S. HRG. 118–13

GUARDIANSHIP AND ALTERNATIVES: PROTECTION AND EMPOWERMENT

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

WASHINGTON, DC

MARCH 30, 2023

Serial No. 118–02

Printed for the use of the Special Committee on Aging



GUARDIANSHIP AND ALTERNATIVES:
PROTECTION AND EMPOWERMENT

S. HRG. 118–13

GUARDIANSHIP AND ALTERNATIVES: PROTECTION AND EMPOWERMENT

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

WASHINGTON, DC

MARCH 30, 2023

Serial No. 118–02

Printed for the use of the Special Committee on Aging



Available via the World Wide Web: http://www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

52–114 PDF WASHINGTON : 2024

SPECIAL COMMITTEE ON AGING

ROBERT P. CASEY, JR., Pennsylvania, *Chairman*

KIRSTEN E. GILLIBRAND, New York
RICHARD BLUMENTHAL, Connecticut
ELIZABETH WARREN, Massachusetts
MARK KELLY, Arizona
RAPHAEL WARNOCK, Georgia
JOHN FETTERMAN, Pennsylvania

MIKE BRAUN, Indiana
TIM SCOTT, South Carolina
MARCO RUBIO, Florida
RICK SCOTT, Florida
J.D. VANCE, Ohio
PETE RICKETTS, Nebraska

ELIZABETH LETTER, *Majority Staff Director*
MATTHEW SOMMER, *Minority Staff Director*

C O N T E N T S

Page

Opening Statement of Senator Robert P. Casey, Jr., Chairman 1
Opening Statement of Senator Mike Braun, Ranking Member 2

PANEL OF WITNESSES

Tina Paone, M.D., Professor and Licensed Professional Counselor, Lansdale, Pennsylvania 4
Ryan King, Guardianship Reform Advocate, (accompanied by Susie King, Ryan's mother), Washington, D.C. 6
Nick Parker, Staff Attorney, Adult Guardianship Office, Indiana Office of Court Services, Indiana Supreme Court, Indianapolis, Indiana 7
Karrie Shogren, Ph.D., Director, Kansas University Center on Developmental Disabilities, Lawrence, Kansas 9

APPENDIX

PREPARED WITNESS STATEMENTS

Tina Paone, M.D., Professor and Licensed Professional Counselor, Lansdale, Pennsylvania 27
Ryan King, Guardianship Reform Advocate, Washington, D.C. 29
Nick Parker, Staff Attorney, Adult Guardianship Office, Indiana Office of Court Services, Indiana Supreme Court, Indianapolis, Indiana 31
Karrie Shogren, Ph.D., Director, Kansas University Center on Developmental Disabilities, Lawrence, Kansas 33

QUESTIONS FOR THE RECORD

Nick Parker, Staff Attorney, Adult Guardianship Office, Indiana Office of Court Services, Indiana Supreme Court, Indianapolis, Indiana 45
Karrie Shogren, Ph.D., Director, Kansas University Center on Developmental Disabilities, Lawrence, Kansas 47

STATEMENTS FOR THE RECORD

Elder Justice Coalition Statement 53
Statement's for the Record 54

GUARDIANSHIP AND ALTERNATIVES: PROTECTION AND EMPOWERMENT

Thursday, March 30, 2023

U.S. SENATE
SPECIAL COMMITTEE ON AGING
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., Room 106, Dirksen Senate Office Building, Hon. Robert P. Casey, Jr., Chairman of the Committee, presiding.

Present: Senator Casey, Gillibrand, Blumenthal, Braun, Scott, and Vance.

OPENING STATEMENT OF SENATOR ROBERT P. CASEY, JR., CHAIRMAN

The CHAIRMAN. The Senate Special Committee on Aging will come to order. This is the second hearing of the Special Committee on Aging in the 118th Congress. Senator Braun, thank you for your continued partnership on this Committee, as well as all the members. Today, we will discuss the topic of growing national concern, guardianships of older adults and people with disabilities.

The data we have suggests that guardianships affect at least 1.3 million people in the United States who have a disability, or are an older adult. In many cases, guardianship is a blunt legal tool that transfers all decision-making power about the life of a person to someone else. Guardianship can also put a person at risk for abuse, neglect, and exploitation.

In 2018, this Committee documented a number of concerns with guardianship in a bipartisan report that called for the following, greater oversight of guardianship, better data collection, and the need to promote alternatives to guardianship.

Often, people in guardianships need permission to make basic decisions about such matters as their living arrangements, health care, and education. Under some arrangements, a person living under a guardianship must consult with their guardian about voting.

Unfortunately, many of our existing systems, such as our schools, health care agencies, and even courts, communicate to families that guardianship is the only way, the only way to assist their loved ones to make important decisions.

However, there are less restrictive alternatives to guardianships that can increase protections for people needing assistance. These less restrictive alternatives enable a person to retain the power to make decisions that affect them and affect their lives directly.

Alternative arrangements, such as supported decision-making, can provide people with the support they need to make the decisions for themselves with the support of a team.

Today, we will hear from experts and people with lived experience about how these alternative arrangements can help preserve the independence and autonomy of people with disabilities and older adults, while ensuring they have the support they need to make key life decisions.

For the past three weeks, the Committee has asked for input about guardianships and their alternatives, specifically about how to improve protections and independence for people with disabilities who live under guardianships. One individual from Pennsylvania wrote to the Committee saying, and I am quoting, "the system is a sad commentary on how we treat our elderly, and in a word, the system is disgusting." That is the view of one Pennsylvanian. I want to thank everyone for that kind of input that we have heard from many different quarters, and for them taking the time to provide that kind of feedback.

Without objection, I offer their statements for the record, and these are the statements, 312 statements from 40 states and territories. You can see it is a pretty heavy volume of statements.

I appreciate those who shared their troubling experiences with fraud and exploitation, as well as those who offered ideas about how to promote alternatives to guardianships while protecting the rights of individuals.

Many of the experiences that people shared contributed to the development of my new Bill, the Guardianship Bill of Rights Act, which will be introduced today. We know that guardianship is a complex and personal issue. It is clear that we need guardrails, guardrails to protect the rights of people in protective arrangements.

This Guardianship Bill of Rights Act will ensure that the civil rights of older Americans and people with disabilities are protected and that alternatives to guardianships are in fact promoted.

I look forward to hearing from our witnesses. We are thankful for their presence in their testimony, the experience and expertise they bring to us, and with that, I will turn to Ranking Member Braun for his opening remarks.

OPENING STATEMENT OF SENATOR MIKE BRAUN, RANKING MEMBER

Senator BRAUN. Thank you, Chairman. There are far too many difficult and painful stories of guardianship abuse, often from people who did not require a guardianship in the first place. No American should have their rights unnecessarily stripped from them.

Harrowing tales were sent to this Committee of rights being taken away by a single stroke of a pen in the name of guardianship.

There are a number of Hoosiers who shared their personal experiences with me. I thank you all for submitting your statements. It gave me a lot to go on in terms of what we need to emphasize here in this hearing.

I heard from the sister of a Navy veteran, Jimmy Johnston, who said that a court ordered guardianship ultimately led to her broth-

er's death. While she had been designated his health care surrogate, a professional guardian was appointed to make life or death medical decisions for Jimmy without prior medical knowledge or family history.

After Jimmy's death, his family received a hospital bill of nearly $1.2 million. $1.2 million. Nearly all of it was billed to Medicare. That is unacceptable. Guardianship is supposed to mean protection, not that.

When done correctly, it is a valuable tool to protect vulnerable people, but as so many stories have shown us, it can also lead to exploitation and abuse. We must empower states with the tools and resources they need to protect and empower their most vulnerable residents.

Indiana has been an innovative laboratory on guardianship in recent years. It created a guardianship registry to improve data. In 2019 Indiana passed the supported decision-making law to expand options for people who need a protective arrangement.

This gives Hoosiers in need the chance to pick support that works best for them, and when we do this state by state, we are using the laboratories in this country in terms of how to do it best across the country.

Indiana's Volunteer Advocates for Seniors or Incapacitated Adults Program connects volunteer guardians focused on personal autonomy to Hoosiers without support or protection. These volunteers step in when they get calls from adult protective services, nursing homes, or even banks alerting them to an incapacitated person who has no one else to look after their affairs.

Sarah Walker is a Director of Southern Indiana Adult Guardianship Services. She is a self-described old soul who traces her love of working with older adults to her love for her own grandparents. Sarah and her teamwork across five counties in small town USA to help Hoosiers be as independent as possible.

They assisted one client struggling with drug use to find help and a better living arrangement. Now they are working to restore her rights. Hoosiers continue to show us how states can solve these issues.

The Adult Guardianship Office is managing these innovative services. It works with the courts and stakeholders to find practical solutions for local issues in the guardianship system. Our role is to remove barriers in states' ways, not add to them.

I am introducing the Guardianship Grant Flexibility Act with Chairman Casey to remove barriers by making Federal guardianship grants more flexible. This Bill would allow states to recruit and train law students to represent respondents in guardianship cases and to serve as guardians ad litem.

Law students interested in protecting the rights of older adults should not be held back by arbitrary Federal interference. This is a commonsense reform to give states more tools to protect people in need. I ask unanimous consent to enter into the record a letter of support for this Bill by the Elder Justice Coalition.

The CHAIRMAN. Without objection.

Senator BRAUN. I look forward to hearing more about common sense steps we can take to strike the right balance between protec-

tion and freedom, and I look forward to hearing how states can learn more from each other on the issue. I yield back.

The CHAIRMAN. Thank you, Ranking Member Braun. Our first witness today is Dr. Tina Paone. Dr. Paone is a Professor in the Department of Educational Counseling and Leadership at Monmouth University. She is also a licensed counselor and a resident of my home State of Pennsylvania.

Dr. Paone has personal experience with the guardianship system when her mother was placed in a guardianship following a stroke in 2015. Thank you, Dr. Paone, for sharing your expertise and experience with us today. Next, I will introduce our second witness, Mr. Ryan King.

Today, Ryan is accompanied by his mother, Susie. Ryan works with several organizations, including Quality Trust and Project Action to advocate for guardianship reform. He was in a guardianship for 13 years before becoming the first person in Washington, D.C. to have their guardianship terminated in favor of supported decision-making.

Ryan, thank you for being with us today and for sharing your story and your expertise with the Committee. Now I will turn to Ranking Member Braun to introduce our third witness.

Senator BRAUN. Thank you. I am going to introduce Nick Parker. He is a Staff Attorney for Indiana's Adult Guardianship Office. Nick oversees Indiana's Volunteer Advocates for Seniors or Incapacitated Adults Program, the Guardianship Registry, and the Adult Guardianship Symposium.

He engages with practitioners, experts, and stakeholders to improve Indiana's guardianship system. He also spearheads efforts across the Hoosier State to promote alternatives like supported decision-making.

Nick is a graduate of IU's Mauer School of Law. He previously worked for Indiana Legal Services Medical Legal Partnership. He also has direct experience representing clients in guardianship cases and in securing supported decision-making. Welcome, Nick.

The CHAIRMAN. Thank you, Ranking Member Braun. Our final witness, fourth and final witness is Dr. Karrie Shogren. Dr. Shogren is the Director of the Kansas University Center on Developmental Disabilities, Senior Scientist at the Shuffle Bush Lifespan Institute, and a Professor in the Department of Special Education at Kansas University. Her research focuses on assessment and intervention in self-determination and supportive decision-making for people with disabilities. She is an expert in less restrictive alternatives to guardianship. Dr. Shogren, thank you for being here. We will start with our first witness and her testimony. Dr. Paone, you may begin your testimony.

STATEMENT OF TINA PAONE, M.D., PROFESSOR AND LICENSED PROFESSIONAL COUNSELOR, LANSDALE, PENNSYLVANIA

Dr. PAONE. Good morning, Chairman Casey, Ranking Member Braun, and members of the Special Senate Committee. I am a University Professor and a Licensed Professional Counselor. I live just outside of Philadelphia in Montgomery County, Pennsylvania. I am here to share my family's story.

It is a story that resonates with so many other families. In January 2015, my 68-year-old mother had a major stroke. A judge granted guardianship to myself and my brother. The judge also ordered a court appointed attorney, as well as another evaluation by a court appointed psychologist.

At that point, two professionals declared my mother incapacitated. Much to our surprise, the newly appointed attorney insisted on a third evaluation. It resulted in the same conclusion but now the cost to my mother's estate was over $8,000. This was the first indication that something was wrong with the guardianship system.

Soon after, the inventory of the estate was filed, which valued my mother's estate at a little over $2 million, including the business she owned. My brother and I successfully performed guardianship duties for almost a year.

Regardless, the court appointed attorney insisted on a new plenary guardian, a lawyer who admitted she had no previous experience working with large estates, businesses, or families who were actively involved. This was the second indication that something was wrong with the guardianship system.

In 2018, my mother's assisted living facility told us they had not been paid in months. Despite more than adequate funds available, our mother was in arrears for close to $100,000 to her facility and care aides.

When we threatened to expose this situation to the courts, the guardian resigned, but she only resigned as guardian of the person, not guardian of the estate. We quickly learned that this was a decision that was supported and encouraged by the court appointed attorney. This was very concerning to us and indicative of a much larger problem.

My brother and I kept expressing concerns, but we had no voice. Eventually, in 2022, our mother's guardian informed us that our mother's business would be sold, eliminating half of the monthly income she relied on for her care.

Even worse, real estate taxes went unpaid. My mom never paid a bill late in her entire life, and now late fees and penalties piled up in excess of $11,000 due to the negligence of the Guardian. This was a person charged with ensuring my mom's well-being, and yet she intentionally sold the business, my mother's largest asset and income source, and she failed to protect her second largest asset, her home.

It was only when we approached the court appointed attorney to request the removal of the guardian that the bills got paid. Finally, the guardian of the estate agreed to resign. Shortly after, the court appointed attorney agreed to resign with conditions. My brother and I cannot contact any governmental, regulatory, or administrative office to make claims or allegations of her wrongdoings.

We cannot speak to family or friends about her negative impacts. Either action would be deemed a violation and would result in monetary sanctions and possible removal as our mother's current guardians.

If we had agreed to this gag order, I would not be here today, and yet we fear vindictive repercussions as a result of my testimony today. Since her stroke, this situation has cost my mother

more than $116,000. That is money that could have been spent on her care, but instead went to fund a system that seems driven to pay professional guardians, attorneys, and others motivated by greed and power.

My situation is not isolated. In my experience, when an incapacitated person has a larger estate, they are more likely to have frequent involvement with the courts, which increases payments to lawyers, guardians, and services hired by these guardians.

Even more disturbing, the same individuals are selected repeatedly to serve in these roles, creating conflicts of interest and perpetuating a widespread abuse of power that impacts this marginalized population.

As I sit here today, my mother's situation remains unresolved. I call on you, our Senators, to create change. You have the ability to implement meaningful reform. From my perspective, we need Federal standards that regulate the appointment and oversight of judges, court appointed attorneys, and court appointed guardians.

Additionally, families like mine must have a recourse to prevent devastating medical and financial exploitation. On paper, the current system appears well-intentioned. That is not how it plays out.

On behalf of my family and so many others, I beg you to please implement meaningful reform. Thank you.

The CHAIRMAN. Dr. Paone, thank you for providing your testimony and bringing your mother's story to this hearing today. Our next witness is Mr. Ryan King. Ryan, we are going to play your video testimony, video statement that we will play right now.

STATEMENT OF RYAN KING, GUARDIANSHIP REFORM ADVOCATE, WASHINGTON, D.C.

Mr. KING. Good morning, everyone. My name is Ryan H. King. I live in Washington, D.C. I have disabilities. I know I am independent. I was under guardianship for 13 years, but not anymore.

I can do many things on my own, but sometimes I need help. I cook three days a week with support. Wash my clothes and do dishes. Take out the trash—go to the movies, go to WWE events, wrestling matches, and travel. I work at Safeway. Come October it will be 23 years as a Courtesy Clerk. I love what I do, and Metro Access Transportation Services takes me to work.

In 2003, I graduated from high school and wanted to own a limousine business. To get started on my business, I had to go to the Government agency for help. My parents were told they had to get guardianship for me, if I wanted to get their services. Why? I was already independent with support for the things that I wanted to do.

I can make choices. No, I didn't like being under guardianship because I had to go to court. I had to let them know everything I did, like going to events, doctor's appointments, and church. No one else in my family did that.

In 2007, My parents went to court to end guardianship. The court gave me a lawyer, the lawyer said I needed to stay undergoing guardianship. The judge agreed. I did not win my case. I read about Jenny Hatch in the paper.

Jenny Hatch was the first person to use supported decision-making—to end her guardianship. Quality Trust for Individuals with

Disabilities helped her. I got them to help me tell the court about the things I can do. They used Supported Decision Making to show what I could do.

All the people who helped me, my family, my friends, and programs I am in—I did that—I did all of that. A part of my team—I am in Project Action for advocacy, Lifelong Partners for activities, and Quality Trust for leadership and advocacy support. We went back to court in 2016. I told the judge—the judge said he read about everything I can do. He was impressed, and then ended guardianship—I won.

Now, I know I can do something by myself. I know I need help sometimes. Everybody needs help sometimes. I tell people not to judge me before you know me.

The CHAIRMAN. Mr. King, thanks for your testimony.

Yours is a story of inspiration, and we need to hear that, and we are grateful you are here. Mr. Parker, you are next. Thank you.

STATEMENT OF NICK PARKER, STAFF ATTORNEY, ADULT GUARDIANSHIP OFFICE, INDIANA OFFICE OF COURT SERVICES, INDIANA SUPREME COURT, INDIANAPOLIS, INDIANA

Mr. PARKER. Thank you, Chairman Casey, Ranking Member Braun, Members of the Committee, my name is Nick Parker and I am the Staff Attorney for the Adult Guardianship Office with the Indiana Supreme Court.

My office serves as a resource for courts, members of the public, judicial staff, and grantees to receive quality information on the guardianship process and tools to maintain a functioning and effective system overall. Before starting with the court, I was a staff attorney with Indiana Legal Services.

In this role, I worked directly with clients, addressing decision-making needs with them in their families, including guardianship, but often also including termination and supported decision-making.

My interest in caretaker issues started when I was in the fourth grade, watching my mother care for my grandfather while balancing two nursing jobs and raising her own family. Her goal was to allow him to live as independently as possible for as long as possible. She never served as his legal guardian but was his primary caretaker for many years.

I know that not all seniors were as fortunate as my grandfather to have my mom, and to this day, I understand the importance of having strong programs and supports to help those that need it most and to help them live independently.

My office funds and supports 20 volunteer programs called Volunteer Advocates for Seniors and Incapacitated Adults. These programs work on the local level with county courts to address the needs of people in their communities who require guardianship services but do not have suitable friends or families to take on that role.

These programs cover 52 Indiana counties and adhere to both Indiana law and National Guardianship Association standards of practice. We have strict ethical requirements in place about staff to volunteer ratios and reasonable caseloads for these programs.

My office also oversees court technology, including a guardianship registry for local courts. This is an online system to verify guardianship information. It serves both the public data base function and a behind the scenes case organization feature.

This registry is so important because it provides timely and important data on guardianships and promotes uniformity and entry of guardianship cases in our e-filing system. Judges and others across the State can use this registry to ensure safety of protected persons through access to contact information and demographics.

Banks and financial entities can also check our registry to confirm a guardianship, and it does keep track of cases that have been terminated. The Adult Guardianship Office was a crucial part of a grassroots task force to address supported decision-making and less restrictive alternatives in our State.

This task force showed the power of local organizations working together to effectuate State level change. In 2019, Indiana became one of the first states to recognize supported decision-making as a State law.

This new law also created a requirement for courts to consider less restrictive alternatives before ruling on a guardianship petition. Since then, my office has been working on ways to implement ideas for guardianship innovation, often in the absence of direct funding.

This includes a proposed guardianship educational system, modeled after a program in Ohio, which we hope to launch as a pilot program to help courts ensure that guardians are given proper introductory and ongoing education about their roles and duties. We are also considering a law school clinic program that would link supervised students to local courts to serve as direct advocates or guardians ad litem.

The GAL process in Indiana ensures that the best interests of a person at risk of guardianship is served and that appropriate levels of decision-making support, including supported decision-making, could be put in place.

Guardian ad litem can investigate less restrictive alternatives and ensure compliance with State law and promising practices. For counties and communities that might traditionally have a hard time recruiting suitable GAL candidates, a law student clinic could provide the necessary staffing for this process to be a success.

The Indiana courts have the proven ability to convene multiple stakeholders and bring organizations and entities together to address problems head on. Indiana has strong support and commitment from our Chief Justice, Loretta Rush, which will allow our Adult Guardianship Office to serve its traditional functions, as well as expand its outreach in new areas in the coming years.

Though there is room for improvement in Indiana, we have a strong working network of guardianship stakeholders that are willing and able to tackle issues that come up in our State. Grassroots organizing and local input have been successful in the past, and we hope that similar working groups will help implement changes and improvements uniquely suited to the needs of our communities.

I look forward to discussing the strengths and experiences of our State with others today, and I hope to share thoughts for the fu-

ture of guardianship programing and innovations that are needed. Thank you.

The CHAIRMAN. Mr. Parker, thanks very much. Thanks for bringing in Indiana's story to the Committee. Dr. Shogren, you are next. Thank you.

STATEMENT OF KARRIE SHOGREN, PH.D.,
DIRECTOR, KANSAS UNIVERSITY CENTER
ON DEVELOPMENTAL DISABILITIES, LAWRENCE, KANSAS

Dr. SHOGREN. Thank you, Chairman Casey, Ranking Member Braun, and Members of the Committee for the opportunity to testify on the importance of alternatives to guardianship for people with disabilities, including people with intellectual and developmental disabilities and older adults.

My name is Karrie Shogren. I am a Professor and the Director of the Kansas University Center on Developmental Disabilities. My research over the past 20 years has sought to advance self-determination of people with disabilities, and there is clear evidence that we can provide alternatives to guardianship that preserve rights, enhance self-determination, and support the intent of disability civil rights laws such as the Americans with Disabilities Act, which states in its findings that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers.

As Senator Casey noted in his remarks, it is estimated, although we are in critical need of better national data, that 1.3 million adults with disabilities and older adults are under guardianship arrangements that limit their legal capacity to make decisions about their lives.

Being under a guardianship arrangement can take away rights to make legal decisions, relationship decisions, reproductive decisions, financial decisions, health and medical decisions, education decisions, decisions about where to live, employment decisions as well as rights to vote and be involved in civic life, to travel freely, and to be involved in other daily life decisions.

There is a general consensus that in practice, guardianship remains a default for many people with disabilities and older adults who need supports with decision-making. There is limited and inconsistent access to and understanding of less restrictive alternatives like supported decision-making.

This is despite people with disabilities and organizations, including the National Guardianship Association, asserting that guardianship should only be considered after alternatives to guardianship have been proven ineffective or unavailable.

Defaulting to guardianship without considering alternatives sustains societal and institutional barriers. Current research, advocacy, and lived experience has shown us that people with disabilities can make decisions in their communities and access the supports they need to do so.

None of us would want our rights or the rights of our family members or loved ones to be taken away if there were other alternatives. What can we do to change the options available to people

with disabilities, older adults in their families? We can change the default and provide access to alternatives.

For example, supported decision-making as an alternative to guardianship can be understood as the process whereby a person with a disability or an older adult is enabled to make and communicate decisions with respect to personal, financial, and legal matters on an equal basis with others without disabilities.

Supported decision-making does not remove decision-making rights. It builds a system of support. For example, if a person needs support with medical decision-making, they can identify the person, technology, or other decision that can best support them in understanding and communicating their decisions.

They can identify a different person or resource for financial decisions or for any life domain they need support with, and these supports can be changed over time as support needs and as decision needs change. This is aligned with how we all use supports to make decisions in our communities.

We all get information and advice from people we trust in a way that we can understand it to help us make the decisions we need to. To advance protection and empowerment in guardianship and its alternatives, the goal of today's hearing, I offer the following recommendations rooted in research and the voices of people with disabilities and older adults.

First, establish a clear, consistent definition of supported decision-making and guidelines for its use.

Second, advance education, training, and outreach on supported decision-making and alternatives to guardianship across the multiple systems such as education, legal, health, disability, financial, and aging that impact decision-making rights.

Third, adopt recommendations by the National Guardianship Association and other organizations that guardianship be the protective arrangement of last resort.

Fourth, ensure protections for the civil rights of people with disabilities and older adults who are being considered for or under guardianship arrangements.

Fifth, establish data collection systems that allow for a clear picture of the use and outcomes of guardianship supported decision-making and other protective arrangements and alternatives. To close, there are existing research-based tools and programs to enable supported decision-making.

Courts and State statutes are increasingly recognizing supported decision-making and other alternatives to guardianship. We are learning that supported decision-making is feasible to implement, that people feel more supported and able to make decisions, and that establishing a network of trusted supporters can reduce risk.

Further, we know that more opportunities to make decisions is linked with other important outcomes, including health and well-being, accessing preferred living arrangements, and living a self-determined life.

It is an opportune time to remove societal and institutional barriers to supported decision-making and alternatives to guardianship, using research on the lived experience of people with disabilities to enhance protection and empowerment. Thank you for the opportunity to be here today.

The CHAIRMAN. Doctor, thanks very much. As many of you know at our hearing, especially on Thursdays, Senators are in and out of this hearing and other hearings and meetings, so I wanted to make note of those who have been here o some may be asking questions, some may not.

Senator Rick Scott of Florida has been part of our hearing. Senator Gillibrand of New York. I will cede my question time to Senator Blumenthal of Connecticut.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you so much, Mr. Chairman. Thank you, and the Ranking Member for having this hearing. I am sure as everybody in this hearing room knows, Senator Casey has been a champion.

That word is often used in the U.S. Senate, but he has been a true champion of the interests and values that you are here to represent, and not just in words, but in the legislation that he has advanced to provide, for example, more compensation, more care for the caregivers.

We are talking here about guardianship, people who care for other people. Nothing is more important in our society than that kind of caregiving guardianship. It is a legal term. I am a lawyer. I know what it means in the abstract, but you know what it means in the day-to-day performance of that trust responsibility.

I want to thank everybody who is here, both at the witness table and in the audience, for your caring about this issue. In Connecticut, the probate courts receive 600 new petitions for guardianship of adults with intellectual disabilities every year.

At the same time, reported rates of elder abuse are rising in Connecticut and across the country. Abuse is intolerable. I fought it when I was Attorney General of Connecticut, and I am proud to say that I worked with Senator Casey and others in the Senate to fight it here.

This abuse can take many forms, as you know, including financial exploitation, emotional and physical abuse, and we need to do more to protect it, as we have started to do in 2017, passing the Elder Abuse Prevention and Prosecution Act. I was proud to work on that measure.

It authorizes certain court appointed guardianship oversight activities under the Adult Protective Services Demonstration Grant Program, and we need to appropriate the money that is necessary to implement it, as well as to investigate through the Department of Justice the kinds of abuse that have been mentioned here.

I want to ask Dr. Shogren, in your testimony, you mentioned the variety of terminology to describe guardianship arrangements, which sometimes limits our understanding of the circumstances that lead to the outcome of such arrangements, and you offered that a guardianship is a legal arrangement under which an adult's decision-making authority is granted to another person based on a determination of impaired decision-making capacity.

This determination doesn't require consideration of less restrictive kinds of alternatives such as supported decision-making. Do you think implementing a national definition, a model definition, a standard such as you describe it, it would aid in combating elder abuse—and obviously, states bear a major responsibility here. Do

you think it would provide guidance to states and be a positive development?

Dr. SHOGREN. Yes, thank you for that question, and yes, I do think so. I think establishing a foundation for the definition, the standards for implementation is critically important.

As you noted, we have very little clarity even on how many states are implementing supported decision-making arrangements in the same ways because of that lack of consistency.

Having a base level of understanding of what we are talking about in talking about supported decision-making, how agreements are set up, and how protections will be put in place is very important to provide that base level of understanding of what we are talking about, and to allow data to be collected to inform our understanding.

Senator BLUMENTHAL. Thank you. Dr. Paone, I have been very disturbed about your description of what you went through, what your family have experienced in your attempts to ensure your mother's well-being.

Your family situation describes a system where the courts, professional guardians, psychologists, health care providers, and others seem to be connected and have an interest in charging estates for their services.

You said that we need to provide recourse for families who experience medical and financial exploitation to prevent their future exploitation. I totally agree.

I am wondering if you could tell us whether you think a dedicated advisory board would be helpful to facilitate progress in combating this kind of abuse?

Dr. PAONE. Thank you for the question. Yes, I believe that an advisory board would be helpful as we determine these types of abuse.

I also believe that having systems or recourse in place for families similar to that of Elder Line or Childline where professionals are reported if they are exploiting the elderly. At this point, that is not what those national hotlines are for.

They will send you back to the courts, which are part of the system that I have found my own problems with. As far as a council, as long as it was an equitable council that took into consideration the background of the individuals who sit on a council.

I think it would be very effective. Hearing voices from families who have experienced this exploitation may be helpful as members of this council.

Senator BLUMENTHAL. I thank you very much. Thank you again to the experts who are here, and the champions and advocates, and thank you, Mr. Chairman, for yielding your time. Thank you.

The CHAIRMAN. Thank you, Senator Blumenthal. We will turn next to Ranking Member Braun.

Senator BRAUN. Thank you. First question will be for Mr. Parker and Dr. Shogren. On supported decision-making again, each in your own ways, tell me what is important. I believe that freedom and choice are, you know, so important in any of this, and Indiana's 2019 supported decision-making law open new opportunities for protection law allowing for more individual choice and freedom,

so each of you tell me why it is so important. We will start with you, Mr. Parker.

Mr. PARKER. Thank you, Senator. The 2019 law change in Indiana was really groundbreaking because it was just like a next step in person center planning, so I was excited to have been part of that task force that got that accomplished for our State.

The law created a new paradigm for how courts view a guardianship petition and review, so what it did is it showed that there have to be efforts to utilize something else or considered it before guardianship is granted. Before in 2019, that was not necessarily the case.

This shifted the dialog from guardianship as kind of a binary system of help versus no help, and it turned it into a last resort system, so that if somebody has other resources or supports available, they are to try those and to make sure that if those aren't available, that is the only way that a guardianship moves forward.

As a practitioner, I helped clients with supported decision-making, so we were either taking preexisting cases and trying to find less restrictive alternatives after 2019, or more often we were talking about alternatives before any petition was filed.

First I could see my clients just being able to take control of their case and take control that conversation, it was a huge shift, but also many people who otherwise would have maybe served as guardians before 2019, they were more than willing to pursue less restrictive alternatives. In fact, many didn't even realize there were other options.

The 2019 law gave us education, but it also gave us a new way to look at these cases, and though there is still work to be done. I think this is a resource, and my office links people to resources, so supported decision-making being a part of our law really allows us to be focused on independence and what people can do rather than a restriction under a guardianship.

Senator BRAUN. Dr. Shogren.

Dr. SHOGREN. Thanks for the question. I agree with everything that Mr. Parker just said, and I will build on that in terms of the importance, that I believe it was Senator Casey that said in his opening remarks that guardianship is often used as a blunt legal tool, and that is not how most people interact with making decisions in their day to day lives about multiple domains of life.

Using a blunt tool to address the range of decisions that have to be made and the range of support needs that people have, doesn't allow us to individualize, doesn't allow us to deal with the realities of people living and interacting in their community.

As we heard from Mr. King, he talks about how we all need supports in some areas of our lives, but we should have the right to choose those supporters, to access those resources and still be decision-making.

Supported decision-making presumes competence. It presumes the ability to make decisions, and really requires us to disprove that before moving on to more restrictive alternatives.

Senator BRAUN. Thank you. Mr. Parker, yes, Indiana's done some things, I think, that has kind of been trailblazing, so to speak. Let's look at the guardianship registry. This system makes information about guardianship more transparent. Other states have adopted

similar changes. Why are the states, you think, best positioned to handle guardianship issues, and how are they learning from each other's policies?

Mr. PARKER. Thank you, Senator Braun, for that question. I started with the courts a year ago, a year ago last week, and I was just amazed at how quickly states were contacting me to talk. Since that time, I have met with 15 other states and all over the country.

There are groups like the National Center for State Courts that can help make connections with states, and then there is a lot of conferences and trainings out there, so people in my position with different states are talking to each other. They are doing that in kind of two ways. Some of it is geographic.

We are meeting with other Midwest states and looking at what they are doing, and then sometimes it's based on how courts are structured, so Indiana has a strong amount of local control called a non-unified court system.

I have been meeting with other states like that. Sometimes courts will kind of meet based on factors like whether they have supported decision-making yet in their State law or what they want out of innovations such as technology like the guardianship registry you mentioned.

What I am seeing in my first year is that there are clear commonalities, that less restrictive alternatives are positive changes, keeping guardianship as a last resort, and an emphasis on education and the use of technology, but outside of that, there is not really a lot of consensus on what we should do because everyone is trying something slightly different right now. I call this kind of the innovation stage. We are looking at like picking and choosing what might work for a State and what might not work for our State, and what have other states learned and done.

Right now, if we picked a set of rules for everyone to go with, it might disrupt some of these discussions and it might have good ideas go unnoticed, frankly, so there is not a one size fits all solution for guardianship, but I do think states are best equipped to address the needs of their communities and find these solutions in both inside their State or from other states that they are talking with.

Community level partnerships have worked for Indiana in the past, and I think that states will drive those effective changes and innovations in the future.

Senator BRAUN. Thank you all. I have a couple other questions. I will save that for a second round.

The CHAIRMAN. Thank you, Ranking Member Braun, and I will take my question time now. Dr. Paone, I will start with you. As you highlight in your testimony, your mother's stroke necessitated a guardianship due to her being incapacitated.

However, your story emphasizes a critical need for these guardrails that we spoke of earlier, guardrails to ensure that even while in guardianships, individuals in their basic rights are protected.

The Bill that I am introducing today, the Guardianship Bill of Rights Act, will direct the Attorney General to create standards for protecting the civil rights of people living under guardianships. Can you describe how legislation like this would be helpful, espe-

cially in the context of your own family's experience with your mom?

Dr. PAONE. Yes. The legislation, after I read it, there are four points that I find would be very helpful or would have been very helpful. An alternative arrangement for my mother would have been helpful.

Family members are less restrictive than court appointed personnel and cost incapacitated people $0. A guaranteed procedure for the modification or discontinuation of restrictive protective arrangements would have been helpful.

Regulatory and—or regular and consistent background checks on court appointed personnel would have been helpful, and finally, the ability to report and investigate abuse of guardianship would have been helpful, so all four points of the legislation would be helpful moving forward.

The CHAIRMAN. Well, your own story gives a foundation for legislation like that, and I am grateful that you are willing to talk about it and bring that to the Committee. I will move next to Mr. King.

We heard in your recorded statement, Ryan, that you have and we know from your story that you have multiple disabilities, but you are very capable of making your own decisions, decisions that you make with support.

I was looking at the written version of your statement, which is basically exactly the same as what you did by way of video, and you said in the first line, I have disabilities and I am independent. Kind of sums it all up in one sentence.

I have disabilities and I am independent. Then right after that, in the next paragraph, you say, "I can do many things on my own, but sometimes I need help." That would apply to me too. Most of us, all of us, really. This idea of independence and making sure that we are not just aware of that as a concept, but that we are putting in place policy that would effectuate it, is critically important.

The process of supported decision-making relies on family and friends to create a team to support you. We have a number of states that have addressed this. Pennsylvania, the State I represent, currently has a grant to help families, courts, and other entities address, or I should say understand, how to implement supported decision-making, in order to both protect people who need help making decisions, and to ensure that their rights are, in fact, honored.

While not a new procedure, it seems that supported decision-making in other arrangements that are less restrictive than guardianship are not that well known, even frankly, by people who should know in our system in Government.

I ask you, Mr. King, how do you—how did you put in place the supports that you needed while you were developing your supported decision-making arrangements?

Mr. KING. First of all, I know that everybody needs to be aware of everything, because if you are not aware of everything, then you lost, you lost in the sauce, and people need to know, if people don't want to be on the guardianship, they don't have to be. Do you hear me?

The CHAIRMAN. Yes. Well said.

That about sums it all up. Now, because we have witness—or because we have Senators that have busy schedules in and out, I was going to go a little longer to kind of give us some more time, but Senator Vance is here, so he will be next.

Senator VANCE. Great. Thank you, Mr. Chairman, Mr. Ranking Member. You know, Mr. Parker, I want to start with you, and I am obviously a little biased here, but I understand the Ohio model has a lot to recommend it in terms of addressing some of these guardianship issues. What specifically about the Ohio model do you think could serve as a model for other legislation in other states or here federally?

Mr. PARKER. Thank you, Senator. When I first started with the court last year, I almost immediately met with Ohio. It was a little easy for me to do, I am from Ohio but moved to Indiana. What I was really fascinated with at Ohio is that they have a system of guardian education set up.

I really think it is a great system because it allows for local communities to submit trainings to having an online data base, and it allows people to kind of watch those at their leisure, guardians and others, but they have to take those credits.

When a court orders a guardianship, they, as I understand it, have a system where they take certain amounts of ongoing education about their roles. I really saw for Indiana that this could be a model to have trainings on there about less restrictive alternatives, but also about financial management and other things that go into the day to day of a guardianship.

I think Ohio could serve as a model for other states that don't have an education system because not all states have one and Ohio has done it very effectively, so that is what I am talking about with the State kind of coalitions and learning from each other.

I took that back to my role and I requested something like that in a Federal grant. We unfortunately didn't get the grant, but we are looking into implementation of a system like that, and I look forward to speaking with my counterpart in your State very soon.

Senator VANCE. Sure. Thank you, and you know, I guess one just basic factual question. Of the current guardianship situation that we have in our country, do we have a good sense of how many of those are family guardians versus, you know, some sort of professional guardian?

Mr. PARKER. In general, counting guardianships is incredibly difficult because of a lot of different challenges, not only with finding cases that might have predated court technology like registries, but also just generally because it is a fluid arrangement that can change, and sometimes people will have a guardianship terminated only to possibly have it reinstated at a later date.

For those and many other reasons that have been stated here today, it is difficult to count adequate guardianship numbers. I do think states like Indiana have created a good guardianship registry that integrates directly with county courts to help with that.

I think counting is a first step, and then the second step is looking at review of those cases, and saying this might have been a case where guardianship was granted.

Senator VANCE. What is a good guess in Indiana for how many are family guardians versus non-family?

Mr. PARKER. I unfortunately don't have that data, but I can look into it. We have a court technology team that I could try to get some numbers——

Senator VANCE. Yes, yes, we will followup maybe off the record and just trying to understand a little bit better. The reason that I ask here is, you know, for obvious reasons, you might expect a family guardian to take the responsibility a little bit differently than a professional guardian.

You know, not to implicate or cast any judgment on professional guardians. I am sure many of them do a very, very good job, but as the country gets older and as fewer and fewer people have children, what I do worry about a little bit, of course, is that you have this growing class of professional guardians who maybe don't have the same interests, the same emotional attachments to their loved ones, and, you know, that is obviously something we are going to have to think about here, and I know that we are all very focused on—I am running short on time here, so let me just close before I yield here.

You know, Dr. Paone, has that—am I pronouncing it right? You know, your story was very illuminating to me, and I know I want to echo Senator Casey. I know it took a lot of courage to share it, but I appreciate it. I am sorry it happened, but I appreciate your willingness to actually illuminate this Committee.

It helps us as we figure out what to do. Mr. King, I want to appreciate—offer my gratitude to you for being here and offering your insights, and Ms. Shogren—Dr. Shogren and Mr. Parker, thank you both for being here as well. Thank you. I yield.

The CHAIRMAN. Thank you, Senator Vance. We will now move to a second round of questions. I will start and then I will turn to Ranking Member Braun. I wanted to get back to this question of supported decision-making.

Although we don't have anywhere near the adequate data that we need, the Council of State Legislatures estimates that there are about, as we said earlier, 1.3 million people under guardianships across the country, but we have to bolster that with additional data.

We know that many of these are not working well, that is obvious, but there are hundreds of instances of abuse, neglect and exploitation of people under guardianship arrangements. We also know that guardianship removes the rights of people to make their own decisions, such as where to live and with whom to interact.

I would ask this of a number of our witnesses, what is the benefit of making guardianship a choice of last resort? It seems like in our system today, it has become the first resort or what courts and others turn to immediately.

How do we make that the guardianships, the choice of last resort, and make alternatives like supported decision-making, the default position instead of the other way around? Anyone who wants to answer. Maybe I will start with Dr. Paone.

Dr. PAONE. Alternative arrangements would allow willing and able family members to care for their loved ones, supporting, in my case, incapacitated person with decisions that are aligned with the

wishes that she had prior to incapacitation, so alternative arrangements would be ideal as opposed to guardianship.

The CHAIRMAN. Anyone else? Dr. Shogren.

Dr. SHOGREN. Yes. I will just add that really, to make this a reality, to flip that default, and having clear standards and guidelines. I do think that the points that have been raised, especially about looking at variation across states, looking at variation and implementation can provide useful data.

We need a baseline standard to make sure that everyone has access to these less restrictive options. I think it is also really important to think about education, outreach, and training on supported decision-making and other alternatives. There really are multiple systems.

For example, we talk about pipelines to guardianship. For example, the National Council on Disability has talked about the school to guardianship pipeline, whereas students are transitioning from their kindergarten through 12th grade public education, families are being told about guardianship at that transfer of the age of majority, and again, it is viewed as the default option.

Instead, we need to build resources and supports for decision-making, and that is largely because people aren't aware of and do not have access to the education and training on these options. Systems need to empower families and people with disabilities to access these options.

The CHAIRMAN. Mr. Parker, I know you have had to wrestle with the legal and policy implications of this. What advice do you have for how do we flip the—in essence, flip the default to supported decision-making?

Mr. PARKER. I think some states do have a structural guardianship as last resort built into their law.

I am fortunate to be in a State where because of the protections and the things that are required in a petition for guardianship, that it is a last resort. I think the next steps, though, and working with that paradigm, are education about these less restrictive alternatives, and just to echo what everyone has said on the panel today.

I would also say review and empowering courts to have review of guardianship is very important. I am looking forward to going back to my State and working with courts to implement review processes in line with national standards with the National Center for State Courts.

The CHAIRMAN. Ryan King, I noticed in your testimony that you were not willing to accept the default of guardianship. You had to take two cracks at it, right? You had—you said toward the end of the first page of your testimony, you said, ″the lawyer said I needed to stay under guardianship, the judge agreed I did not win my case,″ but then later, when you read about Jenny Hatch and her story, the first person to use supported decision-making, and then obviously at the very end of your statement, you say ″that we went back to court in 2016, the judge said he read about everything I can do,″ again, emphasizing your independence. Then you go on to say, ″He was ending guardianship. I won, that was a good win. I won. I know I can do some things by myself, I know I need help sometimes. Everybody needs help sometimes.″

You had to try to win a second time, and I think your perseverance is inspirational, but what kept you going to say, I am not going to accept guardianship as the default?

Mr. KING. If you don't fight and win and do everything that you need to do for you, nothing gets done.

The CHAIRMAN. Well said. I will turn to Ranking member Braun.

Senator BRAUN. I agree. Very well said. My last two questions are going to be for Mr. Parker. In any kind of challenge, when you can get volunteers to help, it spreads the burden, and I was intrigued by the Volunteer Advocates for Seniors or Incapacitated Adults, that now we have 92 counties in Indiana, and this is there in 52 of them.

Tell us how that is actually working and is it a real way to engage folks that are willing to give time where it looks like in many cases it is hard to find the professional help that hits it on the mark. How has it been working in Indiana?

Mr. PARKER. Thank you, so the Volunteer Advocates Program began around 2014. It was based on things that were happening in the State, but the model was codified in our State law about 10 years ago.

What is really unique about this model is the volunteer aspect. It's important to note who this program is for, so, the program is for people who have been determined to need a guardianship and then not having anybody suitable that could serve in that role.

That first prong is important here today because these programs are implementing a lot of ways to look at that and say maybe a guardianship is not going to serve the interests of this person. Let's try to find a less restrictive alternative.

They are able to directly advocate for those clients and send them to legal services and protection and advocacy organizations, so this has to be for people who absolutely need a guardianship as a last resort option, and then after that, these programs are uniquely situated, because you read the statement of Sarah Walker with Southern Indiana Adult Guardianship Services.

They are in their local communities. They are working directly with organizations in their communities, and they are extremely ethical organizations. I am very impressed going around the State.

I went on a tour of our programs, and though I knew all of the legal aspects of a guardianship, it was eye opening to see what these programs are doing to serve the needs of people who truly would have no other options.

I have seen this program work in Indiana, and I know that other states are looking at volunteer models, so I look forward to talking with those states about our experiences and potentially having this as an option in other states.

Senator BRAUN. The last question for me will be in regard to the Bill that we are dropping, the Guardianship Grant Flexibility Act, another way not only with volunteers, but this would be with law students.

It seems like there is a real interest among them to help, maybe knowing that they are going to engage in this once they get their law degree, so it is a very simple kind of idea. Tell me how you think that will help, and if we can get momentum behind it because it is a good idea and that we need it.

Mr. PARKER. When I was a practitioner, I had the honor of supervising law students at a legal aid society in a variety of areas of law. I got to see firsthand law students. They are eager to learn. Relatively mobile.

I mean, Indiana is a large State. They are putting in time on research and they want to gain experiences that are going to help them in their future legal careers. I had worked actually with my predecessor in this role to go down to the law school in Bloomington, Indiana, to train a group of students on how to serve their local courts.

This was to train them on guardian ad litem work, which is an independent third-party officer, and following a best interest standard to determine if guardianship is even necessary, they are writing reports to the court.

Last year, we kind of took that, you know, that solution and took it a step further. When we applied for a grant, we wanted to create a model that links law students to these courts and all different kinds of Indiana communities. There are a lot of issues with workforce and staffing. Courts want to have guardian ad litem.

They want to have direct advocates and attorneys serving for people who are at risk of guardianship, but sometimes there are difficulties in recruiting all of the necessary parties into the courtroom, so when we proposed this model, we were hoping that law students could help fill that gap, and that in the process they would gain an appreciation for public interest work and get practical experience.

I think this is an idea that is a perfect example of the type of partnerships that I was talking about, and I look forward to seeking support for such a program in the future.

Senator BRAUN. Thank you for that, and anybody listening out there, get with your respective Senators within your states and support that idea, because a lot of times you can take something practical like this, which I think Senator Casey and I try to specialize on, and got to get others interested in it, and sometimes that is something that can get accomplished in one Congress. I think it would be a good thing to aspire to. I yield back.

The CHAIRMAN. I want to thank Ranking Member Braun, and thanks for the legislation. I think we can have a lot of benefit from having an alliance with law students. They can be great advocates for what we are talking about here today.

With that, we will begin to close, and I do want to again reiterate our thanks to the witnesses for their testimony, bringing your personal experiences here, and indeed your expertise. Today's hearing highlighted both concerns with guardianship, but also solutions.

We don't want to just curse the darkness, so to speak. We want to offer solutions. It should be—I think the hearing has shown that there are commonsense alternatives to guardianship and the current guardianship system.

As Mr. King said, we should not judge people before we know them or their ability to make decisions about their lives. By taking a person-centered approach and creating supported, supportive, a supportive, trusted team around that person.

We can help people participate in their life decisions and retain their rights and to retain as well, their autonomy to both protect

and empower older adults and people with disabilities, a continuum of support should be available to every person.

The legislation I have introduced is one strategy to promote that protection and empowerment. I am grateful for the work of Ranking Member Braun and the legislation we have introduced together.

I look forward to working with the Committee and our witnesses to find out and implement even more strategies, maybe ideas that we haven't explored today. I will turn next to Ranking Member Braun.

Senator BRAUN. Thank you. You know, when you listen to a hearing like this and you hear the story of Dr. Paone and Ryan's story, it is shameful that, you know, in that part of life, when you are going through that issue, that you would have unscrupulous folks get involved and work the system.

I think if there is one responsibility that we have, especially at this level and even within our own states, is to make sure that does not occur. I am really glad that we had this hearing to bring it to this level of attention. It is sad that you need to do that.

I think this is the kind of clarion for everyone out there that is listening and paying attention, and especially within all the states where it looks like we are getting that proper attention. I am proud of what we are doing in Indiana.

At this stage of your life, you shouldn't have to be worried about a guardianship that does the exact opposite of what it implies, so glad we had the hearing. I think we accomplished some valuable stuff here and that hopefully we parlay it through states in here into a better way for those in the future. Thank you.

The CHAIRMAN. Thank you, Ranking Member Braun. I appreciate working with you on this and your work on this hearing, so we want to thank, again our witnesses, Dr. Paone, Mr. Ryan King, Mr. Nick Parker, and Dr. Shogren for bringing their wisdom and expertise to help us figure this out.

If any Senators have additional questions for the witnesses or statements to be added to the record, the hearing record will be kept open for seven days until next Thursday, April the 6th. Thank you all for participating today, both at the witness table and in the audience. This concludes our hearing.

[Whereupon, at 11:17 a.m., the hearing was adjourned.]

APPENDIX

Prepared Witness Statements

Statement of Dr. Tina Paone

Testimony to the United States Senate Special Committee on Aging
"Guardianship and Alternatives: Protection and Empowerment"
March 30, 2023

Good morning Chairman Casey, Ranking Member Braun, and Members of the Senate Special Committee. I am a university professor and a licensed professional counselor. I live just outside of Philadelphia, in Montgomery County, Pennsylvania. I am here to share my family's story. It is a story that resonates with so many other families.

In January 2015, my 68-year-old mother had a major stroke. A judge granted guardianship to myself and my brother. The judge also ordered a court appointed attorney as well as another evaluation by a court appointed psychologist.

At that point, two professionals declared my mother incapacitated. But much to our surprise, the newly-appointed attorney insisted on a *third* evaluation. It resulted in the same conclusion, but now the cost to my mother's estate was over $8,000. This was our ***first*** indication that something with the guardianship system was wrong.

Soon after, the inventory of the estate was filed, which valued my mother's estate at over $2 million, including the business she owned.

My brother and I successfully performed guardianship duties for almost a year. But then, the court appointed attorney *insisted* on a new plenary guardian, a woman who admitted she had no previous experience working with large estates, businesses, or families who were actively involved. This was the ***second*** indication that something was wrong with the guardianship system.

In 2018, my mother's assisted living facility told us they had not been paid in months. Despite more than adequate funds available, our mother was in arrears for close to $100,000 to the facility and her care aides.

When we threatened to expose this situation to the courts, the guardian resigned. But she only resigned as guardian of the *person*, not as guardian of the *estate*. We quickly learned that this decision was supported and encouraged by the court appointed attorney. **This was very concerning to us and seemed indicative of a much larger problem.**

My brother and I kept expressing concerns. But we had no voice. Eventually, our mother's guardian informed us that our mother's business would be sold, eliminating half of the monthly income she relied on for her care.

Even worse - we discovered that the guardian failed to pay bills to my mom's skilled nursing facility and aides more than half of the time. Real estate taxes fell behind too. Guardianship reports were filed late more than 80% of the time, and the required filing of the estate inventory was a year and a half late.

My mom never paid a bill late in her life. And yet now, the charges and late fees were piling up in excess of $11,000.

This is a person charged with ensuring my mom's well-being and yet she intentionally sold the business, my mother's largest asset and income source. And she failed to protect her second largest asset, her home.

It was only when we approached the court appointed attorney to request the removal of the guardian that the bills got paid.

Finally, the guardian of my mom's estate agreed to resign. The court appointed attorney also agreed to resign… but it comes with conditions. My brother and I cannot contact any governmental, regulatory or administrative office to make claims or allegations of wrongdoing against her. Additionally, we cannot speak to family or friends about her negative impact. Either action would be deemed a violation and would result in monetary sanctions and possible removal as our mother's guardians.

If we had agreed to sign this gag order, I wouldn't be here today.

Since her stroke, this situation has cost my mom more than $116,000. This is money that could have been spent on her care but instead went to fund a system that seems driven to pay professional guardians, attorneys, and others motivated by greed and power.

My situation is not isolated. In my experience, when an incapacitated person has a larger estate, they are more likely to have frequent involvement with the courts, which increases payments to lawyers, guardians, and services hired by the guardians.

Even more disturbing, the same individuals are selected repeatedly to serve in these roles, creating conflicts of interest and perpetuating a widespread abuse of power that impacts this marginalized population.

As I sit here today, my mother's situation remains unresolved. I call on you, our Senators, to create change. You have the ability to implement meaningful reform. From my perspective, we need federal standards that regulate the appointment and oversight of judges, court appointed attorneys, and court appointed guardians. Additionally, families like mine must have a recourse to prevent devastating medical and financial exploitation.

On paper, the current system appears well-intentioned. That's not how it plays out. On behalf of my family, and so many others, I beg you to please implement meaningful reform.

Thank you.

Senate Special Committee on Aging – Guardianship Hearing

Testimony of Ryan H. King

March 30, 2023

Good morning, everyone. My name is Ryan H. King. I live in Washington, D.C. I have disabilities, and I am independent. I was under Guardianship for 13 years, but not anymore.

I can do many things on my own. But sometimes I need help. I cook three days a week with support, wash my clothes and dishes, take out the trash, go to the movies, go to WWE wrestling matches, and travel. I work at Safeway. Come October it will be 23 years as a Courtesy Clerk. I love what I do. Metro access transportation service takes me to work.

In 2003, I graduated from high school and wanted to own a limousine business. To get started on my business I had to go to the government agency for help. My parents were told they had to get guardianship for me if I wanted to get their service. Why? I was already independent with support for the things that I wanted to do. I can make choices.

I didn't like being under guardianship because I had to let the court know everything I did, like going to events, doctor appointments, and church. No one else in my family did that.

In 2007, my parents went to court to end guardianship. The court gave me a lawyer. The lawyer said I needed to stay under guardianship. The judge agreed. I did not win my case.

I read about Jenny Hatch in the paper. Jenny Hatch was the first person to use Supported Decision Making to end her guardianship. Quality Trust for Individuals with Disability helped with ending her guardianship. I got them to help me tell the court about the things I can

do. They used Supportive Decision Making to show what I could do and all the people who help me. My family, my friends, and programs I am in are part of my team. I am in Project Action for advocacy, Lifeline Partnership for spiritual and activities, and Quality Trust for leadership and advocacy support.

We went back to court in 2016. The judge said he read about everything I can do. He was ending guardianship. I won. I know I can do some things by myself. I know I need help sometimes. Everybody needs help sometimes. I tell people not to judge me before you get to know me.

Thank you.

Statement of Nick Parker
Testimony to the United States Senate Special Committee on Aging
"Guardianship and Alternatives: Protection and Empowerment"
March 30, 2023

The Indiana Adult Guardianship Office serves as a resource for courts, judicial staff, and grantees to receive quality information on the guardianship process and tools to maintain a functioning and effective guardianship system overall. We also work with lawyers, guardians, protected persons, and members of the public to provide education and information on guardianship and alternatives, helping to improve the efficiency of our guardianship network.

I am the staff attorney for the Adult Guardianship Office. Prior to this role, I was a staff attorney for a legal aid society, working directly with clients with intellectual and developmental disabilities. My project addressed decision-making needs with clients and their families, including adult guardianship, guardianship termination, and supported decision-making. My interest in guardianship started at a young age when I watched his mom care directly for my grandfather. He experienced a rapid decline in health that affected his ability to handle financial planning, health appointments, and daily decisions. I watched as my mom navigated my grandfather's care and helped him live independently for as long as possible with support from an area agency on aging. I knew that not all seniors were fortunate enough to have a caretaker like my mom. This inspired me to focus on careers that emphasized the importance of helping others, particularly caregivers and families.

Ten years ago, the Adult Guardianship Office supported and funded a Guardianship Registry for local courts. This online system allows for public access to verify guardianship information. It also serves a behind-the-scenes function in case organization and supporting courts to gather guardianship data. This system is important because it provides timely and important data on guardianships and promotes uniformity in entry of guardianship cases into our e-filing system. It also allows a judge access to search tools, including petitioner caseloads in other counties, to help inform a pending guardianship decision in their court. There are law enforcement officials throughout the state who can also use the Guardianship Registry to ensure the safety of protected persons through timely access to demographic and contact information. Banks and financial entities can also check our Registry to confirm a legal guardianship and ensure proper access to funds and financial management overall.

The Adult Guardianship Office also oversees, funds, and supports 20 local volunteer advocate programs. These programs (known as volunteer advocates for seniors and incapacitated adults, or VASIA) work on the local level with county courts to address the needs of people in their communities who require guardianship services but do not have suitable family or friends to take on that role. The VASIA programs currently cover 52 Indiana counties, with plans to expand into unserved and underserved areas in the future. Our office requires adherence to Indiana law and encourages programs to follow the National Guardianship Association (NGA) standards of practice. Every VASIA program is required to have at least one nationally certified guardian on staff to ensure that these standards are implemented effectively in the volunteer services they provide. There are also requirements about staff-to-volunteer ratios and ensuring that programs take on reasonable caseloads.

The Adult Guardianship Office was a crucial part of a grassroots taskforce to address supported decision-making and less-restrictive alternatives in our state. This task force, which incorporated our working interdisciplinary network of guardianship stakeholders (WINGS) group recognized by the American Bar Association, showed the power of local organizations working together to effectuate state-level change. In 2019, Indiana became one of a handful of states at the time to legislatively recognize Supported Decision-Making as state law and to encourage less restrictive alternatives to guardianship. This new law also created a requirement for courts to consider less-restrictive alternatives before ruling on a guardianship petitions.

Last year, the Adult Guardianship Office applied for the ACL "Improving Adult Guardianship" grant for 2023-26. Though we were not selected for this opportunity, we have been working on ways to implement our ideas from the grant with the funding we have available. This includes a statewide adult guardianship educational system (based on a model in Ohio), which we hope to launch as a pilot program to help courts ensure that family and professional guardians are given proper introductory and ongoing education about their roles and duties. We are also considering a law school clinic program that would link students (through supervision by an attorney) to local courts to serve as guardians *ad litem* (GALs). The GAL process in Indiana ensures that the best interests of the protected person are served and appropriate levels of decision-making supports are put in place. GALs can investigate less-restrictive alternatives and help ensure compliance with state law and best practices. For counties and communities that might traditionally have a hard time recruiting suitable GAL candidates, a law student clinic could provide the necessary staffing for this process to be successful in the future.

Looking forward, there are many ways the Adult Guardianship Office hopes to be part of the solution to complex issues in our state. We are working with our technology team at the court to expand the functionality of the Guardianship Registry, including new ways to search the public system to more easily view the number of cases a guardian has throughout the state. We are also piloting an accounting system (based on a model in Minnesota) that would allow for uniform filing of guardianship inventories, accountings, and reporting, particularly for people without legal counsel who are serving as family guardians. The GAL program proposed in our ACL grant could be utilized to provide training and supervision to a network of available GAL candidates from a multitude of professions, including social workers and health professionals. The clinics envisioned with educational stakeholders could also be expanded, perhaps having students serving additional roles (including law students as direct representatives for protected persons in guardianship proceedings).

Just this month, the Indiana Supreme Court approved a judicial conference committee devoted to the topic of adult guardianship. This shows the strong judicial leadership and commitment that the Indiana judiciary provide and the critical role they play in finding solutions to issues facing our state. The new committee will meet this summer to develop an action plan for implementing improvements and innovations overall.

The Indiana courts have the proven ability to convene multiple stakeholders and bring organizations and governmental entities together to address problems head-on. Indiana has strong support and commitment from Chief Justice Loretta Rush, which will allow our Adult Guardianship Office to serve its traditional functions and expand its outreach into new areas in the coming years. Though there is room for improvement in Indiana, we have a strong working network of guardianship stakeholders that are willing and able to tackle issues that come up in our state. Grassroots organizing and local input have been successful in the past, including task force recommendations (creating the Adult Guardianship Office, Guardianship Registry, VASIA programs, and supported decision-making law). We hope that similar working groups at the state and local level will help implement changes and improvements uniquely suited to the needs of our communities and for all involved in the system. We look forward to discussing the strengths and experiences of our state and to share our thoughts for the future of guardianship programming and innovations.

Statement of Karrie A. Shogren, Ph.D.
Director, Kansas University Center on Developmental Disabilities
Ross and Marianna Beach Distinguished Professor of Special Education
Senior Scientist, Schiefelbusch Institute for Life Span Studies
University of Kansas

March 30, 2023 Hearing before the U.S. Senate Special Committee on Aging

"Guardianship and Alternatives: Protection and Empowerment"

Thank you, Chairman Casey, Ranking Member Braun, and Members of the Committee, for the opportunity to testify on the importance of alternatives to guardianship for people with disabilities, including people with intellectual and developmental disabilities and older adults.

My name is Karrie Shogren. I am the Director of the Kansas University Center on Developmental Disabilities (KUCDD), part of the national network of 67 University Centers for Excellence in Developmental Disabilities (UCEDDs) funded by the Administration for Community Living. I am also the Ross and Marianna Beach Distinguished Professor of Special Education and a Senior Scientist at the Schiefelbusch Institute for Life Span Studies at the University of Kansas. In addition, I serve as the President of the Board of Directors of the American Association on Intellectual and Developmental Disabilities. In all of my roles, I seek to advance research-based solutions that enable the self-determination and inclusion of people with disabilities across the life course. My training and background in education, psychology, and research methodology have enabled me to be a part of efforts to create solutions that promote self-determination and engage people with disabilities, their families, their supporters, and their communities in making decisions about their lives.

My research over the past 20 years is rooted in the principle that people with disabilities have the right to make decisions about their lives and that there is clear evidence we can build systems of supports that enable this right. This work is necessary as people with disabilities have not always been afforded the right to self-determine their lives, a right people without disabilities often take for granted.

While I am the one speaking today, I want to emphasize that the ideas I am sharing have emerged from the disability community and been shaped by researchers, legal scholars, practitioners, and advocates across this country and the world. I also want to note the impact of my lived experiences as a friend, colleague, and supporter of people with intellectual and developmental disabilities who are under guardianship arrangements as well as who use formal and informal supported decision-making arrangements. These experiences—supported by findings from research—have shown me that we can provide alternatives to guardianship that preserve rights, enhance outcomes, and support the intent of disability civil rights laws, such as the Americans with Disabilities Act, which states in its Findings that:

> physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are

frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers.[1]

In my testimony today, I seek to make three basic points:

- Adults with disabilities and older adults have the right to make decisions about their lives.
- We can create decision-making supports that do not result in the removal of decision-making rights.
- Supported decision-making has the potential to lead to better outcomes.

The Right to Make Decisions

Adults with disabilities and older adults, as all adults, have the right to make decisions about their lives. However, it is frequently cited that approximately 1.3 million adults with disabilities and older adults are under guardianship arrangements that limit their legal capacity to make decisions about their lives.[2] The terminology used to describe guardianships, procedures for seeking guardianship, and options for people seeking or seeking to change guardianship arrangements varies widely across states. This limits a full picture of the circumstances that lead to guardianship arrangements, outcomes of guardianship arrangements, and the use of alternatives to guardianship arrangements. However, there is little doubt that issues and considerations related to guardianship and alternatives to guardianship are a part of the day-to-day lives of many people with disabilities and their families, particularly people with intellectual and developmental disabilities and older adults.[3]

Guardianship arrangements are legal arrangements under which an adult's decision-making authority is granted to another person (a guardian) based on a determination of impaired decision-making capacity.[4]

Being under a guardianship arrangement can take away rights to:

- Make legal decisions,
- Make relationship decisions (e.g., marriage),
- Make reproductive decisions,
- Make financial decisions,
- Make health and medical decisions,
- Make educational decisions,
- Make decisions about where to live,
- Make employment decisions,
- Vote and be involved in civic life,
- Travel freely,
- And, be involved in other daily life decisions.

Increased attention has been directed to the need for protection and empowerment in the context of guardianship arrangements.[5] The National Guardianship Association holds that guardianship should "only be considered after alternatives to guardianship have proven ineffective or are unavailable."[6]

However, in practice, there is a general consensus that guardianship remains a "default" for many people with disabilities who need supports with decision making. There remains limited access to and understanding of less restrictive alternatives across education, disability, legal, health, and community systems.[3,7] This limits the right of people with disabilities and older adults to be involved in decisions about their lives, despite the fact that most people view exercising their right to make decisions as essential to their lives.

As an example, for people with intellectual and developmental disabilities, the National Council on Disability has described a "school-to-guardianship pipeline." [2] When young people with disabilities receiving special education services under the Individuals with Disabilities Education Act reach the age of majority (18 in most states), educational rights transfer to students. In a national survey on guardianship from the perspective of people with disabilities and their families, respondents shared that full guardianship was commonly suggested by school personnel and others during conversations about changes in decision-making rights occurring at the age of majority.[8] But, seeking guardianship at this juncture is not the only pathway. Alternatives, like supported decision-making, can center people with disabilities as the rights-holder, enable families to continue to support their adult children, and enable adults with disabilities to have better life outcomes; yet, families, educators, school systems as well as other disability support systems often reporting having limited awareness of alternatives to guardianship.[9] The impact of this school-to-guardianship pipeline is reflected in national data suggesting a majority of adults with intellectual and developmental disabilities who receive publicly funded disability services aged 18 to 22 have a guardian.[3]

When guardianship is used as the default arrangement, it eliminates the opportunity for people with disabilities and older adults to access their right to make decisions, with needed supports. It also limits opportunities to grow in decision-making abilities, learn from mistakes, and engage in adult roles and responsibilities. Using guardianships in an overly broad way and without considering and testing alternatives before entering into guardianship arrangements, discounts decades of research as well as the lived experience of people with disabilities, families, and older adults that confirms that people with disabilities can and do make decisions when they have access to supports aligned with their needs, values, and preferences.[10]

This is why alternatives to guardianship have become a major focus of guardianship reform, with recommendations for alternatives to guardianship, such as supported decision-making, being made by multiple organizations. [2,11-13] This is also why creating supports for decision making is a major focus of research and practice in disability supports and services.[7,10,14] Defaulting to guardianship without considering alternatives sustains societal and institutional barriers rooted in prejudice and antiquated attitudes about the lack of decision-making capacities of people with disabilities that are not supported by research, advocacy, or lived experience.

A lack of access to alternatives creates negative outcomes for people with disabilities and older adults and their families. Family members have shared statements like the following:[15]

> *I didn't feel like we had any options. But I now feel guilt about it every day, because he can make decisions, with supports.*

It was the hardest decision I think I've ever made. To have somebody label him as incapacitated, it was devastating. He was crying. We don't say these things around him. We don't talk about him in that way. We don't talk about what things he can't do. We talk about how he can do it ... It was not an easy decision. Especially when we really work hard to help him make his own decisions. What happens now?

Supported Decision-Making: Preserving Rights

What can happen now, to change the experiences of people with disabilities, older adults, and their families? Alternatives to guardianship that preserve rights afforded to all adults can become the default, a first option for people who need supports for decision making.

Supported decision-making, as an alternative to guardianship, assumes that people with disabilities and older adults have decision-making capacities and should have access to decision-making supports that enable them to retain decision-making rights. Supported decision-making is rooted in what we know about how people make decisions, what we have learned about how to understand and address support needs for decision making, and effective practices that empower people to engage with the supports they need so that they retain self-determination over their lives, which leads to enhanced outcomes.[7]

Supported decision-making can be understood as:

- The process whereby a person with a disability is enabled to make and communicate decisions with respect to personal, financial, and legal matters, on an equal basis with others without disabilities.

Supported decision-making:

- Does not remove decision-making rights,
- Focuses on aligning provided supports with support needs and the choices and preferences of the person,
- Integrates a range of supports (e.g., people, technology, other decisional aids) that can change over time based on the person's support and decision-making needs,
- Allows for the growth and development of decision-making abilities and supports.

Supported decision-making "mirrors what happens for most adults when they make decisions… they seek advice, input and information from friends, family or professionals who are knowledgeable about those issues, so they can make their own well-informed choices."[16]

Unlike guardianship, supported decision-making recognizes that different supports may be needed in different situations, for different decisions, across the life course. The focus is on creating a network of resources and supporters that enable the person to access information to make decisions and the supports they need to communicate their decisions in ways that provide the same opportunities and supports all adults have to make decisions.

Establishing supported decision-making arrangements involves:

- Establishing the areas where a person needs decision making supports (e.g., health, financial, living arrangements, relationships),

- Identifying what supports (e.g., people, technology, other resources) will be provided,
- Confirming that the person with a disability or older adult will be the ultimate decision maker,
- Creating a plan for reevaluating and changing the supports, as needed, over time.

There are existing research-based tools and programs to support people with disabilities, their families and communities, and the systems that support them (e.g., medical, education, legal, financial) to identify decision-making support needs and operationalize access to these supports through formal (i.e., legal) and informal supported decision-making arrangements.[7,10,17-22]

Following are descriptions by people with disabilities and older adults about their use of supporters—the people that help them gather and weigh information in making decisions—in supported decision-making[15]:

> *I have people by my side to give me the right prompts and explain a little more about what might happen or won't happen.*
>
> *I like people that know me, I go with people who I trust, who are going to listen to me and help me make my decision. People who know me and a bit of my history.*
>
> *These are your decisions, and the people who support you are there to give you guidance, but the final decision is up to you.*

As families of adults with disabilities and older adults learn about supported decision-making, they often highlight how it addresses what is important to them, as illustrated in the following descriptions[15]:

> *We need to allow our adult children with disabilities to make mistakes and learn from them because we are not always going to be around to protect them.*
>
> *Unlike guardianships, SDM can be tailored to my family member. It is what we all do and it makes us more effective.*

Reflecting a growing recognition of the feasibility and impacts of supported decision-making, Courts across the United States have begun to deny or terminate guardianships because a person is able to use supported decision-making. One of the earliest cases involved Margaret "Jenny" Hatch, a woman with Down syndrome, who defeated, at trial, a petition for permanent, plenary guardianship because she used supported decision-making to make her own decisions. In summarizing the impacts of the case, it has been noted,[23]

> At her 2013 trial, Jenny presented evidence and testimony showing that she used SDM to make her own decisions and direct her life and, therefore, did not need a guardian to make decisions for her. Jenny demonstrated that she had friends and supporters whom she relied upon when needed, and these people helped her understand, make, and communicate life choices that reflected her values, interests, and preferences. Experts testifying at trial opined that Jenny's use of supported decision-making enhanced her

independence and quality of life, and it was consistent with research, best practices, and existing law.

In communicating about her experiences under guardianship, Jenny highlighted the stark differences in her experiences under guardianship and under supported decision-making arrangements. She asked:

> *How do we make sure that a person's rights are not taken away like my rights were? Who will make sure that no one has to go through what I went through? Who will make sure that people do the right thing? Just because a person has a disability does not mean they need a guardian. Many times they just need support and a little help.* [24]

A recent analysis by the American Bar Association Commission on Law and Aging[25] suggests that states have been rising to Jenny Hatch's call and the calls of other people with disabilities, older adults, researchers, and advocates to remove societal and institutional barriers to guardianship alternatives. As of 2022, they reported 14 states have some form of supported decision-making as an alternative to guardianship in state statues; however, the analysis highlighted the variability of statutory definitions of supported decision-making, definitions of supported decision-making agreements (or lack thereof), and guidance on statutory safeguards against coercion and abuse in supported decision-making arrangements.

This variability highlights the importance of standards and guidelines for supported decision-making to ensure that all people with disabilities and older adults have opportunities to access and benefit from supported decision-making arrangements. It further highlights the ongoing need for protections for people who are under guardianship, other protective arrangements, supported decision-making arrangements, and other less restrictive arrangements to ensure their civil rights and their right to make decisions are protected to the maximum extent possible.

Embracing supported decision-making will require systemic change, including education, training and outreach to the multiple people and systems that influence decision-making rights, such as schools, health care, disability and aging support systems, lawyers, courts, and families. Training will also be needed for supporters to ensure understanding of and accountability to supporting the person to make decisions, instead of making decisions for the person. Supported decision-making will also require practice-based strategies to support people with disabilities and older adults to grow in their decision-making abilities, evaluate their decision-making options, and build support networks in the community as they enter into formal and informal arrangements.[7]

Conclusion: Enhancing Outcomes through Supported Decision Making

Preserving people's decision-making rights is an important end, but supported decision-making arrangements can have additional impacts that are important to people with disabilities, older adults, families, and society. For example, research has shown that adults with disabilities who exercise greater self-determination, including having more opportunities to make decisions about their lives, have improved employment and community participation outcomes and are better able to resist and avoid abuse [10,26]. National data suggests that people with intellectual and

developmental disabilities receiving publicly funded disability services who are not under a guardianship arrangement are significantly more likely to work in a paid community job and have employment as a goal on their service plan. They are also significantly more likely to access preventative care and to report having input into where and with whom to live.[27]

And, importantly, growing information is emerging on formal and informal supported decision-making arrangements suggesting the feasibility of this approach as well as positive impacts on the engagement of people with disabilities and older adults in decision-making and advocating for their needs, as well as reductions in risk for abuse because of having a team of supporters.[2,7,28,29]

Supported decision-making centers the person with a disability or the older adult in decision making about their lives. It is consistent with current policy and values in the disability and aging fields and offers an opportunity to tailor supports to specific areas of need. There is no better time to ensure societal and institutional supports are aligned with the right of all people, including people with disabilities and older adults, to be involved in decisions about their lives.

To advance protection and empowerment in guardianship and alternatives, the goal of today's hearing, I offer the following recommendations rooted in research and the voices of people with disabilities and older adults:

1. Establish a clear, consistent definition of supported decision-making and guidelines for its formal and informal use to preserve the decision-making rights of people with disabilities and older adults.
2. Advance education, training, and outreach on supported decision-making and alternatives to guardianship across multiple systems that impact the preservation of decision-making rights, such as legal, education, workforce, aging, disability, advocacy, and health care.
3. Adopt recommendations by the National Guardianship Association and other organizations that guardianship be the protective arrangement of last resort.
4. Ensure protections for the civil rights of people with disabilities and older adults who are being considered for or are under guardianship or alternative arrangements, such as supported decision-making.
5. Establish data collection systems that allow for a clear picture of the use and outcomes of guardianship, supported decision-making, and other protective arrangements and alternatives.

Citations

1. Findings and Purposes of ADA Amendments Act of 2008, Pub. L. 110-325, §2, Sept. 25, 2008, 122 Stat. 3553.
2. National Council on Disability. *Beyond guardianship: Toward alternatives that promote greater self-determination*. https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives; 2018.
3. National Council on Disability. *Turning rights into reality: How guardianship and alternatives impact the autonomy of people with intellectual and developmental disabilities*. https://ncd.gov/publications/2019/turning-rights-into-reality; 2019.
4. Dinerstein RD, Grewal E, Martinis J. Emerging international trends ad practices in guardianship law for people with disabiities *ILSA Journal of International and Comparative Law*. 2016.
5. Moran E. 2021 Guardianship Legislation: Highlights and Trends Effectuating Improved Process and Outcomes in U.S. Guardianship Systems *Bifocal: Journal of the ABA Commission on Law and Aging*. 2022;43(4):https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-43/bifocal-forty-three-four/2021-guardianship-trends/.
6. National Guardianship Association. What is Guardianship https://www.guardianship.org/what-is-guardianship/.
7. Shogren KA, Wehmeyer ML, Martinis J, Blanck P. *Supported decision-making: Theory, research and practice to enhance self-determination and quality of life*. Cambridge University Press; 2019.
8. Jameson JM, Riesen T, Polychronis S, et al. Guardianship and the potential of supported decision making with individuals with disabilities. *Research and Practice for Persons with Severe Disabilities*. 2015;40(1):36-51. https://doi.org/10.1177/1540796915586189
9. Millar DS. 'I never put it together': The disconnect between self-determination and guardianship--Implications for practice. *Education and Training in Developmental Disabilities*. 2007;42:119-129.
10. Khemka L, Hickson L, eds. *Decision making by individuals with intellectual and developmental disabilities*. Springer; 2021.
11. American Association on Intellectual and Developmental Disabilities (AAIDD) and The Arc. *Joint Position Statement on Autonomy, Decision-Making Supports, and Guardianship* https://www.aaidd.org/news-policy/policy/position-statements/autonomy-decision-making-supports-and-guardianship. 2016.
12. Fourth National Guardianship Summit. Maximizing Autonomy and Ensuring Accountability: Recommendations of the Fourth National Guardianship Summit https://law.syracuse.edu/wp-content/uploads/Fourth_National_Guardianship_Summit_-_Adopted_Recommendations_May_2021.pdf. 2021.
13. American Bar Association. *ABA Urges Supported Decision Making as Less-Restrictive Alternative to Guardianship*. Bifocal: Journal of the ABA Commission on Law and Aging. https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_38/issue-6--august-2017-/aba-urges-supported-decision-making-as-less-restrictive-alternat/; 2017.
14. Shogren KA, Abery B, Antosh A, et al. Recommendations of the self-determination and self-advocacy strand from the National Goals 2015 conference. *Inclusion*. 2015;3(4):205-210. https://doi.org/10.1352/2326-6988-3.4.205
15. Kansas University Center on Developmental Disabilities. Supported Decision-Making https://selfdetermination.ku.edu/supported-decision-making/
16. Quality Trust for Individuals with Disabilities. Supported decision-making: An agenda for action https://www.c-q-l.org/wp-content/uploads/2019/12/CQL-Supported-Decision-Making-Agenda-For-Action-2015.pdf. 2014.
17. National Resource Center on for Supported Decision Making. Supported Decision-Making Tools https://supporteddecisionmaking.org/resource-library/
18. U.S. Department of Health and Human Services Administration for Community Living. Supported decision making program https://www.acl.gov/programs/consumer-control/supported-decision-making-program. 2017.

19. American Bar Association. *PRACTICAL tool for lawyers: Steps in supported decision-making* https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html. 2016.
20. Center for Public Representation. Supported Deicsion-Making Gives People with Disabilities a Voice https://supporteddecisions.org/. 2023.
21. Missouri Family to Family. Supported Decision-Making https://mofamilytofamily.org/tag/supported-decision-making/.
22. Shogren KA, Rifenbark GG, Wehmeyer ML, Dean EE, Killeen MB, Karsevar J. Refining the Supported Decision Making Inventory. *Journal of Policy and Practice in Intellectual Disabilities*. 2020;17(3):195-206. https://doi.org/10.1111/jppi.12335
23. Martinis J, Harris J, Fox D, Blanck P. State Guardianship Laws and Supported Decision-Making in the United States After Ross and Ross v. Hatch: Analysis and Implications for Research, Policy, Education, and Advocacy. *Journal of Disability Policy Studies*. in press. https://doi.org/10.1177/10442073211028586
24. Hatch J. My Story. *Inclusion*. 2015;3(1):34. https://doi.org/10.1352/2326-6988-3.1.34
25. American Bar Association Commission on Law and Aging. Supported decision-making and less-restrictive alternatives: A statutory chart https://www.americanbar.org/content/dam/aba/administrative/law_aging/2022-sdm-lst-rstctd-altntvs.pdf. 2022.
26. Shogren KA, Wehmeyer ML, Palmer SB, Rifenbark GG, Little TD. Relationships between self-determination and postschool outcomes for youth with disabilities. *Journal of Special Education*. 2015;48(4):256-267. https://doi.org/10.1177/0022466913489733
27. Bradley V, Hiersteiner D, St. John J, Bourne M. What does NCI data reveal about the guardianship status of people with IDD. *National Core Indicators Data Brief* https://legacy.nationalcoreindicators.org/upload/core-indicators/NCI_GuardianshipBrief_April2019_Final.pdf. 2019.
28. Pell E, Mulkern V. Supported decision making pilot: Pilot program evaluation Year 2 report https://www.hsri.org/files/uploads/publications/SDM_Pilot_Evaluation_Year_2_Report_HSRI_2016_FINAL.pdf. 2016
29. Glen K. Piloting Personhood: Reflections from the First Year of a Supported Decision-Making Project. *Cardozo Law Review*. 2018;39

Questions for the Record

U.S. Senate Special Committee on Aging
"Guardianship and Alternatives: Protection and Empowerment"
March 30, 2023
Questions for the Record
Mr. Nick Parker

Senator John Fetterman

Question:

Mr. Parker, as was raised in the hearing, there are circumstances where a court-appointed attorney or guardian may resign contingent upon a concerned party's agreement to a gag order, which often prevents the concerned party and his or her family from making valid allegations of wrongdoing by the court-appointed attorney or guardian. In Indiana or in other states, what laws or procedures are in place to protect concerned parties from being subjected to gag orders and other attempts to silence those attempting to report abuse? In your experience, among the laws or procedures currently in use among the states, do any stand out to you as generally more effective than others at protecting concerned parties from being improperly silenced?

Response:

In Indiana, there is not a general law or policy about this subject that I am aware of. I am also not aware of courts reviewing or approving orders that contain "gag order" language. To the extent that it would become an issue in our state, I would focus on judicial education and the portions of our Indiana law that emphasize open access to courts for litigants, including people wishing to challenge their guardianship. However, I have not encountered this issue directly.

I will add that our 2019 law changes (which added supported decision-making and less-restrictive alternatives to our state code) require that anybody who suspects abuse or neglect of someone who has a supported decision-making agreement has to report that to Adult Protective Services (APS) or law enforcement. This seems to mirror similar reporting laws for children in our state. I would say that anybody with knowledge of abuse or neglect should report it to our state APS or law enforcement, particularly in cases where mandatory reporting is required.

I cannot speak to other jurisdictions and the effectiveness or ineffectiveness of their laws. However, I am aware that Minnesota has a robust system of guardianship review through their court technology (My Minnesota Accounting and My Minnesota Conservator) and availability of ACL grants to empower linkages between their APS and courts.

Question:

Mr. Parker, in Indiana or in other states, what laws or procedures are in place to ensure that individuals under guardianship may seek recourse for maltreatment by court-appointed attorneys and guardians? In your experience, among the laws or procedures currently in use among the

states, are there any that might serve as a model for preserving the ability of concerned parties to seek recourse for such maltreatment?

Response:

In Indiana, we have an APS system that has local units that handle abuse or neglect investigations. We also have a long-term care ombudsman in our state that works directly for our state FSSA. In my experience, our state's protection and advocacy program (Indiana Disability Rights), along with other legal aid resources (Indiana Legal Services) and government programs (Attorney General), are handling these investigations and helping people find recourse for these issues. Our courts seem to know about these resources and are willing to pass them along to litigants upon request. I emphasize "continuum of care" and linkages during judicial training as well.

I will say that I have heard about some states suggesting a statewide ombudsman program specifically for guardianship cases. Though the court could not directly oversee that program, I think that idea could have potential to be very useful in states like Indiana. It could look a lot like our long-term care ombudsman but could provide anybody subject to guardianship to have a consistent and effective way to report abuse, neglect, and exploitation. This could allow the person to get in front of the judge and connect to resources most efficiently. I am monitoring other states to see if anybody finds a way to fund/obtain these resources in the future.

U.S. Senate Special Committee on Aging
"Guardianship and Alternatives: Protection and Empowerment"
March 30, 2023
Questions for the Record
Dr. Karrie Shogren

Senator Reverend Raphael Warnock

As a Senator, I have heard horror stories from my constituents about guardianship abuses. Brandon, a resident of Atlanta, told me his mother died from neglect before he was able to free her from her guardianship. Douglas, a resident of Acworth, spent four years trying to free his mother from an abusive guardianship. These stories are unacceptable. While the intent of guardianship arrangements is to protect individuals, there are simply too many instances of exploitation and loss of basic rights for people involved.

Question:

Dr. Shogren, how common are stories like Brandon's and Douglas' when it comes to abusive guardianship?

Response:

Given limited uniform data collection and reporting systems on guardianship and alternatives to guardianship, it is difficult to accurately estimate the frequency of abuse and exploitation under guardianship arrangements. However, stories like Brandon's and Douglas' consistently emerge and we repeatedly hear in our research with adults with disabilities and their families about significant challenges in modifying guardianship arrangements even when they are no longer necessary or are exploitative or abusive. Further, the limited, available data suggest that plenary or full guardianship, in which the court gives the guardian the power to make all decisions for the person, remains imposed far more often than other types of less restrictive arrangements, significantly limiting the rights of people under such arrangements and failing to provide access to less restrictive alternatives, like supported decision making.

Question:

Dr. Shogren, what are steps that Congress can take to reform guardianship, so we reduce cases of exploitation and protect individuals?

Response:

First, protections are needed for the civil rights of people with disabilities and older adults who are being considered for or are under guardianship or alternative arrangements, such as supported decision-making. This includes the right to change and challenge guardianship arrangements and to access the support needed to do so. Second, uniform data collection systems are needed to track the use of guardianship arrangements and less restrictive alternatives, the movement into

and out of guardianship and alternative arrangements, and the outcomes of guardianship and alternatives to guardianship such as supported decision making. Without such data it is difficult to report base rates of guardianship and alternatives like supported decision making, how people transition in and out of different arrangements, and rates of abuse and exploitation. Finally, we need to change the default, ensuring that less restrictive alternatives, like supported decision making, are the default option that is considered when a person has decision support needs, as supported decision making does not result in the removal of rights and builds a system of supports for decision making more aligned with living and participating in one's life and community.

Senator John Fetterman

Question:

Dr. Shogren, as stated in your written testimony, most adults aged 18 to 22 with intellectual and developmental disabilities who receive publicly funded disability services have guardians. Alternatives to guardianship, such as supportive decision-making, allow adults with disabilities to build their decision-making skills and build self-empowerment to engage with the supports they need, both of which lead to better outcomes. As we consider this important issue at the federal level, please describe the federal education and outreach infrastructure, whether already existing or prospective, that could meaningfully inform secondary schools about alternatives to guardianship?

Response:

To inform secondary schools about alternatives to guardianship, education, outreach, and training is needed to change how information is shared by school systems and special education professionals as young people with disabilities reach the age of majority and decision-making rights transfer from parents to young people with disabilities. Data consistently suggests that school systems and special education professionals within school systems often present guardianship as the only or default option when young people with intellectual and developmental disabilities reach the age of majority (18 in most states) and decision-making rights transfer from the parents to the young person. Special education policies and procedures are needed to create the infrastructure to ensure students with disabilities and their families have access to information about alternatives to guardianship, such as supported decision making. Special education professionals need training about supported decision making and other alternatives to guardianship as well as procedures to share such information with families and young people with intellectual and developmental disabilities as they reach the age of majority and information is shared about the transfer of rights.

- In communicating at the age of majority about the transfer of rights as well as during transition services, which are mandated by the Individuals with Disabilities Education Act to prepare students with disabilities to move from school to post-school activities

beginning at age 16, policies can be established and practices adopted to create an infrastructure to ensure families and students have access to information on supported decision making and other alternatives to guardianship that can enable families to remain involved and support young people with intellectual and developmental disabilities to exercise their decision making rights and grow in their self-determination. Existing evidence-based practices can be adopted in transition services to promote decision making and self-determination.

- Education, outreach and training is needed to break the school-to-guardianship pipeline, described by the National Council on Disability, with professionals receiving education and systems establishing policies and procedures to ensure information is shared and supports are provided to preserve decision making rights, build decision making skills, and ensure effective transition into adult roles and responsibilities for young people with intellectual and developmental disabilities using supported decision making.

Statements for the Record

Elder Justice Coalition

March 28, 2023

The Honorable Mike Braun
Ranking Member, Senate Special Committee on Aging
U.S. Senate
Washington, DC 20510

Dear Sen. Braun:

The bipartisan 3,000-member Elder Justice Coalition is pleased to endorse your bill to amend the Elder Justice Act that would add to the activities authorized under adult protective services demonstration grants.

Currently, these demonstration grants can be used for a range of activities to address elder abuse, neglect and exploitation. This bill would also allow the grants to be used to create programs for state courts to train law students in supervised settings to serve as guardians ad litem and to represent older adults in guardianship cases.

Guardianship and conservatorship cases are complex and time-consuming; as a result, there are only some private attorneys who take on these cases. Many legal aid and assistance firms will not represent these clients either. Further, state courts may be too constrained in resources to support these vulnerable older adults. Engaging law students in these cases is a win for everyone; the students receive valuable training and may have their interest piqued in pursuing a career in this area, the courts receive the staffing assistance they need, and older adults facing these challenges gain fair representation and legal assistance.

Our Coalition is composed of over 3,000 individuals and local, state and national organizations working to increase public awareness about the tragedy of elder abuse, neglect and financial exploitation and to advocate for legislation and regulations to end this crisis. This legislation would significantly advance Coalition members' shared goal of combating and ultimately ending elder abuse. It is forward-looking and innovative. We are pleased to support the bill, and we thank you for your leadership on this critical issue.

Sincerely,

Bob Blancato
National Coordinator
Elder Justice Coalition

1612 K Street NW Suite 200 • Washington, D.C. 20006
Phone: 202-789-0470
www.elderjusticecoalition.com • info@elderjusticecoalition.com

[redacted]

March 23, 2023

The Honorable Bob Casey, Chair
The Honorable Mike Braun, Ranking Member
Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510-6050

Dear Chairman Casey and Ranking Member Braun:

I am writing to you for the purpose of providing just one story among hundreds (and most likely thousands) of people who have been wronged by the guardianship system in this country and thank you for taking this matter up to correct the serious problems related to these protective arrangements.

Instead of protecting vulnerable individuals, the system has fostered an environment that makes it easy to completely take over an individual's rights, excludes their family from the process who should have priority standing, and where a group of individuals leverage the process for their financial gain.

My story centers in New Mexico, which I came to learn after starting to research the topic of guardianship here, is a hot bed for these cases. Initially, there was some encouraging news where prior cases that became national news spurred legislative changes beginning in 2018. These changes were supposed to reform the abuses occurring, yet still in 2023 as I am experiencing, it is still happening, and those changes are not being followed.

In my case, my aunt/godmother suffered a debilitating stroke in February 2022 and was incapacitated. My father (her brother) stepped in to gain guardianship and was awarded temporary guardianship June 2022. Unfortunately, the rules stemming from the 2018

legislative changes (and subsequent years) in New Mexico outlining the timelines to be followed in these cases were never abided by the court. The case kept getting rescheduled and pushed out on the calendar and eventually went beyond the maximum 90 days established by state statute to determine permanent guardianship. Instead of completing that case on its merits, my father's guardianship ended due to no fault of his own. Unfortunately, this allowed an attorney who is well known in the state for taking advantage of the guardianship process and financially benefiting from these cases (**Caralyn Banks**), to step in and file an emergency motion to take over guardianship of my aunt/godmother through a corporate guardianship she partners with and refers cases. A major issue with the process is that the reasons cited to support the need for an emergency motion do not have to be true or proven to be accurate, yet the motion was signed immediately by a judge without input from the family or a hearing. By not having a requirement for a hearing or a need to even submit factual/accurate evidence, this process is ripe for abuse which has happened far too many times. What is the outcome for family members merely looking to care for their relative in a time of need? A court battle which financially and emotionally drains you fighting a decision done (in essence) under the cover of darkness. While unfortunately my aunt/godmother passed away a short time after the appointment of a corporate guardian (39 days) which limited the damage that could be caused by the action taken by the attorney and the appointed corporate guardian Nancy Oriola of Decades LLC, many people are trapped and exploited in the system for years and have their estate financially drained. An example I discovered when researching this issue was actually was with the same guardianship company headed by Nancy Oriola where a prior family sued her company when discovering an excess amount of legal fees billed to the estate of $240K. The unfortunate reality is that not many people have the funds to fight this battle.

One additional concern is the ease for which a person can change legal documents for individuals in an incapacitated state. In my case, my aunt/godmother's priest (Dimitrios Pappas) brought her multiple legal documents including power of attorney (both medical and financial) as well as a will change to sign shortly after her stroke where both he and the church were entered in as new beneficiaries who would receive up half of the estate compared to 0% prior. Reform is extremely important here where individuals who engage in this fraudulent activity need to face criminal charges in order to protect the vulnerable individuals and ensure their wishes are honored.

The problem? In my observation as an outsider, there is a **cabal** in this state (city of Las Cruces specifically in my story) that is perpetuating what I call legal kidnapping for profit. As the number of individuals practicing elder law is very small in this town, there have

been numerous stories like mine around the ease of how an individual's rights can be taken away via simply filing an emergency motion which usually gets signed immediately by a judge without a hearing. The family that knows the individual the best gets superseded in the process and is cut out leaving them to incur heavy financial hardship and emotional stress to fight the injustice against their family member. Meanwhile, the attorney and the intricate web of players connected to this "for profit" business model (i.e., corporate guardians the attorney refers to in the motion), gain financially together until the individual's assets are depleted at which point, they turn them over to the state since they are now considered indigent, and they can no longer profit from them.

Another problem is the complicity of the legal professionals in these matters. In speaking with several in the area, there is an acknowledgment that there clearly is an issue, a need for change, and awareness of the tactics of attorneys like Caralyn Banks who have prospered financially in these cases. However, they do not act for fear of the professional blowback they will get by raising the issues and trying to reform the problem. Instead, they stay silent and help foster a system which is in desperate need of change.

As you have your upcoming hearing on March 30, 2023, I ask that you please consider the many stories like mine of how individuals and their families have been abused by a cabal who has leveraged a guardianship system that should help protect individuals, to instead use it for their financial gain. My hope is that the level of disturbing cases found across the country will spur necessary reforms where individuals are truly protected, family is given priority to care for their relatives, guardianship is a last resort, and those who try to financially benefit from these situations face consequences severe enough to alter this predatory behavior.

Sincerely,

Alex Antzaras

Alex Antzaras

March 22, 2023

The United States Senate Special Committee On Aging
G16 Dirksen Senate Office Building
Washington, DC 20510-6050

Subject: Unethical, Unnecessary, Neglectful, Exploitive, and Abusive Guardianship of Dorothy Carrino - Trumbull County Probate Court Ohio - Case# 2018 GDP 0100 and Case# 2019 CVA 0019

Dear Chairman Bob Casey and Special Committee on Aging Members,

In regards to any and all complaints regarding guardianships I implore you to please appoint a team of investigators for each state and investigate each case thoroughly which includes interviewing the complainant and their evidence. Many of us have mounds of evidence that the judge never even reviews. Which is a violation of their canons. Guardianship was meant to protect the individual not turn it into this horrific corrupt and criminal human and estate trafficking ring that it has distorted into!

Here are the bullet points of my mom's guardianship scam case.

October 2018 - Long time physician Dr. Frank G. Veres would not recognize my mom's Durable Power of Attorney which is recorded on the Trumbull County Recorder's website with me, her daughter as her DPOA.

November 2018 - My mom did not get an Attorney appointed to her NOR did she get the opportunity to get an independent evaluation which she should have gotten. DOROTHY CARRINO DID NOT GET DUE PROCESS!!! HER RIGHTS WERE TRAMPLED AND IGNORED BY NOT ONLY HER PHYSICIAN, HER SO CALLED GUARDIANS BUT ALSO ADULT PROTECTION SERVICES

January 19, 2019 - Dorothy had a Urinary Tract Infection and Diverticulosis. Urinary Tract Infection's mimic dementia.

January 22, 2019 - Sister in law Debra Carrino who wanted my mom's home and has been living in it since 2011 staged a set up with my mom's fraudulently court appointed guardian Andrea Crook. I was there to help my mom get a shower. Instead my sister in law called the police falsely alleging that I and my late fiance were being confrontational. She should had no right to even be in my mom's house. This was a set up and she colluded with Andrea Crook the guardian over my mom's person restricted me from seeing my mom until February 5, 2019.

February 5, 2019 - My late fiance and I were served with a fraudulent and false Temporary Restraining orders!

February 6, 2019 - My mom was thrown into a lockdown nursing home facility DONNED WITH AN ANKLE MONITOR LIKE A PRISONER! She was NOT a flight risk! When I got to talk to her on the phone she was crying and saying she was terrified! She had no idea why she was put in there!

FROM FEBRUARY 6, 2019 - FEBRUARY 2021 - Dorothy Carrino was at Windor House in Champion where she was neglected, OVERMEDICATED which I have proof of, abused, and almost died from Sepsis due to a neglected urinary tract infection. (Oct. 2020) She was so overmedicated that she could not feed herself and lost 35 lbs while in that facility. My late fiance and I would go in and feed her until we were locked out due to the Covid fiasco. During that entire time I personally had no complaints by the nursing home nor any police reports filed against me even though the lying court appointed, for profit Guardians Attorney Daniel Letson and his employee the guardian over my mom's person Andrea Crook had made their best attempts to restrict me from seeing my mom by trying to vilify me to the staff. If you look at the file there are completely false accusations about me.

In July 2020 I along with many other National Advocates pleaded for a compassionate release for my mom only to be denied while prisoners were being set free! My mom who commited no crime was locked up, isolated and restricted from seeing her loved ones except for only 15 minutes a week through the window! ISOLATION IS A FORM OF TORTURE! How would you like to never see your loved ones?

August 2020 - Judge James A. Fredericka recused himself! Then 83 year old retired Judge Thomas Swift was fraudulently appointed to rule in my mom's court case. According to the Ohio Constitution it does not allow judges to be elected or appointed if they are age 70 or older!

I did everything I could to save my mom from this hell that she had been put into called guardianship. I filed complaints to the Ohio Department of Health about her being overmedicated and almost dying from sepsis which were both unbelievably unsubstantiated! I consider the Ohio Department of Health complicit in my mom's abuse as well as the State of Ohio Ombudsman office and the Attorney Generals Office and their Elder Justice Commission too. Not one of these departments helped to save my mom from being harmed!

I paid Attorney David Engler $8,000 to try to help save my mom. Even after she almost died from sepsis and was in the hospital for 3 days Judge Thomas Swift returned her back to the neglectful and abusive nursing home Windsor House in Champion rather than allow me to take care of my mom at my home. He also denied me to be my mom's guardian. Not only did he deny me but he then added another guardian named Attorney Jeffrey Thomas.

During the past 4 1/2 years my mom suffered at the hands of the Trumbull County Probate Court. They neglected her glaucoma and macular degeneration. She has also had many of her teeth break and was denied seeing a dentist. She has been denied due process, suffered constant violations of her constitutional rights, overmedicated, neglected, abused, with NO REMEDY in sight.

Thankfully she is still alive because I finally was able to get her transferred to a better facility on 2/24/2021. However her home was taken by the guardian. Which is another layer of this

corruption. My first priority is that my mom is safe and is getting good care. My mom wants to be in her own home. She has been denied that right for the past 4 1/2 years. I am a Certified Nurse Aide and am very capable of taking care of my mom. However, she is currently being treated like property and her guardians won't even allow me to take her out of the facility to visit her cousin or even to the dairy queen. Shameful!!!

Again I implore you to please investigate my mom's case and all the other complaints.

LIVES ARE AT STAKE!!! I only touched on the many layers of this corruption. I am grateful that you are all involved and are going to investigate and prevent further American's from being victimized by these courts that have been weaponized against us!!! Thank you! You are greatly appreciated for finally doing something about these atrocities.

Sincerely,

Aleene Carrino, daughter of Dorothy Carrino -[redacted]

Trumbull County Ohio Probate Court victims

My name is April Donovan. My parents are William and Twila Apger. They were foster parents and took in many neglected and abused children. Their life goal was to better the world by helping people. I asked my mom one day, "what was your dream that you wanted to achieve in life?" and her answer was "I did it. My dream was to always help children and people". Out of the many children that they have raised, they chose to legally adopt 4 of them and many others still consider them as "mom and dad". I am one of those 4 that was adopted. I am blessed that they chose me to be their daughter since I was born. They also had 5 biological children. I am the youngest of 9 children or like my mom used to say "the baby of the family". I was extremely close to my parents. My mom and I would do everything together because we had a lot in common.

In June 2017, my mom started having some memory issues, and paranoia. I took her to the doctor because I suspected she had a urinary tract infection and hasn't been to a doctor in quite some time. A urinary tract infection in the elderly can mimic signs of dementia. My mom did have an infection, but the doctor said she had Alzheimer's and prescribed dementia drugs and antipsychotics to which she started to have significant intolerances to and multiple side effects. She was hospitalized in July 2017 and a social worker came to me and said I needed to put my mom in a guardianship. Everyone was on board in my family with me being the guardian since I was the one who took care of my parents finances and doctors appointments. I was appointed guardian on October 11, 2017. My mom was not declining and I did extensive research on the dementia topic, and I believe that she was misdiagnosed and should have never had a mini mental exam to determine if she had Alzheimer's when she had a urinary tract infection. My mom was off of all drugs in September 2018 and was doing better than she was on any drug.

In June 2018, my dad passed away. Shortly thereafter, 5 of my siblings took me to court to get guardianship away from me because they wanted to put her in a nursing facility. My oldest sister who was asking for guardianship was living in my parents house. I trusted her at the time and didn't want to fight so I made the hard decision to sign over the guardianship. She then made it impossible for me to contact my mom. They stole her phone and said it was "lost" but her husband was using it as his own personal phone. I also found out that she was drugging my mom behind my back when I had guardianship with drugs that she was known to be allergic to in order to make it look like she was declining and needed to be in a nursing home. The doctor prescribed them to her without legal authorization. My mom never wanted to be in a nursing home, there was no reason for her to be in a nursing home because she had many adult family members living in her house plus I was willing to have her live with me or I live with her to avoid a nursing facility. My siblings fought me every step of the way. They were caught telling lies in court and not following court orders but the judge didn't seem to care.

After my mom was placed in the facility, she was put on a Do-Not-Resuscitate order (DNR). I was the only one restricted from taking her out of the facility. Even though I was co-conservator, I was kept in the dark about what was going on with my mother's money. My mom started to develop chronic urinary tract infections which I had to fight with the nurses and doctors to check her urine. She was being neglected, only receiving maybe 1 shower a week and sitting in her own urine and feces for too long. On October 24, 2018, the nursing facility was issued a citation for not giving her enough fluids and not helping with her feeding. I then petitioned the court for guardianship to save her from the abuse and neglect. Once I petitioned the court, the doctor increased her antipsychotics to which she had 2 falls and had a huge bruise on her left hip, they did not give her an x-ray. My mom shortly after, had another urinary tract infection which they did not want to treat and a week before the guardianship court hearing, they put her on hospice, withdrew all drugs cold turkey including her blood pressure and thyroid medications then started giving her Morphine, Ativan, and Fentanyl to sedate her. I filed an emergency petition on top of my original petition right away as soon as I saw the condition she was in and what they were doing to her. Prior to my mom being heavily sedated, my mom was eating, drinking, and talking to me, she was not losing any weight and she was not in any pain that would require that kind of pain narcotics.

I asked her if she wanted to be on hospice and she told me "no". She was afraid at what they were doing to her and said to me after they shoved Morphine in her mouth "why are they doing this to me? Everybody is just taking advantage. I'm going to die." I had an attorney from Liberty Counsel send a letter to the facility to get her hydrated, an x-ray, and her urinary tract infection checked out, and if they didn't I would pursue a wrongful death lawsuit. Once they got that letter, they took her off of hospice for a couple of days. When we went to court, the nursing facility blocked my petition with their own petition to get guardianship of my mom. The nursing facility's administrator lied under oath about my mom's condition stating that she couldn't talk, eat or drink, which I told the judge that I had photos, videos, and audio recordings. I also had people lined up on my behalf to testify, but the judge conveniently didn't have time to hear anything that day and scheduled another court hearing for 2 weeks later. After the court hearing was over, they re-instated my mom being back on hospice again. I knew my mom wasn't going to be alive. The next day, the nursing home put up signs prohibiting any pictures, videos or audio recordings. When my sister who was guardian was there, she would scream and call security if I showed up to see my mom. My mom starved and dehydrated to death because of being heavily sedated. That drug combination causes respiratory depression, coma, and death. My mom passed away on January 1, 2020, they were ordered to increase her Fentanyl on that day too. I saw them

shove Morphine in her mouth when she wasn't waking up. I requested an autopsy to be performed, but then they sent her body to a completely different funeral home than where she was supposed to go and what states on her records. I didn't know where she was for 3 days until it came out in the newspaper. I believe the doctor had motive to push hospice and to euthanize my mom because she lost a $9million medical malpractice lawsuit in 2017 and she wanted to cover up what she was doing to my mom. My sisters motive was to get the house, she never truly wanted guardianship because she cared about my mom, it was always about the house.

In February 2020, I hired an attorney to get my mom's bank records. My mom was being financially exploited. There were transactions to restaurants, almost $200 spent at Walmart when she was locked in a facility, and many cash withdrawals at ATM's. My brother who was co-conservator with me, withdrew money from her account the day after she died. My mom was left with $5 in her account by her time of death. On the final accounting report, they have stated my mom bought baby shower gifts, wedding gifts, graduation gifts, and almost $800 in clothes. They will not provide me with any receipts and the judge will not require them to do so either, even though I have asked multiple times.

After the Final Accounting was done, I then petitioned the court in June 2021 for Personal Representative so I could pursue my mom's wrongful death. My siblings objected to it, hired an attorney so my sister could attempt to get the house free and clear by claiming she was the caregiver so Estate Recovery would let her have the house. She and her attorney kept trying to delay things on purpose and they knew I wanted to pursue her wrongful death, the judge was well aware of it too but still set a trial date. The day before trial in July 2022, they withdrew their case, and I was officially appointed Personal Representative. There is a 3 year statute of limitations to pursue a wrongful death claim. I have been having issues getting medical records, her doctor is refusing to give me anything. The records I was able to obtain from the hospital and nursing facility shows a lot of falsifications which I can prove, her death certificate says one of her causes of death was pneumonia which she did not have. I could not obtain an attorney in order to pursue her wrongful death because they state that it would cost too much money to pursue, so I was left with no choice but to file it myself as I had very limited time. The Circuit Court judge dismissed my lawsuit stating that I am unauthorized to practice law even though the laws in Michigan state that a personal representative can sue on behalf of the decedent. Another issue I am having to deal with is Estate Recovery, my parents worked hard for their house and because of my siblings putting our mom on Medicaid in order to put her in a facility, Estate Recovery is coming after her only asset. My sister had my mom sign a fraudulent Medicaid application without my knowledge on October 12, 2018.

I believe we need to abolish guardianship because its too easy for people to get away with these crimes and weaponize the system. Before I had guardianship, I was able to do everything a guardian does and my mom was allowed to make her own decisions. If a guardianship lands in the wrong hands, it can be detrimental to a person and/or their family. This kind of abuse of power is criminal.

My mom was murdered under the guise of hospice but the police refuse to take a report or look at my evidence.

I never would have imagined my mom would have been abused and neglected like the children that she helped come out of those kind of situations. My mom's life had meaning, she had quality, she didn't deserve to be treated like a prisoner in a locked up facility and put to death like she was a criminal. The saying for this systematic abuse is "isolate, overmedicate, and steal the estate". Even though we all have different stories, they use the same playbook. My mom's case needs to be investigated thoroughly. We need change, we need justice, and we need to hold these people accountable!

Dated: March 22, 2023

Sincerely,

/s/ April Donovan

April Donovan

Personal Representative of the Estate of Twila J. Apger

Iron Mountain, Michigan

Senate Special Committee on Aging
Hearing on **G**uardian and **C**onservatorships

Dear Senator Bob Casey, Chairman, Special Committee on Aging:

A decade ago, I returned to New Mexico, my home state, because my stalwart mother had reached her mid eighties. My uncle and an elder cousin had also moved to the area and I became the family advocate for all three. Over the last 5 years I have been forced to witness a horrifying tale of exploitation - each elder preyed on in a different way. My belief in humanity is now deeply tarnished, my joy in life deflated, my finances are stressed, my career is on hold and I believe my health has been impacted. Up until recently, I had never needed or crossed paths with attorneys. But now, based on my experiences, I loathe lawyers and deeply distrust the judicial system.

Here are the most important points from the front lines:

I.
Societal Aversion to Aging

Aging is the beautiful and tragic journey of humanity. None of us escapes the effect of time as it pulls us towards death. Therefore, before we look at the details of elder exploitation **we must question our own attitude towards the final chapters of life**: The United States is a young country an, as such, we celebrate boundless energy and agility.

I believe the ills of the G & C system spring from our society's **deep aversion for weakness and aging**. We fear the loss of mental and physical vigor above all things. And we go on to allow the system we've established to judge our elders harshly - even vindictively.
The minute an old person's competency can be questioned - a flock of vultures are allowed to move in. The legal language speaks of "protection" and yet the elder is handed off to hollow officials and an intolerant system. Empathetic support fades into lip service. The judge's gavel silences hopes for understanding and community. Twisted rulings isolate the elder and leave loved ones speechless - while their family's estates are decimated in the name of "safe keeping."

If we wish to end the horror and bring *inclusive and useful* change to the elder care system - we, as Americans, must get over our addiction to youthfulness and make peace with aging. We are ALL ultimately vulnerable as humans - whether young or old.

II.

The Question of Competency

End the use of "competency" as the dividing line between an elder's independence and the right of others to take control of their life. Our civil and human rights code forbids discrimination - and yet we allow *the definition of aging* to become the means of judging and sluicing elders off into an uncaring system.

Human beings do not loose the cherished qualities of youth from one day to the next. This supposed moment of incompetency rarely ever arrives summarily. Physical weaknesses may appear first, but cognitive understanding may remain clear. It is then humiliating to be treated as incompetent. Or, a person's memory goes but their body is still lively, and then being restrained in a facility is a form of physical hell. There are en endless variety of other versions that can appear.
It is an absurd pretense to believe that a battery of Lawyers, Qualified Healthcare Officials, Court Visitors, Guardian at Litems or even Judges can clearly discern when a person should be "protected" from themselves - and their family.
Real impartiality is impossible given how lucrative these G/C positions are - even if competency were the right measure.

We, humans love the *simplicity of black or white choices.* But life is made up of many shades of grey. If we are honest and upright we will learn to work with elders - sharing in their strengths AND their weaknesses, and welcoming the loss of particular competencies with the same unquestioning love we offer children.

Further, in my experience, those who earn fine salaries from the G/C system - **use the question of competency as their battleground.** Should their ward be seen as competent the official looses their position. I have witnessed a myriad of ways in which G/C officials undermine the vulnerable in their care - for the sake of job security and income. Many clearly love their power, and often become imperious and even narcissistic:

- Across the board, Assisted Living & Memory Care Facilities refuse to help elders with their hearing aids. They claim it is beyond their ability to keep track of these little items. Yet, hearing loss is known to be a big contributor to dementia. If facilities that specialize in the elderly, cannot support them - then who does or will?

- Throughout Lockdown, the volume on my mother's phone was repeatedly turned so low that she could not hear or stay in touch with family. The isolation was intense. When I called the facility, they claimed they had no time to fiddle with residents' phones. I moved my mother to a different facility. For a few weeks the phone worked well and then suddenly the same issues with the volume returned. Surely minimum wage caregivers are vulnerable to offers of money in exchange for "favors" in the way they care for a particular elder…

- We discovered that urinary tract infections made my mother loopy. Suddenly, at a time when I was trying to prove her competency in order to revoke the POA, she had UTIs for four months straight. As soon as the prescribed antibiotic strengthened her, she mysteriously got another infection. Finally, the LTC facility announced a new director was taking over. I immediately spoke up about the infections. The newly hired nurse prescribed daily supplements and my mother has not had another UTI since. However, over the 4 month run of infections, the window for removing the fraudulent POA had closed and my family's properties had already been sold off.

-My elder's "official" wanted to gain more power and petitioned the court to become both conservator AND guardian. Among the witnesses this person lined up to plead her case, were the director and 3 staff members from the facility where my elder lived. Daily life immediately changed for the worse. During this time, my mother often announced that she was a zombie and I should expect nothing of her. It was clear that the staff were doing things to weaken her and keep her "incompetent" in order to funnel the court case in the "right" direction. Loved ones were also treated dismissively. How is it legally acceptable that an elder can pay a monthly fee of $6500 and yet employees are allowed to testify against her and her family in favor of the official who promises to keep the elder in their facility…?

- My uncle was a Marine - 100% disabled due to a head wound in Korea. He had lost recent memory. In the family, we understood he needed a very steady daily rhythm in order to orient himself. When he was forced to move to Memory Care, we chose a very small, friendly place. Yet, a year later, officials moved my uncle to a big facility where few caregivers even spoke English. It was impossible to get my uncle on the phone or set up regular visits. Within a few months he was dead. Now, more than 2 years later the financial official has still not provided a full accounting for his estate or trust.

In a new system, the reason an elder is being given extra attention and care should not be a matter of one cut and dried determination like "competency."
If the elder was just simply embraced for their combination of strengths and weaknesses - then an ambitious G/C official would have no simple aspect to attack them on. Elders would be in less danger. The whole system would have greater fluidity. Rigid and power seeking G/C officials would simply be forced to find work elsewhere.

III.
Undue Influence

In the present G/C system, the determination of "incompetency" is meant to trump all other considerations for the elderly. However, if questions still remain - particularly about *which person should dominate an elder's life* - the idea of **Undue Influence** is trotted out.

An internet search reveals that UI is a concept that is hard to define. Proof of UI seems to rest on a person's competency. According to law, Undue Influence is most pernicious in those with reduced capacity. An elder in the G/C system has already been determined incompetent - so danger of UI follows on its heels. These two concepts create a self-sufficient circle that binds control of an elder into one neat package.

The fact that undue influence is rather nebulous and ill defined ends up playing well into the hands of G/C officials. If family members fight valiantly for input into an elder's life - often some form of undue influence can be dug up to shed an unfavorable light on them and tip the Judge's opinion.

The governmental agency, Adult Protective Services, is offered as an arbiter of any suspicious pressures an elder may be facing. In New Mexico, the APS is often staffed by volunteers. They are tasked to determine whether a certain set of events are occurring. In the space of a few weeks, they wade into an elder's life and scoop up a few facts. If these point to their concept of exploitation - an APS determination is made. These rulings carry considerable weigh in the G/C system.
In some cases, the events are egregious enough that the initial findings are useful in determining wrong doing. However, for the most part the scope of APS is too limited to easily determine the right or wrong of of what is on the surface of an 80 year old's life.

Lawyers and judges have little interest or patience for stories, like those recounted above, where the G/C system itself influences elder's lives unduly. Lawyers, Officials and judges do not consider these situations Undue Influence.
Institutional UI is also not a concept. Such as underpaid facility caregivers who cannot assure that elders wear their hearing aids in order to communicate properly. This is considered acceptable operating procedure - not undue influence turning elders into quiet bundles that are numbly wheeled to 3 meals a day in exchange for a handsome monthly fee.

Undue influence, as I have experienced it in the G/C system, is primarily used to shore up some official's position and distance family members from an elder.

- After each outrageous step, a sibling or I launched Adult Protective Services investigations against the one time book keeper turned trustee who had grabbed control of my mother, uncle and cousin. While we were contacted and questioned more closely - no determination was apparently ever made in any of the 4 cases. Not once did we ever hear back from APS to know what they had uncovered.
Then, the offending official decided to launch a case against me for exploitation of my mother. While, up to that moment, officials had taken great pains to ignore her as "incompetent" - suddenly APS was contacting her often. My mother recounted that someone was telling her she was being misused by me. She found it all shocking and almost funny. I had no idea what was going on. Finally, APS got around to contacting me. They wanted documents relating to one issue and one only. When I attempted to explain that there was a whole context to the event - the volunteer cut me off. The money they were concerned about had come to me due to to wrong doing by my

mother's G/C official. However, the APS volunteer' stated her duty was only to uncover one thing. Within a few weeks, a letter from APS arrived. They had substantiated exploitation. I was guilty.
This determination was used to great effect in the official's petition to become both guardian AND conservator. I had a right to appeal the determination, but when I did - I never heard back and even now, years in, I cannot get through to anyone at APS. The official ultimately lost her court petition for guardian and conservatorship because it was clear she had fraudulently taken control of my elder's lives. However, APS is not available to re-evaluate their determination or remove it from the record. Apparently, I have perpetrated *Undue Influence* on an elder and there is no taking it back.

In general, women still live longer than men. Thus the miseries of the G/C system are essential a women's issue. Having spent more than half a century on earth, I believe that women's lives are a long slalom course of undue influences. Advertising, political campaigns, tempting vices, careers open or not to females, less earning power, the mating call and attitudes towards how women respond to it, love for children, the pull of dreams and personal interests - etc, etc, etc all pressure and push on our lives.

What a hypocritical joke to claim UI raises its head solely in the lives of the aged - and that only certain 'competent' people can see clearly into the weave of an octogenarian's daily stressors to decide which are officially acceptable and which should be removed by the judge.

I hope you will deeply reflect on these three aspects that constitute the roots of the Guardian and Conservatorship system. Nothing good can be added or adjusted if built on such a misguided foundation. I hope you will take heart and help us to build a human and loving means of caring for elders. Let us not forget that we will all grow old.

Statement to the Senate Special Committee on Aging on guardianships, conservatorships, protective arrangements, and alternatives.

I. Stories and examples of problems with guardianships

Problem 1: Courts and others treat guardianship and persons in guardianship as not deserving of the legal rights and processes of other civil case types and litigants

An overarching problem we see in our guardianship work is that guardianship cases are treated as less important than other legal matters. This has an effect across the entire spectrum of the guardianship. Rules of evidence and procedure are ignored or overlooked because "it's just guardianship". Individual rights are violated because the individual lacks capacity. The law is ignored, because again, it's a guardianship matter.

The individual's right to an attorney is often dismissed or diminished. The court as well as counsel for the guardian or other parties often insist that the protected person's attorney divulge privileged information or question whether counsel is actually advocating for the client's wishes since they have diminished capacity and can't believe that the individual may have a position or desire about matters that affect their lives. Without doubt, opposing counsel in any other civil matter would never insist that counsel divulge such information. But it's routine in guardianship.

A protected person's wishes during the guardianship are routinely ignored because they lack capacity and are seen as undeserving of the same rights as any other litigant in a civil matter. In Nevada, there is a Protected Person's Bill of Rights that serves to ensure that a protected person retains rights throughout the life of the guardianship. These rights include the right to counsel who advocates for them throughout the guardianship matter on issues such as where they live, how their money is spent, whether they should have to pay for the guardian's attorney's fees, how and with whom they visit and communicate. Even with a Bill of Rights, the courts in Nevada still routinely ignore the protected person's wishes despite counsel zealously advocating for them. One can easily imagine what it is like for folks in guardianship who do **not** have a Bill of Rights spelling out the rights they retain while in a guardianship.

Story/Example:

In the case of Joy*, the court ignored Joy's request to not have a visitation schedule forced on her. The court's decision to ignore Joy's rights has resulted in an extremely contentious case becoming even more so and forcing Joy to pay literally hundreds of thousands of dollars in attorney and guardian ad litem fees.

Joy's children are very much at odds over who takes care of her and what this care looks like. Even though Joy created a Power of Attorney (POA) appointing one of her daughters to be her agent for financial and healthcare matters, her other daughters somehow managed to put her in a guardianship. Desperate not to have those daughters be in a position of authority over her, Joy agreed to let the daughter she chose to be her agent under the POA be her guardian. Since that time, the other daughters, through their counsel, have fought over every conceivable issue, including whether Joy should have to visit with them when they want rather than when she wants. The other daughters insisted that Joy visit them more often than she wanted and they insisted on more in-person and phone time with them than Joy wanted and filed a petition for a visitation schedule. Joy made clear that she did not want a visitation schedule forced upon her and the Bill of Rights gives her, and her only, the right to determine whether and how she visits and communicates with friends and family. She insisted that she wanted to visit or communicate with family when she felt like it.

Her counsel objected to the visitation schedule as per her wishes. Yet, both counsel for the other daughters and the court have questioned whether this really is Joy's position and insisted it could not be since she has been determined to lack capacity. The court and counsel openly have doubted Joy's counsel representations of their client's wishes in this regard, completely diminishing her right to counsel in the first place and conferring greater rights to the family than to Joy. Then over Joy's objection, the court appointed a Guardian ad Litem (GAL) to interview Joy and the family regarding the issue of visitation. The GAL's report

proposed a visitation schedule while also noting that it wasn't what Joy wanted, but insisting that it was in her best interest anyway.

In the end, without ruling on the issue of visitation, the court removed the guardian, ignoring Joy's preference for this guardian, without notice or a hearing. The court then appointed one of the daughters, who caused all the trouble in the first instance, as the successor guardian. None of these decisions and none of the fees incurred actually conferred any benefit to Joy and yet, she is on the hook for all of these fees and costs, amounting to hundreds of thousands of dollars (see Problem 2).

Problem 2: Courts routinely award outrageous fees from the protected person's estate

It is unclear how this came to be, but the general practice, throughout the US, in a guardianship or conservatorship case, is to award attorneys' fees from the estate of the protected person. When there is opposition to this general practice, the argument is that if a proposed guardian must pay out of their own pocket for the attorney they hire to represent them in the guardianship matter, then a well-meaning family member or friend would never step up to be a guardian for a vulnerable senior. This could have a detrimental chilling effect in providing protection and support for those vulnerable adults in need. This argument is overblown. Guardianship forms, at least in Nevada, are mostly pro forma and these forms are readily available online to the vast majority of guardians who are self-represented family members. Generally speaking, guardianship cases are not complex. Service to those entitled to notice is where most self-represented parties struggle and this could easily be resolved by requiring service by mail rather than registered mail or personal service. Most often, the cases that are complex, such that counsel might be necessary, are cases where money is at stake, either for the guardian or for other family members or both. Money generally leads to more litigation which leads to more fees and the person responsible for those fees is the protected person. This general practice often completely wipes out the life savings of a vulnerable senior while providing zero benefit to them.

The protected person does not hire the attorney whose fees they are forced to pay. They did not get to search or interview different attorneys to determine the most reasonable rate or level of experience. They did not negotiate with or sign the retainer agreements for the attorney whom they are forced to pay. In Nevada, all persons in guardianship or facing guardianship are appointed counsel to represent their wishes but that attorney is provided at no cost from a legal services organization. Therefore, in Nevada, the only party's attorney NOT being paid from the assets of the protected person is the attorney for the protected person.

While there is general acceptance allowing attorney fees to be paid from the protected person's estate, there is no general approach regarding those actual fees. Some states require the court to consider reasonableness factors (like Nevada), some states impose a cap on fees relative to the value of the estate, some states set a total cap for fees regardless of the value of the estate and others set an hourly rate for fees or an hourly cap per case. This results in vastly different fee awards for similar work. Most guardianship work is front end, meaning all the work occurs in initiating the case and once adjudicated, there is not much that requires the expertise of a $600.00 per hour attorney. In Nevada, an attorney representing a guardian might bill $600.00 per hour to initiate a simple guardianship matter, resulting in thousands of fees, where an unrepresented family member might file a petition for a similar guardianship matter at no cost to the protected person. The courts looking at both these matters routinely award the fees requested from the guardian's attorney yet also have no trouble accepting that a pro per family member accomplished the same thing for free. There is something inherently wrong with this system.

Story/Example:

Teal* is an elderly gentleman diagnosed with a mental health condition that caused him to be unable to handle his own personal and financial affairs, resulting in a guardianship over his person and estate. Teal's co-guardians, through their counsel, allowed Teal to spend sixteen months of his life in a hospital bed, despite being cleared for discharge. The co-guardians allowed Teal to incur over $164,242.00 in unpaid medical bills as a result of their failure to apply for Medicaid or otherwise manage his affairs during the time he languished

in the facility. Teal's co-guardians then requested that their counsel be paid $30,000.00 from Teal's estate for attorney's fees.

Counsel was appointed and petitioned the Court to remove the co-guardians and to appoint a successor guardian. Teal ultimately prevailed and upon appointment, the successor guardian transferred Teal to an appropriate and much more comfortable home. Counsel also objected to Teal paying fees for co-guardian's counsel. Counsel argued that Teal benefitted not an iota by counsel's actions and instead suffered greatly by co-guardians' failure to provide an appropriate residential setting for him for over 16 months. Therefore, he should not have to pay for their counsel's fees. After strenuous push back by co-guardian's counsel, the Court agreed that Teal should not have to pay for the co-guardian's attorney's fees under these circumstances. In this case, Teal had counsel to advocate for him but most states do not provide counsel for persons in guardianship.

Problem 3: Hospitals violating patients' rights.

Hospitals ignore patients' rights, whether it be the patients' right to discharge against medical advice or to have their lawfully executed Powers of Attorney honored. Hospitals seem to think they operate with impunity and their decisions significantly impact people's lives. The hospitals' conduct results in patients being falsely imprisoned or patients being unnecessarily subjected to court ordered guardianships.

Hospital conduct:
* filing petitions for guardianship for the sole purpose of satisfying unpaid bills
* failing to engage in due diligence before filing a petition for guardianship where a Power of Attorney may exist or there are other less restrictive alternatives
* placing patients in locked facilities for no reason or pending a guardianship
* refusing to discharge when a patient is eligible for discharge while a pending a guardianship
* refusing to allow patients to discharge Against Medical Advice

Stories/Examples:

In a recent case, a for-profit health care facility filed a guardianship petition asking that a guardian be appointed over the estate of Joe. The Petition noted that there were POAs in existence but the agent was not responsive to the facility's request to provide additional documents needed to complete a Medicaid benefit application. After consulting with Joe, who did not desire a guardian be appointed, his counsel filed an opposition to the petition requesting it be denied. The primary basis of the opposition was that there were less restrictive means available to Joe, those being the powers of attorney, and, in any event, the inability of an agent to assist with obtaining and transferring benefits to that facility was not a valid basis to grant a guardianship. Should a guardianship have been granted, it would have suspended the POAs, against Joes' wishes and in the manner he had established prior to his medical disabilities.

The court agreed that the hospital cannot obtain guardianship over someone for purposes of ensuring there is a party available to obtain Medicaid benefits to pay for their prior care. The court further found that alternatives were available to Joe.

Recently Jane, who has suffered from mental illness for decades, voluntarily sought emergency care at the hospital. Because Jane presents as delusional, after addressing her medical needs, the hospital transferred her to another facility for psychiatric care. It is unknown whether the hospital obtained consent from Jane for the transfer. It should be noted that Jane has a home where she lives with a roommate. She receives an income which she uses to pay for her rent and utilities and she is capable of understanding when she needs medical care and how to obtain it, as her visit to the hospital demonstrates.

When she arrived at the facility, they put her in a restricted unit, meaning she was not free to leave. Jane contacted her attorney about wanting to leave and being denied. The attorney contacted the facility and

insisted that she was a voluntary admit and therefore could voluntarily leave. The facility refused stating they had not determined whether to petition for guardianship and would hold her until that time. Again, the attorney insisted that she had voluntarily entered the hospital, was not under an involuntary hold, was not subject to a guardianship, and wanted to leave, even against medical advice. The facility still refused. Jane's counsel contacted counsel for the facility and Jane was ultimately discharged after being locked up for weeks.

In another case, a hospital filed a petition for guardianship over Lane. Lane was hospitalized due to numerous medical conditions. For unknown reasons, the hospital placed Lane in a restricted unit. The hospital's petition noted that the primary reason for petitioning for guardianship was that Lane was refusing treatment for a serious condition. The required certificates attached in support of the petition were conflicting regarding Lane's actual need for a guardianship, i.e., whether she lacked the capacity to consent to or deny medical treatment. Lane's attorney objected to the petition for guardianship. At the hearing, the court granted more time to the hospital to supplement the petition with support for a guardianship over Lane's objections. Despite counsel for the hospital assuring the court that Lane was free to leave while the petition was pending, the hospital has refused to allow Lane to discharge Against Medical Advice or to move her to an unrestricted unit. Lane remains locked up.

*Dave suffers from mental illness but manages his day to day life pretty well with help from his fiancé who he named his agent under his Power of Attorney for Healthcare. Dave suffered a psychotic episode that led to a hospital stay. Once he was stable and ready for discharge, the hospital refused to discharge him and filed a petition for guardianship seeking the appointment of the Public Guardian. Again, Dave was in a locked unit. Dave didn't need a guardian. He had a lawfully executed POA and a home he shared with his fiancé. The hospital petition failed to mention the POA. When there are less restrictive alternatives available, a guardianship should be the last resort. Dave's attorney began to investigate, ordering medical records and social worker notes, and interviewing Dave, his family and his fiancé. Buried in the hospital social worker's notes was a statement that the social worker did not like Dave's fiancé and did not think she was appropriate to be his agent.

Dave's attorney filed an opposition to the guardianship arguing the guardianship was unnecessary due to the POA and advising the court of the social worker's egregious conduct in subjecting Dave to a wholly unnecessary legal process. The hospital withdrew their petition and Dave was immediately released.

II. Stories and examples of alternatives to guardianships

*Jane is sixty-six years old and suffers from slight cognitive handicaps that make her susceptible to influence. Jane has always lived and worked independently despite her cognitive deficits. In fact, she worked for the U.S. Postal Service for over thirty years before she retired.

Unfortunately, many years ago, Jane's brother, who was assisting Jane with her finances, misappropriated and mismanaged Jane's money. As a result, Jane was placed under conservatorship. Jane still made her own medical and personal decisions, but her financial decisions were made by a conservator. Over time, the conservator was able to grow Jane's estate such that it was sufficient to provide for Jane for the rest of her life.

In 2013, after she retired, Jane moved to Las Vegas to be closer to her sister and brother-in-law. On the advice of their attorney, Jane's sister and brother-in-law petitioned for general guardianship over Jane's person and estate, which was granted. No other alternatives to guardianship were discussed or considered, despite the fact that Jane had never been under guardianship in Nebraska and had been making medical decisions on her own her entire life.

In 2018, the court appointed counsel to represent Jane in her guardianship case. Upon meeting Jane, it was abundantly clear that Jane did not need a guardian. The attorney discussed alternatives to guardianship with both Jane and her co-guardians. According to Jane, her co-guardians provided her with input and advice

on matters of medical care and money, but ultimately Jane made all decisions about her affairs. The co-guardians confirmed this fact and said that if they had known there was some alternative to guardianship, they never would have filed the petition for guardianship in the first place.

Jane decided she wanted to terminate the guardianship and enter into a Supported Decision Making Agreement, an agreement that would basically memorialize how Jane was already making decisions with her co-guardians' input and advice. Jane's co-guardians were fully supportive of Jane's decision. The court terminated the guardianship and Jane signed the Supported Decision Making Agreement, naming her sister and brother-in-law as her supporters. This agreement reflects the way Jane has been living her life with the help and support of her family who fully encourage her independence.

*Ms. Thompson did everything right in planning for her senior years. When she was 80 years old, she executed powers of attorney, naming her daughters as agents to make decisions for her if she was unable to do so. Although married, she trusted her daughters to make the best decisions for her. Ms Thompson suffered from a stroke that left her with significant physical disabilities, including difficulty speaking. However she was still mentally sharp and able to communicate with nods and gestures. When she left rehabilitation, she moved in with her daughter, who provided all of her care.

Ms. Thompson's daughters were thwarted in applying for Medicaid and other benefits because her husband refused to provide necessary information to complete the applications. He rarely visited or contacted her and refused to provide any assistance in her care. Ms. Thompson decided she wanted a legal separation from her husband in order to access benefits and because of the disregard he had shown for her well-being. Her daughters completed and filed the paperwork for a separation at her request.

After being served with the paperwork, Ms. Thompson's husband filed a guardianship action, seeking to control all of her affairs, including her monthly Social Security income. The court appointed counsel for Ms. Thompson, who was no longer able to speak but could clearly communicate her wish not to have her husband be her guardian. She wanted her named agents under the POA to continue to make decisions for her.

Ms. Thompson's counsel filed an opposition to the husband's petition arguing there was no need for a guardian because sufficient alternatives existed. The Court denied the guardianship petition finding that Ms. Thompson had alternatives in place that were sufficient to support her needs and a guardianship was not necessary. Ms. Thompson, with the assistance of her daughters, was able to finalize her legal separation and obtain access to needed benefits.

*All names of the protected persons have been changed to protect their confidentiality

III. Suggestions for protecting the rights of people being considered for or currently covered by guardianships, conservatorships, or other protective arrangements

Suggestion 1: Mandate that every person in or facing guardianship is provided with counsel to advocate for their wishes and to protect their legal rights.

Suggestion 2: Create a Bill of Rights for Persons in Guardianship clearly delineating the rights that a person retains throughout a guardianship.

Suggestion 3: Consider restrictions on attorney fees such that payment from the protected person's estate is the exception rather than the default.

Suggestion 4: Require that courts must make findings that no less restrictive alternatives exist to support a person's needs before granting a guardianship petition.

Suggestion 5: Create significant civil penalties for hospitals that violate patients' rights and that abuse the guardianship statutes.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

AMY WILLOUGHBY BRYANT
OCM DIRECTOR

OFFICE OF CONSERVATORSHIP MANAGEMENT
HISTORIC METRO COURTHOUSE, SUITE 601
NASHVILLE, TN 37201
OFFICE: (615) 880-3355
FAX: (615) 880-1435

March 22, 2023

Chairman Bob Casey
The United States Senate Special Committee On Aging
G16 Dirksen Senate Office Building Washington, DC 20510-6050
[redacted]

RE: Statement for the hearing on guardianships, conservatorships, protective arrangements, and alternatives

The Office of Conservatorship Management was created based on recommendations of the Volunteer Task Force following the malfeasance and criminal activity of an attorney in Tennessee that resulted in the loss of over a million dollars of the people he was charged with protecting. This office, a division of the Metropolitan State Trial Courts Department helps to encourage the responsible, ethical, and appropriate management and treatment of individuals under a Guardianship or Conservatorship within Davidson County, Tennessee. Based on our oversite function in this area, we have case studies, examples and suggestions for protecting the rights of people under a conservatorship.

Please accept the following information as a statement for the record for the hearing on guardianships, conservatorships, protective arrangements, and alternatives. The two articles attached were drafted and awaiting publication in bar journals in Tennessee. One article provides information about how better monitoring of conservatorships will provide better oversight for the person and the person's assets. The other article details situations where mandatory training for conservators would likely curtail mismanagement of assets.

Please contact me for any additional questions or information.

Thank you,

Amy Willoughby Bryant
Director, Office of Conservatorship Management
Metropolitan Govt. of Nashville and Davidson Cty.

printed on recycled paper

How Conservatorship Training May Curtail Unintentional Harm -- Amy Willoughby Bryant

When a person's ability to make personal and financial decisions diminishes, other people may step in to help. This can be accomplished via estate planning documents, supported decision making documents or a conservatorship. If a conservatorship is established, the person with diminished capacity is called the "respondent" while the person helping is called the "conservator" or "fiduciary." The conservator is tasked with making medical and mental examination and treatment decisions on behalf of the respondent and/or, marshalling and managing the Respondent's financial interests.

There are three types of conservatorships: one over the respondent's person; one over the respondent's property; and, one over both the respondent's person and property. A conservator may be appointed to manage both person and property or separate conservators may be appointed for the property or person of an individual. In a conservatorship of the person, a conservator makes decisions regarding housing placement, caregivers, and healthcare for the person with a disability. Equally, in a conservatorship over property, a conservator makes decisions related to marshalling and managing the finances and assets of the conservatorship estate in the best interest if the person with a disability. Conservators over property may be required to file inventory, bond, annual accountings, property management plans, and request permission from the court when taking certain action regarding the respondent's property. All conservators are required to file an annual status report.

Some conservatorship relationships consist of the respondent and a professional conservator, typically either an attorney or a private company. One of the most common conservatorship relationships is between a respondent and their family member. The latter relationship is the one that more often encounters the unintentional abuse and neglect that training and education could remedy.

The lack of required training in Tennessee has resulted in several instances of unintentional abuse. This unintentional abuse is not only harmful to the respondent, but also to the conservator who is often a close family member. The respondent suffers harm through the mismanagement of their finances by their conservator. If the court discovers such mismanagement, the conservator can be subject to civil suits in which monetary penalties can be rendered against the conservator. That situation plays out in the following three cases:

The first involves an (adult) only child who was appointed conservator of the person and property for her father. In addition to the responsibilities of serving as conservator for her father, she had four children. The conservator was apprised of her fiduciary responsibilities however no specific training was required. Unfortunately, the conservator failed to file annual accountings and inappropriately managed the respondents bank accounts. These actions resulted in a $30,000 judgment against the conservator. While she remained conservator of her father's person, she was removed as conservator over property. She later stated had she fully understood the responsibilities, she may not have agreed to be the conservator over the property of her father.

The second involves an aunt who was appointed conservator of the person and property of her niece. This case came to the attention of the court through the Office of Conservatorship Management ("OCM"). The OCM received a call from a local real estate agent after the conservator entered a contract to purchase a house for the respondent with the respondent's funds. After an investigation, the OCM discovered the conservator withdrew excessive cash from the respondent's bank accounts for trips and lavish purchases for the respondent. Moreover, the conservator purchased a $36,000 truck for the respondent's benefit without court approval. The conservator contended that she was only attempting to make her niece happy and was unaware she needed court permission to make the large cash withdrawals, take vacations or make home and vehicle purchases. The review hearing resulted in a judgment against the conservator in the amount of $48,000.

The third involves a son who was appointed conservator over his mother. The OCM found through its welfare review process that the respondent was running out of money and would soon no longer be able to afford to live at her current residence. A review hearing was held to discuss the lack of accounting and diminishing funds. The hearing uncovered that the conservator was withdrawing money from the joint bank account held by the respondent and son to pay for vacations, food, utilities, and clothing among other various items. The court provided several chances for the conservator to provide accounting and receipts. However, the conservator failed to provide the annual accountings. The court found that while some expenses were for the benefit for the respondent, the majority were not. Unfortunately, the respondent's home was sold to pay for her care in a nursing facility. The court rendered a judgment against the conservator in the amount of $65,000.

At the hearing when the court appoints the conservator, the court explains the fiduciary responsibilities to the newly appointed conservator. However, at this time, there is no requirement for a conservator of the person or property to have any training prior to being given the authority to make the life changing decisions for the respondent. They have been ordered to manage and make decisions for the person with a disability and oftentimes conservators are only provided with papers to explain their fiduciary responsibility.

Mandatory conservatorship training will serve three key purposes. First, required training imbues conservators with the knowledge they need to effectively serve their respondent. One of the primary responsibilities of conservators is to utilize the respondent's finances to care for the respondent. Managing one's own finances is difficult enough and to be legally obligated to maintain, record, and report another person's finances is undeniably overwhelming. Proper education could alleviate some of this pressure. In the second case, the conservator purchased a vehicle and other items for the respondent's benefit. The conservator would likely not run into any issues with these purchases if she requested permission from the court. Had the conservator been required to attend training, she might have avoided a judgment against her.

Second, properly educating and training conservators can have a positive impact on not only the conservator and respondent, but also the judicial system. When conservators are unsure of their duties, judges, clerks, and oversite offices expend many hours "picking up the pieces." The first case might have been avoided had the conservator been required to watch the OCM training before appointment. She would have fully known the burden she was going to shoulder and perhaps would have asked the court to appoint a professional conservator over property for her father. Appointment of a professional conservator in this case could lessened the judicial and financial resources utilized.

Third, at the very least, mandatory education would put conservators on notice of their responsibilities. Such training and notice could serve to inform conservators of the potential consequences of breaching their fiduciary duties. The third case touches on this issue of notice. First, the joint account should have been closed. Since the conservator was withdrawing funds from a joint account to pay for his personal vacations, items, and food, there is an argument to be made that his actions were malicious. However, based on his testimony, the conservator did not appreciate the fact that the way he and his mom were operating prior to the conservatorship had to change. Had this conservator been subject to mandatory training, he may not have engaged in the inappropriate actions or at the very least, he would have known the repercussions for such actions.

While the potential for unintentional abuse is omnipresent, education and training for conservators can limit such abuse. Twenty-two (22) states require some sort of training for conservators, however, the breadth varies drastically. On one hand, the largest state in the country, California, does not require statewide training for conservators and only a few counties in the state mandate non-professional training. Kansas requires conservators to read a short booklet prior to appointment. On the other hand, Arizona lays out over five (5) hours of detailed education for non-licensed fiduciaries through a state Supreme Court administrative order. Florida requires professional guardians to participate in forty (40) hours of instruction and pass the Florida Competency Guardianship Exam. Some may be too extensive, and the others may not be enough, however, both require conservators to be educated and thus both put conservators on notice.

While OCM offers a free online conservatorship school which consists of videos, quizzes and virtual certificates of completion, such training is not mandatory even in Davidson County. However, there are a few TN counties that require training by local rule.

Ultimately, mandatory conservatorship training has the potential to benefit conservators, respondents, and the Courts. As other states have demonstrated, training can come in a variety of shapes and sizes. It can be three short pages or twenty hours of in-person education with an exam. The purpose and value of conservatorship training is to provide the opportunity for conservators to learn how to properly exercise their fiduciary duties and to minimize fiduciary missteps that may occur.

How Can Tennessee Provide Better Oversight for Conservatorships - by Amy Willoughby Bryant

Individuals have certain fundamental rights to make decisions regarding their own body and property. In a conservatorship, individuals who lack the capacity to make such decisions have some of those rights removed and given to another person or entity to make those decisions for them. In Tennessee, the terms used to describe a person who has been appointed by the Court[i] to have authority for an adult person deemed to have a disability is called "conservator of the person," "conservator of the property (or estate)" or "conservator of the person and property." Nationally, conservatorships are also

known as guardianships, but, in Tennessee, the term "guardianship" is used to describe appointed authority for persons under the age of (18) eighteen. Additionally, the law specifies who is eligible to serve as a conservator and who can file a petition to establish a conservatorship[ii].

Because of the highly sensitive and invasive nature of a conservatorship, the court maintains a reasonable level of responsibility for oversight. Tennessee laws provide the framework for courts to determine how to provide oversight of conservatorship cases. This includes mandatory reporting requirements such as the Report of Physician[iii] and an annual status report[iv]. Other reporting requirements, determined on a case by case basis, may include the appointment of a guardian ad litem[v] or attorney ad litem[vi], an inventory[vii], an annual accounting[viii], a property management plan[ix], and a bond[x].

One important statutory requirement that is currently lacking in Tennessee is the mandatory training for conservators. There is no requirement for a conservator over person or property to have any training prior to being given the authority to make the life changing decisions for the person with a disability they have been ordered to protect. Due to a lack of mandatory training and self-initiated education, family members have had judgments placed against them and successor conservators had to be appointed. Over the years, several bills have been introduced to the Tennessee General Assembly to amend Tennessee Code Annotated Title 34 to require Court appointed conservators to complete court-approved training. This requirement would establish an appropriate educational foundation for conservators and better equip conservators to perform required duties and other necessary actions that could help protect the interests of the disabled adult. However, these bills failed each session.

Secondarily, Tennessee lacks a statewide conservatorship registry and an oversight agency. In 2014, the Office of Conservatorship Management in Davidson County ("OCM") was formed to oversee conservatorships in Davidson County in response to the discovery of a conservator misappropriating funds from the disabled adults he was responsible to protect. In 2013, it was discovered that attorney and conservator, John Clemmons, had been misappropriating funds from a Respondent. Clemmons stole over $60,000 from the Respondent's estate by paying himself from the estate without court approval. Initially the theft was discovered by the Rutherford County Clerk and Master. He was then removed from his case in Rutherford County, his license suspended temporarily, and he was sentenced to either eight years' probation or jail in Rutherford County. The Probate Court of Davidson County discovered additional misappropriation by Clemmons. He was removed from four cases in Davidson County and convicted of stealing about $1.3 million from his Respondents and then spending the money on gambling sprees at casinos. In 2014 he was disbarred. As a result, the OCM was created in Davidson County by the Metropolitan Council as a division of the Metropolitan State Trial Courts Department to monitor conservatorships and minimize such exploitation from happening again. As part of the management process, the OCM partnered with the Metropolitan Government Departments of Social Services to assess the welfare of Respondents. The OCM is funded by the Metro Council as part of the State Trial Courts budget. For this reason, the OCM is only able to serve Davidson County. If the OCM were to expand to other counties, there would need to be more funding from other sources in order to make statewide oversight possible.

Tennessee lacks the ability to ascertain the number of people under conservatorship and the amount of assets being controlled by conservators. There are approximately 8,368[xi] known conservatorships in TN. Currently, each county is left to its own devices to create a data collection system for tracking active conservatorships. Very few counties have a tracking system or the infrastructure to support such. Tennessee also does not have a statewide tracking system or statewide list of individuals or organizations serving as conservators.

Since 2019, the OCM has completed yearly check-ins[xii] with each county to determine the number of conservatorships that each county may have to manage. This task came about when the OCM Director was asked to give a presentation on the state of conservatorships in Tennessee to the Tennessee Bar Association leadership. In order to paint an accurate picture of conservatorships statewide, she felt it prudent to ascertain the number of conservatorships in each county and learn how each county maintains their conservatorships. Based on those findings, many Tennessee counties have little or no established processes through which they track or manage conservatorship cases after a court officially appoints a conservator. Sadly, most counties simply do not have the resources or the manpower to properly oversee conservatorship management.

It is important for a county to know how many people are under conservatorship and how many conservatorships any one person or entity may have. There are numerous ways (file cabinets, file drawers, calendars, binders, electronic systems

and paper files in boxes) counties keep track of conservatorship cases and statutorily required reporting requirements such as accountings. The clerk in each county is responsible for maintaining a system for reporting deadlines for each case[xiii]. Additionally, it is just as important to know if accountings are being filed and if they are accurate[xiv]. This ensures the assets of any disabled adult with a conservator are being managed properly and helps protect them from exploitation. Several counties do not track required accountings[xv]. It is clear from research that both are unknown in many counties.

The OCM receives many phone calls from individuals and agencies who inquire about conservatorships. However, without access to conservatorship cases in every county, it can be extremely difficult for the OCM to ascertain the existence of the conservatorship if it did not originate in Davidson County. By implementing a statewide registry or database, individuals or agencies who need to inquire about a conservatorship could search across every county in the state. Currently, if someone wants to find a conservatorship case but is unsure what county it originated, they will need to contact every clerk with probate jurisdiction in each county until they find the county the conservatorship originated. A registry or database simplifies this and allows courts with probate jurisdiction to search in one place for every county.

To help combat this oversight problem, either the Tennessee General Assembly (by statute) or the Supreme Court through the Administrative Offices of the Courts could mandate the use of a statewide registry of conservators. A statewide registry or database could provide a solution for the lack of conservatorship oversight here in Tennessee by creating a relatively inexpensive and easy way to track conservatorships, especially in larger counties like Shelby, Hamilton, and Knox. Since funding is an issue, we could recruit the assistance of technology organizations to create the statewide registry of conservators.

The OCM maintains a database for conservatorships in Davidson County. This allows the OCM to keep case notes for each case regarding welfare and court hearings, document who serves as conservator, and keep track of assets being managed by the conservator. Most important the OCM can track of a conservator has been removed for maleficence. To date fifty-seven successor conservators have been replaced due to actions of the OCM. The database allows the OCM to track every individual involved in the case and make note of any important information about the case. For example, if an individual has called the OCM about concerns with their conservatorship, the database can keep track of this information so that the OCM has information to provide to the Court about potential concerns related to the welfare of a Respondent. With a statewide registry or database, a fiduciary who is being investigated for improper conduct in one county can be searched in the database to determine if they have any conservatorship cases in other counties, making it easier to identify or potentially prevent improper conduct.

The clerk's office of the probate court and the OCM conduct financial reviews of conservatorships of the property to prevent this type of misconduct by conservators. This review process begins with a review of information by the clerk's office of the probate court. Once it has been reviewed by the clerk's office, the financial information then undergoes a judicial review, and finally is reviewed by the OCM. The first step in this process is a review of all the court records. Financial documents are then requested and reviewed as needed. Once that is complete, the attorney of record or conservator is contacted to verify any information and provide more information if needed. A report is then provided to the OCM Director if there are concerns and a report is filed with the Court to bring any concerns to the Court's attention if needed.

Bottom line, Tennessee can improve conservatorship oversight, and the Davidson County model is a potential solution. It is important to note, the lack of oversight for conservators is a national issue that often leads to the exploitation and abuse of vulnerable elderly individuals and individuals with disabilities. On the bright side, there is no indication that any respondent has been harmed by the lack of management. However, without the ability to ascertain who has a conservatorship and who is a current conservator, it is difficult to ascertain the welfare and financial security of each person under conservatorship in Tennessee.

---

[i] § 34-3-107
[ii] § 34-3-102; § 34-3-103

[iii] § 34-3-105
[iv] § 34-1-111(i)(3) Subdivision (d)(2) requiring a report regarding the physical or mental condition of the person with a disability may not be waived or excused.
[v] § 34-1-107. Guardian Ad Litem
[vi] § 34-1-125. Attorney Ad Litem
[vii] § 34-1-110. Management of Property — Inventory — Filing — Failure to File or Appear — Revocation of Authority
[viii] § 34-1-111. Accounting with Court
[ix] § 34-1-115. Investments; Property Management Plan; Court Approval to Change Nature of Investments; Property of Minors or Person with Disability
[x] § 34-1-105. Bond
[xi] There are likely more conservatorships however of the 94 counties fifteen (15) counties did not report and twenty-one (21) counties stated they do not know and cannot determine the number of conservatorships for their county.
[xii] By phone and email to the Clerks of Court or Clerk and Master
[xiii] The clerk shall maintain on all guardianship and conservatorship cases the same type docket books, files, minute books, and other records as in all other cases. In addition, the clerk shall maintain an appropriate index or tickler so that reporting deadlines established in §§34-1-110 and 34-1-111 and the like are easily ascertainable. The clerk shall issue the notices and summons described in §§34-1-110 and 34-1-111 to each delinquent fiduciary.
[xiv] TCA 34-1-111 Except as provided in subsection (i), within thirty (30) days after the six-month anniversary of the fiduciary's date of appointment, the fiduciary shall file a sworn accounting with the court.
Except as provided in subsection (i), within sixty (60) days after each anniversary of the accounting required in subsection (a) or any other end of an accounting period selected by the fiduciary after the subsection (a) accounting, the fiduciary shall file a sworn accounting with the court. To select an accounting period end other than the end of the month during which the fiduciary was appointed, the fiduciary shall file a statement with the clerk advising of the accounting period selected. The accounting period shall not exceed twelve (12) months.
[xv] Tenn. Code. Ann 34-1-111(d)(2) combined with Tenn. Code Ann. 34-1-111 (i)(3) to require an annual status report for the conservator. "(2)The accounting shall contain a statement concerning the physical or mental condition of the person with a disability, which statement shall demonstrate to the court the need, or lack of need, for the continuation of the fiduciary's services." "(3) Subdivision (d)(2) requiring a report regarding the physical or mental condition of the person with a disability may not be waived or excused."

The Majority Staff of the Senate Special Committee on Aging
Sen. Bob Casey, Chairman

My name is Barbara Barath, and Mary Barath is my great aunt. She is 82 years old. The past 2 ½ years have taken a significant toll on her, and her family and friends are worried. This is her story.

Mary was born in December 1940. Hitler ordered German troops to occupy Hungary in 1944. In 1948, Mary was smuggled out of Hungary and spent three years living in an army barracks in Germany, before finally coming to the United States in 1951.

Hungarian is Mary's native language, but she learned German and eventually English. She married her first husband, Horst, when she was only seventeen years old. They had 2 children, but Horst was violent and abused Mary. Eventually she was able to divorce. Now a battered wife, Mary had to find a way to care for herself and her two children while overcoming the stigma of being a "DP," a displaced person, in her new home of Cuyahoga County OH. Mary eventually re-married William Barath (a kind man) and they made their home on Wagar Road in Rocky River, OH. Sadly, William died in 1994 but she continued to live independently at their home until November 2022 when she was forcibly removed from it.

In her mid-life, Mary like many women, was prescribed hormone therapy drugs. But it wasn't until years later when those drugs were determined to cause an increase in breast cancer, heart disease and stroke.

In October 2000, Mary was diagnosed with breast cancer. Since that diagnosis, she has never achieved five consecutive years of remission from her cancer, and has undergone numerous surgical procedures, including biopsies, a partial mastectomy, radiation, and chemotherapy.

Mary's backstory is important, because it offers some explanation as to why she is so brave, outspoken, tenacious and uncompromising – and why she made zero friends amongst the Cuyahoga County legal community as she fought so voraciously to protect her freedom and independence.

In March 2020, Mary was isolated and anxious, dealing with Covid lockdowns like the rest of us - and that's when her breast cancer returned for the fourth time. She consulted with her doctor and (for the first time) her doctor referred Mary to a colleague to discuss how she was feeling about the fourth diagnosis and the wait that she faced for treatment, alone and quarantined at home, all due to the pandemic. It was this doctor's visit that started Mary on a path toward guardianship, and she saw that doctor just one time.

In December 2020 Elizabeth Goodwin, who is a licensed OH Attorney, filed an application with the Cuyahoga County Probate Court alleging that Mary was an

incompetent person suffering from dementia, and requesting that she be appointed as Mary's guardian.

On January 14, 2021 Investigator Kathleen Russo, an appointee of the Cuyahoga County Probate Court, knocked on Mary's door at her home located at 1127 Wagar Road in Rocky River Ohio to tell her that there would be a hearing to determine if Mary needed a Guardian.

Ms. Russo talked about what that meant, and Mary said she did not need anyone to take care of her as she had lived alone since her husband died and managed her home, her finances, her health, all on her own. When Ms. Russo continued to push the subject, Mary emphatically said that she did not want or need a Guardian under any circumstances. Ms. Russo explained that the hearing would take place via ZOOM but Mary didn't have internet, a computer or a smart phone, so she requested and was provided a telephone contact number for the hearing.

When Ms. Russo returned to the Cuyahoga County Probate Court she gave a deposition in which she stated, "With regard to her enumerated rights, she made no specific requests..." As in Mary didn't say one way or another if she wanted a guardian.

The first hearing was held via ZOOM on January 21, 2021. Mary called in using her landline but could not hear what was being said. No one knew at that time, but Mary was facing a 4th cancer surgery.

At the next hearing held via ZOOM on February 11, 2021, Magistrate David Mills granted the application and appointed Elizabeth Goodwin as interim Guardian over Mary's person and estate. Mary wasn't permitted to be present in-person at that hearing, and she was not represented by legal counsel.

Ever since that time, Mary and her family and friends have fought tirelessly to overturn the guardianship. We have made telephone calls, written letters, filed complaints, researched federal and state guardianship laws and reached out to numerous individuals and entities for help (all the way to the Supreme Court of Ohio,) however all our efforts have been blocked by the Cuyahoga County OH legal community and it's elected political officials.

On or about November 22, 2022, Elizabeth Goodwin petitioned the court to have Mary seized from her home for an evaluation with the Southwest General Hospital-Geriatric Behavioral Health Unit. A magistrate granted the petition, and Mary was forcibly removed from her home by the Rocky River Police Department. After several days at the hospital, Mary was transferred to Vista Springs Greenbriar Village, and placed into a lock down unit where she remains to this day. Pursuant to the Guardian Elizabeth Goodwin's orders, Mary is not permitted contact with her doctors, family and friends. She is not allowed telephone calls or US Mail. All attempts to communicate with Mary are met with instructions from the Vista Springs Greenbriar Village staff to ask for permission from her guardian – and those requests are not approved.

The Cuyahoga County Probate Court is not acting in accordance with The Supreme Court of Ohio, Fundamentals of Adult Guardianship, Participant Manual. Ms. Goodwin is not making decisions based upon the best interest of her Ward, Mary. Fundamentals of Adult Guardianship – Page 35 states "Best Interest means the course of action that maximizes what is best for a ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the Ward. In addition to the directives set forth directly in the definition of best interest, other provisions of Rule 66.09 also address a guardian's decision-making process."

In the time that Ms. Goodwin has been Mary's Guardian, she has been lax in ensuring that Mary's bills were paid on time, causing Mary's credit score to plunge into the 500's and nearly causing Mary's Medicare coverage to lapse. Family stepped in and paid her real estate taxes when Ms. Goodwin did not. Mary was allowed a monthly "allowance" of $600 but had to call Ms. Goodwin's assistant, Sallie Hill on numerous occasions to remind her to send it.

Ms. Goodwin's daughter, Victoria Race works in her office and notarizes her mother's documents. Her assistant, Sallie Hill owns Estate Solutions which is contracted by Ms. Goodwin to ready the homes of her Wards for eventual sale. She currently has at least three of her Wards housed at the Vista Springs Greenbriar Village, and at least two of those Wards (Mary and Herisia Lapp) are not allowed visits from family or friends.

Despite an endless barrage of roadblocks, we continue to advocate for Mary and seek relief for her from a corrupt system and corrupt individuals in Cuyahoga County, Ohio. And we appreciate this opportunity to share a small part of Mary's experience with the United States Senate Special Committee on Aging. Thank you for inviting the public to share their guardianship stories with you.

Sincerely,

Barbara Barath

(On behalf of the family and friends of Mary Barath, a resident of Rocky River in Cuyahoga County, Ohio)

Mary's full docket can be reviewed at https://probate.cuyahogacounty.us/pa/

MEMORANDUM

TO: UNITED STATES SPECIAL COMMITTEE ON AGING

FROM: BRADLEY GELLER *

DATE: MARCH 22, 2023

RE: GUARDIANSHIP UN-REFORM IN MICHIGAN

Michigan was highlighted in the seminal 1987 Associated Press series on guardianship abuse. (Attachment A). The very same issues - misuse of guardianship, inadequate oversight, uncaring professional guardians and the influence of politics - remain today.

Despite 25 public acts passed by the Michigan legislature over the past 30 years to improve the system, inaction by other branches of government has exacerbated shortcomings of the system.

The causes are clear: **Michigan judges do not follow the law**. The Michigan Supreme Court and Michigan Attorney General, empowered to address judges' recalcitrance and professional guardians' nonfeasance, have steered a regrettable course of denial, ducking, deflecting and delay

* As counsel to the Michigan House Judiciary Committee, Bradley Geller drafted the Michigan Guardianship Reform Act of 1988. He subsequently served as counsel to the Washtenaw County Probate Court in Ann Arbor, supervising the guardianship program and writing Handbook for Guardians of Adults. He was then Michigan Assistant Long Term Care Ombudsman, addressing the deleterious effects of guardianship on residents of nursing homes.

As an example, in 1997, at the urging of the State Bar of Michigan, the Michigan Supreme Court created a Task Force on Guardianships and Conservatorships. The task force worked in earnest and arrived at 11 unanimous recommendations for improving the system. The court ignored all of them.

In 2016, a staff member presented the Michigan Attorney General with two loose-leaf binders filled with complaints the office had received about professional guardians, including Attorney General-appointed public administrators. The Attorney General basically told staff to deep-six them.

The Michigan Supreme Court has even taken steps to magnify the system's failings by reducing oversight of judges and guardians. The court's insouciance when confronted with violations of constitutional and statutory law has been astounding,

---

Practices of judges that are egregious violations of Michigan statute include granting a guardianship without notice to the respondent and a hearing; not eliciting clear and convincing evidence of incapacity; refusing to let a respondent present evidence; not accommodating disabilities of a respondent by moving the site of a hearing; ignoring advance directives that obviate the need for guardianship; failing to consider limited guardianship; and not requiring guardians to file annual accounts.

According to the State Court Administrative Office Annual Caseload Report, there were 60,288 adults in Michigan who have a guardian as of December 31, 2021. From the same source, it can be gleaned over 98% of petitions that reach the disposition phase result in an order establishing a guardianship.

Given the paucity of due process protections, it is small wonder Michigan is an outlier in the incidence of guardianship. For instance, it is one and a half times more likely an adult in Michigan will have a guardian than an adult in Ohio, a state with similar demographics.

. Given the absence of an inventory and financial accountings, and the lack of review of accountings by court staffs, small wonder there have been over 60 media reports in Michigan of financial exploitation by professional guardians. The Guardian, Inc of Wayne County scandal involved more than 600 individuals. Long ago, advocates tagged guardianship with the moniker, "a license to steal." Some major players have the audacity to deflect blame by attributing problems in the system to family guardians.

Perhaps the most insidious practice of judges is to ignore the statutory priority of family to serve as guardian and appointing professional guardians. Michigan law could not be more clear a judge can only appoint a professional guardian as a last resort when the individual indicates no preference and there is no family member willing and suitable to serve.

An impregnable case can be made that judges' predilection for professional guardians and the availability of Medicaid as a paying source built the industry. Some years ago, a survey revealed there were 300 completely unregulated guardianship entities in the state. Some of the largest ones are public administrators, lawyers chosen by the Michigan Attorney General. It has been an old-boys network, with appointments a form of patronage. By statute, court appointments are limited to serving in decedent estates, a restriction universally honored in its breach.

One former public administrator testified he has appointed guardian thousands of time. The lawyer was terminated as a public administrator by the Attorney General for being a poor guardian, but continues to serve as guardian and/or conservator for hundreds of individuals, even accepting new appointments. The Attorney General's office recently sloughed off this disgraceful incongruity.

Statistics alone cannot begin to describe the impact of having a professional guardian. An individual loses the independence that goes with any guardianship, but also faces inadequate medical care, isolation from family and

friends, unsafe housing, unnecessary institutionalization and financial exploitation.

Guardians find creative means to drain an estate: underselling real estate, charging exorbitant fees, charging attorney fees for fiduciary services, hiring a lawyer in the same firm, contracting with service providers related to the guardian, having valuable personal property "disappear," and embezzlement.

A home valued for $25,000 was "sold" for $500 and its contents - including antiques - grossed $27 at a two-day estate sale. An individual lost the only two items important to him: his wedding ring and his grandmother's china.

One guardian or another can't be bothered to arrange a cataract operation for an individual whose only joys in life are watching television and playing BINGO; does not arrange for dentures, reducing the resident's diet to mush; consents to psychotropic medication contraindicated for an individual with dementia; refuses to authorize hospice for any of the hundreds of individuals for who he serves as guardian regardless of individual's wishes and medical recommendations.

A guardian "places" individuals in unlicensed, unsafe board and care homes; moves an individual several times in a year; places an individual, a voracious reader who can easily perform all ADL's, in a nursing home; moves an individual three counties away with the express purpose of isolating her from family and fellow parishioners; sentences an individual without dementia to a locked, "memory care" unit; refuses to allow a eligible resident to make the transition to the community under the HCBW Program.

The federal government has avenues to improve the dehumanizing guardianship system, though providing resources to the state is neither necessary nor productive.

1. This Committee can issue a report that includes a section lambasting Michigan. We should not preclude the slim possibility of embarrassing the court into discovering backbone to stand up to 100 probate judges, and the Attorney General into cutting the cord with the professional guardianship industry.

2. In FY 2023, the federal government is providing $6,340,300 to the Michigan Judiciary. If the Michigan Supreme Court does not exercise its constitutional power of superintending control, Congress should turn off the spigot.

3. Professional guardians are paid with Medicaid dollars but there in no oversight as to whether these guardians are fulfilling their statutory duties. Until this step is taken, DHHS should prohibit Michigan from using Medicaid dollars for professional guardianship services.

4. Recommend the Department of Justice to pursue RICO claims against guardianship entities not performing their duties (or worse), with the possible underlying offenses of Medicaid fraud, wire fraud, embezzlement, human trafficking and extortion (to the extent judicial campaign donations are a *quid pro quo* for guardianship appointments, i.e., "pay to play)."

5. Recommend the Department of Justice use the Civil Rights of Institutionalized Persons Act to investigate guardians' actions for residents of the 34 county medical care facilities run by counties and the two state veterans homes, with one focus being the right to live in the least restrictive setting appropriate to an individual's needs.

6. Urge the Office of Civil Rights of DSHHS to explore whether there is racial discrimination within the guardianship system.

APPENDIX A

Excerpt from Associated Press Series

MICHIGAN— MISUSED AND POORLY MONITORED
(By Mark Fritz, Associated Press Writer)

DETROIT— Many of Michigan's elderly people are being stripped of their homes, their incomes and their most basic rights under a misused and poorly monitored legal process that varies wildly in the state's 83 counties.

While guardianship is intended for people who are physically or mentally incapable of running their own lives, an Associated Press study found that this obscure legal process is being used routinely by:

Hospitals, to discharge elderly people into nursing homes or remove them from life-support systems after their insurance runs out.

Doctors, to protect themselves from malpractice suits.

Nursing homes, to insure bills will be paid.

The Michigan Department of Social Services, which is funneling people to professional guardians it considers undesirable.

As of June, more than 25,000 adults in Michigan were under guardianship, conservatorship or both, according to data collected from Michigan courts.

These guardianship rulings originate in Michigan's 79 probate courts in hearings that often last but a few minutes but usually have lifetime effects.

There is so little monitoring once guardianship or conservatorship is granted, however, that bed-ridden elderly people are increasingly having their assets misused, in some cases plundered, by the very people who were appointed to protect them.

Courts say families of older people are becoming more reluctant to act as guardians. Filling part of the void are growing numbers of professional guardians. Among them are Detroit-area lawyer Alan May, a prominent Republican Party activist who acknowledges he provides no personal attention to his 400 wards, and the Rev. Charles Hilliard, the public guardian in Clare County, a for-profit private guardian in nine other counties and co-owner of a string of nursing homes.

Quoted in Abuses in Guardianship for the Elderly and Infirm: A National Disgrace, A Report by the Chairman of the Subcommittee on Health and Long Term Care of the United States House of Representatives Select Committee on Aging (December, 1987).

Beverly Howe Guardianship Abuse and Human Trafficking Fraud in Genesee County Probate Court

1. Beverly Howe was placed under an illegal guardianship on 10-23-18 without the PAD or Financial POA or Beverly present at the hearing in the Genesee County Probate Court in violation of MCL 700.5313

2. My mother, Beverly Howe, 93 years old has been held hostage and isolated since 2-20-19 in her home, and since 6-3-20 she is isolated at Bella Vita Assisted Living in Grand Blanc, MI. Her family has been denied visitation since 2/20/2019 so that they would not see the medical poisoning of Beverly Howe on Plavix 7 days a week, when prescribed 2 times a week, placing her back on Digoxin which Beverly had adverse reactions to, and finally placing her on SEROquel on 7/15/2021 at the request of Bella Vita Administrator Mary Ketterer R.N.

3. Beverly has not seen her family since April 2019 and placed on Digoxin (a medication that was removed without consultation with Beverly's heart doctors) by the guardian via Dr. Sahouri, Beverly's family physician. Beverly had severe adverse health issues while on Digoxin from March 2018 until July 11, 2018 when she had an AV-Node heart ablation which ended the need for Digoxin. On 8-23-2020 Beverly was unresponsive and transported to McLaren Hospital and Thomas Howe intervened to with ER staff. It was found that Beverly was placed on SEROquel on July 15, 2020 to medicate her for a supposedly aggressive behavior. SEROquel is not approved for use on the elderly with dementia.

4. Beverly is currently in debt to Bella Vita Assisted Living in excess of $20,000 due to the guardian, Kraig Sippell's, pure negligence and incompetence. This debt increases each day.

5. Beverly's health continues to decline due to the isolation and medication mismanagement while at Bella Vita Assisted Living. LARA complaints have been made against Bella Vita.

6. Beverly was placed on SEROquel medication to sedate her on 7-15-20 because Bella Vita I believe did not want to watch Beverly, who was potentially confused and agitated by isolation and neglect caused by the Court Order to place her there without enough income to pay for it. The Court refused to allow us to care for her at her home I believe for 3 reasons:

    1. To prevent us from seeing the medical mismanagement of Beverly Howe
    2. To continue the abuse of the estate of Beverly Howe through further litigation
    3. To continue the draining of the Wallace Howe Family Trust with further litigation since Judge Barkey granted favor to George Rizik II to become an interested party in all of Beverly Howe's Probate cases which is in violation to his duty of loyalty to his beneficiaries, Thomas and Steven Howe of the Beverly Howe Family Trust and Wallace Howe Family Trust.

7. Beverly was unresponsive on 8-23-20 due most likely due to a medication overdose of SEROquel and Digoxin. She survived.

8. During the Court hearing on 10-18-20, it was stated that Beverly is **being evicted** from Bella Vita Assisted Living this week due to lack of payment. She was not evicted and is still isolated.

9. Beverly Howe was placed on Medicare Hospice on 1/12/2021 by Kraig Sippell with a Doctors letter from Dr Saed Sahouri without a valid terminal condition with an expected life expectancy

of 6 months or less. No family was listed in the Kindred Hospice contract. Family is required 24/7 access to Beverly. This cannot be done in a Covi-19 lock down facility.

10. Judge Barkey has Court Ordered Pamela and Thomas Howe to have no contact with Beverly Howe or any caregivers, or doctors on 12/02/2020

11. George Rizik II and Kraig Sippell have **embezzled and converted** over $300,000 of my money from the Beverly Howe Family Trust and Wallace Howe Family Trust using illegal ex-parte orders without notice to beneficiaries in violation of the Trust instruments.

12. George Rizik II has **breached his fiducial duty** to his clients and squandered my assets without my authorization as beneficiary of the Trusts to incarcerate Beverly Howe in his guardianship scam with his co-conspirators. His annual accounting shows the fraud.

13. George Rizik II and Kraig Sippell's actions against Beverly Howe include **financial exploitation, elder neglect, emotional elder abuse, physical elder abuse.**

14. George Rizik II, Kraig Sippelland Craig Fiederlien have **violated the Michigan Rules of Professional Conduct by presenting lies to the Court as shown in the transcripts say that Beverly Howe has lots of money in her trusts which did not belong to her.**

15. Kraig Sippell, Guardian, outsourced his medical responsibilities to an incompetent non-medical person (Steven Howe), which has caused Beverly's health deterioration and isolation.

16. George Rizik II and Judge Jennie Barkey DO NOT have the authority to modify Beverly Howe's estate plan per MCLA 700.1201(b), 700.5428, and 700.7817 prohibit it. The case is currently in the Court of Appeals because they have attempted to embezzle money and assets.

17. Kriag Sippell has placed Beverly Howe's home up for sale on 2/2/2021 as Trustee of the Beverly Howe Living Trust which is currently in the Court of Appeals as of 8/2/2020 to have him removed as Trustee. The living trust does not own the home, Beverly Howe Family Trust currently holds the title. Currently the home title sits in the Beverly Howe Family Trust which is the property of Thomas and Steven Howe and has not been properly conveyed back to Beverly Howe as a proper Lady Bird Deed. As you see below, Kriag Sippell appears to have misrepresented to the REMAX agent the title of the home as it is listed as Beverly Howe Tr, not as Beverly Howe Family Trust as it should be. Kraig Sippell who I am in the Court of Appeals to have removed from the Beverly Howe Living Trust dated 8/7/2020 has either misrepresented or is an agent of the George Rizik, Trustee of the Beverly Howe Family Trust who has no Court Order to sell the property.

George Rizik II and Kraig Sippell I believe are involved in **fraud and abuse** of Beverly Howe in violation of MCL 400.11 and MCL 750.174a Criminal Financial Exploitation

19. George Rizik II and Kraig Sippell continue to intimidate the family, cause needless litigation to line their own pockets with my money resulting in hundreds of thousands of dollars of litigation so they can continue to isolate of Beverly Howe for profit.

20. Judge Jennie Barkey I believe has committed fraud to Thomas and Beverly Howe of which she has **NO judicial immunity** from being charged with conversion and theft of the Trust assets as a co-conspirator by issuing illegal ex-parte court orders which are in clear violation to the Trust agreements violating the estate plan of Beverly Howe and the beneficiaries of the Beverly Howe Family Trust and Wallace Howe Family Trust. The Trust were not bonded as described under MCL 700.7702 to protect the interests of the beneficiaries so that Judge Jennie Barkey and her co-conspirator could use illegal ex-parte Court Orders in violation of the trust agreements to further the Courts illegal human trafficking of Beverly Howe for the Court's co-conspirators personal enrichment without consequences from the Bonding Company. This is how I believe Judge Barkey gets around the system to defraud families of their assets without having to answer to a Bond Company. Judge Barkey ordered a bond on the Wallace Howe Family Trust at the end of 2020 and no bond company will touch it with the ongoing litigation that Judge Barkey has created by making George Rizik II an interested person in all of Beverly Howe's court cases.

21. George Rizik II and Kraig Sippell I believe have committed fraud and conversion of the Beverly Howe Family Trust funds of Thomas Howe and Beverly Howe's VA Surviving Spouse Grant and monthly income by co-mingling assets clearly shown on the deposit register and bank statements of $13,035.00.

22. George Rizik II and Kraig Sippell I believe have violated their fiduciary duties and failed to do what is in the best interest of Beverly Howe, Thomas Howe and Steven Howe per MCLA 700.1201, 700.5306a, 700.5428, 700.5407, 700.5520, 700.7201, 700.7817 and the George Rizik II, Trustee has worked in collusion with the guardian and the Court who has granted Rizik an "Interested Party" of the guardianship, Beverly Howe Revocable Trust, and Conservatorship to extract large sums on money from the Beverly Howe Family Trust, and Wallace Howe Family Trust which has no interest in any of the proceedings of Beverly Howe which I believe this is in violation of MCL 700.7901, 700.7902, 700.7903, 700.7815 (1)(a)(b)(c), 700.7801 (Damages, Breach, Abuse and Remedies).

23. George Rizik II, Kraig Sippell, Judge Jennie Barkey, Craig Fiederlein, Rachel Hawrylo, Toni Cerny, Dr. Matthew Weiss, Andrew Stout, Steven Howe, Michael Gildner, Bella Vita Assisted Living in Grand Blanc, and Helping Hands Home Care of Grand Blanc, Michael Gudith of Chase Bank - Grand Blanc I believe have all violated directly or indirectly MCLS 400.11, MCL 750.145m, MCL 750.174, MCL 750.145n, and MCL 750.174a of the Elder Abuse and Elder Financial Exploitation Statutes of the State of Michigan.

24. Kraig Sippell and Judge Jennie Barkey I believe unlawfully transferred funds violating MCL 487.703 by taking over a joint bank account which included my name without my authorization. By doing so, they stole/**embezzled** $19,940 of my personal money for VA caregiving required by federal law under the VA Surviving Spouse Grant application.

25. Toni Cerny the sole Guardian ad Litem (GAL) in Genesee County I believe is in violation of MCL 700.5305(b), (c)(i)(II)(A)(B)(iii)(iv)(vi)(d), (e), (f), (g), (h), (i), (A), (B), (C)ii, iii, iv, v, vi, vii,

viii,(2), (3), (4), (5) failing to do her job according to the law, writing false reports in collusion with the Court to illegally place Beverly Howe under full guardianship without Beverly being present at the hearings, nor were Beverly's family at the Hearing. The Durable Power of Attorney and Financial Power of Attorney (Pamela & Thomas Howe) were not present at the Hearings because they were lied to by their attorney, Michael Gildner, who had them sit in the Court hallway waiting for their ex-parte meeting with Judge Barkey to conclude.

26. Helping Hands Home Care staff I believe failed to act as a "**Mandated Reporter**" MCL 400.11a.

27. Bella Vita Assisted Living staff I believe failed to act as a "**Mandated Reporter**" MCL 400.11a.

28. Dr. Matthew Weiss doubled billed $300 to Rizik to the Beverly Howe Family Trust on 10/18/2018 after taking payment in full from Medicare of approx. $288.00. He was obviously tipped off by the Court that these trusts exist and I believe committed fraud to the Beverly Howe Family Trust along with George Rizik II.

29. Genesee County Elder Abuse Task Force I believe have failed to act as a "**Mandated Reporter**" MCL 400.11a to protect Beverly.

30. I believe this is clearly is a **RICO Racketeering Theft Ring** operating in Genesee County under the Chief criminal, Judge Jennie Barkey, who was elected Nov 3, 2020 for 6 more years of potential crimes against the citizens of Genesee County. A clear violation I believe of the Hobbs Act concerning public corruption, wire fraud, interstate commerce, and Honest Services Fraud.

31. Kraig Sippell who was appointed as a Trustee of the Beverly Howe Revocable Trust by Court Order as an additional Trustee to Thomas and Steven Howe, placed the property located at [redacted] for sale using a Court order to sell and liquidate the property in the Beverly Howe Revocable Trust on 2/2/2021. The issue is that I believe from the MLS # 221000717 it clearly shows that the owner was stated as Beverly Howe Tr 9400 S Saginaw St Grand Blanc, MI 48439-9666 which is actual the Beverly Howe Family Trust which I am the beneficiary and George Rizik II is the Trustee. I have not given George Rizik II the permission to convey any authority to Kraig Sippell to sell property within my trust. I believe the Kraig Sippell is fraudulently attempting to defraud not only me, but mainly mother Beverly Howe while her Estate attorney works through titling issues to correct the "LadyBird Deed" due to a Scriver's error. I believe the Court has made the Court rulings to confuse the title and create issues to defraud the Beverly Howe and her beneficiaries to enrich the Court co-conspirators if possible by moving the title without payment to the Beverly Howe Family Trust which Beverly Howe does not have any interest and then back to Kraig Sippell Guardian of Beverly Howe.

32. I believe Kraig Sippell who finds himself personally in debt due to his fraudulent guardianship without any possibility of recover, is making a desperate fraudulent attempt of using a 8/10/2020 Court Order to sell the property within the Beverly Howe Revocable Trust that currently does not exist and has presented the title currently held by the Beverly Howe Family Trust as a title held by the Beverly Howe Living Trust and he is one of three Trustee's named in the Beverly Howe Revocable Trust. Also Kraig Sippell is being sued in the Court of Appeals to be removed as Trustee of the Beverly Howe Living Trust 8/7/2020. Kraig Sippell has not receive permission from the other 2 trustees to sell the property. It is not possible to sell the property that has a "LadyBird Deed" until the death of Beverly Howe and that will be the beneficiary's decision.

33. Judge Jennie Barkey suppresses evidence to prevent any change of outcome, prevents cross examination to show witness perjured themselves, denies witness to speak and come forward in the Court hearings, shuts off microphone on witnesses to prevent testimony on the record of matter that effects the outcome of the trial, denies deposition of witness during discovery period to prevent evidence of her corrupt conspiracy to human traffic the elderly for profit

34. Beverly Howe transported to McLaren Hospital with low blood pressure on Wednesday 01/06/2021 and returned to Bella Vita Senior Living on 01/10/2021.

35. Beverly Howe placed fraudulently on Medicare Hospice on 01/12/2021 with Kindred Hospice without know terminal condition without any family noted in Hospice contract.

36. Beverly continued isolation in a covid-19 restricted facility in violation of federal and State hospice laws which allow 24/7 visitation, bereavement, and counseling.

37. 1/31/2021 - Due to the prolonged medical absence of Judge Jennie Barkey, disqualification of Judge Kay Behm, Judge Thomas Byerley of Eaton County assigned. (I feel Judge Byerley is incompetant and just another criminal of the Michigan Court system)

38. 2/26/2021 Court hearing petitioning to sell Beverly Howe's home is approved by Judge Byerley which has had the title reassigned 2 times illegally by the Court. Genesee County Probate did not have jurisdiction to hear the case due to the Court of Appeals filing. Genesee County Probate Court had no jurisdiction to hear the case in the CA (Conservatorship Case) as the Court has not yet heard the CA case or determined a conservator.

39. First, the deed was transferred by Court order to the Beverly Howe Family Trust (Thomas Howe beneficiary) violating the EPIC Estate Planning laws, then, after a rehearing, the Court order is voided and the deed transferred illegally to the guardian Kriag Sippell of Beverly Howe by George Rizik II the trustee of the Beverly Howe Family Trust violating the Court order instead of returning it to Beverly Howe as a "LadyBird" deed. The allowed the Court to order the house to be sold in violation of EPIC estate planning laws. The title is so defective at this point that title insurance will not be possible to obtain. Title is now defective allowing potential future Medicaid recovery of home assets once the "LadyBird" deed was illegally transferred by faulty Court Orders and malfeasance of the Court's co-conspirators to attempt to obtain the cash from the sale to continue their fraud on Beverly Howe and the Estate of Beverly Howe.

40. On 2/27/2021 informed by text from the guardian Kraig Sippell that Beverly Howe had fallen on Friday 2/26/2021 at Bella Vita Senior Living in Grand Blanc, MI with a head laceration and a small fracture in her neck.

41. On 2/27/2021, I was informed by the guardian Kraig Sippell by text that Beverly Howe had fallen, had a laceration on her head, and a crack vertebra in her neck. The incident happen on 2/26/2021 and failed to report it to the family until the next day.

42. I reported the injuries at Bella Vita Senior Living in Grand Blanc to APS, Genesee County Elder Abuse Task Force, Grand Blanc Police, L.A.R.A., and the Genesee County Ombudsman Renee Polalowski asking for Beverly Howe to be removed from Bella Vita Senior

Living and Kraig Sippell's negligent care. Note: There is no emergency intervention in Michigan outside of an emergency hospitalization.

This is where the "Perfect Crime" starts:

I agreed in Court 9/11/18 to have George Rizik II to take over my 2 Trusts to end needless litigation concerning my mother, who I was taking care of after a long illness in 2018. Once I agreed, my attorney Michael Gildner who was in collusion with the Court and the co-conspirators in this "Pefect Crime" explained below, put my mother under full guardianship illegally on 10/23/2018, and robbed my family of our assets. This turned out to be the key in the conspiracy to human traffic my mother using $660,000.00 of my money to use on a 3rd party who is a non-beneficary.

George Rizik II was appointed by the Genesee County Probate Court along with his co-conspirators, Toni Cerny(GAL), Kraig Sippell (Guardian), Andrew Stout (Court appointed attorney), and Dr. Matthew Weiss (Court appointed Doctor), Craig Fiederlein (Steven Howe's attorney and the conduit to the Court), Rachel Hawrylo (Steven Howe's attorney and the conduit to the Court), Michael Gildner (my attorney who colluded with the court).

George Rizik II violated the duty of loyalty which requires the Trustee to administer the Trust solely for the interest of the beneficiaries MCL 700.7802 (DUTY OF LOYALTY) as shown below and violated his duty to inform and report MCL 700.7814 (DUTY TO INFORM AND REPORT).

Steven Howe I believe was duped by his attorney Craig Fiederlien (The Conduit to the Probate Court) into believing that Steven could be Guardian, throw his mother, Beverly Howe, in a nursing home, and take control of the 2 Trusts that clearly belonged to Thomas and Steven Howe. This was all for Steven's personal financial gain.

I believe Craig Fiederlien set my brother up with the Court to commit fraud on the Howe family and get control of the family assets through illegal Court hearings, ex-parte orders, starting with an illegal guardianship.

The fraud in this scam is the fact that Steven Howe knew from the beginning, per emails from Michael Thomas the Trust attorney, that the outcome of Steven's initial Guardianship petition or petitions to remove me as Trustee of the 2 Trusts would never occur and the Court would seize the opportunity to target Beverly.Howe and her family as high net worth individuals and begin the process to place the ward (Beverly Howe) under guardianship, remove the family as caregivers and take over the Trusts for their personal gain without regard to the Trust provisions.

George Rizik II has never met my mother, Beverly Howe, and doesn't have any understanding of Beverly's wishes and he makes false allegations without any proof that my mother needed a guardian, which she did not because she had a Healthcare PAD (Pamela Howe) and Financial Power of Attorney (Thomas Howe), which is clearly shown in the original Court filings.

Beverly Howe had made a very conscious decision to appoint Pamela Howe, her daughter in law, as her Durable Healthcare Power of Attorney and myself as backup Durable Healthcare Power of Attorney in November 2017 to replace Steven Howe who was not acting in her best interest.

Rizik II's False Statement to Kathryn Barron State Public Adminstrator:
ems in RED below that follow are excerpts from George Rizik II's response to my complaint)

hank you for the copy of Thomas Howe's complaint, referenced above.
*I was appointed by the Genesee County Probate Court as successor trustee of two trusts, the Beverly Howe Family Trust and the Wallace Howe Family Trust on September 11, 2018. I had not been involved in either of those matters prior to that date and was not aware of either of those matters prior to that date. Apparently, I was appointed on the request of one of the interested persons after the two brothers, who were involved in a protracted fight over **their mother's trusts** and assets, could not agree on their mother's guardian, conservator or administration of the trusts.*

Thomas Howe's response:

Here is the true background:

The creation of these Irrevocable Trusts were done for asset protection and to insure that predators such as George Rizik II would not be able to defraud the Howe family of their assets.

George Rizik II admits that the 2 Trusts, the Beverly Howe Family Trust and Wallace Howe Family Trusts clearly belong to Thomas and Steven Howe in his own answers to you that incriminate himself in his response.

What George Rizik II fails to do is tell you about is the scam that he has participated in and that he has defrauded the Court by making false statements the Trusts belong to Beverly Howe, which they do not. See the transcript below for Rizik's own deception to the Court. Transcript 01132020 Page 10

MR. RIZIK: Yes, your Honor. The only purpose for me wanting to get the property interest, it's two--two separate petitions, getting the property into trust as a result of this, Mr. Sippell, is the guardian, okay; I am the trustee of the trust, of both trusts, I handled the vast majority of Mrs. Howe's assets that are in her trust and the Wallace Howe Trust, they have substantial funds as you know as I've disclosed on the other petition. Getting those--nobody right now has the sort of jurisdiction or the authority to deal with the real estate. Mr.--you know, as far as maintaining the real estate for maintenance costs--

THE COURT: Correct.

MR. RIZIK: --paying for taxes and insurance, I just want to make sure that's done. If the Court tells me, leave

e Trust document are very clear that any money removed would need to be payable to Thomas nd Steven Howe, the beneficiaries only.

This is just one of many false statements George Rizik II and his co-conspirators in this "Perfect Crime" state to the Court. There is little doubt that the Court is actually the "lead criminal" in this "Perfect Crime". The clear violation of state laws, illegal secret guardianship hearing, premeditated reports that all match etc.....

George Rizik II clearly in breach of fiduciary duty to the beneficaries. George Rizik II must not profit from the Trust, or make any transactions that would benefit him personally which he has done by interjecting himself with approval by Judge Jennie Barkey into my mother's illegal guardianship case and helping the co-conspirators imprison her in her home using my Trust assets of the Beverly Howe Family Trust and creating huge legal fees for himself due to his breach of fiducial duties to the beneficiaries.

George Rizik II never notified me that funds were being withdrawn from the Trust on multiple occasions using illegal ex-parte Court Orders. It was the Trustee's responsibility is to disclose his actions and the beneficiary must consent and authorize them. This never happened, nor were we ever provided annual tax returns, monthly statements, or investment information which is in breach of his fiducial duty as Trustee.

Trust declaration below:

DECLARATION OF TRUST

1.1 **Parties to Trust.** I, **Beverly M. Howe, Trustee of the Wallace E. Howe Trust dated August 28, 1996,** of Genesee County, Michigan as Grantor hereby enter into this Trust agreement with **Thomas W. Howe and Steven E. Howe** as Co-Trustees

1.2 **Name of Trust.** This Trust may be referred to as the **Wallace Howe Family Trust dated September 16, 2014.**

1.3 **Declarations.** The income beneficiaries of this trust are **Thomas W.Howe and Steven E. Howe.**

1.4 **Trust Principal.** Contemporaneously with the execution of this agreement, I have delivered the property described on attached Exhibit "A" to the Trustee as the initial trust principal, the receipt of which the Trustee hereby acknowledges.

2.2 **Income and Principal.** The Trustee may pay to the beneficiaries herein, such part or all of the net income and principal of this trust as necessary in the Trustee's sole discretion to assist in education, maintenance, and support, including sums necessary to protect beneficiaries' property. If any beneficiary dies the trust will be held for the remaining beneficiaries.

rge Rizik II clearly defrauded Thomas and Steven Howe by using the following illegal scam along th his co-conspirators by obtaining illegal Court orders without a public hearing using a "Proof of Service" to the beneficiaries.
This is where the loophole in the banking system is exposed. Banks make the assumption that the Court orders are valid with a certified copy of the Court order and then the banks proceed to do exactly what the Court order says without knowledge that the ex-parte Court Order is illegal.

This is where Michael Gudith of Chase Bank - Grand Blanc enters the scam as a co-conspirator in this crime.

The scam is as follows:

1. The order is truly NOT VALID because it does not have a proper Court hearing with "Proof of Service"
2. Banks make the assumption that any Certified Court Order presented to them is valid without ensuring that public hearing was conducted with a certified "Proof of Service"
3. Banks normally take just the 1st and last pages of the trust documents and fail to ensure that they adhere to the requirements of the trusts allowing George Rizik II to remove money to a Trustee checkbook. Why would George Rizik II need a personal Trustee checkbook when checks could easily be made at the bank according to the Trust agreement payable only to Thomas and Steven Howe? The answer is easy because it allows George Rizik II to scam the beneficiaries of their assets without any checks and balances or communication with the beneficiaries.
4. Banks never ask for a "Certified Proof of Service" copy along with the order to verify a legal Court hearing was done ensuring a legal Court Order is presented to them. That assumption is that the order is valid is faulty because the Probate Court has gone rouge of the Citizens of Michigan with these illegal ex-parte Court orders. How is the Bank going to know? The Banks have made a faulty assumption that the Courts are legal, honest, and would never defraud anyone. That assumption is one of the key pieces of this scam in "The Perfect Crime".
5. So, without proper knowledge of the Trust documentation, the banks become an accessory to the scam knowing or unknowingly. The Banks are too trusting which shows where their weakness is and where the banks can be potentially be deceived or a bank employee can become a co-conspirator.
6. Now the banks become potentially liable to the beneficiaries due to their negligence.
7. The beneficiaries do not know they are being scammed due to the fact that there is no "Proof of Service" being giving for the illegal ex-parte Court orders that they are unaware of. The beneficiaries know nothing about this or never receive a copy from George Rizik II. Why would George Rizik II advertise his crime to the beneficiaries?
8. George Rizik II never informs his clients of his fraud and fails to provide any reasonable communication to the clients during the year on the Trust assets because the funds are held in cash for easy access for conversion for another cause, which are not allowed by the Trust agreement.

There's the basics of the "Perfect Crime" to defraud families, enslave their loved ones so the co-conspirators have an avenue or reason to spend money which create huge legal fees for their "Bar card" carrying co-conspirators. These families who have done their legal proper estate planning, which is "bullet proof", except for this one huge fatal flaw in the system, as I've shown to you above.

So George Rizik II in Court makes false wild statements in Court that I believe the Judge knows all about and he pretends to deceive not only the Court, but the beneficiaries of their assets with the sole

purpose to create huge fees for their co-conspirators whether they be attorneys, nursing homes, GAL's etc.

They relish and salivate when the family fights back with legal action because this helps them to generate more fees in the scheme to steal the assets of the Trusts, as now they can charge attorney fees directly to these Trusts to further deplete the Trust assets directly into their personal pockets which is in clear violation of the Trust agreements.

I would make an analogy that this premeditated scam is just like to putting chum in the ocean to attract sharks to start a vicious feeding frenzy!!

MR. RIZIK: Yes, your Honor. The only purpose for me wanting to get the property interest, it's two--two separate petitions, getting the property into trust as a result of this, Mr. Sippell, is the guardian, okay; I am the trustee of the trust, of both trusts, I handled the vast majority of Mrs. Howe's assets that are in her trust and the Wallace Howe Trust, they have substantial funds as you know as I've disclosed on the other petition. Getting those--nobody right now has the sort of jurisdiction or the authority to deal with the real estate. Mr.--you know, as far as maintaining the real estate for maintenance costs--

THE COURT: Correct.

MR. RIZIK: --paying for taxes and insurance, I just want to make sure that's done. If the Court tells me, leave

The above statement clearly shows George Rizik II's blatant lie in Genesee Court Probate Court record on the transcript of 02132020 on page 10.

Without this statement and many others to deceive the Court, the co-conspirators couldn't mask their crime along with Judge Barkey and the George Rizik II's band of co-conspirators and start feeding from Trust accounts they cannot legally use for their scam.

I've put together the entire financial fraud from the transcripts and how the co-conspirators deceive the family once they have gained access to the family Trusts or funds of the victim, which they have made a ward of the State of Michigan against their will and the law MCL 700.5306. See Word document below. (Please open and print Word document below)



Transcripts CA Case.docx

George Rizik II's statements are nothing but "pure speculation" that this plan created a real dilemma for Beverly. Do you actually think that someone like me would take the time to lay out this "Perfect Crime" would abandon their own mother? Not likely and certainly not me.

This "Perfect Crime" takes the fabric of the family out of the equation and eliminates them from any input to their own family member personal situation.

They start by doing the following:

1. Attorney telling the petitioner (client) to create family controversy as it helps their cause. The truth is it actually gives the Court the opportunity to remove the family and install a professional guardian.
2. They take any possible opportunity to discredit the family.
3. Then the Guardian ad Litem (GAL) comes in and writes horrible false reports of lies on the family who are caring for the potential ward, using language such as controlling, family care costs too much, family is dysfunctional, and any other possible way they can discredit the family so they can to be removed and a guardian needs to take over. No mention of power of attorney documents are mentioned in Court. The lawyers work with the GAL and Dr. Matthew Weiss to ensure the reports show that the irrevocable Trusts are falsely stated on the reports as the potential victims on not the beneficiaries assets.
4. The Court appointed GAL and Dr. Mathew Weiss fail to inform the Court that the potential ward already had a valid Patient Advocate or recommends the Patient Advocate be removed without any proof of cause. The GAL never meets the Patients Advocate, but still recommends the removal of the Patient Advocate.
5. The GAL fails to inform the potential ward of their rights by placing the "NOTICE OF RIGHTS TO ALLEGED INCAPACITATED INDIVIDUAL" form number PC626 in the home in a inconspicuous location without explanation to the ward or family.
6. The GAL fails to act as Mandated Reporter and report the elder abuse that is going to occur by the Court as the GAL is a co-conspirator of the Court..

The following major rights are always violated:

A. Right to a trial by jury (No one can anyone ever get a trial by jury in Michigan Probate Court)
B. Right to be present at the hearing
C. Independent evaluation of your condition, the Court appointed attorney always tells the family "It's just a free evaluation by a doctor", which is the farthest thing from the truth.
D. The right to prevent the guardian from having powers that are already held by a valid patient advocate. In our case we were not told of the 4 minute hearing on 10/23/2018.
E. You have the right to choose the guardian you would like the Court to consider appointing. This is why the victims are never in court and the initial guardianship application at the bottom that the ward is required to be filled out is always left blank and the Probate Court accept these documents unfilled out illegally.
F. Recommends the removal of current POA's and trustees which is outside her field of responsibility and shows the GAL's collusion with the co-conspirator attorneys. The GAL never has a conversation with the POA and recommends the removal to help begin the fraud that the Court and its co-conspirators have begun. Phone billing records show that the attorneys and GAL are having conversations prior to the report being issued.
G. The GAL writes false financial information in the GAL report that she has no knowledge of and it not part of her position showing the collusion with the Court and the attorneys.

H. An ex-parte illegal "ORDER FOR INDEPENDENT EVALUATION" with the Court's co-conspirator Dr. Matthew Weiss in Grand Blanc, MI is done by the Courts co-conspirator, the Court appointed attorney for my mother Andrew Stout. Dr. Matthew Weiss is told what to write in his report which includes reviewing the GAL report and stating the following WHICH IS NOT PART OF A NEROLOGIC EVALUATION shown below:

   a. I support the appointment of the Court Appointed Trustee
   b. I support the Court appointed Guardian
   c. I support the removal of the current Power of Attorney and Trustee

I want everyone to understand that all of this is determined while my wife and I are asked just a few questions about my mother's medications in Dr. Matthew Weiss's office in less than 5 minutes.

So, this is how the next part of the crime begins by getting the co-conspirator doctor to put this information into his report, that isn't part of his job as a medical professional of which he should have no knowledge of, which of course the rest of the co-conspirators provided it to the doctor who has done this scam many times I believe. The doctor then bills Medicare, and as a thank you, somehow knows how to double bill for another $300 to the Beverly Howe Family Trust as a little "thank you" for helping the cause in the co-conspirators "Perfect Crime". This is **Health Care Fraud**.
5 days later on 10/23/2018, Beverly Howe was made a "Ward of the State" without notice, without the current POA's present, the Ward wasn't informed of the hearing and her personal joint bank account with her son Thomas Howe was illegally stolen, as shown in the transcript. On that day the family is told by their attorney Michael Gildner that 'everything stays the same and there are no changes'. This is false and the family is unaware that Beverly is now under guardianship on purpose to prevent a 21 day rehearing or Court of Appeals filing and helps prevent families from objecting using res judicata and estoppel.

Without these lies shown above from the single source GAL and the false doctor reports provided to the Genesee County Probate Court, this scam would not likely work in Genesee County Probate Court or any other county. The GAL and doctor deliver these high net worth victims and families to the steps of the Probate Court for financial abuse and to exploit of all their family assets with their false reports.

Beverly Howe's Trust attorney, Michael Thomas, was well acquainted with the illegal activity of Judge Barkey and the Genesee County Probate Court over the last several years. Without these Trusts, Beverly could be victimized with her revocable trusts living in a lawless town with predators like Judge Barkey and her ban of co-conspirators lurking for unsuspecting victims. I was warned in Michael Thomas's office in 2014 of Judge Barkey's illegal actions and her incompetence.

When is the State of Michigan and Genesee County Prosecutor David Leyton going to step up and arrest these predators of any vulnerable person with a purse string?

George Rizik II states in his own words the following:

*First, Beverly would create her own **irrevocable** trust, and transfer almost all of her assets to the irrevocable trust to be known as the Beverly Howe Family Trust.*

Thomas Howe's response:

In reality Beverly Howe did not create her own **irrevocable** Trusts. Beverly created an irrevocable Trusts owned by Thomas and Steven Howe to protect family assets from predators such as George Rizik II.

George Rizik II states in his own words the following in his response to you:

The trusts provided that the sons, Tom and Steve, would be the trustees and sole beneficiaries. That is, Tom and Steve controlled the trust assets and they were the only ones entitled to receive income and principal from the trusts. Beverly could not, according to the trust documents, receive anything from the trusts – not principal and not income, nothing.

Thomas Howe's response:

These are George Rizik II's own words above, yet he illegally used these Trusts defrauding Thomas and Steven Howe in collusion with Judge Barkey to enrich her band of co-conspirator attorneys and destroy Beverly Howe's life and family by human trafficking her, isolating her in her own home, and using assets illegally on non-beneficiaries obtained by illegal ex-parte orders.

These Trusts are structured so that no money can come out of the Trusts outside of Thomas and Steven Howe.

This is where George Rizik II in collusion with his bank of choice, Chase Bank of Grand Blanc, MI. The Chase Bank will accept anything.

Since the first of October, George Rizik II has moved Trust assets from Chase Bank to Huntington Bank Asset Management in Flint, MI. I called Huntington Bank and tipped them off to freeze my Trust assets. The call was made to Janice Sova at 810-257-2538 janice.sova@ huntinton.com on 10/16/20. I have asked for her to issue a Suspicious Activity Report (SAR) and investigate any other transfers of George Rizik II using any illegal ex-parte Court Orders from Judge Barkey that does not have a valid "Proof of Service" on the Register of Actions of the Genesee Probate Court.

Approximately $54,000 of the Wallace Howe Family Trust was not deposited into Huntington Bank as required by Court Order of 10/2/2020. Sheriff's Department Complaint # 2512503543 with Det Andrew Snyder 810-424-4326.

Financial Elder Abuse was filed with Grand Blanc Twp Police Complaint 0350-21 with Officer Pile on 2/1/2021 against George Rizik II and Kriag Sippell.

George Rizik II states in his own words the following:

Second, Mr. Thomas reasoned that because the assets of Wallace's trust were not technically Beverly's but were Wallace's – even though she was the sole beneficiary and trustee – Beverly as trustee had the right to have Wallace's revocable trust create a new irrevocable trust (the Wallace Howe Family Trust) and transfer all of the revocable trust's assets to the new irrevocable trust. Again, for Medicaid and
VA purposes, Beverly could not be the trustee of the trust; and Beverly could not be a beneficiary of the trust. That way, the assets of the Wallace Howe Family

Trust could not be counted as Beverly's for purposes of Medicaid. And there was no lookback period for either Medicaid or VA for the Wallace Howe Family Trust.
That plan was summarized in a letter dated June 23, 2014 (Exhibit A).

George Rizik II Statement:

• *However, this plan created a real dilemma for Beverly. She was giving up all rights in and access to about $700,000-800,000 of liquid assets that had been in the 1996 trusts, and all income that could be generated by that corpus, in exchange for meager VA benefits ($1,130 per month) and the possibility of Medicaid benefits should she ever need to be institutionalized in a skilled care nursing home.*

Thomas Howe's response to the above 2 statements:

The fact is that this Trust agreement prevents George Rizik II and the Court from illegally enslaving victims like my mother because the family controls the money and how it is used. Not George Rizik II, not the Court. My mother never wanted to be isolated in a Covid-19 motel AKA (Bella Vita Assisted Living Facility), drug out of her mind with SEROquel by, In my opinion, a horrible fraudulent Guardian, Kraig Sippell who deserves a live sentence in Jackson State Prison. My wife, Pamela Howe, and I are my mother's chosen Patient Advocate and my mother wants to come home now with her family. She wants these criminals removed from her life.

This is where George Rizik II and his band of co-conspirators enlist Chase Bank in Grand Blanc in the crime to help get illegal access to the money by presenting illegal ex-parte Court orders for dispersement of funds from the Trust accounts that a layman would not generally suspect or know that they were done ex-parte without a public hearing. The bank never asks for a "Certified Proof of Service" to validate and the banks usually only take the front and back pages of the Trust documents so they assume the bank shirks the responsibility to the Trust by turning a blind eye on the details that they legally have an obligation to adhere to protect the assets for the beneficiaries.

Again George Rizik II's statements prove that he knows he has committed a crime of conversion and fraud by using Trust assets for a non-authorized purpose below with his statement.

George Rizik II states in his own words the following:

• *The trusts provided that the sons, Thomas and Steven, would be the trustees and sole beneficiaries. That is, Tom and Steve controlled the trust assets and they were the only ones entitled to receive income and principal from the trusts. Beverly could not, according to the trust documents, receive anything from the trusts – not principal and not income, nothing.*

• *So, to resolve the dilemma – which was always part of the plan – there was an undocumented wink-and-a-nod side agreement made: Tom and Steve would nominally be the beneficiaries, but would be required by the side agreement use all income and principal for Beverly's care, maintenance, and comfort. This was the assumption upon which Beverly relied in agreeing to part with her $700,000.*

• So, while the governing trust documents for both new trusts said that Beverly was entitled to absolutely nothing and could never be entitled to anything (that is, they "pauperized" Beverly on paper), the real deal was that all trust principal and income was *for the benefit of Beverly. In other words, the plan was to fool the federal government into thinking that Beverly had no assets and no income and no right to assets and income. This side agreement was summarized in two letters from Mr. Thomas dated*

September 16, 2014. Exhibit C and Exhibit D. Steve Howe was wary of what was occurring, but acquiesced.

Thomas Howe's response:

George Rizik II's statements are nothing more than a cover up for his "Perfect Crime" with his co-conspirators. Our family Trust planning was to ensure family assets could never be used for purposes that Court is currently doing to enslave Beverly and isolate her from her family and drug her with psychotropic drugs until she dies. The family controls all family finances, not the Court, not George Rizik II.

George Rizik II statement below is nothing but nonsensical fiction.

• Later, Beverly Howe had some issues with how the new plan worked in practice, was unhappy that she had no access to her own money, and was unhappy with the trusts; so, she went to see Mike Thomas in January, 2016, about 18 months after the two irrevocable trusts were created. Why did Beverly think that Thomas could do anything about the trusts when they were irrevocable, she was not a trustee, she was not a beneficiary, and had no rights with respect to either of the irrevocable trusts? Well, that was because she and her sons knew that the trusts were a sham, and that the real plan lay in the unwritten agreement: that she was really entitled to everything under the trusts, regardless of what the documents actually said. Mike Thomas was trust protector and had the right to remove trustees, so that held some sway over the trustees.

• As a result of the January, 2016 meeting, Mike Thomas wrote a letter dated January 29, 2016, to Tom Howe. It reiterated that Wallace's trust was a ruse, and that all assets still belonged to Beverly. In addition, Tom had been day trading with both irrevocable trusts' assets and had lost almost $140,000 in the process. Exhibit E.

Thomas Howe's response:

The facts are that Steven Howe was making his first attempt at getting total control of the Trust assets for his personal gain. He was informed by Mike Thomas that if he chooses to go to Court that he also would be removed by the incompetent Judge Jennie Barkey who would let her co-conspirators pillage the trust assets against family wishes.

George Rizik II himself makes a living creating these same trusts like this to protect family assets from predators such as himself. His statements are nothing but fiction and has made up these statements I believe to deceive anybody that listens to him to cover up his crimes. I believe as an attorney you can see right through his deception of the facts. There are no possible answers for George Rizik II's actions in my opinion, other than he is in my opinion a thief, con-artist, elder abuser, and predator of anyone with a purse string to make a buck hiding behind, in my opinion, the true criminal, Judge Jennie Barkey.

George Rizik II statement of falsehoods:

• In summary, when Beverly created the two irrevocable trusts in 2014, it was her understanding – and everyone's understanding – Mike Thomas, Tom Howe, and Steve Howe – that she would continue to be entitled to all income and principal from the trusts. And that worked out as long as Tom and Steve served as trustees and could be controlled by Mike Thomas as trust protector, even though Steve was uncomfortable with the entire plan.

Thomas Howe's response:

Beverly Howe and family made legal Trusts with her family approved by all Medicaid and VA sources. These documents protected assets from predators such as George Rizik II and his band of co-conspirators in this near "Perfect Crime". George Rizik II I believe is either working in collusion with Steven Howe to defraud and punish his own mother, or is making up statements for Steven Howe.

George Rizik II statement of falsehoods:

• In 2018, the probate court removed Tom Howe as Beverly's guardian for various reasons, including alleged mistreatment, failure to provide medications, mental and emotional maltreatment, and failure to allow other relatives, including her other son
Steve, from visiting her. The court appointed Mr. Sippell as guardian and me as trustee of the two irrevocable trusts.

Thomas Howe's response:

George Rizik II's statement is nothing more than pure fiction and lies.

1. I was never Beverly Howe's guardian.
2. I was Financial POA and backup Durable Medical POA to my wife Pamela Howe, who is the Durable Medical POA.
3. Never was my mother mistreated. George Rizik II has no proof nor can provide any proof of his false statement. I take great offense to his allegations. Court transcripts show that as caregivers, me and my family provided good care and there were no problems financially. George Rizik II stated on the transcript that there were no problems financially.
4. I never failed to provide medications for my mother. Matter of fact, I along with my wife, were probably the only reason that my mother survived her long battle with A-fib issues and medication issues in 2018. It was only due to the hard work of Thomas and Pamela Howe in coordination with her heart doctors that Beverly survived. As soon as we were removed as caregivers to begin George Rizik II illegal theft from my Trust accounts, Beverly was put back on the toxic Digoxin 0.125 mg until she was taken unresponsive to McLaren hospital on 8/23/2020 when McLaren hospital appears to have taken Beverly back off Digoxin due to the toxicity reaction. This medicine nearly killed Beverly during her bouts with A-fib attacks in 2018. Beverly has missed several critical doctor appointments and pacemaker checks while under guardianship.

George Rizik II statement of falsehoods:

• Tom also asked the court to pay him about $200,000 from the trusts for taking care of his mother during his guardianship. He also refused to deliver his mother's medicines to
the new guardian and began posting scurrilous and mentally imbalanced social media posts about Judge Barkey (the probate court judge) and all attorneys involved, including *me (some of them might be considered threatening). I can send these to you if you'd like.*

Thomas Howe's response:

Once I understood the scam or the "Perfect Crime" and George Rizik II and his co-conspirators on 10/23/2018 had stolen my joint bank account with $19,940 of VA caregiving money in it and illegally placed Beverly Howe in guardianship, I realized that the only possible way to stop this crime was to petition for my own money from the Trust to try to stop this "Perfect Crime". 11 days later I was

released from the Genesee County jail asking for my own Trust money. Judge Barkey did this for an act of intimidation and retaliation.

George Rizik II statement of falsehoods:

• The real problem arose when I was appointed as successor trustee in late 2018. The house of cards – the Potemkin trust – tumbled. As trustee of Wallace's trust, I am bound by the governing document; I am not in on the fraudulent and deceptive side agreements made in 2014. The trust document says that I cannot pay anything to anyone other than Tom and Steve. I cannot pay anything to Beverly or for Beverly or for Beverly's care from Wallace's trust. By that time Beverly was receiving 24/7 in-homecare based on the probate court's order. I had no more money from Beverly or her own trust to pay for her care, which was at the rate of $3,600-$4,000 per week (that's about $200,000 per year) for 24/7 home health care. So, Beverly was essentially destitute except for her house, her Social Security, pension benefits, and VA benefits, which totaled just in excess of $3,000 per month – not even enough for assisted living residency.

Thomas Howe's response:

George Rizik II statements are nonsensical as he was never appointed. I was conned into given up the Trust accounts in exchange to drop the entire guardianship and Trust probate cases which was started by my brother Steven Howe. This is the first step to get control of the families assets.

- George Rizik II's own statement ***"I had no more money from Beverly or her own trust to pay for her care, which was at the rate of $3,600-$4,000 per week (that's about $200,000 per year) for 24/7 home health care."***

  This is pure theft and he actually incriminates himself admitting he committed fraud and conversion of the money in the Trust. His lies of deception to you as those Trust assets truly belonged to Thomas and Steven Howe. George Rizik II did not have my permission, and had no legal authority to petition the Court for unauthorized use of assets from my Trust named the Beverly Howe Family Trust, which clearly George Rizik II admits to converting.

I agreed to have George Rizik II be Trustee with the understanding that George Rizik II would fiducially manage the Trust accounts and that the requirements of the Trust would be followed.

How could anything go wrong?

George Rizik II fails to inform you that both Trusts have exactly the same language George Rizik *"cannot pay anything to anyone other than Tom and Steve. I cannot pay anything to Beverly or for Beverly or for Beverly's care from Wallace's trust"* or the Beverly Howe family Trust either. But he did! $277,000 later of theft, co-mingling of my mother's monthly income with my Trust account later, George Rizik II has completed his task to distribute $277,000 of Trust assets to the following Co-conspirators.

1. Genesee County Probate Court for illegal litigate fees
2. George Rizik II for negligent legal and accounting fees
3. George Rizik II is fiducially negligent to the beneficiaries for interjecting himself into the guardianship case of my mother when he truly works for me!
4. George Rizik II lacks standing to bring cases to the Court under my mother's guardianship case number and further, he is not an interested person pursuant to MCLA 700.1302, 700.7201, 700.7202, 700.7203, 700.7301, 700.7303, 700.7410, 700.7411, 700.7706 and MCR 5.125 (B) (3), (C) (32) and (33).

5. George Rizik II is fiducially negligent for charging me legal fees for interjecting himself into the guardianship case of my mother and causes further needless litigation.
6. George Rizik II is fiducially negligent for paying Helping Hands Home Care for incarcerating Beverly Howe 24/7 using fund that he has no authority to use.
7. George Rizik II is fiducially negligent for paying Dr. Matthew Weiss for his participation in this "Perfect Crime", which was double billing of Medicare and illegal billing to the Beverly Howe Family Trust.
8. George Rizik II is fiducially negligent for paying the co-conspirator attorneys the legal fees for their participation in this "Perfect Crime", including Andrew Stout, Craig Feiderlein, Kraig Sippell.
9. George Rizik II is fiducially negligent for paying Toni Cerney, GAL, for her participation in this "Perfect Crime"
10. And this list goes on and on……

George Rizik II statement of falsehoods:

• So, the dilemma is that we either honored the sham trust's provisions and let Beverly, a 90 year-old lady with dementia and no visitation from relatives, stay at home by herself with no care (because of lack of funds) or that we could use the Wallace Howe Family Trust's assets for her benefit, which means either violating the terms of the trust or terminating it altogether. I was not willing to let Mrs. Howe starve to death or be harmed by lack of care. So, I asked the court to terminate the Wallace Howe Family
Trust and turn over the assets of that trust to Beverly's guardian or conservator. The basis of my request, of course, was that when she set up the Wallace Howe Family
Trust, Beverly was told that the trust was only a sham and that she would still receive all the money she needed from the trust. So, she was essentially defrauded into creating the trust, which also defrauded Medicaid and the VA. Medicaid and the VA could know of the trust – which looked real – but they would not see the side letter agreements that contradicted the trust provisions.

Thomas Howe's response:

George Rizik II response is truly the "Sham" as he tries to deceive you that he can legally do anything he wants, knowing the fact the AG office so far has failed to procecute predators like George Rizik II and his band of co-conspirators.

To have George Rizik II make such an absurd statements such as this "*let Beverly, a 90 year-old lady with dementia and no visitation from relatives, stay at home by herself with no care (because of lack of funds)"* is utterly unbelievable to what lengths George Rizik II will go to further his nonsensical scam on the AG office.

Beverly Howe can live successfully and happily at home under her VA Surviving Spouse Grant with her family watching over her as I have proved doing so previously for a year. This is Beverly's wish.

George Rizik II making such wild statements, as a "Public Administrator" to your office, is pathetic.

George Rizik II is in violation of his fiducial duties to the beneficiaries of both Trusts. Currently both Trusts are in the State of Michigan Appeals Court to overturn all Genesee County Probate Court orders of George Rizik II and his co-conspirator crime, Judge Jennie Barkey.

The only people that have defrauded Beverly Howe are George Rizik II, Kraig Sippell, and the Judge Jennie Barkey, who is incompetent to serve and needs to be removed from the bench before she harms any more citizens of Genesee County.

George Rizik II's statements that *"creating the trust, which also defrauded Medicaid and the VA"* **is pure fiction**. Estate planning under EPIC is allowed and is approved by the VA and Medicaid. It is beyond belief that George Rizik II would attempt to deceive his own boss at the AG office with such falsehoods and lies.

George Rizik II statement of falsehoods:

• *Tom Howe's aim is to keep his mother in his house (he has requested this) and to give her below-standard care so that she will not need funds for quality care in a licensed facility. That way, he can preserve the $400,000 in the Wallace Howe Family Trust for himself. I have several e-mails from him in which he mentions to his brother, Steve, that they must never use the funds in the Wallace Howe Family Trust for Beverly's care, because he considers those funds as their (Steve's and Tom's) future and their nest eggs*

Thomas Howe's response:

George Rizik II's statement that *"to give her below-standard care so that she will not need funds for quality care in a licensed facility"* is beyond absurd.

How much further below-standard care can you give Beverly Howe by having her live in isolation in a Covid-19 isolation motel called Bella Vita Assisted Living, drugged out of your mind?

Ask George Rizik II if he would put his own 100 year old mother in that facility tomorrow with my mother. Doubtful at best.

Let's put this into perspective, **on 8/23/2020 due to the negligence of Bella Vita Assisted Living, the guardian, and George Rizik II, Beverly Howe was taken unresponsive to McLaren hospital in Flint, MI overdosed on SEROguel and Digoxin.** It just doesn't get any more negligent than that.

Incident reports have been filed with the Department of Licensing and Regulatory Affairs (L.A.R.A) on Bella Vita Assisted Living, the Covid-19 motel, for their negligence and medication maladministration.

My mother's request, this last month on 9/23/2020, is that she wants to go home with us. She has had been angry about being isolated at the Covid-19 motel named "Bella Vita Assisted Living" in Grand Blanc. With only $3500 in monthly income and over $4,800 a month bill plus legal fees in costs at Bella Vita Assisted Living, the guardian is personally in debt for $20,000 in fees. Beverly Howe does not want, nor would ever approve of, this money being spent on her isolation while her perfectly good home sits abandoned. Currently the property taxes on Beverly's home are unpaid due to the utter failure of George Rizik II and his band of co-conspirators.

Money has nothing to do with this. My mother's wishes has everything to do with this!

George Rizik II statement of falsehoods:

• *Once I filed this petition, Tom hired Phillip Strehle as his attorney and has done everything to prevent using funds for his mother's care; that is his right, of course. It is scandalous, but legal.*

Thomas Howe's response:

Right now, due to the fact that the Attorney General refuses to investigate and procecute these predators for their crimes, I am left with no other option than to take legal action to stop George Rizik II from illegally accessing Trust funds to further his "Perfect Crime:" perpetuating his illegal enslavement of Beverly Howe.

The "Trust Protector", Michael Thomas, will not remove George Rizik II as Trustee for fear of suspected retaliation and the attorneys of Genesee County are known to never take action against each other.

George Rizik II statement of falsehoods:

Finally, I have enclosed copies of some of Tom's social media posts about the court and others involved, which are similar to his complaint in this matter. In one he rants about the deep state and suggests using armed violence against the court and attorneys.
I would be very happy and open to discussing this matter with you or anyone from your office or other agency; and I appreciate the opportunity to respond to Mr. Howe's complaint. I do not know whether it is appropriate, but you may also want to discuss this with Hon. Jennie E. Barkey, who has been involved with the guardianship, conservatorship and trust matters since their inception.

Thomas Howe's response:

Again, to further his "Perfect Crime", George Rizik II resorts to intimidation, slander, and falsehoods to further his deception to the AG office and his boss at the AG office of Public Administration.

Speaking out for justice against these crimes is my RIGHT AS A CITIZEN of the State of Michigan and protected by my CIVIL RIGHTS as a citizen of the United States of America.

These "Perfect Crimes" have been ignored by the AG office for years, which only give these predators validity that they can continue to defraud any family with a purse string, whether they be young, mentally disabled, elderly or an heir trying to probate a large value estate.

My question along with the Citizens of Michigan is, when is the AG office going to step up and procecute the criminals for their crimes against humanity?

When?

How long do the victims have to suffer?

Let's start right here, right now, by arresting and prosecuting Genesee County's band of co-conspirators that are defrauding families of their loved ones and their assets illegally there will be justice.

The price is high, the stakes are high, and many are watching for your office to step up your game and begin to stop this madness and disgusting stain on Michigan.

This entire scam rests at the AG office's feet and Genesee County Prosecutor David Leyton for the negligence and failure to uphold the laws in Michigan.

Michigan is a lawless state due to these criminals lurking in the hallways of the Courts in Michigan.

When is this suffering for the Citizens of Michigan going to be over?

IN SUMMARY:

- My mother, Beverly Howe, 93 years old is being held hostage in Bella Vita Assisted Living in Grand Blanc, MI.
- Beverly has not seen her family since April 2019.
- Beverly is currently in debt to Bella Vita Assisted Living in excess of $20,000 due to Kraig Sippell's pure negligence. This debt increases daily.
- Beverly's health continues to decline due to the isolation and medication mismanagement while at Bella Vita Assisted Living.
- The Court hearing on 10/16/2020 stated that my mother is **being evicted** from Bella Vita Assisted Living this week.
- George Rizik II and Kraig Sippell have **embezzled** over $300,000 of my money.
- George Rizik II has **breached his fiducial duty** to his clients and squandered my assets without my authorization as beneficiary of the Trusts.
- George Rizik II and Kraig Sippell's actions against Beverly Howe include **financial exploitation, elder neglect, emotional elder abuse, physical elder abuse.**
- George Rizik II and Kraig Sippell have **violated the Michigan Rules of Professional Conduct.**
- **I was sentenced one for Contempt of Court for saving my own trusts from losing money, and a second time served 11 days for supposedly not giving them the correct information which I did give them. Actually I believe it was in retaliation for asking for money from my own Beverly Howe Family Trust that was denied so they could embezzled it to human traffic my mother.**
- George Rizik II and Judge Jennie Barkey DO NOT have the authority to modify Beverly Howe's estate plan per MCLA 700.1201(b), 700.5428, and 700.7817 prohibit it.
- George Rizik II and Kraig Sippell are involved in **healthcare fraud and abuse** of Beverly Howe in violation of MCL 400.11 and MCL 750.174a Criminal Financial Exploitation
- George Rizik II and Kraig Sippell continue to intimidate, cause needless litigation to line their own pockets with my money resulting in hundreds of thousands of dollars of needless litigation with these criminals.
- Judge Jennie Barkey has committed fraud to Thomas and Beverly Howe of which she has **NO judicial immunity** from being charged with conversion and theft of the Trust assets as a co-conspirator by issuing illegal ex-parte court
- orders which are in clear violation to the trust agreements violating the estate plan of Beverly Howe and the beneficiaries.
- George Rizik II and Kraig Sippell have committed fraud and conversion of the Trust funds of Thomas Howe and Beverly Howe's VA Surviving Spouse Grant and monthly income by co-mingling assets clearly shown on the deposit register and bank statements.
- George Rizik II and Kraig Sippell have violated their fiduciary duties and failed to do what is in the best interest of Beverly Howe per MCLA 700.1201, 700.5306a, 700.5428, 700.5407, 700.5520, 700.7201, 700.7817 and must be considered and the Trustee has failed to do so.
- George Rizik II, Kraig Sippell, Judge Jennie Barkey, Craig Fiederlein, Rachel Hawrylo, Toni Cerny, Dr. Matthew Weiss, Andrew Stout, Steven Howe, Michael Gildner, Bella Vita Assisted Living in Grand Blanc, and Helping Hands Home Care of Grand Blanc, Michael Gudith of Chase Bank - Grand Blanc have all violated directly or indirectly MCLS 400.11, MCL 750.145m, MCL 750.174, MCL 750.145n, and MCL 750.174a of the Elder Abuse and Elder Financial Exploitation Statutes of the State of Michigan.
- Kraig Sippell and Judge Jennie Barkey unlawfully transferred funds violating MCL 487.703 by taking over a joint bank account which included my name. By doing so, I believe the Court stole/**embezzled** $19,940 of my personal money.

- Toni Cerny (GAL) is in violation of MCL 700.5305(b), (c)(i)(II)(A)(B)(iii)(iv)(vi)(d), (e), (f), (g), (h), (i), (A), (B), (C)ii, iii, iv, v, vi, vii, viii,(2), (3), (4), (5) by not doing her job according to the law, writing false reports in collusion with the Court to illegally place Beverly Howe under full guardianship without Beverly being present at the hearings, nor were Beverly's family at the Hearing. The Durable Power of Attorney and Financial Power of Attorney were not present at the Hearings. The Durable Power of Attorney and Financial Power of Attorney did nothing wrong but provide Beverly Howe with "Cadillac care", according to Beverly's wishes.
- Toni Cerny GAL failed to act as a "**Mandated Reporter**" MCL 400.11a.
- Helping Hands Home Care staff failed to act as a "**Mandated Reporter**" MCL 400.11a.
- Bella Vita Assisted Living staff failed to act as a "**Mandated Reporter**" MCL 400.11a.
- Dr. Matthew Weiss failed to act as a "**Mandated Reporter**" MCL 400.11a and doubled billed $300 to Rizik on 10/18/2018 after taking payment in full from Medicare of approx. $288.00. He was obviously tipping off by the Court.
- Flint Township Police failed to act as a "**Mandated Reporter**" MCL 400.11a.
- Genesee County Elder Abuse Task Force failed to act as a "**Mandated Reporter**" MCL 400.11a.
- In my opinion, this clearly is a **RICO Racketeering Theft Ring** operating in Genesee County in violation of the Hobbs Act of 1946.
- Beverly Howe was placed illegally on Medicare Hospice without a proper qualifying terminal diagnoses with a life expectancy of 6 months or less at Bella Vita Senior Living in isolation.

It is time for a conviction by the AG office of the State of Michigan and Genesee Prosecutor David Leyton to send a clear message to the rest of thieves in Michigan that this RICO Racketeering Theft Ring Enterprise is done in this State and hopefully with treble damages and punitive damages awarded to the victims for their malfeasance.

It's time to take this predator Judge Jennie Barkey and her co-conspirators off the streets before she illegally victimizes anybody else's family in Genesee County. She has no immunity in this crime! The AG office and Genesee Prosecutor David Leyton has no choice but to procecute these criminals for their crimes against the citizens of Genesee County.

I am available at any time to discuss this matter, provide any information you request or answer any further questions.

Sincerely,

Thomas Howe
Son of Beverly Howe
Financial Power of Attorney and Healthcare Advocate of Beverly Howe
[redacted]

C: Kathryn A. Barron, via e-mail, w/enc: [redacted]

MCL 400.11 and MCL 750.174a Criminal Financial Exploitation

MCL 750.174a Criminal Financial Exploitation

Barbara Monroe
[redacted]

Dear Senate Committee:

I would like to let you know what the Guardianship/Conservatorship is REALLY like. I can speak from the perspective of my mother being a victim of this system. I am also a victim of this system.

First my mom:
Linda Mae Monroe of Meridian Idaho and now of CDA Idaho was misdiagnosed in April 2019. St Luke's hospital would not accept her POA to take her from the hospital. She had her home paid for, her new vehicle paid for, was attending doctor appointments, driving and taking care of herself at age 75.
The following has happened to Linda Monroe in IDAHO since April 2019

1) Taken from her home and never allowed to return to live her life freely
2) CHEMICALLY restrained against her will at Intermountain Hospital in Boise Idaho, which includes FORCIBLY HELD DOWN AND INJECTED WITH PSYCHOTROPIC DRUGS AGAINST HER WILL, BUT ALSO GIVEN ORAL DOSES TOO.
3) CHEMICALLY restrained against her will at Crestwood Serenity of Meridian Idaho to the point of needing Hospice within 2 months. HELD DOWN AGAINST HER WILL AND FORCIBLY INJECTED.
4) Staff at Crestwood Serenity were laying in my mom Linda Monroe's twin bed and cuddling and fondling her. She was so drugged she could not resist and later informed me how upset she was.
5) Neglected and missed appointments with Dentist and her eye specialist for glaucoma and eye conditions.
6) Her $430,000 home sold with no communication to Linda or her family.
7) Linda Monroe has NO SAY in her own belongings, including heirlooms, clothing, photos, trinkets from her life.
8) Over kill on medications to silence her and incapacitate her.
9) ISOLATION FROM FRIENDS AND FAMILY
10) RETALIATION AGAINST ME, FOR SPEAKING OUT
11) Judge Bieter of ADA county involved heavily.
12) Guardian ad litem attorney Michelle Finch of Gravis Law involved
13) Personal attorney Leslie K Smith involved
14) James Kauffman of Gravis Law also involved. (family court does not care about conflict of interest what so ever)
15) Multiple Guardians, and Conservator have drained Linda Monroe's estate to an alarming figure. She had a half million dollar estate two years agao and now has less than $100k left which at 79 will not suffice to keep her in assisted living.

16) She is currently in The Renaissance of CDA Idaho and is being ISOLATED FROM HER FAMILY AND FRIENDS. MAINLY ME, HER DAUGHTER FOR BEING HER ADVOCATE AND SPEAKING OUT.
17) Idaho Legal Aid refuses to help our family

Llinda Monroe has NO RIGHTS.

I have personally complained to the following State of Idaho offices and people and received **ZERO HELP EVER**

1) Guardianship monitoring board in CDA Kootenai county Idaho
2) Guardianship monitoring board in ADA county Idaho
3) Ombudsman in Boise and CDA Idaho
4) Meridian Police Department
5) CDA police Department
6) Idaho attorney general's office
7) Idaho governor Brad Little
8) Wrote to Senator Risch and Daines
9) Adult Protective services in Boise and CDA Idaho
10) Judge Christopher Bieter in Boise Idaho has been alerted and does nothing to help, even when Linda Monroe is being chemically restrained and isolated from her family.
11) Judge Bieter allows perjury to occur in his court by Guardians, And attorneys.
12) Judge Bieter allows Linda Monroe to be ISOLATED since May 2022 again.

My mother Linda Mae Monroe has been abused by the acts of rogue Guardians and the court system does nothing to stop it.
GAL (guardian ad litem attorney) are all in on this scheme against our most vulnerable.
It's about the MONEY.

Due to trying to ADVOCATE and help my mother I have also been victimized by a court system that is rigged to help the ones in charge of this rotten Guardianship system.
I have had the following happen to me as a direct result of trying to advocate for my mom, Linda Monroe.

1) **I have a FALSE PROTECTION ORDER FILED AGAINST ME BY A GUARDIAN.** They use your legal system and ABUSE it to ISOLATE their WARD from family that speak out. I have at least ONE HUNDRED other people in same situation that can verify this to be true.
2) GUARDIANS are weaponizing the Protection Order system to keep families apart. NO EVIDENCE is needed to place these false orders upon a law abiding citizen. FAMILY COURT JUDGES rubber stamp the FALSE PROTECTION ORDERS LIKE GIVING OUT CANDY!!
3) My reputation has been smeared by the Guardians, GAL, and others that I have sent legitimate complaints to.

4) I am retaliated against for speaking out for my mom. Including being TRESPASSED BY CDA IDAHO POLICE from my mom's assisted living. WITH NO REASON GIVEN. I have it on video but no one cares to view it!!!
5) **My communication has been severed from my mom Linda Mae Monroe several times.**
6) **Currently I am unable to see my mom due to the Guardian having me trespassed from the assisted living facility FOR NO REASON.**
7) **I have not seen or spoke to my aging mother since May 2022 and trespassed since JULY 2022!!! All due to rogue actions of a Guardian in CDA Idaho**
8) **I have had to endure thousands of dollars in attorney fees to defend myself. I am 57 years old. I hold professional degrees and never had a record before being falsely given a protection order in KOOTENAI COUNTY IDAHO.**

9) **Guardians are allowed free and unchecked power over WARDS. This needs to STOP**
10) **NO ONE CARES that there is no evidence or need to ban family and friends.**
11) **Guardians actively and routinely BAN FAMILY and ISOLATE WARDS**
12) **Guardians Use the CRITERIA listed on "RESIDENTS RIGHTS TO VISITATION" for their false smear campaigns.**
13) **State officials let it continue. IN four years time, NOT ONE PERSON HAS HELPED OUR FAMILY.**
14) **Guardians have no training on specific needs of WARDS.**
15) **Guardians can have DUI records and still be a Guardian in IDAHO**
16) **Guardians AND Conservators can have RECENT BANKRUPTCY FILINGS AND STILL BE CERTIFIED IN IDAHO**

Guardians have unlimited power over a WARD. NO one can question them or complain about them without expecting RETALIATION.

Guardians are filing false Protection Orders against INNOCENT people at an alarming rate
WARDS are being ISOLATED from their loved ones at an alarming rate. Due to spiteful actions of guardians with unchecked power over another human being.
ESTATES are being drained.
WARDS are being CHEMICALLY RESTRAINED by Guardians with NO TRAINING on the subject matter.

Assisted Living facilities are aware of the abuse and do nothing.

It's all about the money!!!

I have not seen my mom in over EIGHT MONTHS
I can't call because the Guardian has severed her phone contact as well.
My mom has missed family holidays, birthdays and visits.
My mom has not had a visitor since October 2022
My mom, Linda Monroe, is locked up and has less freedom that a an Idaho prison inmate.
Linda Monroe wants to see her entire family but gets no choices of her own.
Linda Monroe gets no say in her life
Linda Monroe gets no say in her belongings or care
Linda Monroe has been held down, while screaming, and injecting. This is terrible treatment and what I have been fighting against.
NO one will help.
No one has cared.

When my mom is broke and is sent to a Medicaid State run facility, and all the people above don't have free access to their piggy bank called LInda Mae Monroe, I bet they won't care about fighting to keep her in their system.

SHAME On the USA government for allowing this to happen to my mom, LInda Mae Monroe and also to me Barbara L Monroe of Idaho and Montana!

It needs change and I am willing to help if anyone will listen and take input from a person that's family and lives have been ruined by this system. I miss my mom. I am being kept from her. This has to stop!

Sincerely

Barbara Monroe

Barbara L Monroe

Silverman, Jack (Aging)

From: Ben Tilly [redacted]
Sent: Friday, March 17, 2023 4:31 PM
To: Guardianships (Aging)
Subject: Addressing guardianship abuse with the 14th amendment

Dear Senator Bob Casey, Chair and Senator Mike Braun, Ranking Member,

Please accept this suggestion for the Senate Committee on Aging on guardianship abuse.

Section 5 of the 14th Amendment grants Congress, "...the power to enforce, by appropriate legislation, the other provisions of this article." One such provision in Section 1 is, "...no State shall deprive any person of life, liberty, or property, without due process of law...". Guardianships deprive people of liberty or property. They also sometimes result in loss of life. Therefore Congress may legislate to guarantee that due process is followed.

Abusive guardians gain power through violating due process. This enables their later crimes. But it also creates a paper trail. Appropriate legislation can be used to identify and remove that unconstitutionally granted power, then give justice for the victims.

Here is a list of common ways that due process rights are violated, and redress is blocked:

- Judges and lawyers collude.
- Subpoenas are not properly served.
- Wards have court chosen lawyers forced on them. These lawyers have financial conflicts of interest that make them unlikely to serve their clients well.
- Fraudulent misrepresentations and unverified allegations are accepted at face value.
- The right to appeal is blocked. This happens in state courts in various ways. And federal courts are not an option because of the Abstention Doctrine.
- Those aware of due process violations lack standing to bring suit to correct it.
- Probate courts and guardians regularly override durable power of attorney, advance directives, existing trusts, and other protections that victims thought would protect them.
- Guardians modify wills to the personal benefit of themselves or their associates.
- State laws often specify protections that should only be bypassed with extraordinary justification. What should be extraordinary, becomes routine.
- Particularly corrupt lawyers, judges, and courts systematically enable abuse.
- Local corruption may be enabled by perceived or real corruption in state institutions.

Congressional legislation can address this. As long as the action is specific to ensuring due process, there is no Constitutional restriction on the means that Congress may use. Options include:

- Civil and criminal penalties for all involved. Many profit, including guardians, lawyers, business managers, medical professionals and so on. All deserve punishment. If there was collusion before the filing of the case, even the judge is personally liable. See the case *Rankin v. Howard* to verify.
- Grant private attorney general status to family, friends, and activists, giving them legal standing to be heard where they cannot be today.
- Create a legal presumption that due process violations in state probate court are likely part of a pattern causing irreparable harm. Thereby giving federal courts grounds to set aside the Abstention Doctrine.
- Create processes for undoing decisions where due process was in doubt.
- Allow federal agents to review documents which were sealed under state law, for the purpose of documenting and prosecuting due process violations.
- Override state laws that are found to enable due process violations leading to a potential loss of life, liberty, or property.

- Create direct oversight regimes for questionable judges and courts.
- Empower specific federal agencies to act on this issue.
- Earmark money for related enforcement activities.
- Create incentives for states to implement additional reforms.
- Compile reports on guardianships, with an eye towards further actions.

I will use the Britney Jean Spears conservatorship (which is what California calls a guardianship) as an example. She faced routine due process violations. Resulting in facts that look like a web of fantastic allegations against all involved. But the publicity of her case makes the facts easy to demonstrate. This illustrates the many traps that other victims fall into. And shows how many ways in which Congressional legislation could help victims like her.

1. There was prior collusion to violate Britney's rights and administer dangerous psychotropic drugs. Prior conspiracies like this are common, even though it leaves the judge with no judicial immunity. As reported in https://www.latimes.com/entertainment-arts/story/2022-07-05/britney-spears-lou-taylor-subpoena-emails, *"…on Jan 30, 2008, Jamie Spears' attorney, Geraltine Wyle, emailed (Lou) Taylor and copied her client (Jamie) saying, 'We have run into a problem with a judge selection' because the judge who was available soonest would 'not give Jamie the power to administer psychotropic drugs to B.' Wyle advises that the first "safe day to be in court would be the first day that judge wasn't around."*

2. Britney was never properly served, and therefore no judicial authority was established. This should have invalidated the court's decisions. But no court has ever examined that question. Congressional legislation would let federal courts fix that. The relevant facts are described in https://bettyshope.com/articles/petition-to-terminate-probate-conservatorship/,

3. As often happens, Britney was denied her right to choose a lawyer. Britney tried to choose Adam Streisand. He left the court after Judge Reva Goetez claimed to have a confidential medical report from Dr. Spar saying that Britney was incapable of choosing her own lawyer. Britney then attempted to choose Jon Eardley. Two courts turned away his motions. He was later disciplined. https://members.calbar.ca.gov/courtDocs/08-O-10075-2.pdf shows that his attempts to represent Britney were one of the prime causes. And so the judge forced Samuel D. Ingham III on her. He earned up to $10,000/week from her conservatorship, and earned millions from helping take away her rights.

The right to a lawyer who represents your interests is fundamental to due process. Congress should ensure it.

4. The conservatorship was based on fraudulent misrepresentation. The judge claimed that Dr Spar's confidential medical report said Britney was incompetent to choose a lawyer, and belonged in a conservatorship designed for comatose patients. Britney's obvious competence shows that, either the medical report was fraudulent, or the judge lied about its contents. This was legal fraud either way.

https://drive.google.com/file/d/19vhrZUJA8PDedaGlF_6FYJ4nUNOeVpAT/view documents these facts. Fraudulent medical documents are common in guardianship abuse, and should be grounds to invalidate the guardianship.

5. Britney could not appeal. Jon Eardly attempted. But temporary conservatorships cannot be appealed in California courts, and the federal court abstained. Once the conservatorship was permanent, Ingham could have filed. But he didn't. Presumably because of his financial incentives in favor of doing nothing.

Thus Judge Reva Goetez' unconstitutional decision to take away Britney's rights was never challenged. Many others are in the same trap. Congress can provide a guaranteed path to appeal.

6. Nobody had standing to contest this. Many could have made the case that Britney's rights should be restored. But no court would hear them. Families around the country cannot intervene against unconstitutional abuse due to the same legal trap.

Congress can fix this by granting private attorney general status so that others can make the case that the victim has lost the legal right to make.

The Los Angeles Probate court has long been infamous for corruption. The Los Angeles Times ran a series about it starting in 2005. A state judicial task force investigated. Their final report, released September 8, 2007, can be found at https://www.courts.ca.gov/documents/102607itemD.pdf. Its reforms never happened. Britney Spears was placed into a conservatorship just a few months later.

I have seen no evidence that this court has improved since. Therefore it remains one of many courts that are excellent candidates for direct federal oversight.

8. The California State Bar admits to a history of corruption in https://www.calbar.ca.gov/About-Us/News/News-Releases/State-Bar-of-California-Releases-Reports-Detailing-Past-Unethical-Conduct-in-Handling-Girardi-Complaints. But corruption likes company, where one case of corruption is found, many more likely remain undiscovered.

It is reasonable to speculate that corruption in the state bar played a role in this case. Why else would Eardley be punished for attempting to represent Britney? Why was Ingham not published despite many complaints about his highly publicized collusion with the conservatorship?

California is not the only state with such problems. Unfortunately, state corruption is beyond the power of the federal government to fix. But when it enables unconstitutional abusive guardianships, the 14th Amendment gives Congress the power to act.

After her rights were taken away, Britney was forced to work in indentured servitude, her life was put at risk, and only extraordinary public pressure freed her. Given that statutes of limitations have expired on many of these crimes, it is unlikely that there will ever be meaningful consequences.

This is not for lack of laws that theoretically apply. For example 18 U.S. Code § 1589 specifies up to 20 years in jail for those responsible for her involuntary servitude. 18 U.S. Code § 1593 specifies mandatory restitution of gross revenue from all who profited. She should get over a billion dollars in restitution. Instead lawyers argue about how many more millions she will have to pay.

Cases like this show potential criminals that guardianship abuse is profitable and unlikely to be punished. Many would like to follow the example of people like Lou Taylor. She helped create the conservatorship, stole hundreds of millions of dollars from Britney Spears, and founded her TriStar media empire. The record shows that many others succeeded in similar crimes.

But a crime requires a means, motive, and opportunity. Systematically violating due process is the means of committing guardianship abuse. This is true across the nation, and has been true for decades. It will remain true until Congress uses the authority that it has been granted to take this means away from criminals.

I therefore ask that Congress use the authority granted to it by the 14th Amendment. Pass legislation creating federal oversight on state probate courts to guarantee due process. And retroactively apply existing law where possible.

Sincerely,
Benjamin Jacob Tilly
[redacted]

To those who care,

Elderly Wards Disappearing in Plain Site

There have been recent revisions to Senate Bill 199 and 202, but we also know, the Ohio Supreme Court issued changes to the state's rules for guardianship that took effect July 1, which are being blatantly ignored by guardians and judges, so why would they care about the most recent changes? Who's making sure they are followed? Who really are the Incompetent ones?

What really Happens when an elderly person is sentenced to Guardianship.

When an elderly person is deemed incompetent by the courts, they become a ward of the state. The probate court judge assigns a guardian, in most cases an attorney of their choosing to be the ward's guardian. During this process, the guardian is given guardianship over the estate, person, or both. If they are assigned as the guardian over both person and estate, the assigned guardian has total control of the ward. To be clear, the ward loses "ALL" rights, except to have legal counsel. Unfortunately, most wards do not know about this option and if they do, the guardian stops it at all costs.

As in everything, you have the good, the bad, and the evil. If a ward gets assigned a guardian with seemingly inappropriate interest in the ward's estate, meaning net worth, house, possessions, etc. then watch out! The ward loses their voice and ownership of everything, including where they live and who can visit them! They're isolated from their family and their friends. This happens every day, everywhere! If you can't believe it, please look no further than at the guardian dockets in the Cuyahoga County Probate Court system, the Medina County Probate Court system, etc. It's all there to bare witness, completely visible to the public, but not many of us are aware of it, and could not fathom that this really happens. That decent people, who have lived a good life, can be deprived of their sense of ownership so easily and without question.

On Friday, June 24, 2022, Kitty Lapp was taken from her home, of over 60 years, to Vista Springs [redacted] under the pretense of "checking the facility out." Mrs. Lapp was told by an employee of the court-assigned guardian, to "bring a nightgown", since they wanted her to "check the facility out and that she may stay the night." As this letter is being typed, she remains at Vista Springs Greenbriar Village. To be crystal clear, she had on her nothing but her nightgown and pocketbook, thinking she was coming home the next day. Mrs. Lapp is 97 years old, a widow of 30 years, with no children, and no family in this country. She has friends but they were told by the court, "they have no standing" when it comes to the court. With the exception of one person (a person Kitty said was trying to get all her money) Kitty has no contact with family in Estonia, nor friends, and is not privy to a telephone or form of communication with anyone outside the facility, pursuant to the guardian's orders.

On November 22, 2022, a magistrate issued an order of detention, and Mrs. Barath was "forcibly removed" from her home by the Rocky River Police Department to Southwest General Hospital-Geriatric Behavioral Health Unit. After a few days at the hospital, Mrs. Barath was taken from Southwest to Vista Springs Greenbriar Villag[redacted] and placed into a lockdown unit where she remains to this day. Mrs. Barath has no contact with family and friends and has no telephone or way of directly communicating with persons she wishes to speak with, "pursuant to the Guardian's orders."

Harold and Cecila Matney who lived in Medina County were taken to Vista Springs Greenbriar Village [redacted] after Mr. Matney took his wife to the hospital where Mrs. Matney was deemed "incompetent." Mr. Matney, not wanting to be separated from his wife, went with her. Since then the courts have deemed Mr. Matney "incompetent" as well. Since then, their home has been sold along with all their belongings. Mr. Matney has written many motions to have their "incompetency" status reviewed yet each time it has been reviewed, it has been denied.

Are you asking yourself, "how can this be happening?" How can any decent human who believes in equity for all, allow these atrocities against our elderly? How can we stop the madness? How do we give the elderly their voices back?

The hole that has been dug is deep and well-guarded. We are asking for assistance in not only getting these individuals out of the hole but to bring these guards to justice so they can't put any more down there. If you are inclined to help and are moved by these unfortunate circumstances, you are not alone and we welcome your help.

The Cuyahoga County Court Case numbers that are mentioned in this email are listed below, as well as the Medina County case numbers.

Cuyahoga County Probate Court:

Herisia (Kitty) Lapp - case# 2022 GRD 269971

Mary Barath - case #2020 GRD 256745

Medina County Probate Court:

Harold and Cecilia Matney - case# 2021 08 GI 0045 - 2021 08 GI 0046

We thank you in advance for your time and look forward to speaking with you soon.

Friends looking out for friends.

Kathy1 and Cathy2

Kathleen Kerrigan

[redacted]

Catherine Colleran

[redacted]



March 22, 2023

United States Senate Special Committee on Aging
393 Russell Senate Office Building
Washington, DC 20510
Committee Chairman-Senator Robert Casey

Re: March 30th Committee Hearing on Fraudulent Adult Guardianships and Conservatorships

Dear Chairman Casey,

CEAR is a national leader promoting reforms that best protect vulnerable adults and their estates from the predatory legal community. We advocate for victims in the prevention of durable power of attorney (DPOA), probate, trust, and adult guardianship and conservatorship frauds.

CEAR, through the tireless efforts of its network of free volunteers, have worked for the past decade, starting in Nevada in 2013, to educate the public on their risks, and to support victims attempting to emancipate from the control of predatory parties who routinely use guardianships as a cover for their criminal enterprise. We have counseled or investigated over 5,000 cases of suspect fraudulent adult guardianships and conservatorships. We coined the term "estate trafficking" to describe the scams predatory attorneys use to fleece vulnerable adults…and their loved ones.

The "estate" can be a lifetime of savings and investments, or generations of familial wealth held in trusts. It can also be the Medicaid entitlements that flow to each state for the destitute and disabled needing long term care. Each case takes on a familiar pattern; "isolate the victim, defame legitimate protectors, and liquidate the estate".

Bloomberg estimates $2 trillion/year passes generationally in the U.S. today as estate holders pass their estates to their intended heirs. There is also over $1 trillion in Medicaid/Medicare funding dispersed nationwide annually to provide care and comfort for America's aging, disabled and destitute population. The legal community, and their beneficiaries, have nearly unlimited potential to intercept these funds for unintended purposes, most notably when they leverage the dysfunction of each state's equity court system. Guardianship and conservatorship has become a profit center for many Bar members and they have demonstrated their commitment to status quo to ensures its growth.

Equity court litigators, especially the predatory type, are some of the most influential and manipulative people one will meet. They learned long ago how to weaponize these courts to

serve their needs at the expense of the public. Also, every insider is financially incentivized to gain guardianship or conservatorship orders. As a result, it is quite easy to manipulate judges into creating unwarranted and unnecessary guardianships.

Sadly, the courts that empower predators nationwide continue to demonstrate almost no ability, or desire, to stop the exploitation. CEAR's research over the last decade consistently shows these courts protect court officers and those they appoint almost unilaterally. Every abusive and exploitive guardian/attorney CEAR has studied was fully protected by their sponsoring court. The jurists routinely ignored evidence eventually recognized by law enforcement. The guardian and attorney(s) were seldom disciplined and often protected and rewarded until they are criminally convicted. Many equity courts require criminal convictions before they will take action, and then often the result is to dismiss the parties while allowing them to keep their lucre.

Rewarding predatory guardians and their attorneys' fees and dismissing them is not discipline in the eyes of their victims and their loved ones. Also, while it takes only minutes to be ordered into guardianship based solely on unconfirmed, and often completely untrue claims, it often takes years to get out. The double standard on speed to entry versus extended and expensive litigation to gain emancipation should concern every American. Government leaders have a much greater obligation to protect America's vulnerable adult population, and their loved ones, from judges with poor judgement and predatory litigators who leverage it.

Over the past decade the 35+ criminal convictions of attorneys and professional guardians substantiate the widespread issues nationwide in these courts. Combined they converted well over $100 million in estate trafficking assets and when criminally convicted returned far less than 10% of the assets fraudulently captured via guardianships. Thus, proving crimes pays well for predatory equity court litigators.

The criminal convictions of attorneys, especially the 2022 federal criminal convictions of Jeffrey Siegmeister-MDFL and banker Russell Laffitte-DSC (accomplice of attorney Alex Murdaugh), give us hope that federal law enforcement is finally starting to see the unique and overdue obligation they have to investigate guardianship crimes. Almost unilaterally local and state law enforcement refer to these crimes as "civil" and defer loved ones back to the very system intent on exploiting them.

[redacted]

Needed Reform

We must even the playing field in our equity courtrooms and provide far greater protection to the respondents (those petitioned for adult guardianship) to greatly reduce the overuse of adult guardianships and conservatorships. Jurists MUST be required to honor legitimate estate documents and the civil and Americans with Disability Act (ADA) rights of these Americans. (See attached suggested reforms.)

Due to the lack of oversight in this system nationwide today, it is very difficult to find counsel willing and able to zealously represent respondents or their loved ones in guardianship proceedings. Capable counsel in contested cases is nearly impossible to find nationwide. Attorneys willing to take these cases understand they are fighting the opposition, the court appointed officers, and a bench passionately committed to defending "their team". Often the most zealous litigators quickly find themselves battling Bar complaints and Bar disciplinary action so they understand their services are no longer welcome in that state. Bar Disciplinary counsels nationwide long ago adopted a position that if an equity jurist blesses the actions of a member, no matter who egregious their actions may be, they will too. Sadly, many appellate courts have done the same.

March 30th will be the fourth Senate Committee hearing on toxic guardianships and conservatorships since 2016. I lost count of how many have been held since 1986 when the Associated Press exposed the horrors of the system with their 2,200 case national investigation. Congress has left it up to the states to self-improve over the last 40 years. While some have taken incremental steps, none have addressed the core issue; how do we protect the public from local jurists with poor judgement?

While Congress has been wringing their hands, the predators who manage this system have been filling theirs. I pray you take action now. Millions of current and future vulnerable Americans, and their loved ones, are depending on you.

Regards,

Rick Black
Executive Director-CEAR

Terri Black
Director-CEAR

.cc Committee-members

[redacted]

2023 - CEAR Legislative Priorities for Seniors and Dependent Adults

FEDERAL legislation in the 118th Congress

S2881/HR5600 (2022) - Guardianship Accountability Act - Requires states report annually the census and total assets (including acquired trust assets) by county assumed by order of an adult guardianship or conservatorship. Integrates reporting to the federal Elder Justice Coordinating Counsel to ensure states are accountability to wards' federal rights. Not reintroduced in the 118th Congress.

HR500 – Financial Exploitation Prevention Act of 2023 – Allows investment companies to freeze accounts and delay transactions for up to 25 days if the company reasonably believes financial exploitation of a customer 18 or over is occurring. Ensure U.S. Treasury investigations. Introduced by Rep. Ann Wagner-R

Guardianship/Conservatorship Reform Priorities for each State

Equity court proceedings transparency. Video record all hearings and make all adult guardianship records digitally available to the public. Adopted in Nevada and Michigan, in part in Indiana.

Require third party trained and nominated FREE respondent counsel. Ensures trained counsel that will protect the respondent's rights and ensure least restrictive alternatives to guardianship are pursued. Suggest the federally funded state protection and advocacy (P&A) entity be given the responsibility to train and nominate attorneys for each respondent statewide for the life of their conscription. Adopted in part only in Nevada.

Third party statewide financial auditing and investigation entity with law enforcement referral powers. Responsible for all guardianship account auditing and census/total assets management. Adopted in Minnesota.

Single statewide "jury of your peers" to hear all contested guardianships. Process would identify dysfunctional courtrooms and ensure estate documents and state and federal laws are protected.

[redacted]

March 10, 2023

Senate Special Committee on Aging: Guardianships, Conservatorships, Protective Arrangements & Alternatives

Dear Senator Bob Casey and Senator Mike Braun,

Myself, from Nevada, along with three other parents from California have joined in the effort to free our angels from government control. We all filed individual complaints and then a joint federal civil rights complaint. Our joint complaint and my individual complaint were both referred to the Federal Department of Health and Human Services on December 14, 2021. They dead ended there.

Making their freedom a reality is not difficult. No new laws or legislation are needed as what is being done to Casey, Nate, Andrew, William and all of the others who have been kidnapped by the government is already against the law. **WE JUST NEED THOSE LAWS ENFORCED, THOSE RESPONSIBLE HELD ACCOUNTABLE AND OUR SONS RETURNED TO US.**

Casey, Nate, Andrew and William are not celebrities and have only the voices of their parents, myself (Carol), Ilya, Deborah and Lynda to speak for them. Classified officially as vulnerable, developmentally disabled dependent children with limited communication (identified as adults due to age alone) and diagnosed as 'autistic'. They have become the forgotten 'middle child' between the children and elderly and are the link that completes the circle of this corruptive guardianship system.

They have the right to be with those who care for and love them. They have the right to enjoy life instead of being drugged just to make it easier for their 'caregivers' to get through each day. They have the right to be happy. They are not a paycheck. They are not disposable. They are important.

They have been torn from their families while all legal entities refuse to investigate the complaints of neglect and isolation combined with medical, emotional, psychological and physical abuse. The isolation and separation are inhumane and torturous. Convicted felons are treated better in prison.

Families are left bankrupt as they seek 'legal' assistance to get their loved ones returned to them only to find that the attorneys are already in the game or drafted once they accept a guardianship case. We mothers, fathers, sisters and brothers

have watched in horror as our loved ones are 'court kidnapped' or 'medically kidnapped' for profit.

We are tired of seeing the truth trampled on in our 'justice' system, tired of watching our loved ones deteriorate before our eyes as they beg us to free them and tired of seeing them shrink when making the mistake of trying to say something that is not allowed. We are also tired of seeing our state, county and court systems along with everyone else who is tied to this racket obtaining financial security under the guise of the guardianship systems that they have severely corrupted while **EVERYONE INVOLVED TURNS A BLIND EYE TO THEIR SUFFERING.**

In addition, any attempts to expose what is happening to them while they are wards of the court assigned to the COUNTY PUBLIC GUARDIAN, DEPARTMENT OF DEVELOPMENTAL SERVICES or another guardian appointed by the court are silenced and/or ignored. Yes, COUNTY PUBLIC GUARDIAN – what better way to keep all that funding under government control and in one nice, neat little package.

ALL INTEREST IN THEIR CASES, BY LAW ENFORCEMENT OR MEDIA, SEEMS TO END WHEN THE EXTENT OF GOVERNMENT INVOLVEMENT IS REVEALED. Why? How can it not make sense to keep things under full control in this way? This has been going on for decades in Nevada alone.

Please read the following quote from an attorney, in response to a request for contact information to organize a rally for one of the victims of a fraudulent guardianship/limited conservatorship:

"The sad truth is that no one is going to rally for ----. ***The media doesn't care about a man with autism, the politicians don't care either****, so I can certainly try and let some of the young people know that you are suffering, and that your son is suffering, but don't expect anyone to show up. Your federal congressional rep is your best chance. All around us is evidence of a broken system, but do you hear a peep from any judge? Nope, they can't be embarrassed into taking action. I am very sorry. I know this is terrible. I will share your contact information but otherwise, I don't know what to do."*

The horrific 'court kidnapping' and 'medical kidnapping' cases of these voiceless individuals throughout the United States is a reality. The lengths that all agencies

involved are willing to go in an effort to discredit those who are trying desperately to free their loved ones from this web of corruption is even more incredible. There is evidence – a lot. Think about it. If all of the garbage they are spewing about us were true, would we really be trying to bring any of this out in the open to so many and be pleading for an investigation? Now, consider why they are trying so desperately to silence us and what they have to lose if this is exposed.

If one would listen to the different accounts taking place across this free country, it becomes glaringly obvious that each state is sharing a Standard Operating Procedure manual specifically for this very lucrative endeavor. If there is one known case in any state, you can be assured that there are many others.

Why would these court and government entities do this? Because there is so much money involved. Some of these individuals have estates, most have Medicare or Medicaid, and all are easy targets once they are under the control of the government. Take a peek at how much funding is given for the purpose of aiding these vulnerable disabled adult 'kids' and then explain why these individuals are neglected so horribly. Where does all that money go? There are so many victims and this has been done for so long that there is no regulation or scrutiny.

What is happening under the smokescreen of the term 'PROTECTED PERSON' is no more than legalized human trafficking. Another way for financial gain by 'legally' kidnapping these individuals and imprisoning them until they are used up. Should these innocents die it does not matter to them as there are so many others to fill the gap and more that will be added each day. At this time, please refer to the definition of RICO.

No, we are not asking for compensation – we want our loved ones back and all those involved removed from their positions; and, thereby rendered incapable of tearing any more families apart to satisfy their financial greed. All Guardianships and Limited Conservatorships need to be abolished. It is too late for reform; it is time to clean house and once again let family take care of family.

Sincerely,

Carol Pickett

[redacted]



I am writing on behalf of the National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE) to share our insights and recommendations regarding guardianship, conservatorship, interdiction, and other "protective" arrangements (collectively referred to here as "guardianship") from the perspective of parents of children, youth and young adults with disabilities. National PLACE is a national membership organization of 70+ national, state, and local parent-led, family-serving organizations including Parent Training and Information Centers, Community Parent Resource Centers, Parent to Parent groups, and National Federation of Families for Children's Mental Health affiliates, among others. Many of our members serve families of children with disabilities, and young adults with disabilities, so our interest in this issue is from the perspective of parents, many of whom are pressured by school staff and other professionals, including medical providers, into seeking guardianship for their young adult children.

In order to reduce the number of unnecessary guardianships in this country, we must stop the school-to-guardianship pipeline. The vast majority of parents who seek guardianship for their young adults (or prior to their youth becoming an adult) are told they must or should do so by school professionals, many of whom are ignorant about other options that are less invasive and less violative of the human and civil rights of their children with disabilities. Often these professionals provide inaccurate information about what role parents can continue to play in their young adult's life without seeking or securing guardianship. This contributes to the feeling that they must seek guardianship or place their loved one's health, education, finances, employment, etc. at risk.

Parents are often not provided with information about the wide-ranging ramifications and long-lasting consequences of securing guardianship, including the involvement of courts and other systems in their lives moving forward as well as the potential difficulty of trying to end the guardianship. We have heard horror stories from parents and young adults about situations where courts refused to end guardianships even though the parent(s) and the young adult both wanted them to end. Unfortunately, in our experience, few professionals, whether in schools, the health field, or other areas, understand the alternatives to guardianship such as supported decision-making that could address the concerns of parents without stripping their children of their civil and human rights.

We are also aware from the experiences of the individuals and families we serve that guardianship is not just an issue for people with intellectual disabilities. Young adults with developmental, mental health, or other disabilities that do not impact their intellectual capacity, have found themselves caught up in the guardianship machine.

We cannot wait until individuals are already under a guardianship order to try to get them out

of that situation – we must educate child- and parent-serving professionals across systems about the negative consequences of guardianship, the alternatives to guardianship such as supported decision-making, and strategies and tools families can use to ensure that their young adult is safe regardless of disability. And we must educate parents about these alternatives so that they are not persuaded by professionals who try to pressure them into guardianship. As a member of the Consortium for Constituents with Disabilities (CCD), we agree with CCD's statement that guardianship is a cross-disability, disability rights issue, and any action to eliminate unnecessary guardianships must be taken within this frame.

We also agree that the lived experiences of young adults with disabilities at risk of or in guardianship – and their families – requires urgent attention and action. Taking away the right of a young adult with disabilities to vote, travel, work, marry, procreate, associate (including with their families and friends), and live and work in their communities is a drastic measure that should be taken only when there is no other possible alternative.

We also agree with CCD that advancing Court improvement initiatives, while important and necessary, is insufficient to address this serious issue. Due process protections are critical. Access to a qualified attorney in a guardianship proceeding should be guaranteed regardless of an individual's financial status. Requiring a rigorous burden of proof before depriving an individual of their human rights and civil liberties must be ensured. But instituting these reforms without addressing the underlying issues legitimizes an illegitimate system. The federal government must ensure both that there are adequate protections, not just on paper but in reality, when guardianship is being considered for individuals with disabilities, while at the same time providing leadership, guidance, and effective strategies to move towards less restrictive options including Supported Decision-Making.

National PLACE strongly supports the recommendations of the CCD for Congress to (1) establish grant programs and other financial incentives to states and territories to reduce the number of unnecessary or overbroad guardianships and increase access to other options, including Supported Decision-Making; (2)invest in a long-term national technical assistance center to promote Supported Decision-Making models and to provide states and territories the support they need to advance them successfully; and (3) provide funding and develop requirements for states and territories to collect detailed data on guardianship and report them to a national data collection entity which would then analyze and report the information widely to the public including individuals with disabilities and their families, policy-makers at the legislative and administrative level, and the larger community.

Within all of these efforts, there must be a focus on stopping the school-to-guardianship pipeline which is where far too many guardianship efforts begin. Families must understand the alternatives to guardianship, the draconian impact of guardianship, and the importance of protecting the civil and human rights of their young adult children with disabilities. For this to happen, technical assistance must be available to school systems at the state/territorial and local level; students in transition to adult life stages of life; families; and professionals across multiple systems that are involved in the transition to adult life process (i.e., Vocational Rehabilitation agencies, developmental disabilities agencies, mental health agencies, etc.) Parent Centers, which are funded under the Individuals with Disabilities Education Act to

provide information, training, and individual assistance to families of children and youth with disabilities as well as youth and young adults with disabilities themselves, would be an obvious set of organization to fund to stop the school-to-guardianship pipeline. (It is important to note that almost 1/3 of the individual who receive information and training from Parent Centers are professionals, so this would also be an appropriate way to reach professionals). Family to Family Health Information Centers, which are funded by the Maternal Child Health Bureau to provide support to families of children with special healthcare needs, including disabilities, would be an obvious set of organization to fund to help educate healthcare providers about the drawbacks to guardianship and the positive solutions such as Supported Decision-Making.

In order to ensure that the voices of those with lived experience, i.e., individuals with disabilities and their families, are heard and considered at the state/territorial level, any federal legislation should also require states to establish an advisory council to monitor and advise the state in the process of transforming the state system into a "Supported Decision-Making First" model. In addition to representatives of diverse populations of those with lived experience, the council should also include representatives of the organizations that support them such as representatives from Protection and Advocacy agencies, Parent Centers and F2Fs, Centers for Independent Living, and others, as well as relevant state agency representatives.

Finally, we strongly endorse the CCD recommendation to require, analyze, and report on reliable data regarding the use of guardianship in the US, including not only the number of individuals under guardianship by type of guardianship (limited or plenary, of the person or of the property or both, permanent or temporary), but also regarding key demographic information such as age including age at which the individual entered guardianship, gender identity, race, ethnicity and primary language, type of disability, etc. Other important information would include the length of the guardianship, type of guardian, type of residence, number of new guardianships and number of those leaving guardianship each year, and the use of professional guardians, including the ratio of professional guardians to people under professional guardianship. This data should be analyzed and reported at the national level, as well as state/territorial level, and used to address those jurisdictions that continue to overuse/ abuse guardianship.

National PLACE and our 70+ parent-led, family-serving members around the country appreciate this opportunity to provide the Committee with our input regarding the importance of federal action to promote access to alternatives to guardianship and severely restrict the use of guardianship, especially for youth transitioning into adulthood/young adult with disabilities. We reiterate our direct experience from the perspective of providing parents with individual assistance in this area as well as the direct experience many of our members have regarding their own youth/young adults with disabilities – we must provide information and support to parents BEFORE they are pressured to seek and secure guardianship for their youth as they transition to adulthood so that they are aware of the options including Supported Decision-Making.

Please reach out to Diana Autin at [redacted] to discuss our concerns, experiences, and recommendations regarding this critical issue. Thank you!

To: The Honorable Paul Casey, Chair and The Honorable Mike Braun Senate Special Committee on AgingUnited States Senate Washington, D.C.

Dear Senators Casey and Braun, and members of the Committee:

My mother Dorris Hamilton is an iconic figure in Las Cruces, New Mexico.

Now 95, she left the extreme poverty of her Arkansas home to live with a teacher at age 12 and used the power of education to overcome segregation. She became the first Black woman to graduate from the University of Arkansas, received her first master's degree at age 23, met Martin Luther King Jr. before he became famous, and secured a place in New Mexico history as the state's first Black school principal at Lynn Middle School in Las Cruces. In her work with the NAACP, she helped lobby the New Mexico Legislature.

A lifelong saver, my mom had built a substantial nest egg by the time she retired in the late 1990s. She owned a home and several small properties while maintaining an active lifestyle.

But life as she knew it was upended in 2019 when a Las Cruces judge signed a temporary emergency petition presented to him by a local attorney placing my mom under the care of a corporate guardian and conservator (it was later exposed this firm had no license, certification or bond)— Appointing the corporate guardian was an action that was done without our knowledge and against our wishes.

It was a fast-track legal process that resulted in my mother being removed from her home, her possessions liquidated, and her life and finances being placed in the hands of strangers.

These strangers took extreme measures to keep me, her only child, away from my mother and out of the primary house that lists us both on the deed. There was an email sent to my lawyer by mistake from the court appointed guardian to the attorney, that reads . . . 'we have to do something to stop him dead in his tracks.'

After a 22-month legal battle in which prominent Las Cruces residents appeared in court and to show support for my family, I was appointed as mom's guardian in May of 2021. I was also allowed to choose a new conservator to manage my mothers financial affairs. The Judge finally released the infamous attorney who orchestrated all of this, a request both my mother and I had at our first of 10 hearings.

At this point you'd think I'd be somewhat satisfied - lick my wounds and walk away. But the players are bitter and feel as if they've lost a fight instead of reunited a family. For them, its not about family its about money and power. The power to destroy families in the name of guardianship. They are coming for my family again!

I've estimate that fees charged against my mother's estate by lawyers,court-appointed guardians and conservators and court visitors are well over $200,000. After removal from her home, she was placed in a memory care facility chosen by her guardian and known by locals as *The Prison*. Estimated costs for this stint are about $150,000. For 2.5 years during COVID, rules against my visitation became more severe and punishing for both me and mom.

But despite New Mexico's recent progress injecting transparency into such cases and enhancing the rights of "protected people" and their families, cases like my mom's are continuing proof the system designed to protect vulnerable individuals is not yet fixed.

1. ELIMINATE EMERGENCY PETITIONS - the vulnerable person loses all their rights once signed and the court process moves quickly to seize funds and remove family support. Court records show that nine days after we met with Attorney Banks, Judge Arrieta granted the temporary guardianship/ conservatorship to Advocate Services, permitting the firm to close my mother's 6 bank accounts, seize her funds and transfer the money to another bank.

2. ONLY DOCTORS DETERMINE INCAPACITATION Judges and Lawyers should be made to provide proof of incapacity from a doctor, not a paid court-visitor.

3. JUDGES MUST ADHERE TO EXISTING LAWS. New Mexico has crafted laws to protect the vulnerable adult and the families they love. Judges must recognize and respect these laws.

4. ENFORCE FEDERAL LAWS AGAINST FRAUD AND RACKETEERING.

5. PUNISHMENT FOR PREDATORY LAWYERS - this will help to deter the behaviors of aggressive court guardianship. Request guardianship lawyers take an oath before they begin talking, just like the rest of us.

6. JUDGES AND LAWYERS MUST RESPECT EXISTING WILLS AND TRUSTS - Wills and Trusts already written and documented by the vulnerable person should be honored and not changed or altered by anyone.

7.ALLOW INCAPACITATED PERSON TO CHOOSE LEGAL COUNCIL - in my mom's case, when the guardian ad litem left the case, and mom finally got an attorney of her choice— provided free of charge by Disability Rights New Mexico. The public court docket sheet reflects that the attorney for Disability Rights has opposed several motions from Attorney Banks.

Thank you for the opportunity to share a brief version of my story and offer suggestions on improving the system at a FEDERAL level. Please help the families that have been victimized by this process.

Rio Hamilton
Las Cruces, New Mexico



DRNY
DISABILITY RIGHTS NEW YORK
www.drny.org mail@drny.org 800-993-8982

March 22, 2023

VIA Email

U.S. Senate Special Committee on Aging
[redacted]

Disability Rights New York (DRNY) submits the following comments in response to the U.S. Senate's Special Committee on Aging request for public input on the scope of problems related to guardianship and protective arrangements and to identify potential solution. As the designated Protection and Advocacy System (P&A) for New York State, DRNY advocates for thousands of individuals with disabilities including people threatened with guardianship and those subject to guardianship who seek to dissolve their guardianship and restore their decision-making rights. New York's guardianship statute exclusively applicable to people with intellectual and developmental disabilities (ID/DD) is particularly problematic, subjecting thousands of people to plenary guardianship every year with virtually no due process. We appreciate the opportunity to share our experiences and recommendations.

New York's Two Statutory Schemes for Guardianship

New York has two distinct guardianship statutes that offer vastly different protections to persons for whom guardianship is sought. The first, Article 81 of the Mental Hygiene Law (MHL 81), was enacted in 1993 and is a general guardianship statute offering significant procedural and substantive due process protections to ensure that guardianship is imposed only as a last resort. The powers of the guardian are limited to the person's specific areas of need. The second type of guardianship is Article 17-A of the Surrogates Court Procedure Act (SCPA 17-A) and is directed exclusively to people with ID/DD and childhood onset Traumatic Brain Injury. At its inception in 1969, the purpose of the statute was largely to permit parents to exercise continued control over the affairs of their adult children with disabilities. In essence, the statute rested upon a widely embraced assumption that people with ID/DD people were perpetual children.

Guardianships imposed under SCPA are permanent and plenary, meaning the guardian has decision-making authority over every aspect of the person's life unless or until a Court terminates the guardianship. SCPA 17-A guardianship is primarily diagnosis-driven and merely requires a court to determine guardianship is in the "best interests" of the person with a disability. The

279 Troy Road; Ste 9
PMB 236
Rensselaer, NY 12144

DRNY has office locations in
Albany | Brooklyn | Rochester

Phone 518-432-7861 | TTY 518-512-3448 | Fax 518-427-6561

statutory scheme offers minimal procedural and substantive due process protections. DRNY will focus primarily on the problems regularly encountered with SCPA 17-A guardianships.

In 2013, New York's *Olmstead Cabinet* unequivocally recommended reform and modernization of SCPA 17-A.[1] The Cabinet condemned SCPA 17-A as overly restrictive and lacking the constitutional and procedural protections afforded by MHL 81. Ten years later, Article 17-A remains untouched, continuing to strip people with ID/DD with all decision-making rights without any meaningful due process protection. DRNY has successfully restored the rights of more than a dozen individuals subject to guardianship under Article 17-A with a 100% success rate. These efforts, along with the emergence of Supported Decision Making (SDM) as an alternative to guardianship, have resulted in a steadily increasing demand for pro bono representation in terminating SCPA 17-A guardianships that sorely tests DRNY's limited resources.

The Problems Posed by New York's Archaic SCPA 17-A Guardianship

In many cases, individuals subject to SCPA 17-A are denied the most basic due process protections. Among these is the lack of adequate notice of the plenary and permanent nature of SCPA 17-A guardianship, the right to challenge the guardianship, the right to a hearing, and the right to counsel. Unlike MHL 81, SCPA 17-A lacks any requirement that informs the person that the proceeding may result in a total loss of rights and autonomy or the requirement that a neutral party, such as an appointed attorney, explain the petition and implications of guardianship to the person whose rights are being removed. Indeed, SCPA 17-A does not require the appointment of counsel or a court evaluator. If guardianship is imposed, the person is rarely informed of the right to appeal or seek dissolution in the future. In fact, DRNY has encountered several court clerks who assert that a person with a SCPA 17-A guardian loses any right to challenge their guardianship by virtue of the appointment.

Further, while MHL 81 clearly articulates a process for restoration, the process under SCPA 17-A is not specified in the statute. This has translated into a lack of consistent processes across

---

[1] *Report and Recommendations of the Olmstead Cabinet: A Comprehensive Plan for Serving New Yorkers with Disabilities in the Most Integrated Setting* at 27-28 (October 2013) (Recommending that "Article 17-A be modernized in light of the Olmstead mandate to mirror the more recent Article 81 with respect to appointment, hearings, functional capacity, and consideration of choice and preference in decision making), available at https://www.olmsteadrights.org/self-helptools/advocacy-materials/item.546373-New_York (accessed 2/8/2023).

jurisdictions causing pro bono counsel to exhaust valuable resources learning to navigate multiple restoration procedures.

DRNY's efforts are primarily focused on the dissolution of guardianship for people with ID/DD. It is an arduous process and absolutely requires legal representation. DRNY currently represents over 20 individuals in terminating their SCPA 17-A guardianship. Knowledge of the right to restoration is not the only barrier to terminating a guardianship. DRNY and our clients are regularly denied access to court records from the original guardianship proceeding. Some Surrogate's Courts require a party to file a notice of appearance or even seek permission from the guardians in order to access these essential documents. These procedural barriers make it nearly impossible for an individual subject to a guardianship to seek its removal without access to an attorney. Indeed, while the Unified Court System has a "Do-It-Yourself" package of fillable forms for those seeking a guardianship, there is no similar assistance for those seeking to remove guardianship. Instead, those seeking restoration must obtain pro bono counsel who can prepare, file and advance a petition for dissolution. Many have do to this while living in fear of negative repercussions on their relationships with their guardians.

Even those lucky enough to secure legal representation still face an uphill battle as the process for terminating a SCPA 17-A guardianship is far more complicated than the proceeding for the appointment of a guardian. The vast majority of Surrogate's courts place the burden of proof on the person seeking to have the guardianship removed. It is then incumbent on the person under guardianship to produce evidence that guardianship is not in their best interest, even when their current guardian does not oppose the dissolution. Some Surrogates require an evidentiary hearing even when no such hearing was held when the guardianship was originally granted.

SCPA 17-A's requirements for dissolution are markedly more onerous than those applicable in New York's other guardianship scheme -- MHL 81. In its efforts to achieve more systemic reform, DRNY routinely raises the discrepancies between these two statutes as discriminatory and in violation of due process and equal protection rights under the U.S. Constitution. As an example, under MHL 81, the burden of proof lies with the party seeking to maintain the guardianship while SCPA 17-A puts the burden on the person seeking dissolution. Similarly, under MHL 81, the need for guardianship must be established by clear and convincing evidence; SCPA 17-A uses the ambiguous and subjective best interest standard.

Over the last five years, the New York Legislature has taken up several bills seeking to reform SCPA 17-A. These efforts are ongoing, but those being placed under guardianship or seeking dissolution still depend on relief from the bench. Some Surrogates have begun to approach the need for guardianship under SCPA 17-A more cautiously. For example, some courts now recognize that guardianship is appropriate only if it is the least restrictive form of intervention. Surrogates are increasingly willing to look at the person's natural and environmental supports and

279 Troy Road, Ste 9
PMB 236
Rensselaer, NY 12144

DRNY has office locations in
Albany | Brooklyn | Rochester

Phone
518-432-7861

TTY
518-512-3448

Fax
518-427-6561

safeguards before imposing the drastic remedy of plenary guardianship. This is a timely development given the success of the Supported Decision Making New York (SDMNY) pilot project funded by the New York Developmental Disabilities Planning Council and directed by Hunter/CUNY in collaboration with other partners including DRNY. The Legislature has recently passed a bill making SDM agreements legally enforceable alternatives to guardianship.

As DRNY and others pursue these cases and consistently challenge the problematic lack of Constitutional protections afforded by SCPA 17-A, the need for legislative reform is plainly evident. Indeed, this was the very conclusion of the New York State Olmstead Cabinet convened in 2013. "The Olmstead Cabinet recommends that Article 17-A be modernized in light of the Olmstead mandate to mirror the more recent Article 81 with respect to appointment, hearings, functional capacity, and consideration of choice and preference in decision making."[2]

RECOMMENDATIONS

1. **Ensure Every Person for Whom Guardianship is Sought is Provided with Substantive and Procedural Due Process Protections**

All persons alleged to be in need of the appointment of a guardian must be provided robust due process protections including, but not limited to, notice of the proceeding in plain language and a right to counsel of their own choosing or the appointment of counsel guaranteed at public expense. A guardian should not be appointed absent a hearing where the person alleged to be in need of a guardian is present. The person's appearance at the hearing may be not dispensed with absent truly exceptional circumstances. In the event guardianship is imposed, the person subject to guardianship must be advised of the right to appeal and the right to seek dissolution of the guardianship at any time.

2. **Ensure Guardianships May Only be Imposed by Clear and Convincing Evidence that Guardianship is the Least Restrictive Intervention to Protect the Person with a Disability**

The appointment of a guardian must be necessary and the least restrictive form of intervention available to meet the personal and/or property needs of the person as determined by a court. The diagnosis or the age of the person alleged to have a disability should never be the basis for the appointment of a guardian. Rather, the person's ability to function in society with available supports should be the focus of a court's inquiry. Guardianship may only be imposed when based on clear and convincing evidence that a person is unable to provide for personal needs and/or

[2] Id.

property management even with available supports, and the person cannot adequately understand and appreciate the nature and consequences of such inability.

3. **Ensure the Powers of a Guardian are Limited to the Actual Needs of a Guardian and the Guardian include the Person Under Guardianship to the Maximum Extent Possible**

The powers of the guardian should be identified in the order issued by the court and tailored to meet the needs of the individual in the least restrictive manner possible. The person subject to guardianship should retain all powers not expressly conveyed to the guardian. Among other things, the guardian's duty is to make decisions that give maximum consideration to the individual's preferences, wishes, desires, and functioning level. A guardian should protect the individual from unreasonable risks of harm, while supporting and encouraging the individual to achieve maximum autonomy.

4. **Require Periodic Review to Ensure Guardianship Remains Appropriate and that there are No Lesser Restrictive Arrangements**

The duration of a guardianship should be determined by the court and conform to the proof adduced at the hearing. For instance, time-limited guardianships may be appropriate including where a guardianship is sought for a young adult between the ages of 18 and 25. Where a guardianship of limited duration has been ordered by the court, any application to extend the guardianship should require proof by clear and convincing evidence by the petitioner that it is necessary to continue the guardianship and no lesser restrictive options are available or appropriate. In such proceedings, the person under guardianship must have access to counsel of their own choosing or counsel appointed at public expense.

5. **Ensure the Burden of Proof is Always on the Party Wishing to Preserve Guardianship**

The court should retain jurisdiction over the guardianship and entertain modification and termination proceedings. The burden of proof must be on the person objecting to dissolution of the guardianship or a party seeking increased powers for the guardian.

6. **Ensure Access to Restoration and Right to Counsel at Public Expense**

Initiating a court proceeding to modify or terminate guardianship is not practical for a person under guardianship, particularly if that person is indigent and unable to retain counsel. Both MHL 81 and SCPA 17-A, do not have a clear process that permits a person under guardianship to obtain access to counsel at public expense or a process that is easily accessible for pro se litigants. In post-adjudication circumstances, particularly where a person may have consented to the appointment of a guardian and is now dissatisfied with the guardian, there must be a path to return to court with representation by counsel.

7. **Promote Single Transaction Remedies**

An underutilized provision of MHL 81 guardianship law permits a judge to "authorize a [necessary] transaction or transactions" that can solve a single problem or a series of interrelated problems that stem from a health concern.[3] A limited guardianship can, for example, meet a health care provider's need for informed consent to a medical procedure, thus avoiding the imposition of guardianship while permitting a person to retain all their rights, personhood, and dignity. A single transaction solution can also encompass related issues that impact on a person's well-being, such as preserving that person's home from foreclosure, or securing an inheritance and that makes it possible to pay for necessities. Single transaction dispositions have been used very effectively to establish special needs trusts, in those instances where the person may have received an inheritance or a retroactive SSA benefit. We recommend exploring these types of alternatives, where appropriate, to avoid unnecessary guardianships.

Thank you for the opportunity to comment and make recommendations on this very important issue. We have seen far too many cases where guardianships have been imposed without any basis other than a simple diagnoses, guardians who have taken advantage of, or abandoned, the person whose person and/or property they are bound to protect, and judges who ignore fundamental constitutional protections in favor of an ableist belief people with disabilities are incapable and incompetent. Reform is needed now.

---

[3] N.Y. MHL § 81.16(b)

279 Troy Road, Ste 9
PMB 236
Rensselaer, NY 12144

DRNY has office locations in
Albany | Brooklyn | Rochester

Phone
518-432-7861

TTY
518-512-3448

Fax
518-427-6561

The Unites States Senate Committee on Aging
The Honorable Bob Casey of Pennsylvania, Chairman
Sent via email to: [redacted]

March 23, 2023

Personal note, 1 page. The following are factual allegations.

Please do not let my detached legal analysis lead you to believe that I didn't love my parents. I did everything I could to protect them from the factory automation of corruption that is probate in this state. I want every actor in their deaths to be sentenced to the maximum penalty under law. **There was no subject matter jurisdiction in either case, as such, there are no immunities.** The actors should be dealt with exactly as if they belonged to any group of persons who conspired to commit the same atrocities.

Kidnapping 18 U.S.C. § 1201, resulting in death of victim; **The Hobbs Act**; 18 U.S.C. § 371, actual or attempted robbery or extortion affecting interstate or foreign commerce; **Conspiracy against rights 18 U.S. Code § 241, resulting in death of victim; RICO**: 18 U.S.C.A. § 1962; 18 U.S.C.A. § 1962(c); 18 U.S.C.A. § 1961(4); 18 U.S.C.A. § 1961(5); **Mail Fraud**: 18 U.S.C. § 3237(a), Section 1341; **Money Laundering**: domestic money laundering transactions (§ 1956(a)(1)); § 1956(a)(1)(A)(i): intent to promote the carrying on of specified unlawful activity; specified unlawful activity: (ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16); (F) any act or activity constituting an offense involving a Federal health care offense; **18 U.S. Code § 1519** - Destruction, alteration, or **falsification of records**....,False Claims Act [31 U.S.C. § § 3729-3733] Respondeat superior should be used to charge the law firms and other private firms criminally. **Main justice should approve of RICO as my father's case meets five, and my mother's case meets six, of the enumerated criteria for: "A case of national interest."**

The cases have been proven, and unless the criminals are dealt with severely, and significant reforms are enacted, similar actors will just continue in the same vein. Case in point: **December 19, 2019**: A former town judge in, "ALBANY, NEW YORK – Richard J. Sherwood, age 59, of Guilderland, New York, was sentenced today to 54 months in federal prison for conspiring to steal approximately $11.8 million from estates for which he served as an attorney and fiduciary. The announcement was made by: United States Attorney Grant C. Jaquith;..."It had no wider effect. **In November / December 2019,** my mother, a resident of a third state, had been kidnapped in one state, illegally served a probate petition in that state, and endured an illegal probate hearing in another state. **There needs to be Operation Greylord type arrests in this state.**

On January 14, 2020, my mother was sentenced to life in a locked ward in a nursing home by the probate judge who coordinated it all. One year later she contracted the Covid 19 virus that would kill her over 60 days. Her organs were shutting down in her body as she was alive. In April of 2021, the probate judge in an adjacent district filed the last decree in the completely illegal probate case against my father. My father was also illegally imprisoned in a locked ward in a nursing home. As per the nursing notes he suffered unimaginable mental anguish, was then turned into a bedridden invalid from negligence via two cases of septic shock, and then he suffocated to death from more negligence.

Like my mother, my father was a widget in the judges' factory. They were both processed to achieve an unconstitutional state paid bonus for declaring a person involuntary conserved. Under that "...law repugnant to the constitution..." said bonuses are paid out to probate judges in the following year.

My father was a WW2 veteran, he fought valiantly to protect this country. Will that same country fight valiantly to protect his legacy and its most vulnerable citizens? The person(s) who bring about these prosecutions and reform are well deserving of the votes and offices which will assuredly meet them.....Thank you, Dan: [redacted]

My parents cases, and suggested probate remedies, in five pages

The following are factual allegations. Documentary evidence can prove the above alleged crimes in the two below cases beyond a reasonable doubt. Two proven cases: one interstate, one in-state, both fall under federal jurisdiction as the crimes affected interstate commerce via mail and banking. The main actors are: 17 lawyers, three probate judge, two police officers, two DA's (who refused to act / aiding and abetting), three social workers, a nurse, nursing homes, two citizens who filed the fraudulent petitions

Background: The bad son steals $480,000 in elder theft over 10 years. The good son discovers the thefts after he moves back to his home state. The bad son then goes to two separate probate courts to get away with his crimes. His goal is to have his parents declared incapacitated and stripped of their legal rights. My parents had mild cognitive impairment, yet they were declared incapacitated and sent to nursing homes. My parents were killed from negligence and airborne illnesses over nine and 15 months respectively. The lawyers bill their estates approximately $730,000. The good son studies law on his own for a year, he then puts together all the probate documents via an online database. He proves that his parents were never legally conserved. They were killed in two separate racketeering enterprises. **There was no subject matter jurisdiction in either conservatorship case or in either decedent estate case.**

Per law and evidence, the conservatorship and decedent estate cases were coram non judice due to want of subject matter jurisdiction and all the decrees were void ab initio. Black's Law Dictionary (6th Ed. 1990) defines coram non judice as "[i]n presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be coram non judice, and the judgment is void."

The cases were heard in courts of limited jurisdiction. Such courts cannot go beyond statute in a manner that affects a person's liberty interests. If they do, they lose subject matter jurisdiction. "A limited class of fundamental constitutional errors is so intrinsically harmful as to require automatic reversal without regard to their effect on a trial's outcome. Such errors infect the entire trial process and necessarily render a trial fundamentally unfair. Neder v. United States, 527 U.S. 1, 119 S. Ct. 1827 (1999)."

In my father's case, the probate judge falsified the second decree to pretend that the medical evidence and initial hearing were statutorily compliant. There were many other liberty interest violations throughout the entire case, those are the most glaring. Through reasonable diligence the lawyers knew of such violations. See ABA Rule 8.4 Misconduct. Also, "All lawyers are fiduciaries, which is to say they owe clients fiduciary duties.... A fiduciary duty is the duty of an agent to treat his principal with the utmost candor, rectitude, care, loyalty, and good faith--in fact to treat the principal as well as the agent would treat himself." Burdett v. Miller, 957 F.2d 1375 (7th Cir. 1992)

When the bad son started going after his mother to get out of an elder theft lawsuit, she and the good son moved. **She became a resident of another state.** The probate court that was coordinating with the bad son was Faxed proof of the mother's new residency. Said, was also Faxed a statute from that state showing that as an out of state resident, the mother could only be served an involuntary conservatorship petition in that particular probate district in that state. **My mother was safe, as long as she didn't return to that state.**

The probate court then coordinated an interstate kidnapping in a third state. My mother was illegally seized in a fraudulent psychiatric hold by two police in a no-knock warrantless entry at a hotel. A paramedic was called to "see if your mother needs to go the hospital." The paramedic, and his later report, indicated that my mother was mentally and physically fine. **The legal standard for a psychiatric hold in that state was not met.** In using

force to detain my mother (literally forcing her out of bed) the police knowingly committed a federal crime. 18 U.S. Code § 241 - Conspiracy against rights. My mother is cleared for "medical and psychiatric release" within two hours of arrival at the hospital. Nonetheless, in a clear violation of her civil liberties, she is illegally held for 23 days. The hospital fraudulently bills Medicare $83,000. See: False Claims Act [31 U.S.C. § § 3729-3733]

Although it is a felony to do so, my mother is then served an involuntary probate petition by her bad son (signed by a local lawyer) at the hospital in the third state. **The papers were for a probate hearing in another state. The papers were legally meaningless**, there was no valid service of process. The bad son was motivated to get out of the elder theft lawsuit. Probate and the lawyers were motivated by theft.

My mother had a restraining order against the bad son, had filed criminal charges against him for the $480,000 in elder theft. The bad son has three separate felony convictions, all the evidence was conclusive, yet the bad son was never criminally prosecuted in the state of the probate court. Presumably, that was because he laundered $125,000 of elder theft proceeds thorough a local attorney to buy land, and the local legal system is "a newly established monarchy" which protects its members.

At the illegal hearing (which my mother attended from the hospital where she was served the illegal involuntary conservatorship petition) **my mother asked for her own lawyer. That is on the transcript.** The person pretending to have the legal authority of a **probate judge then quickly covered up the microphone.** Secondary to no subject matter jurisdiction, that was a structural error and produced an automatic reversal. **My mother was forced to have a local attorney who (with the others) knowingly conspired against her civil rights.** Hence, my mother was never "meaningfully heard" as was her guaranteed procedural due process right.

Based upon invalid out of state medical evidence, my mother was declared incapacitated that day. On the decree, the person pretending to have the legal authority of a probate judge: "waived whatever statutory requirements are not met by the medical evidence." **My mother was then illegally transported across state lines, placed in a nursing home, the lawsuit against the bad son was dropped, and she was killed. A complicated estate theft conspiracy with four of the primary actors began after that.**

Note: My father's kidnapping case (resulting in death) is under federal criminal jurisdiction as well. That is because the actors affected interstate commerce via mail and banking. Hobbs Act robbery applies in both cases. Both cases meet 18 U.S. Code § 241 - Conspiracy against rights (resulting in death). Each act of Mail fraud and Money Laundering can be separate charges.

The motivation of the actors: money

Why were my parents murdered? State tyranny, money, and a local monarchy that protects its members. The machine corruption is so pervasive that the local District Attorneys don't fear being prosecuted as accessories after the fact. It is machine corruption that rivals Tammany Hall.

That state uses involuntary conservatorships as a revenue source, it is running their probate courts as profit centers. That state taxes the lawyers, probate judges, nursing homes, and assisted living facilities. It also gets federal Medicaid reimbursement dollars when possible, and then (when possible) attaches Medicaid Liens on the person's estate after they are no longer alive. That lien supersedes Wills and trusts. That state even has

adult protective care workers who act as primary feeders into the probate system. Those social workers routinely falsify court forms and commit perjury, yet are never prosecuted. As for the lawyers, they are central actors in the machine. They bill the estates excessively, and are not prosecuted if their actions are criminal. Civil lawyers do not take cases that go up against the machine corruption of probate and their fellow lawyers.

The standardized factory model of elder theft via probate. 1) Target an elderly person. 2) A lawyer or social worker files a conservatorship petition with unsubstantiated allegations about abuse, neglect, and financial exploitation. 2) A local probate judge (preferably at an ex parte hearing) signs the petition. 4) Procedural due process requirements and statutory compliance are (in some percentage of cases) not considered important; in such cases, the key variable is that all the actors keep any illegality secret. 5) The elderly person is served the papers. 6) At the initial hearing the probate judge revokes any power of attorney and healthcare agency forms, which were often put in place to protect against such abuses. 7) The lawyers have lots of hearings, billable hours, and shuffle papers back and forth endlessly. 8) The elderly person is preferably institutionalized at the time of service or subsequently placed into an institution. 9) The state taxes everything that is taxable. 10) When applicable, the state gets federal reimbursement for Medicaid, and, when applicable, files a Medicaid lien upon the estate after the elderly person is no longer alive. Medicaid liens supersede wills and most trusts.

The probate system (for the above state) mimics the proscriptions of ancient Rome. The victims are stripped of their legal rights, their estates are plundered, the state benefits, and the actors are rewarded. "In republican Rome, [the proscriptions] [were] a method used by those in power in the government to extract money from people they judged dispensable." The Proscriptions (Smith's Dictionary, 1875)

How to deal with the problem

"Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people." Federalist 10 (1787). President Madison was also clear to point out that a "parchment barrier" (laws) would do little good in stopping a government that, often in search of the people's money, would: "draw(s) all power into its impetuous vortex":

As James Madison feared, a new monarchy has been established in a state government, and that has crept into other states. **Federal intervention is needed to help restore a: "Republican form of government." See Guarantee clause: Article IV, Section 4, U.S. Constitution.** The new monarchy (in my mother's case) has crept across state lines.

What has developed in that state's legal system is precisely what President Madison feared, a monarchy that protects its actors and considers itself above the law. The corruption is so pervasive that local lawyers (and others) knowingly involve themselves in kidnapping, robbery, false imprisonment, and felony murder via probate, and they do so without fear of consequences. The state's probate oversight committee could have prevented my mother's murder. They had the basic evidence of the federal crimes 15 months before she was killed. They did nothing. They didn't even have a hearing. Now the probate judge I complained of is an alternate on their committee. Also, the probate judge who falsified the decrees in my father's case is on the state's probate rules committee. The actors are employing what Friedrich Nietzsche referred to as: "Master-slave morality." They love and admire themselves, the good life, and their perceived nobility. Yet the law doesn't apply to them. It does apply to the slaves though.

Through the guarantee clause, James Madison argues that a Republican form of government ensures that a small number of people will represent the body politic, pass laws, and act in accordance with the trust afforded to them. If they cease to do that, if they form a "new monarchy" the federal government has the right and obligation to intervene to correct the situation.

627 F.3d 405. UNITED STATES of America, Plaintiff-Appellant, v. Brano MILOVANOVIC; Tony Gene Lamb; Ismail Hot; Muhamed Ko United States Court of Appeals, Ninth Circuit. (Dec 3, 2010) DOCKET NO. No. 08-30381. See generally Norman Abrams Sara Sun Beale, Federal Criminal Law and its Enforcement 151 (2d ed. 1993) **("It has been suggested that the federal government has an obligation under the Republican government clause of the constitution to ensure that states are free of public corruption**, Adam H. Kurland, The Guarantee Clause as a Basis for Federal Prosecutions of State and Local Officials, 62 S. Cal. L. Rev. 369 (1989), and that authority was cited in the Congressional debates that led to the enactment of Section 1346. 134 Cong. Rec. H11251 (daily ed. Oct. 21, 1988) (comments of Rep. Conyers introducing legislation to overrule McNally).").

The mail fraud statute has been described by one well- known former federal prosecutor as "our Stradivarius, our Colt 45, our Louisville Slugger, our Cuisinart — and our true love." Jed S. Rakoff, The Federal Mail Fraud Statute (Part I), 18 Duquesne L. Rev. 771, 771 (1980). Judge Raggi's concurrence in the Second Circuit en banc decision 117 F.2d 110. SHUSHAN et al. v. UNITED STATES. Circuit Court of Appeals, Fifth Circuit. (Mar 3, 1941) DOCKET NO. No. 9388.

No trustee has more sacred duties than a public official and any scheme to obtain an advantage by corrupting such an one must in the federal law be considered a scheme to defraud. The essential immorality of an arrangement of that sort, or even the use of undue personal influence, is illustrated in Oscanyan v. Winchester Arms Co., 103 U.S. 261,26 L.Ed. 539; Crocker v. United States, 240 U.S. 74,36 S.Ct. 245,60 L Ed. 533; Crawford v. United States, 212 U.S. 183,29 S.Ct. 260,53 L.Ed. 465, 15 Ann.Cas. 392; United States v. Carter, 217 U.S. 286,30 S.Ct. 515,54 L.Ed. 769, 19 Ann.Cas. 594; Pan American Petroleum Co. v. United States, 273 U.S. 456, 500,47 S.Ct. 416,71 L.Ed. 734.

> I would like to see a federal law (named after either of my parents) which guarantees that if there are civil rights violations by any actors within probate, that there will be mandatory federal prison terms. In my parents' cases, as the evidence clearly shows, local DA's will not prosecute probate actors. I can assume this is true in many counties within the United States. Also, I would like to see large mandatory public surety and crime bonds for conservators. **I want to see my parents' cases fully criminally prosecuted. The politician who helps in that (and to change the below mentioned probate judge bonus law) is truly deserving of senior citizen votes.**
>
> **The U.S. Constitution demands that the bonus structure law for probate judges in the above state be struck down.** The production bonus ranges from 1-5. If a routine form is filled out by a probate judge, that judge can claim a (1) rating on the bonus pay scale. If an involuntary conservatorship is adjudicated, that judge can claim a (5) rating on the bonus pay scale.

The state law which enacts the bonus pay is the definition of: "A Law repugnant to the Constitution is void." and must be stuck down. Marbury v. Madison, 5 U.S. 137 (1803). **Here is how that is done: My mother was a citizen of another state. That means that the U.S. Supreme Court will have original jurisdiction over the case if her state of residency sues the state where my mother was illegally conserved as a result of the illegal pay scheme for probate judges in that state. I suspect, as in Cooper v. Arron (1958), it will be a 9-0 decision.** Look at the precedent cases: 556 U.S. 868. 129 S.Ct. 2252. 173 L.Ed.2d 1208. 77 USLW 4456. 2009 Daily Journal D.A.R.

8207. 21 Fla. L. Weekly Fed. S 908. 09 Cal. Daily Op. Serv. 7053. Hugh M. CAPERTON, et al., Petitioners, v. A.T. MASSEY COAL CO., INC., et al. U.S. Supreme Court (Jun 8, 2009) DOCKET NO. No. 08–22.

The Tumey Court concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has "a direct, personal, substantial, pecuniary interest" in a case. It is well established that a judge may not preside over a case in which he has a "direct, personal, substantial, pecuniary interest." Tumey v. Ohio, 273 U.S. 510, 523, 47 S.Ct. 437, 71 L.Ed. 749 (1927). This principle is relatively straightforward, and largely tracks the longstanding common-law rule regarding judicial recusal. See Frank, Disqualification of Judges, 56 Yale L.J. 605, 609 (1947) ("The common law of disqualification ... was clear and simple: a judge was disqualified for direct pecuniary interest and for nothing else").

The Supreme Court decides what the law is, and the states must follow.

358 U.S. 1 . 78 S.Ct. 1401 . COOPER ET AL., MEMBERS OF THE BOARD OF DIRECTORS OF THE LITTLE ROCK, ARKANSAS, INDEPENDENT SCHOOL DISTRICT, ET AL. v. AARON ET AL.**U.S. Supreme Court (Sep 12, 1958)** DOCKET NO. No. 1.

The interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." P. 18.9. **No state legislator or executive or judicial officer can war against the Constitution** without violating his solemn oath to support it. P. 18.10.

Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as **"the fundamental and paramount law of the nation,"** declared in the notable case of Marbury v. Madison, 1 Cranch 137, 177, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system.

It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3, "to support this Constitution." Chief Justice Taney, speaking for a unanimous Court in 1859, said that this requirement reflected the framers' "anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State . . . ." Ableman v. Booth, 21 How. 506, 524.

No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. Chief Justice Marshall spoke for a unanimous Court in saying that: "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery . . . ." United States v. Peters, 5 Cranch 115, 136.

Thank you, Dan: [redacted]

Emily Darnell
[redacted]

To: Senator Bob Casey, Senator Special Committee on Aging, Chair
RE: Senate Special Committee on Aging: Guardianship, Conservatorship and Alternatives
Date: March 23, 2023

Dear Senator Casey,

The opportunity to share with the Senate Special committee on Aging:
Guardianship, Conservatorship and Alternatives was brought to our Coalition in New Mexico from multiple sources. I am a member of a Coalition that has come together out of our sheer difficulty understanding how something that I feel was developed to help people could have gone so wrong and transformed into a horrific, traumatic, and torturous planned attack on families and their loved ones at times that are often transitions that are naturally difficult. Shame on our Judicial systems for not being better custodians of the law and in many cases in NM for not even trying. Shame on the Cottage industry that continues to profit from pitting family members against each other rather than finding any common ground and eroding or disregarding it even when there is a lot of common ground!
Our Mother was put into a Court appointed Plenary Guardianship Conservatorship in 2010. She died in 2015. It was life changing, heartbreaking, overwhelming, difficult to navigate and an excruciating painful experience so I have committed my life to stopping this from happening to others – a civilized society shouldn't do this to people.
I have never written about our case; I have been reluctant to share. It has taken me years to be able to talk about it and not cry. I am a strong woman who has contributed to many political and systemic changes in New Mexico throughout my 37 year career. I believe in miracles and am hopeful the Public Will will prevail to stop Guardianship Conservatorship abuse and even make them a sad part of history and I do it in honor of my Mother, Blair Darnell.
I offer you my story and some solutions.

"Mother of course we can fix this. We just need to get in front of that Judge and let her know our side of the story. This is only one side of the story."
That was the last thing I told my mom before we ended up in a Court appointed Guardianship and Conservatorship with Plenary Power.
My Mom, Blair Darnell did everything right. She hired the best Accountants for many years, the best attorneys to draw up her legal documents. She went to college, made decisions, got married, had children, raised her children, raised many other children, ran a business with her husband for over 45 years. She contributed to her community by serving on Boards and a variety of them, School Boards, Museum boards, Horse Boards, she gave back through her infectious commitment to children, families, nature, and culture to name a few. She inspired so many people and shared everything she had with anyone who needed it. She was passionate and caring and enjoyed her life and her family. My Mom truly was fun, unforgettable and extraordinary in life.

But then there is this transition to death that didn't serve her and will haunt me the rest of my life.
It was what I would equate to Torture and really unimaginable – you cannot make this up, who knew this could even happen.

Even having all her legal Documents: Estate Plans, Will, Power of Attorney, Advanced Health Care Directive, etc. Legal contract was NO match for the abusive corrupt system of Court Appointed Guardianship Conservatorship. Disregarded and thrown out the window with no explanation just accusations with no evidence just attorneys who had a prior relationships with the Judge, money spent to fight as we could as a family and all of this happened on an Emergency Petition which led to Temporary Guardianship.

This all began when her oldest daughter petitioned the Court with her high-powered attorney who did get paid out of my Mom's estate and none of the rest of us did. So the Court immediately went into protect the Petitioner mode and the other 3 children were painted as difficult, troubling, liars, thieves, whatever the system needed to continue and cover for all the attorneys and court appointed people. We could see the system was supporting our Mother's Estate was paying itself to fight itself and we were trying to not generate any reasons for court hearings or conflict.
All of this continued on for 5 years. I will not go into more detail of which there is plenty, however, I feel it is important to know we feel our Mom was not allowed to die naturally, she was not cared for better than her family would have cared for her, she was unable to see her friends or family as she would have had she been allowed to have her family in charge. We feel the attorney's were dishonest and the Conservator, caregivers and other "professionals" in our case had many questionable practices. We have documentation to prove many allegations we have.
No one should ever have to live through this corruption because their loved one is aging. No family should ever have to be subjected to this horrific system in New Mexico or anywhere else.

Here are the main areas I think need changing:

Emergency Petitions – this needs to be defined and there should be specific reasons to bring an Emergency Petition to Court and all judges must mandatorily be trained and sanctioned when there is evidence that Emergency Petitions are being used. For example my Mom was put in Plenary Guardianship Conservatorship based on an Emergency Petition. She had never been to court and neither had her family. Unacceptable there should have been multiple interventions.

Legally Prepared Documents- Must be followed See 10 Steps
There is such an abuse or lack of use by Judges to follow the Legally Prepared Documents and Judges must be trained and mandatorily sanctioned if they do not use them or request them and put someone in a Guardianship Conservatorship.

AT least 10 steps need to occur before any adult with suspected dementia should ever be put into a Court Appointed Guardianship Conservatorship.

Many families are growing in their learning about their differently abled or elderly person with a new diagnosis or potential diagnosis. For families this transition can be terrifying, heartbreaking and challenging to accept or face. Yet New Mexico families are strong, and I would encourage legislation be created that works to support families to work on the struggles through many avenues. Laws in New Mexico and the United States should create supportive language and innovative approaches to encourage solutions and best practices that can support families even in conflict about their loved on often the person who could end up in a Court Appointed Guardianship Conservatorship. Language in laws that leads to actions that look like punishment that make families feel monitored or influenced by the system are less desirable.

Step 1: Shift thinking from Court Appointed Guardianship Conservatorships to Alternative Family Support immediately in contested cases (and really all)
Step 2: Create and develop innovative training for Courts, Professional people,
Step 3: Create and administer training to all family members interested in supporting the family member or protected person
Step 3: Create plans based on Family member or Protected persons Legally prepared documents including using coaching and support from the attorney who developed the documents. This should last for 1 year and
Step 4: Reports could go to Alternative office
Step 5: The plans should be ongoing and changeable as the person grows and changes and as other factors change
Step 6: Supported Decision Making
Step 7: To Be Determined
Step 8: To Be Determined
Step 9: To Be Determined
Step10: Court Appointed Guardianship Conservatorship

The Pipelines need to be exposed- a campaign to end "pipeline" searches for adults who have assets must be shared with the general public and Statewide efforts and federal efforts should be made to discourage at least the use of pipelines without communicating with families: Hospitals, Doctors, Banks, Gardner's, home health, etc....Attorney's who profit from using the pipeline without the proper communication and authorization from a family members should be disbarred.

Civil Rights, Human Rights, and Fiduciary rights of ALL family members should be honored. If not honored again the attorneys involved, care agencies, accountants, Corporate Guardianship Conservatorship companies should be sanctioned and the public should be able to see the data on who has been sanctioned. Accessibility, Accountability bring Sunshine and Sunshine is clearly what is needed in this system.

Undue Influence and Self Dealing in the context of a loving nurturing family should be explained and not used against families to bring burdensome attorney fees and in some cases jail time to families.

Finally, FAMILY VOICE must continue to be heard until the culture of this legal oppression and torture is over! When we suppress the voices of those who have experienced this system, we are perpetuating the injustice of Court Appointed Guardianship Conservatorship and giving up on our most vulnerable willingly.

In Closing, most people are trying to survive. If we engage the pedagogy of Paolo Freire and Reggio Emilia in Italy, we will think about people as learners. We will think of everyone engaging in learning as

something that happens together. We all bring our own agency to our experiences. I am struck when I think about this and how my family was affected by my Mom's Guardianship. We didn't know all we needed to do and we were learning and willing to learn. We shared openly and were encouraged to do what we were told to do by the Guardians and the Conservators. We had information they needed about my Mom and family. At the end of the day the system left us and our Mom with no voice and my Mom had no autonomy, no capacity to say no and have it respected. We were forced to endure watching in silence as "professional" people were harming her, isolating her, speaking horrible of her and her family, not practicing best practices related to health, activity, etc.. The shift had happened from all of us being learners together and doing what was truly best for her to creating her life as a prison to secure her assets went to "other than family" to make decisions with or support her on this journey. There was an overwhelming amount of information, paperwork, and understanding to go through to be involved with the Courts. If we complained we were threatened with not being able to see her, the Guardian or Conservator would tell the judge we were interfering with her care. They tried to separate us and we had to depend on us knowing who we were as a family. The end of our amazing Mom's life was tragic and her loss of her rights was unimaginable. Her agency which I feel sure she would have had to her death if this Guardianship didn't happen to her and us was savagely taken away. Silenced by attorneys, a judge, and professionals that knew what was best for her. She spent most of her time with strangers creating a day they thought she needed. She spent the end of her amazing life dominated by the drugs she was given and probably didn't need and those who created the days they thought she needed. Her family was the highlight of her end of life days. She lit up to spend time with her grandchildren and children.

Make the law reflect a system that honors the families who make decisions all day with their vulnerable person, who problem solve during conflict, who take 10 breathes outside because they cannot handle something that is going on with their vulnerable person.

Support the families who have amazing support systems and enough and... those who don't. Create systems that teach and walk hand in hand with New Mexicans (and All Americans) through our journeys from Birth to Death not one that alters and punishes families and their most vulnerable loved ones through Guardianship Conservatorship as we know it now.

With Gratitude,

Emily Darnell
Daughter of Blair Darnell

The Majority Staff of the Senate Special Committee on Aging
Sen. Bob Casey, Chairman

Subject: Public Input: Mary Barath, Age 82, [redacted]

Reference: Elizabeth Goodwin

Cuyahoga County Probate Court

Guardianship #2020GRD256745

Reference: Amy Snow of Disciplinary Council

Reference: Magistrate David Mills

Disciplinary Council ~ File No. C1-1992J

I am Mary Barath's niece by marriage, and I am filing this complaint to address the serious Elder Abuse being allowed to take place under the auspices of the Cuyahoga County, Ohio Probate Court.

This case began because Mary Barath's son Peter Kramer wants her assets. Through the years he has repeatedly filed complaints with various Ohio adult services. All complaints were dismissed until Dr. Babak Tousi, who is listed as an Internist with Cleveland Clinic, after seeing Mary one time in November 2020, signed a STATEMENT OF EXPERT EVALUATION stating that Mary was "incapacitated" because of "Dementia with behavior disturbance, Depression, and Breast Cancer."

She was depressed because she was facing her 4th surgery, and how does having breast cancer make one incapacitated?

Nevertheless, Magistrate Mills accepted that evaluation. Suddenly the cadre at the Cuyahoga County Probate Court stepped in and Mary Barath became Guardianship Case # 256745 and automatically "Liz (Goodwin) is the guardian." (sentence #2 from Docket entry)

Interestingly, on Guardianship papers, "Applicant" is Elizabeth Goodwin and "Attorney for Applicant" is Elizabeth Ann Goodwin. In subsequent documents, she differentiates her two selves as Elizabeth A. (A1) and Elizabeth Ann (0065048). In addition, she is a Notary (License #5268). Thus, in addition to Guardianship, she has been able to give herself Power of Attorney over Mary and all her assets. When Mary complained to Goodwin's assistant Sally Hill that she was having difficulty getting an attorney, Sally told her, "You don't need an attorney. Elizabeth Goodwin is your attorney." That was a surprise. Mary Barath did not hire Goodwin as her attorney, she definitely does not want Goodwin as her attorney, and no documentation regarding her appointment as Mary's attorney has appeared on the public, online Docket. When functioning as both Guardian and Lawyer, assumedly Goodwin is able to receive a fee for each, thus doubling her income. Herein I refer to her as Goodwin because I am never sure under which relationship she is functioning.

Maria Vadas Kramer Barath was born in 1940 in Budapest and spent WWII as a prisoner of the Nazis. She came to the US in 1950 as a displaced person. Since her second husband Bill Barath died in 1994, she has taken care of herself, her home of almost 40 years, and her fiscal responsibilities. Her bills were paid on time, and she had an excellent credit rating.

Since Goodwin became Guardian, she has diverted all Mary's mail ~ Mary receives NO mail ~~ not bills or birthday cards or church bulletins or Court mailings regardless of what the Docket would indicate. Goodwin has created a pattern of late payment of bills. Mary knew her real estate taxes were due in July, but since all her mail was being confiscated, she wasn't sure of the amount. On June 29, 2021 while we were on the telephone, we accessed tax records, saw the taxes were due by July 15, and paid them online using my credit card. In early August, after their due date, Goodwin's assistant Sally called and told Mary that her real estate taxes needed to be paid, and how did she want to pay them. Mary told her they had been paid. On August 23, I returned Goodwin's call. Goodwin wanted to know why I had paid the taxes. I told her because they were due. Perhaps this technique of delaying payments is the reason Mary's credit score has fallen into the 500 range.

During that August call Goodwin agreed ~ again ~ to an Accounting, and said she would send me a reimbursement check. I did receive a check in an envelope stamped October 7. During our phone conversation, Goodwin added that first Mary, then (lawyer) Randolph Roth, and now I was "pushing back." She asked if I wanted to be Mary's Guardian. I told her no, I did not want to be her Guardian because Mary Barath did not need a Guardian. I asked Goodwin who had initiated the Adult Protective Services' investigation, and she told me Dr. Tousi. Two lawyers have now told us that repeated complaints came from Mary's son Peter Kramer who lives in Ft. Myers, FL where he owned an assisted living facility. Both honesty and truthfulness are lacking.

Goodwin has consistently refused to provide Mary with an Accounting, although we know she has confiscated over $300,000. She has attached/closed several other accounts. Mary's U.S. Government Social Security check is now directed to Goodwin although Social Security on February 25, 2022 informed Mary that her payments would be withheld until they could select "a qualified person to receive your payments." Goodwin has cut off Mary's income. Initially Goodwin allocated $500 per month to Mary for personal expenses. That was subsequently increased to $600 per month, in cash, delivered in person to Mary's home, in a plain white envelope, with no receipt or accounting.

In July 2021, Mary did get a paper receipt because $150 had been withheld from her stipend, meaning she received $450 that month for personal expenses.

On the last day of November 2021, Mary and I were discussing Christmas, but Mary had not yet received a payment. Mary asked if I would call to see about her money, so I called the Goodwin and Brian office. The following is the note I made after that conversation:

November 30, 2021~Documented

I called a little after 1, but Cheryl said that both Sally and Elizabeth were out to lunch.

I called back about 2:45 and Sally answered the phone. I said, "I'm calling to ask if Mary is going to get her stipend today. It's the Christmas season, and we're trying to make some plans."

There was silence on the line...I hesitated...then said, "This is the last day of November."

Sally responded, "You don't have to tell me that...I know it's the end of the month...she'll get her check either this afternoon or tomorrow."

And she hung up on me before I could say thank you.

The money was not delivered November 30 or December 1. On December 2, Mary herself called. Sally answered the phone, and exclaimed, "Oh, we forgot." She then within a couple of hours delivered the $600 in cash in a plain white envelope.

If Goodwin is qualified to be a Court-appointed Guardian, and expected to exhibit fiscal responsibility with regard to the Ward's assets, then the Goodwin and Brian law firm should have a system to provide recurring payments. How can a Ward's living expenses be dependent on an assistant's memory? Are all of Goodwin's Wards receiving this treatment or is this a technique Goodwin is incorporating to further isolate, humiliate, and pauper Mary Barath?

Mary's at-the-time personal lawyer Randolph Roth, Mary, two friends, and I were waiting in the corridor of the County Court House on August 16 for Hearing #3 to begin when Goodwin and Sally Hill exited the elevator right in front of us. Sally spoke, but Goodwin never said a word, just turned and entered the Hearing chambers. Interestingly, the Hearing was then cancelled, and Mary was not permitted to present her documentation and her supporters were not allowed to speak. We had driven from VA to present evidence, but the Hearing was cancelled without notification while we waited in the hallway.

Goodwin continues to try to further restrict Mary's environment. Mary has a valid Ohio Driver's Permit, valid registration, and automobile insurance, but Goodwin used subterfuge to confiscate her 2007 Mercedes. Mary has asked repeatedly for the vehicle's return, but Goodwin has refused. She even attempted to cancel Mary's automobile insurance because, "she doesn't have a car and doesn't need insurance," but Bando Insurance advised us of the attempt. If Ohio law permits Mary to drive, by what authority does Goodwin take away that right, other than to further isolate her. Mary has no source of income, no computer, no internet access, no cell phone, and Goodwin takes her means of transportation. Her USPS mail is diverted to Goodwin's office, the postman no longer picks up mail at her home, and to send a letter, she has to deliver it to the Rocky River Post Office. Goodwin's restrictions are excessive and punitive. (As of this date, Goodwin has sold Mary's 2007 Mercedes.)

On November 2, 2021, Michael P. Harvey of the Law Offices of Michael P. Harvey Co., L.P.A. sent a letter to Mary at her home address.. [redacted]. Goodwin has been confiscating Mary's mail since March 2021, and she confiscated this communication as well. Mr. Harvey's letter was opened and read. We know that because when Sally delivered the contents to Mary at her home, Sally said, "Here's a letter from your lawyer." However, Sally would not return the original envelope bearing the logo of Michael P. Harvey Co., L.P.A., which made it obvious that the letter was a legal communication.

In Fall 2022, Mary agreed with her ophthalmologist's evaluation that she needed cataract surgery. Mary requested funds from the Court and made arrangements for in-home aftercare. Then Sally Hill appeared with a document from Goodwin wanting Mary to sign that she would go to a facility after the surgery. Mary declined because she had already made the arrangements for aftercare. When it was time for the surgery, the doctor informed Mary that Goodwin had refused to pay the $500.00 for it ~~ so Mary's cataract surgery was cancelled.

Dear Senator Bob Casey, Chairman of the Special Senate Committee on Aging and Senator Mike Braun, Ranking Member of the Special Committee on Aging,

Thank you for taking your time to investigate the many facets of guardianship abuse.

The medical neglect, isolation abuse and financial exploitation done to my Mother, Mary Frances McCulloch, and utter failure in my attempts to hold the perpetrators accountable, led me to use public records to find over 40 more victims of the same perpetrators. Advocating for them made it clear Ohio is corrupt all the way up the state flag pole.

The federal level is not fairing much better.

PROBLEMS:

FBI involvement for **public corruption and racketeering** was **recommended by the Hamilton County Sheriff Public Corruption Unit,** in writing by **Special Investigators from the Auditor of the State of Ohio, the Ohio Attorney General Bureau of Criminal Investigation and the United States Postal Service.** Proof of wire fraud involving felonious financial exploitation perpetrated on my Mother and over 40 other victims of the same regime using **EVIDENCE THAT IS SELF-AUTHENTICATING** in the form of probate court rulings paired with case law - **FEDERAL RULES OF EVIDENCE 902** – was delivered to the Cincinnati FBI over a year ago. I have not heard one word from them. It arrived by certified mail which no one signed for but the post office assured me was delivered, on a silver platter with a gavel USB, tied with scales of justice ribbon.

There is no excuse for not prosecuting self-authenticating evidence cases with local, state and federal agency referrals.

Department of Health and Human Services Medicare Fraud is the most inadequate entity I have dealt with. I filed a complaint for fraud regarding my Mother, Mary Frances McCulloch, in December of 2018. I waited the recommended 6 months to follow up with a FOIA request only to be told there was no record of my complaint. At that point my June 2019 FIOA letter was used to refile and I was asked to wait 6 more months. The idea of a year total, did not sit well; I utilized Congressional oversight of Rep. Steve Chabot at this point. January 2020 another FOIA request was sent only to find out THERE WAS NO RECORD OF THE COMPLAINT FOR THE SECOND TIME! I again signed a privacy release for Rep. Chabot to get answers. HHS found no fraud in the following nefarious scheme:

January 2016 Mom was diagnosed by her chosen neurologist to have mild cognitive impairment for over 10 years straight. One month later, her new guardian initiated an involuntary psychiatric hospitalization. The attending psychiatrist planned to release Mom immediately and discontinue medication, stating she didn't need to be there (conversation recorded). Instead, guardian intervention resulted in amplified antipsychotic medications until a zombie Mom was fraudulently diagnosed with severe cognitive impairment (conversation recorded). This was used to move Mom out of her home of 50 years, place her in memory care and sell her house, making her will moot.

The discharge summary instructed a follow up neurologist appointment ASAP; it was remiss by 22 months. Her neurologist record clearly documents the improper continued drugging being directly responsible for her permanent diagnostic decline to moderate dementia.

I was privy to these records because the guardian was not aware I previously had Mom's HIPAA permission. When the guardian was alerted I knew of her fraud, negligence and the resulting detrimental effect on my Mom's health; SHE RESIGNED!

HIPAA established pre guardianship, allowed me to access Mom's medical records and find the above along with the prescribing of a known allergic medication, which I promptly got her PCP to discontinue. My interference infuriated the guardian who promptly changed my Mom's doctor, effectively shutting me out which was not what my Mom wanted. At this time the guardian implemented retaliatory supervised limited visitation so I could not discuss my findings with Mom, hired an attorney to fight my filed complaints and **went through over $700,000 in 18 months.**

HIPAA law needs to be modified to the level of an advanced directive when guardianship is involved. When before conscription, the ward clearly established HIPAA permission; there needs to be mandatory transference of that authorization to all new doctors.

National Adult Maltreatment Reporting System (NAMRS) refused to take a report from me, a taxpaying party to the victim. This failure compromises accurate statistic tracking and defeats the purpose of their existence. Make funding contingent to open reporting as a standard.

Federal Grants to Enhance Adult Protective Services who refuse to take a report from anyone other than the victim needs amending. Incompetent victims are incapable of doing this. Benevolently, APS offered to take a report from the abusive guardian in lei of the ward! There is no help when a guardianship is in place. Mandate funding to the acceptance of outside complaints, a common sense change.

ALTERNATIVES:

Federal backing of advanced directives' needs to be elevated to level of having absolute authority. The ward's ability to direct their life's future is sacrosanct. Probate court has no regard for **advanced directives: POA, wills, trusts** when overriding them is lucrative to their court insider cronies. Existing laws are not upheld.

Expand **collective decision making** when advanced directives do not suffice, to a group consisting of all family members, impartial legal representative, social worker, nurse, church affiliate, etc., giving each an equal vote with the majority prevailing.

Nationally change the legally used definition of a "party to the case" to encompass any concerned citizen. Many of the 40 plus victims I found had no immediate family or even next of kin. Not being a "party" prevented my filings on their behalf to the Ohio Attorney General's Elder Justice Initiative for right to first refusal prosecution, the Supreme Court Disciplinary Committee and probate court intervention attempts from being considered. The "not a party" excuse permitted abuse to go un-reprimanded. Even when the Committee validated my findings in writing, forwarded a copy to the offender, the arrogant perpetrators did not construe it as a cease and desist, but blatantly continues doing the same thing to this day.

PROTECTION:

Probate jury trial decision making, using peers not enmeshed in the system, removes color of law.

Open the grand jury to the people, enabling concerned citizens' easy, private access to a grand jury in order to present evidence. The incestuous relationships between probate, the prosecutor, the sheriff, the self-regulating bar, etc. do not protect the ward. It would have to be unregulated by the previously mentioned stake holders. Remove the prosecutor's right to refuse if the grand jury deems the case worthy.

Any involved agency receiving Federal funding needs the allocation of funding to be contingent or proportionate on ZERO COMPLAINTS.

Remove judicial immunity which is unconstitutional and bar self-regulation nationwide.

I pray God grants you and your Committee wisdom dealing with this multifaceted prolific abomination.

Sincerely,

Kathy Bosse



March 22, 2023

To: Senate Special Committee On Aging

Via Email [redacted]

Dear Senator Casey:

My name is Kerri Jill Perryman. I write you today to share with you my experiences and the issues that I have faced in attempting to visit and care for my mother at the end of her life. My mother, Wanda Dutschamann, resides in an assisted living facility and has been declared incompetent by her doctor. Prior to being declared incompetent my mother executed a Medical Power of Attorney ("MPOA") naming my brother as the individual who has the power to make medical decisions for her in the event that she becomes incapacitated. My brother and I do not get along with one another and have a strained relationship. I have always maintained a very close and loving relationship with my mother; I visited or called her on a regular basis prior to her being declared incapacitated. Since my mother's incapacitation my brother has used her MPOA to prevent me, and other members of my family, from visiting or communicating with my mother. My brother rarely if ever visits which has resulted in her being left in near total isolation. The assisted living facility, at the direction of my brother, does not provide updates on the status of my mother's health and we are not permitted to inquire.

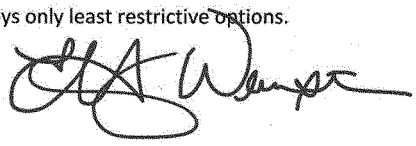
I have retained legal counsel to assist me in applying for guardianship for my mother, but the process is long and expensive. To date I have spent thousands of dollars in legal expenses with little to no change in the circumstances. My brother has had the phone removed from her room so that she cannot make or receive phone calls; for the last 15 months I have had little to no contact with my mother. My mother has always been a social person who loved being surrounded by her family and friends. I know that my mother desires to have contact with her family and friends and it is cruel for him to isolate my mother in the twilight of her life. My brother's actions are not only abusive to my mother's physical health and mental well being they are abusive to my family as well. His actions are not only abusive they are beyond the scope of the MPOA that my mother signed. I know that it was not her intentions that the MPOA be used to isolate her from her family. The assisted living facility has aided in my brother's abuse by acquiescing to his unreasonable demands and denying me and my family access to my mother or information about her well being.

As your committee considers changes or additions to the law please be mindful of the abuse that the incapacitated may be forced to endure without safeguards in place to protect their rights from those that would seek to abuse the power granted them under a MPOA or guardianship. I would also ask that you are mindful of the rights of the children of incapacitated parent(s) to have access to their parent(s). What my brother, and the assisted living facility, are doing to my mother is unconscionable. While there are currently legal remedies for me to pursue they are both costly and time consuming; and given my mother's declining health it is likely that she will pass before I get

The abuse I have suffered at the hands of this illegal Guardian is also difficult to fathom. This Guardian of Property, Kenneth L Bunting:

- denies me any money to eat or live; seeks out and confiscates any money I have saved in separate private accounts to provide for my self, and closes my accounts without notice, financially abusing me however he can, and will dispense money arbitrarily;
- seized and dissipated millions of dollars of my assets, and transferred them to my domestic abuser at no cost, all without prior court approval, in violation of the court's own orders;
- hangs up on me when I call;
- denies me effective assistance of counsel;
- intimidates my witnesses;
- aids and abets in malicious prosecution against me;
- denies me access to court documents;
- cancels my medical insurance without notice;
- uses my assets to pay agents and associates of my domestic abuser
- fails to submit required annual reports, and leaves off major assets in any on record statements regarding my assets;
- willfully misrepresents his position and inserts himself into matters of person or financial issues I manage independently, in violation of the duties of a lawfully appointed Guardian of Property, which he is not;
- prevents me access to my children, clothing, belongings, and mail.

Despite repeated petitions, I and my supporters are unable to seek relief through the courts, through the Department of Justice, or through law enforcement. How is this any different from Nazi Germany? I beseech this special committee to dispose of Guardianships and enact legislation that employs only least restrictive options.



Dear Senators,

I am a former U.S. Army MP. When my mother, Helen M. Kyle, was about to be placed into an unwarranted guardianship/conservatorship in November 2011 following the death of my father, I soon realized that her civil rights were being violated in this court. I began investigating other probate cases in this county. When I found other cases of financial fraud and violation of civil rights I knocked on the doors of those other family members. Their stories were horrific.

This system has to change.

My research into just one county in a small city in the middle of nowhere highly suggests that there are much larger problems of corruption in major cities all over this nation. It will only worsen as the Baby Boomers age within the next few decades.

I am attaching the case summaries of a few of the cases I have found and other documents that may interest you. In speaking with ethical probate attorneys I have learned that this fraud has been in place for years and involves judges, lawyers, and in my opinion it involves the Douglas County Attorney's Office. In about 2012, my then attorney, Richard Whitworth, received a call from an Assistant Douglas County Attorney. She told him that "If I did not stop reporting the physical abuses of my mother to APS I would be charged with felony false reporting." The abuses I reported, with documentation and photographs, were never investigated.

This scheme begins with private practice attorneys whom Adult Protective Services (APS) utilizes to "protect" these vulnerable adults. When all is said and done these elders' financial estates and property are obliterated. All attorneys I have spoken with concerning the fraud and abuses, after reviewing my cases, said "Is that all you have found? There are a lot more of them out there." The attorneys said this is systemic and will never stop. It is well protected all the way to the top of state governments. It has been ongoing for DECADES."

It seems as if the Bar Associations in every state have their own mafia ring established, suggesting elder fraud should be specifically included and outlined in the RICO Act.

Senator Grassley's bill, SB178 The Elder Abuse Prevention and Prosecution Act, was well intentioned but is not being enforced. I have contacted the DOJ in Nebraska twice with no help either time. I have written multiple letters to the U.S. DOJ with no response. I have been to the FBI. They, too, are worthless. I have learned, after a discussion with a former Omaha Police Captain, that the reason these cases are not investigated and that the attitude of the police departments is that "the elder's are old and going to die anyway. They just don't bother." Without mandated enforcement of any new bills that

you may make will be a waste of your time and a waste of the time our elders have left of their lives.

Thank you for your attention to this matter,

Karen T. Kyle



Gamel-McCormick, Michael (Aging)

From: Irene Guest [redacted]
Sent: Wednesday, March 22, 2023 1:39 PM
To: Guardianships (Aging)
Subject: APS abuse and retaliation

I thank the committee for holding these hearings
My name is April Irene Guest am a 66 year old widow on social security
I live in Mississippi on a fixed income.
My husband was 81.
I lost him.
An APS agent yelled "He's dying " in front of him in the ICU.
The agent who could not obtain gaurdianship of my husband charged me with felonies that held 60 years.
I lost everything to pay an attorney.
Case dismissed.
Subsequently I found the agents name in his medical records.
APS agents ERICA HOPKINS &IZALDA ANDERSON with Mississippi Department of Human Services contacted the hospital he
was in and basically told them to deny him the right to not sign a DNR.
AGENT ANDERSON told me if I didn't sign a DNR she would place my husband "where I would never see him again and he would die alone."

I reported the APS agents to their directors.
Agent had me arrested for harassment and cyberstalking.

Please help us with ADULT PROTECTIVE SERVICES unsupervised and unregulated abuse of clients and family who have been attacked by this federal agency.
Too many people have already been harmed by lack of oversight in gaurdianship.
Gaurdianship is being used to institutionalize ppl who have need of services but can and do live independently.
I am in fear of going for any medical treatment because there is a possibility of being declared by APS unable to care for myself .
Sincerely
April Guest

From: Jorja Armijo-Brasher [redacted]
Date: March 22, 2023
To: "Gamel-McCormick, Michael (Aging)" <Michael.Gamel- [redacted]

Subject: Senate Special Committee on Aging: Guardianships, Conservatorships, and Alternatives

Senate Special Committee on Aging Members

Thank you for the opportunity to provide suggestions for protecting the rights of people being considered for or currently covered by guardianships, conservatorships, or protective arrangements.

The New Mexico Supreme Court issued an order on April 6, 2017 forming a 16-member commission to study the State's guardianship system, hold public hearings and recommend improvements. The commission was charged with recommending any necessary changes in court rules, state statutes, funding, administrative or other proposals to improve the guardianship system. I was appointed to serve on this commission until the completion of the final report. I continue my work on guardianship serving as a member of the New Mexico Family Guardianship and Conservatorship Coalition. The coalition meets weekly to support families and works to help make systemic change in the guardianship system.

I have key concerns about systemic processes for the establishment and administration of guardianships and the critical need to improve these processes. A number of issues must be addressed. These include, among others,

- the process by which a person is determined to be incapacitated and a ward of the state and the public guardianship is established;

- the process for appointment and oversight of guardians ad litem, conservators, court visitors and other service providers, and consideration given to qualification and cost of service;

- arrangements for managing the costs of these services providers and protecting the assets of the incapacitated person over the long term;

- conflicts of interest of service providers arising from compensation arrangements;

- balancing the need to respect the privacy rights of the incapacitated with the need for transparency to ensure the proper administration and oversight of the public

- guardianship and proper respect for the wishes of the incapacitated and wishes of family members;

- ensuring the appointment and administration of the public guardianship serves the best interests of the incapacitated person and is respectful of the wishes of the incapacitated person, considering the short and long term;

- the proper roles and the rights of family members in the processes for the establishment, administration and oversight of the public guardianship;

- the resources of the judiciary to administer and oversee public guardianships, given a heavy caseload

- compulsory waivers of claims against service providers and releases of service providers from liability imposed on family members.

Thank you for the opportunity to present this information. I believe it will help you understand the scope of the problems, needs and interests related to protective arrangements as you study these important issues.

Again, Thank you.

Jorja Armijo-Brasher
Former Director, Department of Senior Affairs
City of Albuquerque, New Mexico

[redacted]

Testimony of Joanne Bougalis

March 25, 2022

My mother Katherine Bougalis was labeled incapacitated and was appointed a guardian in December 2014. During the following year and a half, she suffered abuses that are commonplace for wards in Minnesota and throughout the United States. My mother's diagnosis was mild cognitive impairment. As justification to legally incapacitate her, her diagnosis was abruptly changed to severe dementia. She was then removed from her home and placed into a locked institutional setting, where she was forced to take a combination of medication whose synergistic effect is unconsciousness. She was also forced to wear a body monitor to prevent her escape.

My mother's diagnosis of dementia was made by a family practice physician with a specialty in obstetrics. My own and my mother's efforts for further testing of her cognitive status were denied based on the guardian's claim that such testing would be "burdensome and intrusive for the ward." My mother was desperately unhappy in the facility where she was forced to live, which even her guardian acknowledged was a difficult setting for her because of her high cognitive ability. The family practitioner claimed there was no need for further testing since in her opinion dementia patients only get worse. Incidentally, at this time my mother was a widow with an estate valued at six million dollars.

As I attempted to advocate for my mother, and as she and I tried to get help through the court, we found that the system seemed to be set up in a way to silence us completely. At the hearing for permanent guardianship, the guardian scheduled a medical appointment for my mother that prevented her from attending to defend herself. At subsequent hearings, she was denied the opportunity to testify, as by then, she was already labeled legally incapacitated. When I spoke on her behalf I was accused of being "unwilling to work with the professionals." When I continued advocating for her I was then threatened by the guardian that I would never see my mother again.

After eighteen months with my mother begging for her freedom, having no success being heard or getting justice through the probate court, nor any help from twenty agencies we had reached out to, we finally gave up on utilizing the expected channels.

In May of 2016, my mother managed to physically escape her institutional setting and succeeded in removing her electronic body monitor. Because she is fortunate to have dual citizenship, my mother sought and was able to obtain assistance from the Greek Embassy. She and I were provided with emergency travel documents allowing us to escape to Greece.

Almost two years after her diagnosis of severe dementia by a family practitioner specializing in obstetrics, both a neurologist and psychiatrist diagnosed my mother with mild cognitive impairment, her original diagnosis. Off the heavy medication she had been forced to take in the facility, her cognitive functioning improved. While the guardian had claimed it was not in my mother's best interest to travel or to be with her family, she adjusted well even though she had not lived in Greece for fifty years. She reconnected with extended family and old friends and has lived successfully in her community as a free citizen for the past six years.

My mother's guardianship is still active in Minnesota and her guardian continues to get paid. Despite the fact the court and the guardian have been given legal notice of my mother's presence in Greece, the guardian continues to report her whereabouts as unknown, and the court continues to accept the reports. The guardian continues to collect her teacher's and nursing pensions, while my mother receives no financial support whatsoever. Her estate is now reported by the guardian as being worth $600,000, only ten percent of the value it had when the guardian was appointed.

We were good citizens and contributing members of American society. My father was an immigrant and a successful businessman. I served in the US Marine Corps and in the US Army and am now a disabled veteran. My immigrant mother worked in the helping professions as a teacher and a nurse. She has not been able to find justice in Minnesota or in the US, and instead had to seek help from Greece, her country of origin. My mother cannot return to the US without being forced and isolated into an institution. I cannot return to the country I served to protect because of a warrant for my arrest for accompanying my mother to freedom. The warrant was requested by the guardian, and granted by the judge. My mother's and my experience suggests there's a serious problem with how guardianship and the probate courts operate in Minnesota.

I am aware there is a Bill of Rights in Minnesota for wards. However, in our experience these rights are not enforced, not even by the probate judges, who seem inevitably to defer to the guardian's wishes. Beyond the need to overhaul the entire guardianship system to protect future victims, there is an immediate need for accountability, and for actual penalties when guardians violate ward's rights.

Considering the well-known research of Stanford University psychologists Philip Zimbardo and Stanley Millgram on abuses of authority in settings of extreme disparity of power, it is clear that a setup such as guardianship that permanently strips rights from one person, while giving virtually absolute power to another, is a recipe for exploitation and abuse. From a scientific perspective, the maltreatment of my mother by her guardian is an expected outcome.

Thank you for supporting changes in the law that will address these problems.

Thank you also for considering my testimony.

Sincerely,

Joanne Bougalis



Statement of Joanne Bougalis

I want to thank the U.S. Senate Special Committee on Aging for inquiring about guardianship. Providing testimony from Greece in a position of exile from the country I served both as a U.S. Marine and a U.S. Army soldier, I hope my first-hand experience and knowledge will prompt the Committee to take action. Studying the matter and collecting data is a long-awaited necessity, however, the situation as it stands is an emergency for the wards and their families who are actively being exploited and abused under the Color of State Law. Wards are forced to succumb to identity theft, torture and an early death while family members seek justice in a system that has ample opportunity to silence them. Although changes in several areas are needed, the root of the problem is the freedoms and absolute immunity afforded the judiciary.

Guardianship in America has become a death sentence for the innocent. In March of 2022, I was invited to testify about Minnesota guardianship and the related issues of fraud and abuse at a hearing of the Minnesota State Senate Committee on Judiciary and Public Safety. Attached is a copy of my testimony from the hearing, in which I describe my family's experience when my mother, Katherine Bougalis, was forced into guardianship, and was unable to obtain protection or assistance from any public agency, attorney, or public official in Minnesota or nationally. My mother's situation has not changed since I provided that testimony one year ago.

My mother Katherine is still under guardianship in Minnesota, despite not having lived in the jurisdiction, or the country since 2016. Because the American government failed to protect my mother during the period she was trapped in an abusive guardianship, in May of 2016 she was able to physically escape the locked facility where she had been unjustly held and heavily medicated - against her will and best interests - by both the guardian and the judge who appointed him. After a period in hiding, we sought the assistance of the Greek government where we have dual-citizenship. My mother and I were provided with emergency travel documents by the Greek consulate, enabling her to return to Greece out of harm's way. Katherine now resides in Greece where she continues to live in her own home in the community without the need for a locked institutional setting.

After the Minnesota State Senate hearing, I have no knowledge of the Committee taking action to address abuses by guardians of wards in Minnesota, or to amend the law in Minnesota to protect citizens from future cases of similar abuse. The House of Representatives refused to broach the subject and refused victims the opportunity to testify. This inaction is consistent with the lack of help my mother received when she was in Minnesota.

A private investigative firm has found evidence of potential money laundering in relation to my mother's substantial estate. My personal experience, and experience as an advocate, has made it evident that no professional is willing to put their license, themselves or their families in harm's way to breach the unspoken code of conduct of this highly lucrative crime. Note that professional guardians require no professional licensing.

Guardianship has become an avenue for slavery and human trafficking of both disabled and wealthy abled Americans where fraud and abuse are concealed by white collar criminals under the guise and protections of civil case law. American citizens have no protections from the threat of being targeted for guardianship, and rarely have the opportunity to flea with the help of a foreign government. What is happening in America with these legally legitimized abuses in guardianship should be viewed by all Americans, especially those in government in a position to act, as a guaranteed threat to the security of the freedom afforded all American citizens.

Currently there is no valid avenue for justice for citizens targeted for guardianship or for citizens in guardianship. In my mother's case, her entire estate is being used to pay unexplained fees determined by her guardian while she receives zero financial support from the monies she and my father spent a lifetime working for. The guardian has free reign on her estate and through his refusal to acknowledge that he has officially been made aware of his ward's requests and location, he has succeeded in providing no support whatsoever to his ward. Although no ward is present in the Minnesota jurisdiction, with the judge's approval the guardian refuses to give up his position as guardian over my mother's estate matters.

To protect the rights of citizens being considered for or currently under guardianship, guardianship needs to be completely redefined, the rights of wards and especially of guardians needs to be redefined, and laws put in place that prevent guardianship from being effortless to obtain and wide open to corruption. Enforceable checks and balances need to be put in place to prevent unwarranted guardianships, and a demand for professional licensing of guardians. The problem also needs to be addressed at the level of the family/probate court relative to the freedom and impunity afforded to individual judges.

To get a detailed understanding of the ramifications of the U.S. government taking no action to remedy the vast freedom afforded to white collar criminals under the umbrella of guardianship, I invite you to visit my website by searching 'Bougalis Guardianship.' I also invite Committee members to view the videos on my website for a better understanding of the problem.

Sincerely,

Joanne Bougalis, MSW

[redacted]

Silverman, Jack (Aging)

From: James Romero [redacted]
Sent: Thursday, March 23, 2023 9:59 PM
To: Guardianships (Aging)
Subject: Guardianship-R. Romero, New Mexico

Dear Committee Members:

In 2013 my sibling filed a petition for 3rd party guardianship and conservatorship for my mother.
Thanks to an astute judge, the final ruling granted guardianship to our family and not to a 3rd party institution.
Our family, especially my mother, suffered terrible trauma and division because of these proceedings.

I ask for the following changes:
1. Family disagreements and feuds often lead to a disgruntled family member trying to manipulate the judicial system to resolve the family's disputes.
1. Require family mediation and counseling (at the family members' expense) for a year prior to acceptance of guardianship petitions within the judicial process. Require that counselors and mediators presented written documentation of proceedings and recommendations.
2. In our case, I am positive the case would have
gone nowhere had my sibling had to rely on their own resources to pay.
2. Do not allow the person filing the petition (whether that person is power of attorney or not) to utlize the proposed guarded person's estate to pay for the litigation. Require that filings, fees, home visitor, and attorneys (any costs associated with the proposed guardianship) be paid for by the person pursuing the guardianship case.

Your attention to this statement is greatly appreciated.

Sincerely,

Reina A. Romero
[redacted]

Sent from my iPhone

To the U.S. Senate Special Committee on Aging:

My name is Jennifer Turley. I have witnessed, and my family has experienced directly, terrible consequences of abusive and fraudulent guardianship and conservatorship. As the system operates now, the "business" of guardianship across America seems to have attracted an unfortunate number of predatory attorneys and white-collar criminals, much in the same way abusers of a different kind might formerly have been drawn to roles in the clergy or teaching. While the majority of those involved in guardianship undoubtedly have honest and helpful intentions (like the majority of good priests and teachers), a not insignificant percentage of guardianship/conservatorship professionals appear to be using the terribly lax oversight of guardianship/conservatorship commonplace across America to take advantage of the wards they have been entrusted to protect.

Indeed, wherever professionals are permitted to wield great power over another human being, there will always be people with sadistic or criminal tendencies drawn to those roles, and it becomes the obligation of the government to prevent the abuses. This has been addressed for clergy and teachers: there is awareness of the problem within those arenas, more screening and monitoring has become routine in those settings, and most importantly, victims are heard and believed, and action is taken. The same cannot be said for guardianship or conservatorship in America.

The predicament of abused wards today resembles the position of abused, beaten wives of years past, when authorities would not intervene in what was then viewed as "a family matter." Wards and their advocates today are invariably told (by police, by doctors, by attorneys) that there is nothing they can do about the abuses of a ward – it is "a judicial matter" or "a civil matter."

With guardianship and conservatorship, abundant information about what has gone wrong is available; victims and their advocates are just waiting for the appropriate authorities to take action. My hope is that in addition to "collecting data" and "studying the problem" you will establish something like an 800-number whistleblower hotline for wards and concerned family members and friends to report serious abuses, with an agency where complaints will be properly investigated. This is currently the biggest problem wards and their concerned advocates encounter – the system seems set up in a way that virtually assures there is nowhere to obtain help.

It is on you, our government leaders, to take effective action, and to do so promptly. Do not hide behind claims of "insufficient data" – would it have been acceptable to take data on wife beating in lieu of taking action? The issue then may have been cultural (the acceptance of wife beating), where the problem now seems more likely political. Whatever it is, the time for action is overdue.

For a comprehensive and excellent report on what is happening and what change is absolutely needed, please read the written statement provided to the Senate by the Harvard Law trained, ACLU human rights attorney Zoey Brennan-Krohn, when she addressed the U.S. Senate Judiciary Committee's Subcommittee on the Constitution on September 28, 2021. The PDF of her written statement is online and easy to find.

Below I describe some of my personal experiences with abuses of guardianship and conservatorship in America:

I first learned of the legal tool of guardianship in 2009, when a neighbor and acquaintance who lived on my street, Saint Johns Place in Park Slope, Brooklyn, was legally removed from her home by a

guardian. The guardian appeared to be serving the needs of the woman's landlord, not the woman or her live-in partner. The landlord was in the process of converting the building to condominiums. Frances M and her partner Frank had been living in Frances' rent-stabilized apartment for many years. Due to the mild disability of Frances (in her mid-fifties) and her partner's status as a senior citizen, the couple had some legal protections against eviction from their rent-stabilized home. Frances was the holder of the lease on the apartment. Against Frances' wishes and her best interests, a payment was purportedly made to Frances in compensation for the couple leaving their home; of course, this payment went into the hands of the conservator, not Frances. I know the details because I sought to assist Frances, first by arranging a consultation with an attorney at my own expense, and later when I attended with Frances and Frank (at their request) on the day they were removed from their home and transported to the NYC Department of Homeless Services intake unit in Manhattan. Once there, the guardian's agent attempted to obtain free housing for the couple while making no mention of the settlement that had been arranged on Frances' behalf. I mentioned the settlement payment at that meeting, which might have backfired for the couple as they then received no housing at all. They ended up sleeping on subways for a couple nights until I and other neighbors found them again and funded a hotel stay on their behalf. We also pressed the guardian to provide housing, which the guardian finally did, at least temporarily.

Since witnessing what happened to Frances and Frank, I have unfortunately had a more personal experience with conservatorship/guardianship, this time involving a member of my immediate family. To provide the victim a modicum of privacy, I will write in general terms about what happened, without revealing the name of the victim. The victim is happy to testify to your committee under appropriate conditions of confidentiality.

The victim no longer lives in the United States, and indeed this person fled the USA to escape escalating abuses by the guardian. The guardian seemed to be playing games with the ward's healthcare.

The guardianship had been imposed and made permanent at *ex parte* hearing(s), and the ward was given no notice of any of the hearings, before or even for years after, until the conservatorship had become "long standing" – which the ward was then told meant it could not be reversed. I should mention that during the period of the ward's purported incapacity, the ward's behavior was perfect (there was no actual mental health history). The ward had impeccable references and during this period of legal incapacity that the ward did not know about, she was hired by the NYC Dept of Education and taught public school children for years.

What kind of "protective" legal order allows for a level of secrecy that prevents even other government agencies from knowing the order is on the record? Had there been any kind of accident in the school setting, how would it have appeared that the City of New York had hired a legally incapacitated person to work with children, unsupervised, in the public schools? In fact, the ward was an exemplary employee and nothing bad ever happened, but did not the city, the school principals where she worked, and the ward herself have a right to know her status?

The assigned conservator had a history of abusing this family member and others when the two attended the same university years earlier. This conservator should never have been permitted to become involved in my family member's life. The arrangement was grossly inappropriate on every level.

Before teaching in the NYC public schools, this family member lived in California, returning to NYC in the late 1990's. By 2001, she was living in one of the new rental buildings in Tribeca, near the World Trade Center. After 9/11, she helped organize the residents of her building to get appropriate testing and

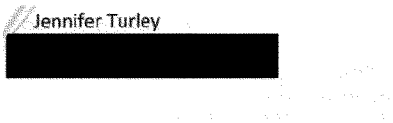
cleanup. She was quite vocal about the situation confronting her neighbors and herself, and in fact had two letters published in the *NY Times* on the challenges lower Manhattan residents faced in cleaning up their homes after 9/11. She was later invited to speak on public radio (I believe it was the *Brian Lehrer Radio Show)*. The radio program aired after it was reported there had been influence by the White House on how 9/11-related air quality information should be presented to the public. Throughout this time she was apparently already "legally incapacitated" but evidently not deemed by the court or the conservator to be deserving of knowing her status.

Some years later, she developed breast cancer, a condition occurring more often than expected in those exposed to 9/11 contaminants. By this time, as she had been repeatedly experiencing her health care inexplicably impeded in the USA, she had resorted to getting some routine and preventive care abroad, most often during the summers while her youngest child was in summer camp. The breast cancer was diagnosed abroad. By chance, shortly before her breast cancer diagnosis abroad, someone in the USA who knew about the conservatorship finally revealed to her that she had been under conservatorship for over two decades, and the conservator had been misrepresenting her to American doctors (which explained why she was having trouble getting health care or her medical records in the USA).

After being diagnosed abroad with breast cancer, since her health insurance was based in the USA, rather than being treated abroad, she returned to America with her pathology report in hand along with a direct referral from the diagnosing doctor in Europe, to a surgeon at Memorial Sloan Kettering. In this instance, the conservator seems finally to have been prevented from obstructing her medical care, for the cancer treatment the ward needed (which was surgery and radiation treatment). However, very soon after her active treatment was completed at MSKCC, the ward was tipped off that the conservator planned to have her sent for a lengthy stay in a mental health facility (perhaps to counteract an increasingly obvious appearance to doctors and others that the conservatorship they had been forbidden to mention to the patient had been fraudulent all along). Fortunately, the ward managed to leave the USA prior to experiencing any further interference from her conservator. She holds citizenship to two countries in Europe in addition to her American citizenship, so can remain there indefinitely.

One important element in fraudulent or abusive conservatorships worth noting is that beyond being harmful to the ward, they are also expensive to the American public at large. When Britney Spears was punished with a mental health lockup for, in her words, "saying no to a dance move", one may surmise there were resulting medical insurance billings associated her conservator-directed multi-week inpatient treatment (in a house that had been converted into some kind of supposed "treatment center"). When elderly wards with mild cognitive impairment are labeled falsely with severe dementia then heavily medicated and institutionalized (apparently a common scenario), excess billings surely accrue to Medicare. When my family member was threatened with an inpatient psychiatric stay that she did not need, probably so the conservator could bolster their own defense against accusations the conservatorship was fraudulent, the harm would have been not only to my family member, but also to medical insurers charged for the stay. Who comes out ahead in these cases is clear enough -- the conservator. Who comes out behind includes not only the ward – but medical insurers and everyone downstream paying higher premiums for medical insurance – also taxpayers. Can the country afford this misdirection of medical resources and inappropriate medical billing, which are additional outcomes ("collateral damage") from fraudulent guardianship?

I urge you to take action to address these problems, and most importantly, to set up a system so that abuses can be meaningfully reported and properly investigated. Thank you.


Jennifer Turley
[redacted]

Submitted Testimony of Jordyn Zimmerman
Hudson, Ohio
for the Senate Special Committee on Aging Hearing
on Alternatives to Guardianship
March 2023



Hello. My name is Jordyn Zimmerman. I am a 28-year-old white female. I grew up in Hudson, Ohio and currently live here with my family.

I am autistic and need support to do many activities throughout my day. I communicate by typing words and sentences on an iPad application, which then speaks aloud.

I did not start typing until I was 18 years old.

By this time, the school had already told my parents I had to be put under guardianship. My parents met with a lawyer and ultimately we were able to extend their divorce decree to create an extended duty of support, which allowed them to help make decisions

regarding my education and medical needs, while also giving me the autonomy to make decisions affecting my own life.

I have my own bank account. I vote. I choose my health providers. I hang out with my friends. And I choose what I want to do each day.

Guardianship would limit any decisions I have the right to make about how I want to live, and is not a solution.

Thank you.

Jordyn Zimmerman can be reached at [redacted]

Dear Senator Bob Casey, Chairman of the Special Senate Committee on Aging and Senator Mike Braun, Ranking Member of the Special Committee on Aging,

Thank you for taking your time to investigate the many facets of guardianship abuse.

The medical neglect, isolation abuse and financial exploitation done to my Mother, Mary Frances McCulloch, and utter failure in my attempts to hold the perpetrators accountable, led me to use public records to find over 40 more victims of the same perpetrators. Advocating for them made it clear Ohio is corrupt all the way up the state flag pole.

The federal level is not fairing much better.

PROBLEMS:

FBI involvement for **public corruption and racketeering** was **recommended by the Hamilton County Sheriff Public Corruption Unit,** in writing by **Special Investigators from the Auditor of the State of Ohio, the Ohio Attorney General Bureau of Criminal Investigation and the United States Postal Service**. Proof of wire fraud involving felonious financial exploitation perpetrated on my Mother and over 40 other victims of the same regime using **EVIDENCE THAT IS SELF-AUTHENTICATING** in the form of probate court rulings paired with case law - **FEDERAL RULES OF EVIDENCE 902** – was delivered to the Cincinnati FBI over a year ago. I have not heard one word from them. It arrived by certified mail which no one signed for but the post office assured me was delivered, on a silver platter with a gavel USB, tied with scales of justice ribbon.

There is no excuse for not prosecuting self-authenticating evidence cases with local, state and federal agency referrals.

Department of Health and Human Services Medicare Fraud is the most inadequate entity I have dealt with. I filed a complaint for fraud regarding my Mother, Mary Frances McCulloch, in December of 2018. I waited the recommended 6 months to follow up with a FOIA request only to be told there was no record of my complaint. At that point my June 2019 FIOA letter was used to refile and I was asked to wait 6 more months. The idea of a year total, did not sit well; I utilized Congressional oversight of Rep. Steve Chabot at this point. January 2020 another FOIA request was sent only to find out THERE WAS NO RECORD OF THE COMPLAINT FOR THE SECOND TIME! I again signed a privacy release for Rep. Chabot to get answers. HHS found no fraud in the following nefarious scheme:

January 2016 Mom was diagnosed by her chosen neurologist to have mild cognitive impairment for over 10 years straight. One month later, her new guardian initiated an involuntary psychiatric hospitalization. The attending psychiatrist planned to release Mom immediately and discontinue medication, stating she didn't need to be there (conversation recorded). Instead, guardian intervention resulted in amplified antipsychotic medications until a zombie Mom was fraudulently diagnosed with severe cognitive impairment (conversation recorded). This was used to move Mom out of her home of 50 years, place her in memory care and sell her house, making her will moot.

The discharge summary instructed a follow up neurologist appointment ASAP; it was remiss by 22 months. Her neurologist record clearly documents the improper continued drugging being directly responsible for her permanent diagnostic decline to moderate dementia.

I was privy to these records because the guardian was not aware I previously had Mom's HIPAA permission. When the guardian was alerted I knew of her fraud, negligence and the resulting detrimental effect on my Mom's health, SHE RESIGNED!

HIPAA established pre guardianship, allowed me to access Mom's medical records and find the above along with the prescribing of a known allergic medication, which I promptly got her PCP to discontinue. My interference infuriated the guardian who promptly changed my Mom's doctor, effectively shutting me out which was not what my Mom wanted. At this time the guardian implemented retaliatory supervised limited visitation so I could not discuss my findings with Mom, hired an attorney to fight my filed complaints and **went through over $700,000 in 18 months**.

HIPAA law needs to be modified to the level of an advanced directive when guardianship is involved. When before conscription, the ward clearly established HIPAA permission; there needs to be mandatory transference of that authorization to all new doctors.

National Adult Maltreatment Reporting System (NAMRS) refused to take a report from me, a taxpaying party to the victim. This failure compromises accurate statistic tracking and defeats the purpose of their existence. Make funding contingent to open reporting as a standard.

Federal Grants to Enhance Adult Protective Services who refuse to take a report from anyone other than the victim needs amending. Incompetent victims are incapable of doing this. Benevolently, APS offered to take a report from the abusive guardian in lei of the ward! There is no help when a guardianship is in place. Mandate funding to the acceptance of outside complaints, a common sense change.

ALTERNATIVES:

Federal backing of advanced directives' needs to be elevated to level of having absolute authority. The ward's ability to direct their life's future is sacrosanct. Probate court has no regard for **advanced directives: POA, wills, trusts** when overriding them is lucrative to their court insider cronies. Existing laws are not upheld.

Expand **collective decision making** when advanced directives do not suffice, to a group consisting of all family members, impartial legal representative, social worker, nurse, church affiliate, etc., giving each an equal vote with the majority prevailing.

Nationally change the legally used definition of a "party to the case" to encompass any concerned citizen. Many of the 40 plus victims I found had no immediate family or even next of kin. Not being a "party" prevented my filings on their behalf to the Ohio Attorney General's Elder Justice Initiative for right to first refusal prosecution, the Supreme Court Disciplinary Committee and probate court intervention attempts from being considered. The "not a party" excuse permitted abuse to go un-reprimanded. Even when the Committee validated my findings in writing, forwarded a copy to the offender, the arrogant perpetrators did not construe it as a cease and desist, but blatantly continues doing the same thing to this day.

PROTECTION:

Probate jury trial decision making, using peers not enmeshed in the system, removes color of law.

Open the grand jury to the people, enabling concerned citizens' easy, private access to a grand jury in order to present evidence. The incestuous relationships between probate, the prosecutor, the sheriff, the self-regulating bar, etc. do not protect the ward. It would have to be unregulated by the previously mentioned stake holders. Remove the prosecutor's right to refuse if the grand jury deems the case worthy.

Any involved agency receiving Federal funding needs the allocation of funding to be contingent or proportionate on ZERO COMPLAINTS.

Remove judicial immunity which is unconstitutional and bar self-regulation nationwide.

I pray God grants you and your Committee wisdom dealing with this multifaceted prolific abomination.

Sincerely,

Kathy Bosse



March 22, 2023

To: Senate Special Committee On Aging

Via Email [redacted]

Dear Senator Casey:

My name is Kerri Jill Perryman. I write you today to share with you my experiences and the issues that I have faced in attempting to visit and care for my mother at the end of her life. My mother, Wanda Dutschamann, resides in an assisted living facility and has been declared incompetent by her doctor. Prior to being declared incompetent my mother executed a Medical Power of Attorney ("MPOA") naming my brother as the individual who has the power to make medical decisions for her in the event that she becomes incapacitated. My brother and I do not get along with one another and have a strained relationship. I have always maintained a very close and loving relationship with my mother; I visited or called her on a regular basis prior to her being declared incapacitated. Since my mother's incapacitation my brother has used her MPOA to prevent me, and other members of my family, from visiting or communicating with my mother. My brother rarely if ever visits which has resulted in her being left in near total isolation. The assisted living facility, at the direction of my brother, does not provide updates on the status of my mother's health and we are not permitted to inquire.

I have retained legal counsel to assist me in applying for guardianship for my mother, but the process is long and expensive. To date I have spent thousands of dollars in legal expenses with little to no change in the circumstances. My brother has had the phone removed from her room so that she cannot make or receive phone calls; for the last 15 months I have had little to no contact with my mother. My mother has always been a social person who loved being surrounded by her family and friends. I know that my mother desires to have contact with her family and friends and it is cruel for him to isolate my mother in the twilight of her life. My brother's actions are not only abusive to my mother's physical health and mental well being they are abusive to my family as well. His actions are not only abusive they are beyond the scope of the MPOA that my mother signed. I know that it was not her intentions that the MPOA be used to isolate her from her family. The assisted living facility has aided in my brother's abuse by acquiescing to his unreasonable demands and denying me and my family access to my mother or information about her well being.

As your committee considers changes or additions to the law please be mindful of the abuse that the incapacitated may be forced to endure without safeguards in place to protect their rights from those that would seek to abuse the power granted them under a MPOA or guardianship. I would also ask that you are mindful of the rights of the children of incapacitated parent(s) to have access to their parent(s). What my brother, and the assisted living facility, are doing to my mother is unconscionable. While there are currently legal remedies for me to pursue they are both costly and time consuming; and given my mother's declining health it is likely that she will pass before I get

my day in court.

Respectfully submitted,

Kerri Jill Perryman

[redacted]

By: Kerri Jill Perryman
Kerri Jill Perryman

able
SOUTH CAROLINA

March 23, 2023

Michael Gamel-McCormick
Disability Policy Director; Senate Special Committee on Aging
Room G-16 Dirksen Senate Office Building

Dear Michael Gamel-McCormick:

Able South Carolina strongly opposes the process of guardianship due to the concerning impact such an arrangement has on the ability of an individual with a disability to make decisions and self-determine the direction of their own life. The terms of such an agreement directly contradict the philosophy that guides our organization, the Independent Living Movement, which recognizes that individuals with disabilities should be granted the same civil rights and control of choice as individuals without disabilities.

Able South Carolina is a disability-led Center for Independent Living in South Carolina seeking transformational changes in systems, communities, and individuals. We practice equity, disability justice and representation, and true inclusion through consumer-driven independence and disability pride. Our mission is three-fold; equip people with disabilities with tools to foster pride and direct their own lives; educate the community to challenge stereotypes and eliminate barriers; and advocate for access, equity, and inclusion at the individual, local, state, and national levels.

Through our work with consumers, and our own experiences as individuals with disabilities, we recognize daily the negative impact such agreements can have on the independence and aspirations of an individual. Much of our work focuses on education for individuals, families, and professionals regarding less restrictive yet effective alternatives. As a result of this work, we have grown concerned with the evident pipeline to guardianship within institutions otherwise intended to protect and support individuals with disabilities. This pipeline appears most prevalent in our school systems and within services for the aging population.

Under the Individuals with Disabilities Education Act (IDEA), educational rights pass from the parent to the student when the student reaches the age of majority. This transfer of rights can be alarming for parents, who often turn to school personnel and other relevant professionals for guidance. Studies conducted in 2007 and 2015 (Further & Miller, TASH) found that a majority of guardianship recommendations come from school personnel. Through our interactions as an organization, school personnel often report recommending guardianship because it is the "most well-known option" and have little understanding or information on less restrictive alternatives.

As an organization intrinsically linked to the disability community, the personal stories we encounter from the individuals and family members directly involved lays bare the true reality of life under a guardianship agreement. Recently, a young adult consumer applied for a place at a leadership conference hosted by our organization. The young adult was interested in building his confidence and learning about employment skills to supplement his career aspirations. The young adult informed us that his communication with our organization was secret, as his guardian prohibited him from using a cell phone. When the young adult eventually told his guardian to request transport to the event, his guardian refused to allow him to attend.

In another instance, a father that had not only assumed guardianship over his son but had counseled many other families on the importance of seeking guardianship in his role as a professional service

provider, realized his error in judgment after learning more about guardianship and alternatives. After undertaking the arduous and costly process of dismantling the guardianship agreement, he said, "For so many years, all I've promoted is guardianship. I did it because I wanted to protect our kids ... I really did act out of fear." As a professional and a parent, the father acknowledged that his inclination to promote guardianship resulted solely from his ignorance of other available options that would assuage these fears while protecting the rights of the individuals subject to the agreements.

Our direct experiences with consumers also reveal the threat of regression and exploitation that a guardianship agreement can pose. One such example concerns a consumer known as "Mr. Justice." Mr. Justice became disabled at birth following an anoxic injury. The cause of injury was ruled as physician malpractice, and the awarded settlement was placed in a trust in his name. Then, at the age of six, Mr. Justice was struck by a public bus when crossing the street; following this, a settlement totaling $6 million was placed in an additional trust in his name. Under the care of his parents, Mr. Justice learned many skills, had many hobbies, and helped to care for his family members. After the passing of his parents, Mr. Justice was placed under guardianship. In the beginning, Mr. Justice was able to utilize support to live in his own apartment, become a certified forklift operator, and pursue his hobby of powerlifting. However, in time, the actions of his appointed guardians have severely restricted Mr. Justice's independence and decision-making abilities. Examples of this restrictive behavior include:

1) Preventing Mr. Justice from continuing welding classes, despite assurance from the instructor that Mr. Justice had the necessary skills to succeed as a welder. Becoming a welder would have potentially helped him be less reliant on Medicaid benefits.
2) Refusing to allow Mr. Justice to take the South Carolina State driving test. Due to his disability, Mr. Justice was eligible under South Carolina law to take a verbal test in lieu of a written test. Still, this opportunity was denied at the request of his guardian. Access to personal transportation would have allowed Mr. Justice to pursue job opportunities and social activities.
3) Refusing to arrange or maintain in-home and community supports that Mr. Justice previously successfully utilized to live independently for over fourteen years and maintain full-time employment for over nine years. After removing these supports, Mr. Justice was moved to a group home setting over three hours away from his previous residence at the direction of his guardian.

Since being placed under this agreement, Mr. Justice has been at the whim of the decisions of three different appointed guardians, two of which were attorneys that took payment from the established trusts set up in Mr. Justice's name. In all cases, none of his appointed guardians had any formal experience working with an individual with a disability nor any prior knowledge or understanding of disability rights.

Alternatives to Guardianship

Reasons often cited by family members or caregivers for pursuing guardianship or conservatorship agreements are fears about the potential exploitation of a loved one, or concerns about an individual's decision-making ability related to specific areas such as healthcare, managing finances, living arrangements, and personal care. Guardianship agreements are typically presented as the solution, even without considering the individual or unique situation. Offered below are several recognized alternatives that can address specific concerns without completely stripping individuals of all decision-making abilities in their life.

It should be noted that any agreement regarding an individual's right and ability to make decisions increases the chances of abuse and/or neglect. This increased likelihood should be mitigated by establishing oversight mechanisms, such as regular audits of agreements and affected parties, and enforcing penalties for violating an individual's rights.

able
SOUTH CAROLINA

Power of Attorney, Advanced Directives, Special Needs Trusts, Representative Payees

These are existing alternatives, some of which are regularly utilized by individuals without disabilities, that can provide the comfort of a legal structure that recognizes an agent with the power to make decisions on behalf of an individual without completely stripping the ability of the individual to make independent decisions in their own life. These alternatives vary from the restrictions put in place by a guardianship *agreement in that they:*

- *Only give decision-making authority in the activities outlined in the specific agreements, thus,* giving the individual the freedom and legal right to make their own decisions in other areas of their life.
- Allow for flexibility in ways that guardianship does not. These options can be permanent or temporary, take immediate effect, or happen in a predetermined event when a professional adjudges an individual to be incapable of making an independent decision.

Supported Decision Making

Supported Decision Making (SDM) is a framework that emphasizes an individual's right to make their own decisions with support and assistance rather than having others make decisions on their behalf. SDM is grounded in the belief that all adults with disabilities should be presumed to have the capacity to live as they desire and provided with the opportunity to refuse support, assistance, or protection if preferred.

An SDM agreement establishes a network of support that utilizes trusted advisors to help the individual decision-maker make decisions related to their life. At the core of SDM is a person in control of their own life, surrounded by a support network. SDM allows individuals requiring decision-making assistance to choose trusted friends, family members, and/or professionals to help them thoroughly understand situations they face and the choices associated with those situations to make an informed decision. Through SDM and, when needed, additional support, the person can actively self-direct their own life without sacrificing their rights or dignity.

The individual and included parties decide the complexity, formality, and focus of an SDM agreement. Support can be accessed and utilized when necessary, and identified supporters can be changed. If one *support strand breaks, other strands can serve as a safety net to ensure the individual has continued* access to appropriate advice.

A successfully established supported decision-making framework can allay fears and provide the peace of mind often craved by caregivers while protecting the human dignity and rights of individuals with disabilities to make their own decisions regarding the trajectory of their lives. As of 2021, 11 states have enacted legislation recognizing Supported Decision Making, with varying degrees of formality and requirements.

Able South Carolina has spearheaded efforts to promote Supported Decision Making as a recognized alternative to guardianship on a state and national level. Our staff collates stories, tools, and resources for the SC Supported Decision Making Project, which we founded in 2016. Able SC was a key organization in the drafting and passing the Adult Students with Disabilities Educational Rights Consent Act in 2016 in South Carolina to guide navigating options for the transfer of rights in an age of majority scenario. Additionally, we have youth ambassadors representing South Carolina as part of the 'Center for Youth Voice, Youth Choice' project, a national youth resource center on alternatives to guardianship. Leading the South Carolina State Coalition for Supported Decision Making, we are drafting legislation that legally recognizes SDM as an alternative to guardianship in South Carolina.

able
SOUTH CAROLINA

For more information on Supported Decision Making and the positive impact it can have on the lives of individuals with disabilities, please explore the following resources:
SC Supported Decision Making Project
National Resource Center for Supported Decision Making
Center for Youth Voice, Youth Choice

These alternatives, whether used alone or in combination with one another, can allay certain specific fears or worries while preserving a person's right to be involved to the fullest extent possible in all conversations and general management relating to their personal affairs. In all instances, these alternatives are less expensive and less burdensome to pursue than guardianship/conservatorship agreements and pose lesser restrictions to individual decision-making abilities.

Using a combination of research-driven data, best practices, and the vast anecdotal evidence collected through our close interactions with the disability community and relevant professionals, Able South Carolina makes the following recommendations to combat the gross overuse of guardianship agreements:

1) Training requirements for professionals that work closely with the disability community, including, but not limited to, school personnel, medical professionals, protective services staff, and any other relevant staff members connected to services intended for the disability community that recognizes;
    a) the full scope of guardianship,
    b) the implications of such an agreement on an individual and,
    c) the plethora of alternative and less restrictive options available.
2) Educational requirements to ensure students with disabilities have full access to information and resources regarding their rights and options before, during, and after they reach the age of majority.
3) Creating a robust library of resources and a referral system for caregivers ensures they have full access to community-based organizations, such as Centers for Independent Living, that can provide guidance and support.
4) Legislation that acknowledges and protects less restrictive alternatives to guardianship, such as Supported Decision Making.

To conclude, Able South Carolina vehemently urges the United States government to take action and lead reform regarding guardianship agreements. We compel you to recognize the expertise of community-based organizations and the voices of the disability community at large when they say that guardianship should only ever be used as a last resort and never as a first option. Sweeping change would create a pathway prioritizing the least restrictive measures suited to an individual's needs, replacing a "one-size-fits-all" system that effectively stamps out the decision-making power and human dignity of individuals with disabilities nationwide.

Thank you for extending the opportunity to provide input.

Sincerely,

Kimberly Tissot
President & CEO

able
SOUTH CAROLINA

References

Jameson, J. M., Riesen, T., Polychronis, S., Trader, B., Mizner, S., Martinis, J., & Hoyle, D. (2015). Guardianship and the Potential of Supported Decision Making With Individuals With Disabilities. Research and Practice for Persons with Severe Disabilities, 40(1), 36–51.

Martinis, J., Harris, J., Fox, D., & Blanck, P. (2021). State guardianship laws and supported decision-making in the United States after ross and ross v. hatch: Analysis and implications for research policy, education, and advocacy. Journal of Disability Policy Studies. https://doi.org/10.1177/10442073211028586

Millar, D. S. (2007). "I never put it together": The disconnect between self-determination and guardianship—Implications for practice. Education and Training in Developmental Disabilities, 42(2), 119–129.

National Resource Center for Supported Decision Making: https://supporteddecisionmaking.org/

Walters, C., Plotner, A., Mojica, A., & Allison, M. (2022). An Exploratory Study of Special Education Director Experiences With Issues Related to Age of Majority, Guardianship, and Alternative Options for Adult Decision-Making Support. Journal of Special Education Leadership, 35(1), 18-32.

To: The Honorable Paul Casey, Chair and The Honorable Mike Braun
Senate Special Committee on Aging
United States Senate
Washington, D.C.

Dear Sens. Casey and Braun, and members of the Committee:

Imagine that the government took your mother away, then said you could not see her or speak about the problem. Crazy law? It happens every day in America. What could the motive be? Perhaps it's the $60 billion available to predators annually, from people with assets. Or maybe the over $3,187 billion in federal entitlement money paid out for "pensions" and health care in 2022 alone. Now, I'll tell you about the experiences of my family and others I know.

During the 1970s, a New York judge appointed my father as guardian and conservator for an elderly, incapacitated great cousin. Dad had a certificate in investments from the American Institute of Banking. A botched operation had left our relative a quadriplegic, and unable to speak. I heard Dad's attorney tell him, "If you want the guardianship, you'll have to pay extra. Otherwise, the judge will appoint the same friend he always appoints."

My father did not want payment for managing his relative's affairs, but the judge insisted he accept the then-going rate in New York—a percentage of income and expenses annually.

The judge threatened Dad with a contempt citation if he did not accept the small settlement the hospital offered. My great grandaunt had followed Dad's investment advice and prospered. She had bequeathed $500,000 to a charity. After seven years in a nursing home, she had no money left. "That was our money," the charity's representative complained to the Attorney General. To Dad, he said, "You should have stopped feeding her." "It was her money," my father answered. He had spent it on her care, as his records proved.

Dad taught me about finance. In 1994, he died. Mama, a retired anthropologist with little interest in finance, was eighty-two. I started managing her financial and health matters, using the powers of attorney that I had held for years, for both parents, but had never before needed to use. Mama wanted me to handle them. I more than doubled her net worth.

In 1997, my husband, my mother and I moved to Albuquerque, New Mexico; Mama had her own home. By 2003, Mama had nearly sliced off part of her thumb (requiring 17 stitches). I found her staring at the wall, bleeding, but making no attempt to summon help. Another time, she asked "What's this?" when I handed her the checkbook. At that point, she needed me to protect her more than I could with a power of attorney.

An attorney said she needed a guardian. For the next fourteen years, attorneys (except for my last one), social workers, judges, medical and home care personnel, and financial functionaries ruthlessly manipulated both of us. For almost three years, the "legal guardian" kept me from seeing my mother, while deliberately bleeding her estate. They forbade me to call her. If she called me, whoever was with Mama took the phone from her hands. After my husband died of Parkinson's Disease in 2007, I had to beg for visitation "privileges." It took even more legal wrangling before they allowed me to have a private conversation with Mama.

Most family members of wards are forever silenced by gag orders or NDAs, so I'll try to speak for them. After Mama died, I endured over five years of court-induced pain. The judge had imposed a gag order that forbade me (forever) to speak to my elected officials, to speak in public, to publish written materials, and to produce videos, all under threat of fines and jail time for contempt of court. I had to spend more than $1.5 million in legal and expert fees, on top of what I had shelled out during Mama lifetime's, to get the gag order lifted, and to have my mother's almost nine years of guardianship records released. Those 40,000 pages attested to endless featherbedding and make-work projects, some of them fictional, and to gross overcharges.

I used the released material to write the book I promised Mama I would, to warn others (*Protecting Mama* https://www.amazon.com/dp/1959770292). It ***documents*** how those who act

as paid guardians, aided by court personnel, attorneys and caregiving agencies, strip estates of their assets while attempting to alienate and isolate family members from each other.

What good is the Bill of Rights if the courts routinely strip both family members and the wards of these supposedly guaranteed freedoms?

Protecting Mama, the book the judge waned to stop me from writing, has won multiple awards—First Place in the New Mexico and Arizona Book Awards, Second Place in the Global Book Awards, and Third Place in the New Mexico Press Women Communications Contest.

Neither awards nor money can compensate me for the abuse I suffered or my late mother for the anguish she experienced, after she realized how she had been used.

Any legislator registering on my site (https://DayspringResources.com) may have a 2-week pass to my summit, online course, and knowledgebase on guardianship. They offer a hands-on feel for what it is like to be a very much endangered senior citizen or family member these days. Rich or poor, we are all in the line of fire. As *Protecting Mama* documents, the so-called "experts" tell the court what they think will enrich them. The court does not make them prove what they say. They are not cross-examined. Loved ones, on the other hand, are often not allowed to speak, and even vilified.

Mama lost over $10 million, not including what financial experts call "opportunity costs," meaning that, because of the lost money, she also could not make money from investing those lost as. The guardianship firm did this, as one document explains, because they wanted to make sure I did not inherit "too much money."

Two of the largest recent (2017) cases of New Mexico guardianship, conservatorship, and trustee fraud involved over 400 indigent people. The Medicaid-eligible bring federal and state subsidies, sometimes as high as $10,000 per month, to appointed commercial entities for

administering their pensions and small trusts. Ayudando Guardians and Desert State Life Management, both non-profits, are now closed, their principals in prison.

The first stole over $6 million from the indigent, the second over $6.8 million. (I have seen no evidence that any money has been returned.) In both instances, *insiders* reported the wrongdoing. State courts "overseeing" both entities ignored all the wrongdoing for years. Federal court act acted. State courts still refused to consider relatives as replacement guardians and conservators/trustees, just as they had refused them that role in the first place; quite a few of these "wards" have now been reassigned to my mother's former guardian. These were all people who needed guardians.

However, some people are railroaded. One was not allowed to use his hearing aids while being asked questions to determine his mental capacity. He could not hear the questions and ended his life "guardianized" and isolated. The guardian prevented his wife from visiting him.

What can we do about these abominations?

1) There must be a better, more scientific, way to determine incapacity. I don't care what you call guardianship; some people need another person to make moderate and major decisions for them. However, sending strangers to invade people's homes and grill them fosters hostility and mistrust, often with good cause.
2) Cases/hearings must be public. All records should be open, at the latest after a ward dies. "The light of day is the best disinfectant," just as Judge Brandeis said.
3) Large corporations track expenditures in real time. A federal program helps law enforcement identify financial fraud against the elderly. The states should use what's available. State judges say they need more millions to "study" the matter. Meanwhile, the bleeding of estates and the destruction of families continues.

4) We need to re-examine all wards periodically, so both improvement and worsened conditions can be detected.

5) Other than choosing clothing or dinner, assisted decision making is "the will of the person offering the choices," and not a reflection of anyone's capacity. I have also interviewed social workers who participated in this process. They tell me that the representative of the person/ward is always in the minority, advocating for their interests, against three or four other people with more power.

6) We need to reeducate social workers, caregivers, lawyers, and the courts that family members ought not be treated as automatically evil.

7) Family members should be in the majority on reform committees and commissions. New Mexico, one with 17 members, only one of whom was a family member. Only one family member served on the Florida Guardianship Reform Commission also. Unconscionable! Family members are voters. There are more of us than of all the other groups combined. We are the majority.

8) What can the federal government do? Withhold funds relating to guardianship from states that refuse to hold open, evidentiary hearings within the guardianship system and notify families of hearings. Monitor compliance. Penalize non-compliance.

9) Enforce existing federal laws against fraud and racketeering. Withhold Federal funds from courts in states that refuse to divulge the number and types of protective arrangements they monitor, and that cannot prove that guardians ad litem and other court-appointed experts are assigned by lot. Monitor compliance. Penalize non-compliance.

Respectfully,
Léonie Rosenstiel, Ph.D., M.P.H., Family guardianship survivor, elder activist
PO Bo 94057, Albuquerque, NM 87199

STATEMENT FOR THE RECORD
SENATE SPECIAL COMMITTEE ON AGING

MILA L. KAPUSTA, ATTORNEY

MARCH 23, 2023

Chairman Casey, Ranking Member Braun, Members of the Committee, Thank you for extending invitations to professionals, law enforcement, caregivers, families and most important, those persons who have been the subject of guardianship and conservatorship petitions in the courts of these United States. I thank you for giving a voice to those who cannot speak for themselves.

INTRODUCTION

My name is Mila Kapusta and I reside in Oakland County, Michigan. I have been an attorney at law for over thirty years with probate law experience. I have also held state licenses for over 30 years as a Residential Builder, Real Estate Broker and Real Estate Appraiser. I petitioned for guardianship and conservatorship of my parents and was denied by Oakland County Probate Judge Daniel A O'Brien. The Veterans Administration performed a field review, interviewed both parents, obtained two professional references and ran a credit report on me and afterwards federal government appointed me VA Fiduciary for my father which I remain today because the probate court will not close the estates.

MILAN KAPP AND JANET KAPP

I would like to make a few statements about my parents. My father, Milan John Kapp, served as a Navy Lieutenant in WWII. He was an Aviator and flew the TBF/TBM Avengers, he was a Triple A Baseball Player, a Mechanical Engineer, and an Educator having received a Masters Degree in Education. My father died November 6, 2018, two years after lawyers were appointed as his guardians.

My mother, Janet Kapp, in addition to being a homemaker, was an entrepreneur who owned and operated hair salons. My mother died November 27, 2017, one year after lawyers were appointed as her guardians.

To this day the court will not release the conservator in my parents estates in spite of my attempts under Michigan court rules and statutes to terminate the conservator (MCR 5.202; MCL 700.5431). The conservator continues to bill the estates and has siphoned both estates of all assets.

MY TESTIMONY

My testimony begins with the all too familiar story of the homeless, jobless and nefarious sibling who secretes the elderly parents to an estate attorney under pretense. The objective of the

nefarious sibling is to alter the existing estate plan and "take it all" which is exactly what happened.

In my situation, the sibling was to assist my folks with VA benefits. However, through undue influence and the administration of prescription medications which included a count of 199 refills of generic "seroquel" to subdue and control my parents, the sibling isolated my folks from their children and from other relatives. The homeless sibling exercised total physical and mental control over my parents who were confined to wheelchairs.

One day I found my mother left alone in a wheelchair at a hair salon crying. My mother stated the homeless sibling hit my father. I also witnessed that sibling abuse my father. My parents were forced to live in fear. They were hit, screamed at in anger, threatened and given orders. Elderly folks confined to wheelchairs engage in survival mode to avoid punishment from their taskmasters. In this case, the sibling, conducted her business, met with her attorneys, and made my parents sign papers under duress, without any understanding to avoid punishment.

The homeless sibling also financially abused my parents by stealing a receipt to a baby grand piano which she later stole, committed identity theft and stole $38,000 from a joint account I had with my parents, without consent took a $10,000 cash advance on my parents American Express, and fraudulently used a financial transaction device by placing $8,000 of debt on my parents US Bank card after adjudication of incapacitation (which includes over $500 charged after death). Finally, the sibling hid Janet Kapp's entire personalty, jewelry, and commingled VA funds with the sibling's joint checking account.

I requested assistance from local law enforcement, administrative agencies, county law enforcement and federal law enforcement. I also reached out to special interest groups. I found a large number of people were having the same problem as me but there was no help.

THE COURT PROCESS

Once an abuser gains control over person and property of the elderly, or, isolates those individuals, the only legal alternative available to third parties is guardianship and conservatorship. A different alternative is needed. Current issues with judicial discretion and law enforcement are feeding the frenzy as the foxes are guarding the hen house..

Guardianship and Conservatorship

PROBLEMS IDENTIFIED

1. Judicial Discretion

A. Suitability - Prior to appointment of either a guardian or a conservator, a judge must conduct a hearing and consider the petitioners by order of priority as set forth in the Estates and

Protected Individuals Code (EPIC). MCL 700.5313;MCL 700.5409. The term "suitability" is a frequently used term throughout the Michigan courts which excludes family members from appointment as guardian and also as conservator. In my case, all four siblings were found "unsuitable" to serve as guardian and conservator "based on the conflicts..including visitation problems". [Tr 11-23-16, p .11] No specific instances were set forth which were adverse to Petitioners. If family cant get along, they are exluded. However, if family can't get along with the apointed guardian, too bad.

Families are not perfect. Rather than look and what is best for the ward and work through the problems, the courts pass off the problems to attorneys who charge legal rates and do nothing to resolve the issues. These lawyers siphon the wealth from the estates while the wards sit in isolation and receive nominal care and attention. If "suitability" is the standard, a firm formula for "suitability" must be developed so a discretionary application is transparent and not arbitrary.

B. Duty to Account -700.5418. The conservator must annually account for expenditures. If the account is not filed, a letter of deficiency will issue. If the account remains unfiled, the Judge will decide whether to act as a matter of discretion. Once the account is filed, the Judge has a great amount of discretion and may issue orders which appear highly questionable, even actionable in a criminal proceeding.

Irregularities which occurred in my proceeding are too numerous to list. A few examples are set forth below to illustrate the deranged accounting principles permitted by court appointee Fraser which would be found unacceptable by a typical family member. Accounting principles should be the same for all conservators, but they are not.

Example: Thomas Brennan Fraser - Conservator/Guardian of Milan Kapp and Janet Kapp; made entries of the following in the above matters:

1. Purchase briefs (underpants) for Milan at an adjusted rate - $235/hour.

2. Second and Final Account - Fraser attested $99,459.49 was spent for "Patient Pay". The actual receipts only totaled $83,637.12. It was discovered $15,822.37 was moved from the conservator bank account to Fraser's IOLTA account after Milan's death and after appointment of the Personal Representative. Demand was made by the Personal Representative to surrender the funds, surrender was not made.

3. August 15. 2018 Order - the Conservator was to surrender all property of Janet Kapp to the Personal Representative. Demand was made and surrender was not made.

4. November 14, 2018 Order - Fraser was ordered not to sell any personal property of Milan Kapp or Janet Kapp. Fraser sold approximately $30,000 of Janet Kapp's

fine jewelry for $4,000 to an out-county jeweler.

5. $144,000 was paid to attorneys while the estate value is shown to be approximately $280,000, plus additional attorney fees pending.

6. Fraser filed two petitions attesting VA payments being received were $4,490/mo which was false and the VA money being received was turned over to Fraser for attorney fees.

7. Fraser stated that when he sold the family vehicle he would use a "car dealer" to "normally get more than the blue book" value. The car sold below market value to Fraser's employee's sister. The Certificate of Title was also false and filed with an understated sale price of $9,000. All sale proceeds of $12,500 were placed in the wrong bank account. [TR 10-30-2017]

8. Homeless sibling was given approximately $30,000 from Milan Kapp's conservator bank account under the guise of "caregiving" when in fact, she was terminated by the VA and in breach of contract for isolating the parents from visits with family. That money was used to pay Prince Law Firm. It is unknown if homeless sibling paid taxes on this money.

9. Mila Kapusta offered to mortgage Milan Kapp's home so he could continue to reside in the family home. However, Fraser and homeless sibling petitioned the court to move Milan Kapp to a facility so the home could be sold and they could pocket money. Milan Kapp developed multiple decubiti at the facility.

10. Mila Kapusta was not permitted to call witnesses on her witness list at trial and discovery subpoenae quashed in three proceedings.

C. Termination of Conservator - 700.5431 "Upon determining, after notice and hearing, that the minority or disability of the protected individual has ceased, the court shall terminate the conservatorship." Death ends the disability and hence the conservatorship ceases.

I petitioned the court to terminate the conservatorship of Milan Kapp. The Court denied my petition and also sanctioned me. This degree of discretion is extreme and should not be permitted.

D. Both Court Appointed Attorneys were agents of the Department of Attorney General. The Department of Attorney General terminated both attorneys (Thomas Brennan Fraser and Barbara Andruciolli). After termintion by the Attorney General, the Oakland County Probate Court hired Ms. Andruciolli as Probate Register. The Oakland County Probate Court placed Thomas Fraser on the list of Professional Guardians.

2. Lack of Law Enforcement

A. FBI/DOJ - interviews were had and/or requested with the departments. The concern was that insufficient money exists to yield sufficient interest that would require allocation of resources to investigate. Half of America's wealth is funneling through America's probate courts. I cannot disagree strenously enough with the current tact. I urge the Committee Members to impress upon these Departments more money lies in inheritance than in the California University investigations.

B. DHHS/Adult Protective Service - Complaint were filed with this agency to report vtiolations of MDHHS policy. The response received stated: "..your email has been forwarded to the guardian regarding your concerns with your parents." Additionally, any information the agency uncovered indicated they were unable to forward as the files are confidential. Copies of all reports must be obtained by filing a FOIA. This process is completely useless.

C. Department of Attorney General - Multiple complaints were filed with the Attorney General through various divisions with copies of documents and exhibits. Additional offerings were made and rejected of information not contained in the court file. The Chief Law Enforcer in the State will not prosecute court appointees in Oakland County.

D. Local Police - Numerous reports were filed as incidents occurred due to abrasions, contusions, bed sores, reports of the parents stating Lorrie was yelling, etc. Each time the investigation came back with "the house was clean", the matter is civil.

In closing, Janet Kapp waited patiently for the court to protect her, to buffer her suffering and to act. The Court never did a damn thing for her. The last five months of Janet Kapp's life, she suffered three hematomas above the eye expanding to the brow and forehead. July, August and November, 2017. All three incidents were reported by the homeless sibling as "falls" and required hospital attention. Janet Kapp told different stories. I reported the incidents to police and APS with photo documentation.

Janet Kapp died 17 days after the November 10, 2017 incident. I requested an autopsy and was court ordered to have absolutely no contact with the medical examiner.

The Judge would not release Janet's body for interment until January, 2018. He said her burial was not a emergency. [TR 12-19-2017]

My mother Janet was buried naked in a body bag.

Each committee member should find the Judge's conduct outrageous and crazed.

DETAILS OF NICHELLE NICHOLS CASE – From Her Own Words, To Her Abusive Conservatorship to her Death

Location of Judicial Abuse: Stanley Mosk Courthouse, Dept. 11

Judges: Barbara Johnson (retired), Ana Maria Luna (denied physical abuse, verbal and psychological abuse and financial abuse)

Ex-Conservator Fiduciary Who Whistleblew on Nichelle's Son: Dr. BJ Hawkins PHd

LA County Deputy DA Who Knows Nichelle Was Not Treated Fairly in Court & Who Knows I speak the Truth, yet she still remains anonymous

Case Number: 18STPB04265

Day of Death: Saturday, July 30, 2022

I met dear friend and second mother Nichelle Nichols in 2012, while casting a film that I was producing with my husband. Nichelle was introduced to us by another Star Trek actress. Nichelle and I spent a lot of time together, she was a kind and wonderful support to us, our work and to our film. We became friends which is oftentimes unexpected in the Film Industry, so much that when my now husband proposed to me Nichelle insisted on giving me away in marriage to my husband, and actually did so. Nichelle also became an honorary Co-Producer and Executive Producer on our film, she was always there for us. Then in 2013, she needed us, as she went to the hospital with a bout of Pancreatitis, at this time her son, Kyle Johnson, and Nichelle's sister, Marian Michaels Nichols-Smothers, came and placed Nichelle in a rest home after she left the hospital and began to make plans for Nichelle's rest home stay to be absolutely permanent, even though there was no cause or "true" reason to place her there. Nichelle cried daily and often while in the rest home begging to be released from the facility. Nichelle subsequently made the decision to escape the rest home with the help of her then talent manager, Gilbert Bell. That same day Nichelle requested a Power of Attorney to prevent her son or anyone else from bringing harm to her again. Her then talent manager was her POA and Nichelle asked me to be her second. I agreed as I saw how deeply distraught she was and I knew she needed help. Nichelle then came to our house that night as she was afraid of her son, angry, but also afraid that he would come and force her back into the mentioned rest home. She spent the night at our house where she asked me to make a video of her stating what she wants in life, I did so. I then asked her what she wanted me to do with the video she said keep it and if anyone specifically her son came and tried to challenge her rights then to share the video with the Press. Nichelle Nichols is a world renowned actress and previous Recruiter for NASA and believed and felt that if her fans heard of her strife through the Press that her beloved fans would have her back, not her sons' or sisters' back who just tried to place her in a rest home, or anyone who had just brought harm to her in 2013 or would possibly bring harm to her in the future. I kept the video for 6 years hoping I would never have to share it, not ever. But that wasn't to be. The video is called "Nichelle Nichols' Own Words on YouTube".

During these mentioned 6 years, my husband and I always visited Nichelle and she would come to set or to meetings with us. The holidays, Christmas, her birthdays were always sad for

Nichelle, because her family did not show up for her nor did her son, so there she sat alone. She and her son had a very bad relationship, her son did not visit her for 6 years. So we began celebrating every holiday, birthday and Mothers Day with her. I did not trust her family but after a few years I began to trust Nichelle's sister. As the talent manager, I observed was seemingly allowing items to disappear from Nichelle house, this is my experience which I own. Memorabilia and items began to disappear from Nichelle's walls. Nichelle had an estate that she wanted to live and pass away in in Woodland Hills with two properties on it. The then talent manager lived in the small house, Nichelle lived in the large house. Nichelle's home began to deteriorate while the small house that the talent manager lived in was being constantly upgraded. Nichelle's toilet wasn't fixed, light fixtures and wires hung from the ceiling, the garden that she loved was not watered. I began contributing money to her household to ensure that these things were taken care of, approximately$6200 at the time, I gave it freely to a woman who became like a second mother to me and I would do it again. I informed Nichelle's family through Nichelle's sister, they did nothing to help me protect Nichelle or even be there with her or for her. Finally, end of 2017, I got a call from one of her assistants that all of her clothes were gone/stolen, I went to her house, the clothes were in fact gone. I bought her some new clothes just to keep her warm on her trips and at her conventions, again no family nor did the manager do or purchase anything for Nichelle in this instance.

In 2018, after the 6 years of absence, Nichelle's son entered back into Nichelle's life out of the blue and filed for Conservatorship over Nichelle. I believe he had run out of money and his mother was still living so he had no inheritance yet. Nichelle's son Kyle, began isolating his mother and there was word that he was going to sell Nichelle's home again and place her in a rest home - again, which Nichelle was deathly afraid of back in 2013. So the video I filmed for Nichelle, instead of sharing it with the press as Nichelle directed me to do, I thought I'd better share it with her son and Nichelle's sister first, they refused to hear it, then I attempted to share it with the probate department at Stanley Mosk, they refused to hear it and told me "what if the son doesn't want his mother's words shared" and dutifully tried to shun me away by telling me that I could not file a petition to stand up for my friend's rights, then I had to make the very intense decision to share the video with the Press as Nichelle asked me to do originally. The story carried. I then went to court and became an Interested Party Acknowledged by the Court in Nichelle's case in 2018. I fought for Nichelle's human and civil rights to remain in her home, to work, to visit her fans and for my visitation rights to visit her and check in on her. Nichelle's sister finally called me and asked me to "withdraw from the case", I said yes if they would give Nichelle her rights. She promised they would. I signed an NDA with the son, for Nichelle to have her wishes granted and to visit Nichelle. All was OK, so I thought for a few months. Then an abuse video was sent to me by the ex-talent Manager Gilbert Bell of Nichelle stating a whole hell of a lot for someone that her family was attempting to state that she had "dementia", she was clear. She did not have dementia, she was forgetful as a Grandmother would be but she knew what and who she was and what she wanted. This video and audio was horrific of Nichelle's son manhandling Nichelle and then cussing his own mother out afterwards as she whimpers. The Press called me at that point and asked me how I felt about the abuse I stated that I did not like it. The son because I spoke out against his abuse/his crime banned me from seeing Nichelle, stating I violated the NDA. I never violated it but I will state that there is no NDA on this planet that will hold me back from reporting a crime when I see or have knowledge of a crime committed. I then made tens of dozens of calls to the LAPD, FBI, Adult Protective Services, City

Supervisors, Human Rights Activists, The Mayors Office, the Deputy DA's office, the Attorney General and Washington DC trying to obtain help for Nichelle. Currently, there is an individual in LA County that believes that Nichelle did not get a fair hearing and this individual states that I have done whats right by Nichelle. This person a Deputy DA is currently Anonymous but I hope one day they will speak openly in regards to this matter in assistance to Nichelle and to me as I fight for Nichelle's Rights. Since this time additional Abuse audios have surfaced of Nichelle's son being deeply violent around Nichelle and assaulting her friends. Currently another police report has been made of the son battering one of Nichelle's friends, in front of Nichelle it's violent. I was informed of the existence of this video in December 2021, her son has become emboldened in his violence and his non-chalance for what Nichelle's human and civil rights are as he is not becoming of someone who cares of Nichelle in public as he knows or feels he will NOT be prosecuted for harming his mother.

Otherwise, because I would not stop fighting for Nichelle's rights, Nichelle's son's attorney stated to one of my attorneys that he was going to "smear me in the media" which they in actuality did to a certain extent. Subsequently, I paid for a Deposition of an Individual who was selected and hired by the son and appointed by the court to be the Temporary Fiduciary - Conservator over Nichelle's finances, she told the truth via Deposition. She deposed that Nichelle's son had severe anger management problems, that he was "not fit" to be over Nichelle due to his anger even though she feels that family is the best to conserve over individuals, she also deposed that Nichelle was not happy and seemed very sad when she was alone with just her son. She observed him speak down to Nichelle. He also made inappropriate personal demands for Nichelles' money and when she ethically informed him that she could not "just" give him his mothers money without process he stated that he was going to "get her, hurt her and fix (f**K) her". This individual's name is Dr. BJ Hawkins PHd, she and her assistant quit due to the violent nature of Nichelle's son. Also Dr. Hawkins states via deposition that the son was obsessed with me (Angelique) / jealous of my relationship with his mother, and was trying to falsely accuse me of "anything" to get me to back down and not stand up for Nichelle's rights.

Through all of this at this time Nichelle is being abused, she was never allowed to go to court, her son prevented her from going and speaking up for her human and civil rights in court (in 2018) such as Britney Spears father did to her, her son sold Nichelle's beloved home for $2.2 Million and to this date Nichelle's sister has raised $180,000 via GoFundMe upon mistruths to the fans and they are still asking for money, to this day her family still does not allow her to speak. And given that Nichelle began having real memory problems in 2017, and the mistreatment she has received so vigorously from her son and the stripping of her home from her, which is the worst thing that you can do to an elderly person with memory loss is remove them from an environment they are used to and to isolate them from people they love, her condition is likely not as before.

The two Judges primarily involved in this case are; Retired Judge Barbara Johnson and Judge Ana Maria Luna. I filed a 170.6 for Judge Johnson to recuse herself in 2018, she ignored the action as if it was never filed by my then attorney. Judge Johnson promised me that I would be granted an evidentiary hearing in regards to the physical and mental abuse inflicted upon Nichelle, she retired instead. Judge Luna heard the case in late 2020 and denied an evidentiary hearing without prejudice, which would have allowed the physical, verbal, and mental abuse that Nichelle suffered by her son to finally be heard. Most recently I went pro-se for the first time and

I was granted an Evidentiary Hearing by Judge Luna then she promptly denied the evidentiary hearing once I obtained an attorney again in January 2022 to hear the extreme financial issues that Nichelle's son has inflicted upon her, Judge Luna denied Nichelle of her rights once again. Going "against" what an elderly individual asks for is wrong, it is abuse and it is a violation of the individuals Human and Civil Rights.

Bottom line, there is so much unacknowledged pure evidence of abuse in this case, and I can mark at minimum t w o (2) documented instances where a payoff was attempted within this case, with evidence that was never heard. I have so many videos, audios, text messages and emails, never heard by acknowledged by the court. As to my promise to Nichelle, if any of this was heard by the court, Nichelle would not have lost the life that she worked hard for to live, she would no longer be abused, and her rights would be powerfully given back to her. They never should have been taken away.

ADDITIONAL ITEMS

1. There was a very important Deposition that I called and paid for in regards to Nichelle's case after Nichelle's son's attorney lied in a court document in my response to reinstate my court ordered visitation rights that the son wrongfully removed from me because I reported the crime of physical abuse against him, inflicted upon my friend and 2nd mother Nichelle, additionally when the Press called me, I spoke out and stated that I was upset after hearing and viewing the mentioned audio and video abuse, he did not want me to speak to the Press at all. The Deposition is of Dr. BJ Hawkins, PHd, Temporary Fiduciary/Conservator over Nichelle's Estate, who was referred to Nichelle's son by a family friend, selected and hired by the son and appointed by the Court. Dr. Hawkins adamantly "whistleblew" on Nichelle's son on what she observed privately while working with Nichelle's son. The Deposition details the following issues;

- Hawkins observed Nichelle's son to be verbally abusive to his mother Nichelle.

-Hawkins observed Nichelle's son deliberately not allow Nichelle to attend court on her own behalf in late 2018, to state and stand up for her own rights and for her personal desires in life. I was in court on this date, the son and his attorney stated that Nichelle did not want to come to court, that was not true as in a video in a leaked video 2019, Nichelle stated that she wasn't allowed to go to court about this matter, her own conservatorship. Nichelle is not the type of person to allow her rights to be stripped from her.

- Hawkins states, when asked by my attorney, if Nichelle's son ever attempted to bribe Hawkins, Hawkins stated "YES". Hawkins refused the bribe and when she did so, Nichelle's son stated he would "GET HER, FIX HER AND HURT HER". During another instance the "FIX" word was the word "F*CK Her".

-Hawkins states that Nichelle's son was making "inappropriate personal demands" for Nichelle's money, and when she refused to simply give him Nichelle's money he, Nichelle's son would become enraged. (This is also in print via an email attached below).

-Hawkins stated that Nichelle's son would make attempts to intimidate Hawkins to get what he wanted in regards to Nichelle.

2.) The sale of Nichelle's home Nichelle's home was on the market for ONLY 1 DAY, less than 4 hours.

Her home was sold to a Real Estate Investment Company that may or may not have it's ties to the Stanley Mosk Probate Court. Her home was allegedly sold for 2.2M, being in a real estate market where all of the homes next to her sold for 4M, and she has a celebrity home. I believe the home was sold for more than 2.2M.

3.) There are payoffs and bribes in this case. I have an audio that was sent to me with a lawyer and one of Nichelle's assistants who is scared to speak. And the bribe that the son tried on Dr. BJ Hawkins.

4.) Audio of Nichelle's sister asking me to withdraw from the case:
https://twitter.com/AngeliqFawcette/status/1511025963102273542

5.) Audio of Nichelle's Son speaking to her - "I'm Not Going To Kill Myself For You Mother"
https://www.instagram.com/p/CS5yp1gHu0i/

6.) Text Msg From Nichelle's Sister from years ago, revealing that she did not get support from her family in regards to Nichelle. They in actuality were not close and I know for a fact that the 3 sisters did not get together every 3 months as indicated on her GoFundMe Page, Nichelle was estranged from one of her sisters for almost a decade, I personally took the photo of all 3 sisters at a one time visit from her estranged sister and other sister. They unfortunately were not a close loving family towards Nichelle as they stated. https://www.instagram.com/p/CXWj6ulP3O8/

7.) Recording of the Deposition - PARTS 1, 2 AND 3.
https://www.dropbox.com/s/eqgijavif67xq4u/Deposition%201.mp4?dl=0
https://www.dropbox.com/s/achmfjma8zyorl5/Deposition%202.mp4?dl=0
https://www.dropbox.com/s/0gm8lcxol8p2xia/Deposition%203.mp4?dl=0

'AYOFF of NICHELLE'S ASSISTANT – HER ASSISTANT SENT THIS TO ME IN TEARS EARLY ON IN THE CASE
'ARTS 1 & 2https://www.instagram.com/p/Ca5oh7jsEMA/ https://www.instagram.com/p/Ca5qpCZgBMl/

Audios are Covered by the Right To Truth Evidence Act in the California State Constitution.

FINAL NOTE:

My Dear 2nd Mother died on Saturday, July 30, 2022. Isolated, Human and Civil Rights stripped from her, in court documents not given much food per day in which the son and his attorney were actually proud of, died not in the manner in which she chose to die even after asking to pass that way. She never should have had to ask.

Nichelle passed a few days after I had spoken to Adult Protective Services, an observe and report organization, who I know contacted Nichelle's son Kyle Johnson. Kyle Johnson also knew that this LAPD police report is in existence and was processed and filed. Two days later after APS called, maybe 3 days? Nichelle is reported dead. This mentioned LAPD Police was altered/falsified and no charges were pressed upon the battery the son and his colleague were charged with against Nichelle's son and his colleague.

Ref: Nowell, Marie Cape County court case 21CG-PR00226; **(Political Gang Rape of her estate)**;
Yet the docket says CONSERVERTORSHIP

A member of We The People referred me to you.

I find myself in desperate need of your expertise.

As Durable Power of Attorney for medical and finance for my Father, I purchased medication and etc., for him and my mother. In Feb. 2019, I received a reimbursement check of about $1100, which prompted someone to report me to adult protective services, (probably a jealous sibling). I had receipts and it is documented in Adult Protection Services, Andrea Brands report, that I offered them to her. Yet she continued to defame me, and never picked them up. My parents Attorney, author of the Durable Power of Attorney for health and finance, at that time, directed me on financial matters, during their stay in a Cape County nursing home, from 12-1-2018 through 4-10-2019. Note****I paid this attorney to direct me; Missouri's Adult Protective Services investigator, finds fault in attorney instructions, but only attacks the small person being billed; who is responsible for the harm my parents have suffered?

In 2018 my 90 year old Mother underwent 3 major surgeries, from 11-15-2018 thru Dec. 8, 2018; before my Mother could properly heal;

In 2019, in my opinion:

My mother and father were wrongfully placed under guardianship/conservatorship in Pemiscot County Missouri; 4-30-2019, Judge Keith Currie;

May 14, 2019, Pemiscot County Public Administrator, Trina Hollomon,(against my Mother's wishes), placed Robert L. Nowell in the Mo. Veterans Home, Cape Girardeau;

June 29th, 2019; the Veterans home allowed my father to get outside the facility, where he rolled down a slope and was ejected from his wheel chair into a concrete parking lot, causing injuries;

July 2, 2019, my father Robert Nowell expired; (a wrongful death suit is filed) Attorney Aaron Wood is the Attorney);

August 2019, my mother went back to her neurologist, who said it was not necessary for Mother to be under guardianship/conservatorship and never was needed. She had a Durable Power of Attorney for both medical and finance, and plus her medical status did not warrant it. (My Mother nor I, had ever seen the interrogatories that the court used to place my parents under guardianship, until my Mother was restored out of guardianship in Dec. 20, 2021; but conservatorship was continued.)

In December 2019, I hired Attorney Jeff Koch, of the Limbaugh firm, to terminate the guardianship/conservatorship;

In August 2020, Jeff Koch (his plan) moved my Mother for a change of venue to Cape Girardeau, and placed her under Public Administrator Lisa Reitzel;

Against Marie Nowell's Protest,and in a "CONFLICT OF INTEREST" Jeff Koch and Cape P.A. Lisa Reitzel, became Lisa Reitzels Attorney, leaving Marie Nowell without an Attorney, until I hired her an attorney with my funds, in May or June of 2021. Jeff Koch's billing has been large to say the least.

December 10, 2021, Marie Nowell was restored out of guardianship, after 5 doctors said it was wrong. But Judge Julia Koester continued the conservatorship. I think for the most part because the Adult Protective Investigator, (for the second time, gave inaccurate testimony, gave bad testimony again in December 10, 2021.

Public Administrator Lisa Reitzel and Attorney Jeff Koch under protest of my Mother; to me it certainly appears. they never intended to have a good relationship with my Mother or I.

Adult Protective Services Investigator Andre Brands wrongfully interjected herself into my parents affairs;(My Mother refused to sign her document requesting her services);

And it is documented in the report, that we were allowed to receive after Marie Nowell was restored out of guardianship.

APS Andrea Brands, documented in her report 18 days before the hearing 4-12-2019, that no one was being turned over to law enforcement. There was nothing found to cause criminal charges;

April 30th, 2019, that isn't what she testified to in Pemiscot County court;

My Mother has been out thousands of dollars and so much harassment, stress and grieve, because of the way Andrea Brands testified, the way she conducted her investigation, by not excepting the receipts I offered her; She claimed to assess my mother for capacity on a day at a nursing home and my mother was already living with me on that date; she withheld doctors interrogatories from my Mother until after she was restored out of guardianship; she with held the interrogatories from my Mother's lawyer until after she had testified in court; her report documents, that she gave to to Attorney Josh Tomlin after she testified; Andrea Brands, Aps never contacted my attorney, who petitioned to have me appointed Guardian/Conservator, if my mother needed one; My Mother named me in the court hearings. We have the recordings. I never thought she needed a guardian/conservator. I was following my parents attorney.

There are so many ugly things this State employee did that made her appear to be attempting to please her home town siblings; instead of doing what was best for my Mother Marie Nowell. It appears APS Andrea Brands wanted to please the complainers, in her hometown.

Andrea Brands testified as though she was doctor, jury and judge, when she spoke about me in her testimony. Every action I took with my parents finances were done with my parents and my brother Anthony's presence and/or under the direction of my Attorney Jim DeReign..Attorney DeReign was also the author of my parents Durable Power of Attorneys, that stated how guardianship appointment would be handled if one was ever needed.

We are waiting on an answer from a July 7, 2022 Review from Judge Julia Koester, who is acting on the testimony still of Andrea Brands APS investigator; who gave a different testimony in 12-10-2021 than the 4-30-2019; and very different from her written and documented report that Mother just received after she was freed from guardianship in December 2021.

Does she need a conservator; or did Missouri not opt for supported decision making for folks like my mother? Who was suppose to inform us of the different options?.

Aps Supervisor has said Andrea Brands supervisor was quick to pull the guardianship trigger.

My Mother, my brothers Anthony Nowell, Donnie Nowell, and Michael Nowell and I, have wrote to the judge saying we will help and we think the conservatorship and stress are doing much more harm than good.

These proceedings are being looked at to produce criminal charges against those that are found guilty. I feel there are several.

Would you share with me, if any of this is, in your opinion, unconstitutional?

I would so much appreciate an answer.

I hope you understand that any comments you can make are urgent. My Mother is now 94 years old. If you can expedite it would be appreciated.

My brother, Anthony, (lives in Cape) and my Mother has lived with me in Cape since April 20, 2019; we have both had back ground checks through DHSS and are clean; we have great credit scores; we have our own income and are financially secure. We would like to see our Mother be allowed to work from a Durable Power of Attorney, that her present lawyer Steve Southard, could author for her. There is no financial exploitation. Surely you can find much wrong with these proceedings.

My Mother, has her wits about her. Isn't it unconstitutional, that she be held in this civil death mode of a life?, because of two disgruntled children, who are also senior citizens. Perhaps, it is them who is in need of cognitive assessment; as I wonder who in their right minds would do this to a loving parent; and who would stand by and watch attorneys deplete her estate. Who was it that knowingly made false complaints? Why would the state of Missouri create such a web for

the Baby Boomer Generation and our parents? What was your goal? Why write a law, a statue, and then let it be used harmfully against vulnerable folks

Shouldn't the judge have to tell the petitioners, why we aren't suitable; shouldn't a Adult Protective employee have to prove wrong doing before she testifies? Does it look like this is a gang rape on the estate of my now 94 year old Mother, who has always had her wits about her? A government induced gang rape on a 94 year old citizen's estate, she has never asked this government for anything, except to free her of this unlawful, punitive, harmful, charge that the state of Missouri is allowing. The people running the GREAT STATE of Missouri are allowing this. What if this was your parents?

My father is dead. We would like an answer. Except for a few, are you so afraid of dirtying your political/clubbie/ cronie hands. My Mother lives with me. I must feel what Mary felt as she watched them crucify our savior, her son, on that cross. Would you make these crimes against our elderly stop? The laws are there. They have no compliance where my Mother is concerned. Why not write in our laws, that everyone over the age of 85, whom the state of Missouri chooses, will turn over their life savings and the state will put a cruel Master in place to make decisions for them.Why not write that in our laws? Does it sound wrong, shameful? Yet that is what all the powerful people in Missouri are allowing. Or will you pass the buck or pretend you didn't receive this?

DO YOU NOT SEE YOU ARE MAKING A BLUE PRINT FOR YOURSELF?

The Bible makes provisions for anger; and I'm trying to control mine in a Biblical way, but it doesn't make provisions for those who purposely and intentionally, wrongfully induce it. I believe the Bible says those in power will be looked at more closely.

Thank you.

Patricia L. Silman, Daughter and Caretaker for Marie R. Nowell: she doesn't belong in probate court, she is alive and she can make her own decisions.

[redacted]

To whom it may concern

My name is Marina G Retamales Torres and I am the second of four from the marriage of Liliana Torres Miranda and Raul Retamales Lazcano. My little brother Alejandro Retamales Torres, born June 13, 1971, was born with Down Syndrome. And needless to say, how our life as a family changed since his birth, especially my mother's, who despite working outside the home, dedicated herself body and soul to the welfare of my brother.

Throughout Alejandro's life, she was always looking out for his welfare and security, to the point of seeking information on how to leave him "protected" in his eventual death. She consulted and created a trust (which was the best option at the time) to ensure his financial and physical/emotional care.

As time went by and our father passed away, she handled all inheritance and estate matters. Both she and Alejandro stay living in the house that belonged to my parents. It should be clarified that at no time any of the siblings made any claim of inheritance.

The problem came when a plot of land (with its respective building), is interested by third parties and my mother, seeing that the interested parties could fulfill the dream that they (my parents) did not achieve in relation to the plot of land, gave the go-ahead for the sale. That was the beginning of the story that still does not end.

My mother had to incapacitate my brother, a fact that was very painful for her and for all of us, since it was evidence that Alejandro was not "capable", and she who fought all her life for him to be as normal as possible, felt that she had failed. Every time she had to meet on this issue, she would cry and leave in dismay. Finally, the Bayamon Court set the Skype hearing for Wednesday, June 24, 2020 at 2:00pm, a petition that was filed on February 4, 2020, but began in mid-2019. Resolution of the case favorably is dated June 25, 2020.

At the end of 2020, the interested buyers again contact my mom, she indicates to them that the process of declaring Alejandro incompetent had already been completed. If they were still interested, the application had to be submitted to the court. A new appraisal was done on the property, which showed that its value had dropped by about 80k. Given the value of the appraisal we indicated to the attorney who is serving as liaison between the party interested in the purchase:

I am hereby informing you that my mother (and estate), Ms. Liliana Torres Miranda is not interested in selling the lot given the results of the appraisal

delivered in January 2021. However, if the buyer is willing to pay based on the old appraisal numbers, we are in the best disposition to make the sale. Any doubts or questions can be directed to me personally.

The petition is filed with the Family Court (on May 11, 2021) for judicial authorization of sale to the court, prior to which a contract of sale with suspensive condition signed on May 1, 2021 was made. The court sends notice to the Procuraduría de la Familia with ten (10) days to answer, to which the Procuraduría requests an extension. Finally, on July 12, this court declares that the petition is dismissed, since the Family Relations Chamber is not working on the sale of the property.

A request for partial liquidation is submitted, evidencing that the same benefits both Alejandro and the rest of the heirs, since it makes effective an asset that is not his (in addition that for its use, in case it was not sold, it would require an investment that was not available at the time) making available in cash funds to cover the expenses of Alejandro's daily life, needs, activities and privileges that otherwise could not be supplied by the limited income of the latter from his social security.

Finally, on January 19, 2022, the sale was authorized, after the attorney general's office of the disabled person repeatedly opposed the sale in question, even though it presented evidence of Alejandro's need for cash, the Judge declared the attorney general's motion for reconsideration to be without merit. Furthermore, he establishes that the total amount of the sale be deposited in its entirety until a partitional notebook on the totality of the estate or with a deed of partial partition or sworn document signed by all the heirs, to the same effects, where they agree with the corresponding partial partition, is presented.

On May 12, 2022 the sale took place and since that date the proceeds of the sale have been consigned to the court, in spite of the steps taken.

It is a pity that a system that should protect works to the detriment of both the disabled and the family. On countless occasions I felt frustrated because I did not understand the insensitivity of both judges and prosecutors. The judicial system does not see individuals, but "cases", they look for welfare from the theoretical, from what the "books" or rather the laws say. They talk about protecting, but in the process they dehumanize. My family, has remained united, at no time any of us, has asked for any inheritance. We all understand that "that right", in reality is a gift that our parents give us and which began with giving us LIFE.

There is no single solution, for any case, but I understand that it should be generalizable for legal purposes. Each individual is unique, but not special, we are all equal and my brother Alejandro is unique and deserves everything, and our duty as brothers is to provide it. I know that other cases are different, but this one "touches me personally", and I want to establish that the SYSTEM did not work. And as of today, March 23, 2023, the money from this sale is still consigned, but more than the money that is not available, is that we do not see the individual as part of a Family System in which he is loved and protected. The whole family throughout this process, to a lesser or greater degree we have felt like "the bad guys", the ones who do not love, protect and protect. Those who do not love, protect and take care of and therefore "the great father", meaning the state, has to intervene.

It is unfortunate where we have come to.

Thanks for your time

Marina G Retamales Torres, Ed. D.

[redacted]

VERSION ORIGINAL----------

A quien pueda interesar

Mi nombre es Marina G Retamales Torres y soy la segunda de cuatro del matrimonio de Liliana Torres Miranda y Raúl Retamales Lazcano. Mi hermano pequeño Alejandro Retamales Torres, nacido el 13 de junio de 1971, nació con Down Síndrome. Y de mas esta decirles, como cambio nuestra vida como familia desde su nacimiento, principalmente la de mi madre, la cual pese a trabajar fuera de casa, se dedico en cuerpo y alma al bienestar de mi hermano.

A lo largo de la vida de Alejandro, ella en todo momento busco el bienestar y seguridad de él, al extremo de buscar información sobre como dejarlo "protegido" en su eventual muerte. Se asesoro y creo un fideicomiso (el cual era la mejor opción en un momento dado) mediante el cual aseguraba su cuidado tanto financiero como físico/emocional.

El tiempo paso y nuestro padre muere, ella gestiona todo lo relacionado a la herencia y los bienes. Tanto ella como Alejandro se quedan viviendo en la casa que era de mis padres. Cabe aclarar que en ningún momento alguno de los hermanos hizo algún reclamo de herencia.

El problema vino cuando un solar (con su respectivo edificio), es interesado por terceros y mi mama viendo que los interesados podrían cumplir el sueño que ellos (mis padres) no lograron cumplir en relación al solar, dio el visto bueno para la venta. Ahí comenzó la historia que aun no termina.

Mi mama tuvo que incapacitar a mi hermano, hecho que le fue muy doloroso tanto a ella como a todos, ya que era evidenciar que Alejandro no era "capaz", y ella que lucho toda su vida para que el fuera lo mas normal posible, se sintió que había fracasado. Cada vez que tenia que reunirse sobre este particular, ella lloraba y salía desconsolada. Finalmente, el Tribunal de Bayamón señaló la vista por Skype para el miércoles, 24 de junio de 2020 a las 2:00pm, petición que se presentó el 4 de febrero 2020, pero que comenzó a mediados del 2019. La resolución del caso favorablemente esta fechada el 25 de junio de 2020.

A finales del 2020, los compradores interesados nuevamente contactan a mi mamá, ella les indica que el proceso de declarar incapaz a Alejandro ya se había completado. Que, si ellos seguían interesados, se tenía que someter al tribunal la solicitud. Se le hizo una nueva tasación a la propiedad, que puso en evidencia que su valor había bajado cerca de 80k. Dado el valor de

la tasación le indicamos a la abogada que está sirviendo de enlace entre la parte interesada en la compra:

> *Por la presente le estoy informando que mi mamá (y la sucesión), la Sra. Liliana Torres Miranda no le interesa vender el solar dados los resultados de la tasación entregada en enero 2021. No obstante, si el comprador está dispuesto a pagar basado en los números de la tasación vieja, estamos en la mejor disposición de realizar la venta. Cualquier duda o pregunta, puede dirigirse a mí personalmente.*

Se radica la petición al Tribunal de Familia (el 11 de mayo de 2021) para la autorización judicial de venta al tribunal, previo al cual se hizo un contrato de compraventa con condición suspensiva firmado el 1 de mayo de 2021. El tribunal envía notificación a la Procuraduría de la Familia con diez (10) días de plazo para contestar, a lo cual la procuraduría pide una extensión. Finalmente, el 12 de julio este tribunal declara no ha lugar la solitud, ya que en la Sala de Relaciones de Familia no trabaja la venta de la propiedad.

Se somete una solicitud de liquidación parcial mediante la cual se evidencia que la misma beneficia tanto a Alejandro como al resto de los herederos puesto que hace efectivo un activo que no le está (además que para su utilización, en caso de que no se vendiera, se requería de una inversión que no se disponía al momento) haciendo disponible en efectivo fondos para cubrir los gastos de la vida diaria de Alejandro, necesidades, actividades y privilegios que de otro modo no podrían ser suplidos por el limitado ingreso de éste de su seguro social.

Finalmente, el 19 de enero 2022 se autoriza la venta, luego de que en repetidas ocasiones la procuraduría del impedido se mostrase en contra de la venta en cuestión, aun presentándole la evidencia de necesidad de efectivo para Alejandro, el Juez declara sin lugar la petición de reconsideración de la Procuraduría. Además, establece que la cuantía total de la venta se deposite íntegramente hasta tanto se presente un cuaderno particional sobre la totalidad del caudal relicto o con escritura de partición parcial o documento juramentado firmado por todos los herederos, a los mismos efectos, donde estén de acuerdo con la partición parcial correspondiente.

El 12 de mayo de 2022 se realiza la venta y desde esa fecha el dinero producto de esa venta a estado consignado en el tribunal, a pesar de las gestiones realizadas.

Es una pena, que un sistema que deba proteger trabaje en detrimento tanto del impedido como de la familia. En innumerables ocasiones sentí frustración por no entender la insensibilidad tanto de jueces como de procuradurías. El sistema judicial no ve individuos, sino "casos", buscan el bienestar desde lo teórico, desde lo que dicen los "libros" o mejor dicho las leyes. Hablan de proteger, pero en el proceso se deshumanizan. Mi familia, se ha mantenido unida, en ningún momento alguno de nosotros, ha solicitado algo de herencia. Todos entendemos que "ese derecho", en realidad es un regalo que nos hacen nuestros padres y el cual se inicio con darnos la VIDA.

No hay una solución única, para ningún caso, pero entiendo que debe poderse generalizar para propósitos legales. Cada individuo es único, pero no es especial, todos somos iguales y mi hermano Alejandro es único y merece todo, y nuestro deber como hermanos es proveérselo. Se que otros casos son diferentes, pero este me "toca a mi en lo personal", y quiero establecer que el SISTEMA no funciono. Y al día de hoy 23 de marzo de 2023, aun se tiene consignado el dinero producto de esta venta, pero mas que el dinero que no se tiene disponible, es que no veamos al individuo como parte de un Sistema Familiar en el cual se le amo y protege. Todo la familia a lo largo de este proceso, en menor o mayor grado nos hemos sentido como "los malos" , los que no aman, protegen y cuidan y por lo tanto "el gran padre", entiéndase el estado, tiene que intervenir.

Es lamentable a donde hemos llegado.

Senate Special Committee on Aging
Statement of Rachel Sinness, ND P&A Legal Director

North Dakota Protection & Advocacy (ND P&A) protects the human, civil and legal rights of people with disabilities. The agency's programs and services seek to make positive changes for people with disabilities where we live, learn, work and play.

ND P&A submits this statement to provide input regarding efforts in which our agency has engaged and to provide stories and examples of problems with guardianships; stories and examples of alternatives to guardianships; and further suggestions for protecting the rights of people being considered for, or currently covered by, guardianships, conservatorships, or other protective arrangements.

Problems with Guardianships

Often, guardianship authority is overreaching and unnecessarily broad. This type of court-ordered authority removes the individual's dignity of risk, and the ability of an individual to make even simple decisions about their lives, including providing input on where they live, work, who they spend time with, or how they spend their money.

A. Unnecessary Plenary Authority

ND P&A has represented a number of individuals over whom guardianship was previously ordered in a plenary fashion. In many of these cases, plenary or full authority in all areas where decisions may be made is not appropriate, because the individual is capable of and has made many decisions about their lives without the input of the guardian. In one such case, a plenary guardianship had been ordered in 2004 for an 18-year-old woman. The young woman eventually obtained an apartment and began expressing an interest in working and going to school. She handled some of her own finances and maintained independence in most areas of her life. The guardianship

remained unchanged until 2022, when the young woman challenged the necessity of the plenary authority granted to the guardian. ND P&A successfully represented the young woman in limiting the guardianship authority in all areas to allow her more independence in decision making.

B. Visitation with Non-Guardians

In some cases, individuals are asked to give up even the most basic of rights, including who they spend time with. ND P&A represented an adult individual whose mother had been granted guardianship authority, and her father was seeking court-ordered visitation. The father had a history of drug and alcohol abuse, as well as domestic violence perpetrated against the individual. The individual had at times refused to see her father, and at other times visitation was denied by the guardian. The father argued that he had a right to see his adult daughter, unfettered, and that such visitation should be ordered scheduled by the court. ND P&A successfully argued that it was well within the individual's ability and rights to make and communicate decisions about who to spend time with, and no visitation was court-ordered.

Alternatives to Guardianships

ND P&A has undertaken a number of teaching opportunities in the past two years to inform communities and stakeholders about the importance of "dignity of risk" – to allow an individual to make a decision and take reasonable risks in those decisions. These decisions have shown to be essential to an individual's dignity and self-worth.

In providing such education, ND P&A has scheduled and completed lectures and continuing legal education opportunities about Supported Decision-Making (SDM), and other alternatives to guardianship such as Health Care Directives and Powers of

Attorney. ND P&A intends to continue these efforts to inform North Dakotans about the importance of these alternatives to guardianship and conservatorship.

Further Suggestions for Protecting the Rights of Individuals

ND P&A joins NDRN in requesting additional funding to provide individual and systemic advocacy to individuals with disabilities who are subject to guardianships and/or conservatorships. In our experience, individuals subject to guardianships are very rarely represented by counsel, and the result is often a grant of unnecessarily broad authority to a guardian, or the order of an unnecessary guardianship when an alternative to guardianship would be more than sufficient. Guardianships often result in removing an individual's voice and ability to make even the simplest of decisions about their daily lives.

Sincerely,

Rachel E. Sinness
Legal Director, North Dakota Protection & Advocacy Project
[redacted]

My name is Nicole Noblet, I live in Kansas City, Missouri with my mom and dad. When I received my Social Security determination at age 24, the lawyer told my mom she needed to get guardianship over me. Thinking she was doing the right thing, she did and so my mom was my guardian for the next 5 years.

In Minnesota having a guardian didn't really affect my life. I was able to vote, I chose where I wanted to live, and as long as I had enough money to pay my rent, I chose what to spend my money on. But in 2021 my family decided to move back to Kansas City so I did my research, knowing that not all states are as liberal as Minnesota and having a guardian can mean not being allowed to vote, and voting is extremely important to me. I found out that Missouri is one of the states that will sometimes take away someone's right to vote so I immediately told my mom she could no longer be my guardian. Soon after moving to Missouri I started Partners in Policymaking and learned about Charting the Life Course and I heard the words "Supported Decision Making" for the first time. I told my mom about this and we agreed that this is something we wanted to do, so we contacted Missouri Protection and Advocacy and a lawyer named Tom helped to write my supported decision making agreement and sent it to me to look over to make sure I approved of what he put in it. Before he was able to officially start using SDM, my mom and I had to go to Zoom court in Minnesota to terminate the guardianship, which was much easier than we expected, mostly because we had already been living in Missouri for almost 2 years before we were finally able to get a court date. So the judge just said, "at this point it doesn't really matter", but it meant the world to me to not have a guardian and not having people look at my mom when I made a decision, questioning the validity of my choices. Some still do of course but mom my tells them, "she's her own guardian, it's her choice" which makes me feel really good because now I am legally recognized as the decision maker. Nothing really changed for me by switching from my mom being my guardian to my mom being my supporter and using SDM, besides now having to sign my own paperwork because my mom and I were really using SDM the whole time, we just didn't know it.

My mom has always been a huge supporter and was never restrictive like I hear some guardians are and I feel very fortunate to have her in my life. Since learning about SDM and now that I use it in my own life, I tell as many people about it so that they too are able to make decisions about their lives and so they know that there are alternatives to guardianship. Being able to make my own decisions and to have them be legally recognized is the best feeling in the world. Now when I go to the doctor I feel more respected and less like a kid.

Nicole Noblet

[redacted]

TN CENTER FOR DECISION-MAKING SUPPORT

March 23, 2023

Senate Special Committee on Aging
Sen. Bob Casey (Chair)
G16 Dirksen Senate Office Building
Washington, DE 20510

Sent via e-mail to [redacted]

Submitted by: Penny Johnson on behalf of the TN Center for Decision-Making Support

Re: Statement for the Record on guardianships, conservatorships, protective arrangements, and alternatives

Dear Sen. Casey and members of the committee:

Thank you for this opportunity to provide challenges and suggestions regarding guardianship, conservatorship and alternatives for people with disabilities or limited decision-making capacity.

My name is Penny Johnson, and I live in Rutherford Co. Tennessee. I am writing today to share stories about the impact of today's conservatorship system on real people and their families. We have drafted recommendations based on these stories.

I am the Program Coordinator for the ***TN Center for Decision-Making Support (CDMS), which was created to meet a major need that exists across the country: a one-stop source for reliable, free, and easy-to-understand information about decision-making for people with disabilities and their families. Read more about the center:*** ***https://www.tndecisionmaking.org/***

The Center for Decision-Making Support website officially launched in the June 2021 but has been serving Tennessee families since July 2020. During this time, we have identified several service gaps and problems related to the conservatorship process, including but not limited to:

- Conservatorship abuse
- Flagrant Civil Rights Violations
- Lack of conservatorship oversight
- Lack of knowledge across professions about what exactly a conservator is and its recommended use
- Lack of education and understanding for the conservators regarding their roles and responsibilities
- Inability for the respondent to obtain assistance to prevent, contest, modify or revoke a conservatorship.

TN CENTER FOR DECISION-MAKING SUPPORT

- Conservatorship process is expensive and not readily attainable for families with limited income.
- Lack of funding to support programs to assist families obtaining decision-making supports.

Funds for the Center for Decision-Making Support (CDMS) were provided by the Council on Developmental Disabilities, which is part of the federal Administration on Community Living. Every state should have access to a comparable resource, but CDMS is the first in the nation and does not have a long-term funding source. Congress should allocate federal dollars to encourage all states to establish and sustain centers on decision-making support across the nation. As you will see in the case studies below, Tennessee's CDMS is essential to resolving conservatorship issues and preventing unneeded conservatorships.

Conservatorship/guardianship problems and abuses occur in all life stages and areas in which a guardianship may be awarded: from youth with disabilities reaching the age of majority (becoming an adult), to adults of all ages with intellectual and developmental disabilities and/or mental health conditions, to aging adults.

The issues we witness with conservatorship/guardianship also exist in the Social Security Representative Payee program. Reforms that prioritize accountability in that program must be part of the overall conversation about solutions for these populations.

Below are a few real-life scenarios that exemplify the challenges within the guardianship/ conservatorship system.

Note: For the purposes of this document, we use conservatorship to replace guardianship because Tennessee uses the word conservatorship instead of guardianship for both conservatorship over the person and over the property.

1. Stories and examples of problems with guardianships

Case Scenarios

Seeking Conservatorship for a Youth Reaching the Age of Majority (18 yrs. old)
Systemic issue: People seeking conservatorship do not understand what it is or their other options

- **Student with IDD**
- **Age 17 turning 18.**
- **Parents pursued Conservatorship without education about what conservatorship is OR other options.**

TN CENTER FOR DECISION-MAKING SUPPORT

Summary:

- This family was devastated when the judge announced that the court had removed all their daughter's "legal rights" for the rest of her life due to a lack of capacity. They had no idea that is what they were doing. This family was pushed by the education system to obtain a conservatorship for their daughter because she had disability and was turning 18. (Both parents were educators by profession.) They were told if they did not get a conservatorship, they would not be able to be involved in the IEP meeting, in educational decisions, or have access to their daughter's school records. They were given a similar message from their daughter's physician stating they would not be involved in their daughter's medical care decisions. They were told this is what they **had** to do to protect their daughter. There was no explanation of removing their daughter's rights or how that might impact their daughter in the future. They were not told that there may be alternatives to conservatorship.
- A few years later when the mother changed jobs, she found out there were other options to conservatorship and they may not have had to remove her daughter's rights. The parents learned of the Supported Decision-Making, Durable Power of Attorney and other decision-making support options and how to develop a unique support plan. The parents began practicing supported decision-making along with the conservatorship.
- After working with the TN Center for Decision-Making Support, parents have worked with their daughter to increase decision-making skills. Daughter is self-employed. Parents hope to have conservatorship terminated in the future.

Recommendations:

- All states should have a centralized place like the TN Center for Decision Making Support to educate and mediate stakeholders during decisions about capacity and conservatorship. All stakeholders (individuals, the family, and professionals) must have education to understand what conservatorship entails, that there may be other options, and how to seek help to determine right support options. Educators, medical professionals, and attorneys are quick to recommend conservatorship without providing education about how to increase decision-making skills, just because a child has a disability.

Additionally, courts should require:

- An objective, evidence-based assessment of decision-making skills. This does not exist; assessment of the need for conservatorship is completely subjective across the country.
- Education for petitioners and conservators about how to increase decision making skills must be part of the conservatorship process.
- Education for petitioners and conservators about the various options to prevent unnecessary conservatorships.
- All appointed conservators must be required to complete conservatorship training to understand their role and responsibilities to avoid conservatorship abuses.

TN CENTER FOR DECISION-MAKING SUPPORT

Co-Conservatorship Abuses (Overreach and Exploitation)

Systemic Issue: Courts are not equipped to step in and help when conservatorships go wrong, especially for people without financial resources.

- **Young woman with IDD, & Mental Health Disabilities**
- **Age 30**
- **Co-Conservatorship Parents seek Conservatorship Transfer to TN**
- **Includes: abuse, exploitation, family separation**

Summary:

- A young woman contacted the Center for Decision Making Support for support modifying a conservatorship to replace a co-conservator (who was also the Rep Payee) who was financially exploiting the woman and refusing the services she needed and wanted through Medicaid Long Term Services and Supports (LTSS).
- The courts in Tennessee could not assist, even though there was documented neglect and emotional abuse, because the conservatorship had been issued in another state and not transferred to TN.
- Meanwhile, the woman's support staff involved through Medicaid LTSS believed that the individual could be her own decision-maker with supports from her dad and her Circle of Support.
- The Center for Decision-Making Support contracted with a private attorney to handle the situation. It was determined that the conservatorship statues from the previous state did not coincide with TN law. Both states were a part of the Uniform Adult Guardianship and Protection Proceedings Jurisdiction Act (UAGPPJA) but neither had a good process to transfer cases and what to do regarding decision-making authority in the interim. It took several months and resources that the family did not have to get the case transferred. During that time the home environment became hostile. Neither parent could afford to move out. The young woman's psychological and emotional health began to decline. She was hospitalized twice. Dad suffered a stroke from the stress. Mom would say and do things deliberately to get the daughter upset which resulted in her mental health decline and behavior outbursts.
- It took over a year, plus resources the family did not have which were provided by the Center for Decision Making Support, to get the conservatorship transferred to TN and to obtain a private corporate conservatorship in TN. Court awarded co-conservatorship to dad and a corporate conservatorship organization.

TN CENTER FOR DECISION-MAKING SUPPORT

Recommendations

- There needs to be a smooth and affordable process to transfer and/or modify a conservatorship between states and counties. When abuse, neglect or exploitation is involved, courts must expedite and assist with the modifications.
- Every state needs a uniform way to resolve disagreements between co-conservators.
- When conservatorships are transferred, there needs to be an easy way to decipher how to apply that conservatorship to the receiving state's statute.
- The Social Security Administration must be held accountable for abuses in their Rep Payee program. Currently, they are entirely unresponsive even when abuse is documented.

Parent Seeks Conservatorship over Adult Child in Mental Health Facility

Systemic issue: Hospitals and other institutions require conservatorship before providing care *without* objective assessment, education for the family, or resources for legal support.

- **Young Woman with Schizophrenia and Multiple Personality Disorder**
- **Age 30**
- **Parent Seeks Conservatorship to Authorize Treatment**

Summary:

- Parent contacted the Center for Decision-Making Support to get help for her daughter who is in a mental health facility.
- Mom was contacted by the hospital that her daughter's physician wants to place her in an in-patient mental health treatment program, but her daughter does not decision-making capacity to agree to the treatment.
- Daughter has been in and out of mental hospitals since she was in her early 20s when she was diagnosed with mental health conditions. Daughter is not under a conservatorship. Until now the daughter has signed release of information forms to allow mom to be involved in her medical care.
- This time the hospital wants a conservator to authorize the extended in-patient treatment. Mom did not have the money to get an attorney to obtain a conservatorship and does not have the time for the lengthy court process.
- Mom is beside herself trying to get her daughter help. Her daughter has been in multiple hospital stays in the past year. Each time the facility gets the daughter "stable" then releases her. Shortly after she gets out, she is hallucinating and is a danger to herself or others and ends up back in the hospital. Mom was given the understanding that getting a conservatorship would enable her to authorize for her daughter to be institutionalized until she can get better.
- The Center for Decision-Making Support staff explained the distinction between a conservatorship and emergency conservatorship and the process to obtain either kind. It was also explained that TN does not have long term institutional facilities and that obtaining

TN CENTER FOR DECISION-MAKING SUPPORT

a conservatorship may not stop the in and out of hospitalization cycle. The CDMS staff explained capacity and how that applies with conservatorship vs: other decision-making supports and with mental health situations. Mom was explained about Durable Power of Attorney (DPOA) and Health Care Surrogate documents.

- Mom did not want to remove her daughter's rights but determined it was her only option to have her daughter placed for in-patient mental health treatment. Mom was provided with a Health Care Surrogate form to see if the hospital would accept that to authorize in-patient treatment while mom pursued an emergency temporary conservatorship that could be converted to a permanent conservatorship, if needed.
- Referrals were provided for Legal Aid and other low-cost, sliding scale legal services since mom had limited funds. Referrals were made for other mental health services and supports for both mom and daughter.
- To date, the Center is still working with mom to find Pro Bono services. All referral services have declined to provide legal services for a conservatorship and the daughter does not have capacity to authorize a DPOA. Due to the woman's different personalities, where some may agree to signing a DPOA and to treatment, the most dominant personality will not. (The dominate personality is not the daughter's true personality. The daughter would agree to trust and rely on her mom.)
- Her daughter cannot be placed in the facility because the facility wants a conservator to authorize treatment.
- The daughter is currently at home with mom, but mom is concerned for her daughter's and her own safety due to the statements of the different personality voices.

Recommendations

- There should be quick and affordable (Pro Bono service if needed) legal services for emergency conservatorships.
- Mental health conservatorships should be evaluated differently to acknowledge that a temporary or short-term conservatorship may be appropriate. (In some cases, this may only be necessary to resolve the medical crisis and other supports may be less restrictive and appropriate long term. - That would not likely apply in this case with multiple personality disorder and schizophrenia)
- All types of hospitals must be given guidance and held accountable for upholding best practice policies related to requiring conservatorships.

TN CENTER FOR DECISION-MAKING SUPPORT

Conservatorship Issues Related to Persons who are Aging.

Summary:

- The Center for Decision-Making Support interacts with people who are aging and need help, regularly. There are many cases that fall through the cracks of the existing service system. Some of these examples include:
  - Elderly person who loses decision-making capacity with no end-of-life plan (Will, Durable Power of Attorney, Trusts, etc.) set up. The adult child or sibling contacts the Center for Decision-Making Support to find out next steps of what to do and referral for legal services.
  - Elderly caregiver with no plan in place for self or the child with a disability. The Center for Decision-Making Support is contacted to help find resources to address the decision-maker need for the caretaker and the child with a disability.
  - The caretaker/conservator passes away and there is no one to take over as caretake or decision-maker role for the person with a disability. The Center for Decision-Making Support is contacted to help identify the next steps and resources to obtain a replacement caretaker or decision-maker.

Recommendations:

- Families and professionals need access to high quality and affordable end-of-life planning.
- End of Life planning should be part of developing service plans for individuals receiving support services (waiver services, Medicaid, etc.)

2. Stories and examples of alternatives and guardianships

Supported Decision-Making (SDM)

See the video of Will McMillan and how he uses SDM for his decision-making.

- **William McMillan is a self-advocate who uses Supported Decision-Making.**
  Supported decision-making with Will McMillan – YouTube

Durable Power of Attorney (instead of Conservatorship) with Supported Decision-Making

- **Youth reaching 18 yr. old. Family uses SDM and DPOA.**
- **Best Practice Example**
- **Age - 21**

TN CENTER FOR DECISION-MAKING SUPPORT

Summary

- This family was referred to the Center for Decision-Making Support to obtain information about becoming conservators for their son who was about to turn 18. Mom was referred by her school to get more information about conservatorship.
- CDMS staff met with mom and dad to explain what conservatorship is, the process, how it works, etc. When the parents found out it would remove their son's legal rights, the parents wanted to learn more about the other options. After the consultation, getting into the various decision-making options and explaining capacity, the parents were sure they did not want to remove the rights of their son if it was not necessary, but they were not sure about his capacity. They decided they wanted to do more research on their own.

- They scheduled a follow up meeting to discuss more about capacity and discerning the best support for their son. Since they still were not comfortable with a decision, they were referred to a private attorney who helped them evaluate their son's capacity. As a result, they determined that a Durable Power of Attorney and Supported Decision-Making would be the best and least restrictive option for their son and family.

- While working with the attorney, they decided to be proactive and set up long term planning for their son for when they would no longer be able to support him. They set up an alternate DPOA. They included their adult nephew and their other son (age 17) to be a part of the SDM team and start educating them on how to best support their son. They created a Will and started organizing all their son's important information. They applied for Social Security for their son. Dad is the Rep Payee but will be teaching his other son how to help manage the finances. They have a plan for their son's employment training, transportation and where he will live in the future.

Issues:

- **This is an example of the best practice.**
- The family learned of their options, researched more to explore the best plan for their son and family.
- Sought legal counsel to help them identify the best support/s. Decided to prepare and set up long term planning.
- They learned their responsibilities as a Power of Attorney and Rep Payee.
- They continue to seek advice from their attorney and other professionals as they continue to put other supports in place such as an ABLE account, Special Needs Trust, obtain disability support services, etc.

- This type of scenario will prevent future conservatorship abuses for this young man.

Result:

- The parents feel good about their son's future.
- They are at peace knowing they have a plan in place and have a good support system set up for their son.
- The brothers have a plan to live in the same neighborhood so the younger brother can oversee his brother's care and they can be close to one another. (They are best friends.)
- Parents are continuing to seek additional state support services to help their son become more independent.
- They practice SDM while using a DPOA and Rep Payee.

Rights Restoration

- **Young adult seeks rights to make his own life decisions.**
- **Full Conservatorship**
- **Age 23**

Summary:

- Young man was referred to the Center for Decision-Making Support to help him get his conservatorship terminated. His half-brother was his conservator. His father was deceased. His mother abandoned the father when the young man was a child. The brother became guardian when the young man was 13 yrs. old and then became the conservator when the young man reached age 18. The young man dropped out of school at age 18.

- When he came to the Center for Decision-Making Support, he was living in his own apartment by himself with limited ECF Choices supports. He had a job but was not allowed to get a driver's license because the conservator would not allow it. He wanted to get his diploma and go to college, but he did not have the authority to make those decisions. The conservator did not think he could do those things, so he would not help him. The young man was living on his own, managing his daily activities but did not have the legal authority to make any of the decisions to work toward his life goals. He had to ask his brother to authorize everything he did. If his brother did not agree, he would not allow it.

- The Center for Decision-Making Support developed a Circle of Support with an advocate, support coordinator, CDMS staff and a private attorney to determine if this young man's rights should be restored. It was determined by the team that he did have

TN CENTER FOR DECISION-MAKING SUPPORT

the capacity to make his own decisions using Supported Decision-Making. Together the team worked on obtaining the documentation to show capacity; built a rapport with the conservator to get him on board to not contest the petition; to have social security enable the individual to become his own payee; worked with his psychologist and physician to obtain the necessary medical documentation to verify his capacity change; and started the court process to restore his full rights. This whole process took 1 1/2yrs.

Result:

- The judge reviewed all the documentation and restored the young man's rights.
- The young man obtained his driver's license and bought a car.
- Completed his HS Diploma online.
- Applied for and is attending college for criminal justice.

Issues:

- Conservatorships are not evaluated or reviewed to see if the person's capacity has changed.
- The process to have a conservatorship modified or terminated is costly, complicated, and lengthy, without professional help someone would not be able to have their conservatorship changed.
- Because the conservator did not have the accurate understanding of his role as conservator to assist the individual to regain his rights , if appropriate, the young man was stuck and unable to achieve his life goals and dreams.

Recommendations:

- Conservators need to have training that explains their roles and responsibilities as a conservator, which includes supporting the individual to regain rights if applicable.
- They court and legal system should provide a process that is affordable and accessible to individuals under a conservatorship to enable them to have their conservatorship evaluated to see if a modification or rights restoration is appropriate.
- Mediation processes should be available to help resolve issues between the individual and the conservator/s

3. Suggestions for protecting the rights of people being considered for or currently covered by guardianships, conservatorships, or other protective arrangements.

Recommendations:

Statewide resource center for help

- Each state needs a **"one-stop-shop" resource center** to help individuals and families with conservatorship and alternative information, assist with conservatorship concerns and abuses, and provide referral assistance for legal services. This program should

TN CENTER FOR DECISION-MAKING SUPPORT

include a website, videos, webinars, brochures, one-on-one assistance, referral services to legal services. See the TN Center for Decision-Making Support resource center link below.

https://www.tndecisionmaking.org/

Conservatorship statics from the Center for Decision-Making Support work.
Served: 346 families since 7/2020

- Families that contacted the Center for Decision-Making Support seeking a conservatorship: 150
- After attending a Conservatorship and Alternatives consultation decided:
  - Conservatorships pursued: 82
  - Durable Power of Attorney pursued:41
  - Supported Decision-Making pursued: 10
  - Unsure/still considering options: 17

Courts

- Each state needs to have consistent oversight and best practice information and training regarding conservatorship and alternatives.
- Legal services to assist individuals regarding conservatorship need to be accessible and affordable for the individual.
- Conservatorship (Guardianship) courts and attorneys need to be educated regarding conservatorship alternatives. They also need to consider implementing the least restrictive decision-making option.
- An appointed Guardian Ad Litem (GAL) and/or Attorney Ad Litem (AAL) should be assigned to a respondent at the onset of a conservatorship petition. (GALs services should not be waived)
- These services need to be available for anyone under a conservatorship or in a court process related to conservatorship not just individuals who receive state waiver services.
- Conservators should be required to complete comprehensive conservatorship training.

Education

- Education and training regarding conservatorship, alternatives, best practices, court processes, etc. needs to be available and promoted for individuals with disabilities, family, professionals, and legal entities.

Conservatorship transfers

- Consistent guidelines for conservatorship transfers amongst the states and within the counties

TN CENTER FOR DECISION-MAKING SUPPORT

- The original court order should remain valid until a new court order is obtained in the receiving state.
- The sending state should include an explanation regarding how that court order in interpreted and applied according to their state statute.

Funding to Support Reform

- Funding for programs to pay for conservatorship services when there is not family or other natural supports to serve as conservator.
- Funding to provide free or low-cost legal services to obtain a conservatorship.
- Funding to support states to develop pilot programs to address the service gaps in the guardianship/conservatorship system. This funding should allow for unique approaches to incorporate least restrictive alternatives to guardianship/conservatorship. This funding should be available in grants to agencies, organizations, legal entities, and courts that serve the disability, aging and mental health population.
- Funding to support a statewide database and/or oversight office (See the below link to the Davidson County Office of Conservatorship Mgmt. website) https://officeofconservatorshipmanagement.nashville.gov/
- Funding for states to develop and maintain a statewide commission on guardianship/ conservatorship.

Note: These scenarios are real situations we have experienced. The Center for Decision-Making Support team include The Arc Tennessee staff who manage the CDMS program and website, partners with the TN Council on Developmental Disabilities, and the CDMS Advisory Group which is comprised of 15 professionals from all areas of the disability field and organizations across the State of Tennessee.

TN CENTER FOR DECISION-MAKING SUPPORT

The Arc

TN Council on Developmental Disabilities

This project was supported, in part, by grant number 2001TNSCDD, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects with government sponsorship are encouraged to express freely their findings and conclusions. Points of view or opinions do not, therefore, necessarily represent official ACL policy. This

TN CENTER FOR DECISION-MAKING SUPPORT

project is funded under a Grant Contract with the State of Tennessee, Council on Developmental Disabilities."

This communication contains information from Disability Rights Tennessee which may be confidential and/or privileged. The information is intended to be for the use of the individual(s) or entity(s) named as recipients above. If you are not the intended recipient, please destroy this correspondence and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you received this communication in error, please immediately notify the sender.

PHILIP C. MARSHALL

Date: March 23, 2023

To: U.S. Senate Special Committee on Aging, [redacted]

Re: Guardianships, Conservatorships, and Alternatives — Statement

Elder Abuse and Financial Exploitation in Adult Guardianship as State-Sanctioned White-Collar Crime

Adult guardianship desperately needs reform, then replacement, so citizens can protect their constitutional and humanitarian rights

Dear Chairman Casey and majority staff of the Senate Special Committee on Aging:

My name is Philip C. Marshall. I am founder of Beyond Brooke, a cause-based organization advancing elder justice. My grandmother, Brooke Astor, was a New York City philanthropist, the president of the Vincent Astor Foundation for four decades, and a victim of elder abuse and financial exploitation. In concert with several other concerned persons (NYCEAC), I helped save my grandmother from abuse and exploitation by my father and other perpetrators. I petitioned the New York Supreme Court in New York City for a guardianship that was awarded. It allowed my grandmother to spend her last days as she wished: with loved ones, and free from fear.

I am a recipient of The Isabella Award (for guardianship) from the National College of Probate Judges; as keynote speaker, I addressed the National Guardianship Association annual conference in 2015; as a witness, I testified before your U.S. Senate Special Committee on Aging (Broken Trust, February 4, 2015) and submitted written testimony for the record for Trust Betrayed: Financial Abuse of Older Americans by Guardians and Others in Power hearing (November 30, 2016.)

Guardianship helped save my grandmother. But, as I have learned over the past 15 years, guardianship needs reform desperately. Adult guardianship abuse and financial exploitation is an epidemic; a social harm; a deprivation of constitutional and humanitarian rights; a theft of citizens' net worth (including federal entitlements), self-worth, and lives; and criminal.

What follows is informed by the principle that our social compact is defined by the relationship between society and self, in equal measure. This equity is at the heart of all equity. This equity, when cradled by trust, allows our country to flourish. This equity, when tried, is found to be compromised in adult guardianship.

Senator Casey, the ways your committee addresses guardianship through the lens of trust (or its betrayal) is critical. All too prevalent fraud (Office of Victims of Crime, U.S. DOJ) and "pure" elder financial exploitation (Jackson and Hafemeister 2012) aside, elder abuse is the betrayal of trust. Elder justice is the promise of trust. *Elder* and *justice* are both forward looking as are *promise* and *trust*—individually, in sum, and in intention.

Below, elder abuse and financial exploitation is considered as state-sanctioned white-collar crime, especially when viewed though the lens of trust or its betrayal. Delving deeply into white-collar crime informs our understanding of the pathology, prevalence, persistence and, prevention of guardianship abuse and exploitation that has been hard to address since even before Congressman Claude Pepper's hearing qualified *Abuses in Guardianship of the Elderly and Infirm* as "a national disgrace" in 1987.

Analyzing guardianship abuse and exploitation through the lens of white-collar crime—in cases, as racketeering—informs the level of systemic change needed and ways to achieve this change. Guardianship and its reform seem to be on the sidelines until we "think about white-collar crime as abuse of trust" (Susan P. Shapiro 1990). This approach informs social theory, criminology, policy, legislation, practice, and prevention. This approach allows other concepts to coalesce and serve as a catalyst to help arrest abuse and advance systemic reform.

Above all other relationships between society and self—and far, far beyond any informal "expectation of trust"—guardianship embodies our most demanding legal, social, and moral obligation. Arguably, guardianship manifests society's greatest responsibility held in trust, given the courts' and guardians' broad-scope fiduciary duties and the profound, asymmetric power imbalance (Luhmann 2017) imposed on persons subject to guardianship in the absence of beneficiary control. "Fiduciary" or "trust" relationships, in which "one party is at the mercy of the other's discretion" (Weinrib 1975), must be subject to our strictest legal rules, pro-social norms, and moral obligations.

In White-Collar Criminality (1940), Edwin Sutherland is most known for introducing this concept to broaden a prevalent limited understanding of crime and to extend beyond society's biased belief, "that crime, as popularly conceived and officially measured, has a high incidence in the lower class and a low incidence in the upper class." Brian K. Payne assesses eight different concepts and 12 definitions that criminologists employ, noting "A definition of white-collar crime acceptable to all groups is yet to be developed." (2017, 37-39). The perception and focus remains on corporate crime. But, there is rising interest and concern in areas that include health, education, housing, the environment, transnational technology facilitated fraud, and systems of social control—the courts, included.

From a criminological perspective, white-collar crime involves, "violations of the law to which penalties are attached that involve the use of the violator's position of significant power, influence or trust in the legitimate economic or political institutional order for the purpose of illegal gain, or to commit an illegal act for personal or organizational gain." (Reiss and Biderman

1980, 4) "Those in which 'one party is at the mercy of the other's discretion' [Weinrib 1975, 7] are labeled 'fiduciary' or 'trust' relations and subject to much stricter legal rules and intrusive moral rhetoric," observes Shapiro (1990, 349-350).

"In contrast with the power of white-collar criminals is the weakness of their victims," Sutherland observes in his seminal work (1940, 9). The court-determined fact that persons subject to adult guardianship are (allegedly) cognitively impaired compounds this perpetrator-victim power imbalance, made more predominant and persistent by courts when they deny a strengths-based approach to self-determination informed by a capabilities approach—supported decision making (Center for Public Representation), included—and when they turn a blind eye.

Guardianship abuse and exploitation, as white-collar crime, involves the *manipulation* of trust and fiduciary responsibility by actors associated with the court system. Here, manipulation is twofold: it means (1) "to control or play upon by artful, unfair, or insidious means especially to one's own advantage" and (2) "to manage or utilize skillfully." (Merriam Webster) Of the latter, this skill is taught to perpetrators by the state, as described below. Perpetrators employ insidious, skillful means to hack trust in ways that compromise both individuals subject to guardianship and society, whose foundation and future rest on trust.

Schmidt and colleagues conclude, "…the environment in which white-collar crime takes place strongly affects the attribution of responsibility for the crime and its subsequent punishment" and that strategies must focus on both "bad apples" and "corrupting barrels" (52-53; ref. Scholten and Ellemers, 2016). Efforts must extend beyond accountability and "just deserts" of individuals (Braithwaite 1982) to organizations (here, state courts) to prevent of abuse and exploitation. Concurrently, efforts must extend beyond "ritualistic regulation that gives the appearance of being tough without compelling major substantive change." (Braithwaite, Makkai, Braithwaite 2007, 220)

An alarming number of guardianship abuse and exploitation cases appear to be state-sanctioned —whether by commission, omission, collusion, or all three.

- *Commission* extends beyond outright criminal acts by an individual to "aiding and abetting" other persons who are engaged in illegal acts, through collusion.
- *Omission* may be willfully and knowingly, or unknowingly, achieved. With respect to financial abuse, the onus on persons who conduct omission may extend as far as found in California statutes to include a "person or entity knew or *should have known* that a conduct is likely to be harmful [*italics*, added] to the elder or dependent adult." (Welfare and Institutions Code §15610.30(b)).
- *Collusion* among individuals engaged with the court system may be fostered by differential association (described next), leading to racketeering.

Sutherland's concept of *differential association* explains how "white-collar criminality, just as other systematic criminality, is learned; that it is learned in direct or indirect association with

those who already practice the behavior." (1940, 10) Differential association drives criminals to act with impunity. (Eurasia Group; February 17, 2023)

Equity courts provide a favorable environment for learning deviate behavior through differential association toward scaling criminal efforts—here, in guardianship. It remains to be seen whether the equity courts provide a safe and nurturing incubator space that advances other forms of white-collar criminality beyond guardianship abuse and exploitation, "infiltrating legitimate business" (Cressy 1969) in arenas to include those in the adult guardianship pipeline (Erica F. Wood 2020). For older citizens who are life savers, their accumulated and available trillions of dollars are at risk. For older citizens who need a lifesaver, in the form of new property (Charles A. Reich 1966), their federal entitlements are at risk.

Guardianship abuse and exploitation is not a cottage industry, it is a business, it is an enterprise that "takes place across a spectrum including legal and criminal businesses" (Smith 1970, 358). At times, guardianship abuse and exploitation is a joint enterprise (Cornell), mindful that the "...modus operandi literature demonstrates the existence of consistent pressures to pass blame for white collar crime downward in the class structure" (Braithwaite 1985, 7).

Guardianship abuse and exploitation may also be racketeering, lending new meaning to "ring around the [white] collar [crime]." In adult guardianship abuse and financial exploitation, this criminal ring shackles society and enthralls individuals who are subject to a 21st-century form of human trafficking; when it is in the United States, at times it's interstate.

Fortunately, a new dawn rises in a new publication and in renewed academic interest and intent in addressing and arresting white-collar crime. Declared in its 2020 inaugural issue, the *Journal of White Collar and Corporate Crime*, "strives to advance the knowledge of the fields of trusted criminals, to enhance empirical and theoretical investigations into the crimes of the powerful, and to reduce the experienced harms and victimization of ordinary people by influencing and supporting new social interventions through legally oriented policy change and critique." (Alvesalo-Kuusi and Barak 2019, 4) Sustained efforts will also inform and transform legislation, practice, and prevention. The journal was launched by the Division of White-Collar and Corporate Crime established within the American Society of Criminology in 2017. The division was established by White Collar Crime Research Consortium (WCCRC, history), in turn developed under the sponsorship of the National White Collar Crime Center (NW3C).

Fortunately, the National White Collar Crime Center was invited by the U.S. Department of Justice to collaborate on the DOJ-funded, newest Elder Abuse Guide for Law Enforcement (EAGLE) free online training, in partnership with the National Center on Elder Abuse (U.S. Department of Health and Human Services, Administration for Community Living), which has helped expand partnerships, nationwide. For example, NCEA presented at the 2023 National Sheriffs' Association Conference, in part to gain a "glimpse at the newly refreshed EAGLE training with the National White Collar Crimes Center." (February 4, 2023)

[redacted]

This ia a brief overview of my mother's conservatorship and my case both are false to gain control of all our money and they did and my moms dead.

The current system of conservatorship dash guardianship in the United states is a shame to our country and it's a shame to our government. If this committee does not realize the atrocities that are being committed against the elderly in the United States of America at this time then I apologize but they must have their eyes closed.

At this time people who would seek to exploit others especially the weak as the elderly tend to be, know that one of the best tools to basically steal someone 's life savings their home their property their dignity until finally their life, is a conservatorship. My mother immigrated to this country from [redacted] she worked for 41 years as a registered nurse my father passed away when I was 17 so it was basically me and my mom we loved each other from the bottom of our hearts. And then these people in my case it was the neighbors [redacted] and her girlfriend [redacted] who filed false allegations with adult Protective Services that I was hiding my mom in her room for 6 months when the fact was my mom was in Peru visiting her family for 6 months the neighbors knew this. Yet [redacted] of Pacific Grove a police officer and a investigator who did not want us moving next to her orchestrated this whole ploy and to be able to utilize the justice system because they know how it is ran because they're in it and exploit my family my mother is dead at this point our estate squandered and my life is very difficult and it's very sad.

Now [redacted] might be one factor but she knew about a system that was easily manipulated because it is a system of exploitation. When in our country do you ever hear of somebody's civil rights being removed in a 5 minute court hearing without the person present yet that is what happened to my mother. Even the court documents from the court investigator stated my mom was not 5150 even the director of this facility that she was put in by the public guardian for awhile he said she was way too functioning but the public guardian [redacted] and [redacted] who also brought up false allegations against me all along with [redacted] they

were friends they were buddies they belonged to same motorcycle club. Another strange fact in my case is I had an ex employer [redacted] who swindled people out of $240 million people like the [redacted] he lives here in LA now and his cousin is [redacted] and I worked for that man and he hates me and there seems to be a lot of coincidences in this case however the system shouldn't be able to be utilized by anybody that way. My mother was a very well taken care of as the doctor said in the hospital. a 75 year old woman who knew where her house was in San Francisco and you see the public guardian once they came over and they accused me of isolating my mom and my mother had just returned from [redacted] we she brought out her passport showed it to [redacted] of adult Protective Services and he didn't know what to do but somebody called and instructed him how to talk and then when he left our house at in [redacted] on [redacted] he didn't walk to a car he walked right to the neighbors right he jumped over the fence in fact so he wouldn't have to walk all the way out to the sidewalk and that's what he did every time he came by he went directly to the neighbors to report. The neighbors had our phones redirected so that they could call people pretending to be me. Anyway they first claimed first they claimed that I was locking my mom in a room then when that got proven false they moved on to more false allegations. they claimed that I was committing financial abuse after 8 months of investigating me they could find nothing they could not file any charges which really bothered them because [redacted] and passes the public garden had been taking out 60,000 40,000 with no reasoning and while they had control still received notification of how much we were making as I handled the investments. We made 60,000 while the public guardian had out accounts it never reflected the accounting. She gave us an allowance giving us a little 2000 that we had to beg for.

[redacted] we didn't even know how much she cost my mother fired her on numerous occasions but [redacted] just ignored it and came back these people take control of your lives and they talk about you like you are you are so low and they are so above you and they're just a bunch of thieves [redacted] ended up I think making 300,000 close to 300,000 in bills in billing statements plus the County Council plus the public guardian [redacted] was my mothers conservator, the DAS lover, [redacted] came to to court and appointed [redacted] as his DA investigator . what was found out later her lover DA

[redacted] she was in an extramarital affair her husband was a police officer on the force and she was having sex with the DA who was convicting me and she was controlling my family 's money and my mother and as soon as I was out [redacted] sought orders to forcibly drug my mother because my mother screamed for her freedom. I was not allowed to testify in my own court proceedings because my attorney threatened me even though that is the whole reason I went to court to testify. I was I was released and I was able to see my mother 3 times she looked scared meek and on one occasion had a black eye I argued about the place where they placed my mother it was called see seniors paradise for seniors. Oh but that but the court appointed attorney [redacted] and [redacted] went on and one what a wonderful place it was and called me crazy, you are crazy miss [redacted] I said I my mother looks terrified last time I got to see my mom I had 3 visits because [redacted] kept me in court from the moment I left after the being released for 6 months he kept me in court trying to violate my probation and he admits that during this time at least he was definitely in the affair which is a conflict of interest and he should have recused himself but he did not recuse himself until he was caught so they needed me away to get to my mother and to get to the money and the house. The last time I saw my mom in person mother they had us meet at Starbucks and when they said visit is over she begged them to have more time with me she was crying while they dragged her away she paid them 7 or $8000.00 a month for their services and she is told what to do by them and we get maybe half an hour we got that 3 times at a Starbucks with police and public guardians all around us recording us listening to us telling us we couldn't speak in Spanish my mother's first language is Spanish. I was told not bring up anything financial to my mother or anything about the house I asked if that was a condition that I would be violated for if I broke that condition so is it a condition I was asking if it was a condition by the courts that I lied to my mother. Of course they said no but I was not allowed to bring it up we don't want to upset her and I said well I don't know about you but most people I know the major concerns are their family their money and their home so I cannot see that my mother would not bring that up period? Of course my mother brought it up in our visit she wanted to go home and she had enough money to have somebody take care of her home she wanted to go back and see her sisters in [redacted] she had 12 sisters and brothers who have maids

and lived very well but she was not allowed to leave [redacted] she when he became a prisoner of [redacted] when the only reason she was in [redacted] was to see me because I graduated with my masters from the [redacted] When I then started to make a lot more noise and I went to the Board of Supervisors and gave them all the information that I could find on guardianships on what was happening in [redacted] with seized houses and [redacted] who I knew throughout my trial was having an affair with [redacted] because I would be in the room and they would be there kissing when nobody else was there but me so as soon as I went to talk to the Board of Supervisors begging them to help my mother I was put away and I never saw my mother again she died while I was away. In my life there has never been any type of criminal history, my mother and I as she stated to everyone it's funny because the court appointed attorney acted like they had a great relationship my mother hated that attorney she said so on video and she said it to many people but [redacted] will totally deny that ohh no because she is pulling the strings the puppet master she worked with the with the public guardian to conserve my mother she admitted that in her final filing and then she realized that she regretted that because the public guardian who got fired for misappropriation of funds fraud in the care of her wards and seniors paradise was closed down by the state of [redacted] for elder abuse that's the home that my mother lived at and when she looked terrified . My mother fell at that home and then broke her hip completely because she was drugged and she fell off the toilet and her hip broke completely and she was then crippled there was no investigation there was no inquiry into her falling in the middle of the night and laying on the floor and her total hip being broken in fact it's hardly mentioned I didn't even know until I skimmed more deeply into the court papers so they cover up their own crimes and they palsy accuse others who were they to come into our lives because [redacted] have some revenge wanted to get all of our money ironically I believe I I was I had I I was dating the guy from [redacted] I had caught him stealing I had called the police and I caught him stealing from my mother's account he had the cards one day and I didn't know until I looked for them he was gone and this was the first time it happened [redacted] he was married here in [redacted] to [redacted] as she would say she he picked her clean she left came here a millionaire she left penniless he was stealing from my mom and me and I caught

While my mother was in the nursing home, **the guardian, along with the cooperative**, conspired and robbed the entire contents of our family's home. Stolen was our luxury furniture, diamond and gem jewelry, high-end electronics, cash and my dad's legally owned rifle. The New York City Police Department investigated the theft of the gun, and contents of the apartment, but was unable to locate the firearm and the items.

The guardian also targeted my mother's cooperative apartment, worth at least $500,000, to sell it.

Under the Covid 19 restrictions, my mother was isolated in Terence Cardinal Cooke Nursing Home. No longer could I visit her, nor could I monitor her care. Just 6 weeks, with my no longer having access to my mother, she was pronounced dead.

On May 4, 2020, she died.

When I went to collect my mother's funds from her Apple Bank guardianship account, to bury her, the bank refused to return her money to me. The bank seemed to have a questionable and very close relationship with the guardian. A year later, Apple Bank turned her money back over to the guardian. United Guardianship Services then used my mother's remaining funds to pay itself a commission of over $1,000, and to pay 2 attorneys who were trying to sell my mother's property.

My father had cardiac illness. He was in the same nursing home as my mother.

Because of the guardianship, he was not allowed to return to his home. He was a **U.S. Army Military Police Officer and a 30 year MTA worker**. In the same nursing home as my mother, bleeding from blood thinners, he, too, perished.

On August 11, 2015, he died.

Because of the guardianship, my only sibling, Karen Moses, who had Cancer, was evicted from my mother's cooperative apartment. She was evicted so that the property could be sold. Tossed onto the streets, hemorrhaging, on May 27, 2019, she too perished and died.

We were an African-American family, who lived in Public Housing and extremely, we worked hard. At Maple Court Housing Development, at 1901 Madison Avenue, #109, New York, NY 10035, we became shareholders in a housing corporation.

A court-appointed guardian stole everything that we had achieved.

Lastly, after the death of my mother, the guardian and the cooperative, Maple Court, continued to pursue the theft of the property, which I am the heir to. As Maple Court had the keys to our home, and provided access for the theft, in seeking recovery for the theft of my family's items, from Maple Court, I have received only resistance.

Out of a family of 4, I am the sole survivor of the Moses family.

Because of a predatory guardianship, my entire family died within a short period of 5 years.

This tragic story happened under the "supervision of the court."

I hope that this hearing will be a significant and transformative step in bringing about changes to guardianship so that our elders and the most vulnerable will not continue to be targeted, needlessly lose their assets and ultimately die.

Thank you for hearing my testimony.

Sherry Moses
[redacted]

Guardian:
United Guardianship Services
Albert Wilshire
[redacted]



Good Day Senator Casey,

Thank you for providing the opportunity for myself and the countless victims of Guardianship abuse to share our journeys, stories and experiences with Probate court, Conservatorship and Guardianship.

My name is Sue Reeves of Essex County, New Jersey. I am the founder of the #FreeYusefDavis and #ReuniteSkylerWithHisFather movements. I am the owner of Advocate's Attire, a t-shirt line launched to unite the millions of family members that are being tortured daily by Adult Guardianship and Conservatorship abuse nationwide. I am a member of the advocacy/activist group Elderly Lives Matter USA, an Event Planner and a small business owner.
I am also the proud Mother of our nation's youngest advocate against Adult Guardianship abuse, 7 year old Skyler Davis.

Our family has been significantly affected by the nightmare known as Adult Guardianship since June 2018 when my boyfriend of close to 20 years and the Father of my only son, Yusef Davis of Union County NJ, SURVIVED a stroke, heart attack and traumatic brain injury at the young age of 39 years old. Mr. Davis was deemed an incapacitated person and placed under

Guardianship by a now retired Union County Probate Judge in Nov. 2018. Due process was not followed. As Yusef's girlfriend of 17 years whom he resided with and the Mother of his child, I should be considered an interested party. Yet, I never received notification of the proceedings in Nov. 2018 that stripped him of all of his human and civil rights.

Our beautiful son, Skyler, was only 2 years old when his Father's initial Guardian, Yusef's mother, completely severed the relationship between my son, his Father and I. Blatantly barring and outright refusing to allow any access or communication with Yusef. What harm could a 2 year old child cause his Father?

Fast forward 5 years and the heartbreaking isolation, undue influence and malfeasance continues! The current guardian, Mr. Davis' estranged half sister and owner of a childcare center for over 20 years, has not allowed our innocent son to share a telephone call, a virtual call or an in-person visit in the entire 3 years she's served as the role of Guardian, DESPITE Skyler and I currently residing less than 10 minutes from his Father's residence. My son's alienation from his biological Father also impacts the relationships he has with his paternal siblings. Skyler has to accept that his twin sisters can have communication with their Father, although limited and restricted but he cannot. Furthermore, the Guardian is also interfering with the relationships between Yusef and his three older children, Skyler's siblings, by refusing to allow his children to visit or denying communication with their Father in the manner in which they're accustomed to pre-illness. The Guardian's actions demonstrate her total disregard for Yusef Davis as a Father of 4. It more specifically speaks to the Guardian's to refusal to allow Yusef to participate in the decision making process and he would NEVER internationally be absent from ANY of his children's lives.for such an extended period of time.

You'll find our journey is somewhat unique from other advocates in which I have personally experienced the differential between **incarceration vs. incapacitation**, with Yusef. I have firsthand knowledge that Yusef had more rights, liberties and freedoms as a convicted criminal than he does as an incapacitated ward of the state. THAT is a grave miscarriage of JUSTICE!!

I am tremendously fearful of what the long term effects of this situation may have on our young son. I don't want him to grow up feeling discarded or abandoned by his Daddy nor do I want to be blamed when neither parent is at fault. I am even more fearful of how this forced isolation is affecting Yusef and his overall well being. No one can convince me the Guardian is acting in his best interest as long as our son is being alienated.

This past Christmas marked our son's 5th consecutive Christmas without ANY acknowledgement from his Father! On 2/22/23 we celebrated Skyler's 7th birthday which marked the 5th consecutive year we've celebrated Skyler's birthday without even a card from his Father.. Something Yusef would NEVER do!

Skyler's Dad has been forced to miss his entire PreSchool career including his moving up ceremony, Skyler's first day of Kindergarten and graduation, the first day of First Grade, losing his very first tooth... His first haircut!...the list goes on and on. Irreplaceable time LOST!

Every milestone moment is bittersweet without his Father's knowledge, involvement or presence. Yusef's not aware how smart and intelligent our son is, already reading at a 3rd/4th grade level in the first few months of 1st grade. He's not been afforded the opportunity to know our son is a self proclaimed Paleontologist with a dinosaur collection of over 100 dinos! How they both share a love for marine life and Godzilla.

With so many men CHOOSING not to be active and present Fathers, it's heart wrenching and should be criminal to refuse a man, that strved to be a stellar Father, the opportunity to exercise their parental rights simply due to his disability! He would NEVER miss so much of his children's lives!

My boyfriend has made tremendous strides in his recovery! Now able to walk with only the assistance of a cane, breathing on his own. feeding himself, with some minimal cognitive dysfunction.... YET his Guardian now controls every aspect of his life; Denying the opportunity to participate in the decision making process. Refusing adequate socialization A Guardian, who owns and operates a daycare center is actively and internationally isolating a Father from his child/children.

If in fact Yusef Davis does require any assistance there may be less restrictive measures to support an individual without stripping them of all of their rights!

I welcome the opportunity to discuss further at your convenience.

Thank you for caring!

Respectfully,

Sue Reeves

[redacted]

Written Statement of Amanda Jo Benoit
Pittsfield, Massachusetts

For the U.S. Senate Special Committee on Aging

Guardianship, Conservatorships, Protective Arrangements, and Alternatives

March 15, 2023

Hi, my name is [redacted] from Pittsfield Ma. Supported Decision-Making (SDM) is great for me, because I get to make my decisions with help from my team. On my SDM team, I have [redacted] and my mother.

I think SDM helps me, because I look to [redacted] and [redacted] for support, and if I am with [redacted] will speak to her. I also speak to my mom if I need to too.

My SDM Team has helped me join Karate, and work on my health. I have also had my SDM team help me at the bank and with my boyfriend [redacted]

I have been in the SDM Pilot Project for seven years. My SDM Team has helped me with many things.

I now have my Green Belt in Taekwando. I have traveled to many places in the country with my friends, and I am now a World Traveler. I went to London, Paris, and Rome with my friend [redacted] last year. In the past year I have gone through some major health changes and major surgeries, and I leaned on my SDM Team to help me understand what was happening to me and what the doctors were saying. [redacted] and my mom helped me through each step. They spoke to me and had a one on one discussion and provided me with the big picture of my decision. I then made the decision to have the surgery on my spine, which was needed because I kept falling and loosing feeling in my legs.

In ending, My Voice Matters! Please vote for SDM!

You can learn more about my story at:
https://supporteddecisions.org/stories-of-supported-decision-making[redacted]

Dear Senator Casey,

Please accept my deepest apologies for the day late delay. I was at a funeral all day yesterday of a dear friend.

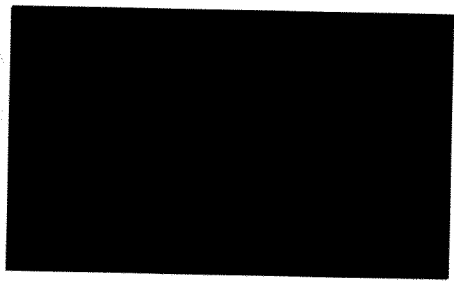
I, most appreciate you and your committee in taking the time to address the atrocities that are occurring with elder abuse.

The poem accurately depicts what is happening to our beloved loves ones.

Thank you so kindly and Warm Regards,

[redacted]

Crushing the Rose



Imagine when crushing the Rose that it doesn't matter
how your forefathers suffered and died for your freedom
of speech —
When greed and power take over your voice.

Imagine when crushing the Rose that it doesn't matter
how hard your forefathers and you worked, penny-pinching to build up a life's savings —
When the court and those it selected want your heritage to satisfy their greed-cravings.

Imagine when crushing the Rose that it doesn't matter how much you declare your wishes and
desires to have family care for you and your finances —
When the court disregards your desires and takes an antithetical* stance.

Imagine when crushing the Rose that it doesn't matter
that your husband and you, with your honesty and good characters, were pillars of the
community —
When the powerful court players ignore due process and seize the defalcation** opportunity.

Imagine when crushing the Rose that it doesn't matter
you were the president of the Civic League and helped many for the good of men —
When the court-appointed guardians have publicly proclaimed "OWNERSHIP," now a prisoner
under them.

Imagine when crushing the Rose that it doesn't matter
that your family tries to be your "stolen voice" —
When retaliation and isolation are the result, prohibiting your choice!

Imagine when crushing the Rose that it doesn't matter
how many times your family's heart is full of pain, seeing your fear-ridden eyes swelling with

tears as you plead for them to come back inside while mouthing "Please don't leave," as
your family is forced to turn away in such agonizing pain -
When the court-appointed strangers dehumanize your family unit resulting in isolation, leaving
you to endure hidden abuses' stain.

Imagine when crushing the Rose that it doesn't matter
if there are laws by which you and I must abide –
When the court system initiates its own under which it can hide.

As John Lennon said in his song "Imagine" – "You may say I'm a dreamer"
I dream of a world where isolation is abolished
and, as I walk through the rose garden with my daughter,
THE MUSIC of MY OWN CHOICES CHIMES THROUGH OUR EARS.

[redacted]

May we not be ignorant to believe that this is not our fate.
As we remember the wisdom of Hubert Humphrey,
Martin Luther King, Jr., and Dietrich Bonhoeffer,
may OUR HEARTS HOLD THE TRUTH
THAT WE WILL BE HELD ACCOUNTABLE
FOR HOW WE TREAT THE VULNERABLE,
THAT "INJUSTICE ANYWHERE THREATENS JUSTICE EVERYWHERE,"
AND "SILENCE IN THE FACE OF EVIL IS ITSELF EVIL.
GOD WILL NOT HOLD US GUILTLESS.
NOT TO SPEAK IS TO SPEAK. NOT TO ACT IS TO ACT."

WRITTEN ON BEHALF OF MARION ROSE'S VOICE

*Antithetical - It is the complete and utter opposition to the character of something you believe in.
**Defalcation - In legal terms, refers to theft, misuse or misappropriation of money or funds held by
an official trustee, or other senior-level fiduciary.

The Story of Marion [redacted] of Portage, Wisconsin

In 2015 family was put in place for my mother, [redacted], guardianship. [redacted] was happy and well cared for and had her voice in all matters.

In 2016 probate guardianship forced their unwanted militant control without my mother being given her right of due process. She was treated as a commodity. This is happening throughout the country in thousands of cases. My mother [redacted] lost her identity, her voice to say what she desired and wanted as healthy and good in her best interest and was put in a worse than prison environment. The first corporate guardian who wanted to do right by my mother was threatened with her life, her family's life, and her career, and forced to step down.

My mother [redacted] was subjected to physical, emotional, mental, and spiritual abuse.

My mother [redacted] was taken to the ER for swollen cheeks, numerous UTIs, rashes from negligent/unattended care, and strokes from abusive care. My mother [redacted] suffered bruises, scratches, and gashes, and was left to sit in soiled pants for several days. She was threatened not to speak of the abuse to her loved ones.

My mother [redacted] was severely limited in the hours her family could visit and eventually isolated from family for days. She was told family didn't want to see her. We could not stay in our family home. We were to remain in the same room as my mother. My sister coming from Pennsylvania had to get a motel room. I strongly believe my sister's tragic premature death was caused by the distress of seeing the torturous abuse of my mother and being threatened to keep quiet. My mother cried when we were asked to leave and she wanted us to stay. In her own home, the guardians created an institutional, inhumane, cruel atmosphere which inflicted fear, anxiety, and isolation. They inflicted what the United Nations calls the worst kind of torture in isolating my mother from her family at a time when she needed the tender loving caring of her family the most.

My mother [redacted] was told she was stupid, criticized, and belittled. She was denied food and denied the joy of making her own food.

My mother [redacted] was not allowed to have her pastor visit to pray with her. Her pastor was not allowed to visit her in the hospital and pray with her when she was in unstable condition with collapsed lung. My mother was not allowed to watch her religious programs on TV or listen to Christian radio in her own home.

Ultimately my mother [redacted] was over-medicated and her life shortened by the guardians and hospice.

Relating to my mother's case, the corporate guardian of estate (who was a lawyer) and guardian of person were fighting amongst themselves and threatened to sue each other in court. (I have voice recordings as evidence.) It made a worse, more volatile mess that brought more confusion, disorder, disruption, discord, and disharmony that was detrimental to my mother's care and health. There was so much evidence and proof of abuse that there was no other recourse but for the corporate guardian of person to recuse themselves. Shockingly the court did not order jail time for their exploitation, isolation, physical abuse, mental abuse, emotional abuse, and spiritual abuse or order any fine to hold them accountable.

We went to the chief of police of Portage who told us his hands were tied and we had to go back to the court. We went to the Department of Health Services in Madison, the Aging and Disability Resource Center and Columbia County Health and Human Services in Portage, contacted in person and/or wrote every senator and representative of Wisconsin and the Aging and Long Term Care Committee who basically passed the buck and did nothing. I contacted Betsy Abramson, who with Roy Froemming co-authored the handbook, *Guardianship of Adults*, who said that all the laws are set in place but the problem is they are not being enforced.

It was very deplorable and distressing whenever family or friends reported abuse to departments who are to protect the vulnerable that there was retaliation in harsher measures against [redacted]nd ultimately family.

Collective Suggestions Through Information and Experiences Gathered by National Advocacy Groups

A. Supported decision making should be the only mechanism and procedure that is implemented.

B. Every citizen should retain their voice and, under no circumstances, should their voice and identity be taken away and given to a guardian or probate guardian.

1. No medication can be administered without the citizen's approval.

C. Any citizen under another person or entity's care should be camera-monitored to deter abuse.

1. Reports of abuse shall be investigated by law enforcement and laws enforced, if affirmed.

2. Any care person retaliating against reporters of abuse through visitation restrictions and/or isolation of the citizen shall be subject to fines and/or removal from care position.

D. Instead of probate court, the family should be making all decisions:

1. If the family is not getting along, a counselor should be called in to assist, not take over.

2. There needs to be a cap on what counselors and financial advisers can charge for assisting.

E. If there is no family, a team or panel selected by the individual will make decisions, to include a pastor, 3 or 4 friends, a social worker, a counselor/psychologist, a healthcare provider.

F. A person cannot be deemed incompetent unless a team of 12 to include family members, a pastor, 3 or 4 friends, a counselor/psychologist, and 3 or 4 doctors are in unanimous agreement. Without a unanimous vote, the person cannot be deemed incompetent.

1. Just because a person cannot formulate words or has different beliefs or viewpoint, does not make a person incompetent.

G. Probate guardianship can only be put in place when there is no family, friend, pastor, church member, or any other entity besides probate available for guardian.

H. In a very rare and extreme case the probate court would get involved. In that event, the following should be invoked and implemented:

1. The judge should not have immunity and should be held accountable.
2. Lawyers should be excluded from the process.

3. The court should never have sole discretion.

4. Every citizen in this situation should have due process with a jury of 12.

5. The court does not have the authority to waive the jury.

6. It should be mandatory that the citizen must appear in person at their competency hearing in the court and that right cannot be waived by the court. (In the majority of cases the person is not present at their own court hearings, either because they are not informed or have been told by court-appointed counsel that it isn't necessary for them to be there. The court never sees the person whose life is being decided. It's all about the money.)

7. They need to abolish the competency tests.

   a. Too often a competent person being tested is deliberately over-medicated and not accurately diagnosed. (Psychotropic drugs are widely abused by professional guardians.)

   b. Doctors need to be held accountable for misdiagnoses.

Statement to the Senate Special Committee on Aging
Abilities in Motion, Center for Independent Living in Berks County, PA
March 23, 2023

As a Center for Independent Living, Abilities in Motion believes that everyone has the right to live an independent, self-directed life in pursuit of their individual dreams and goals. AIM's core mission is to support people with disabilities in gaining and maintaining independence and making their own decisions, and this extends to older members of the communities we serve. In many instances, we have observed that guardianship takes away the ability of people to live truly self-directed lives, and has too often become a "default" way to prevent people from making and acting on decisions others believe to not be in their best interest. AIM supports the right of people to make decisions for themselves whenever they can be supported in doing so, and believes that older Americans and people with disabilities should retain their decision-making rights to the greatest extent possible. In some cases, guardianship may be a necessary step when someone is truly unable to make decisions on their own behalf that will not result in severe negative consequences, however, this should be a last resort when all alternatives have been investigated and exhausted. In Pennsylvania, we have observed an increasing reluctance on the part of judges to grant guardianship when alternatives are available. These alternatives include specific Powers of Attorney that provide for a court appointee to make decisions on behalf of another person while allowing the person whose rights are at risk to retain decision-making authority in areas of life where they are capable of doing so. And while Pennsylvania has not to date officially recognized Supported Decision Making as an alternative to guardianship, this model seems to point the way forward to allowing older Americans and people with disabilities to retain significant decision-making rights as part of a team approach. This shift toward a rights-based model and away from a caregiver model represents a positive step in the direction of recognizing self-determination as a basic right that cannot be taken away from any person other than as a last resort when all other options have been tried. Respecting the right of all citizens to make their own decisions, even when others may regard some of those decisions as being made in

error, is fundamental to the human rights ideals that are the foundation of our society. No rights should be denied to any member of that society other than in the most extreme cases where self-harm or severe negative consequences are the likely result. Thank you for the opportunity to provide this statement.

To Whom it May Concern:

I want to make it known that my friend [redacted] (unfortunately, she is now deceased) fell into the guardianship program of Hillsborough County, in Riverview, Florida. [redacted] had called 911 to report that a neighbor was harassing her and touching her inappropriately. The Sheriff came out and suggested she go to St. Joseph's Hospital in Riverview, FL to get seen. She agreed to go because she believed that she would be safe there. What happened to her then was nothing but a nightmare!

She was examined and admitted on [redacted] 2019. She was to be discharged from the hospital one to two days later. On one of my visits to the hospital, her attending physician, Dr. [redacted] asked me, if I would be willing to be her guardian. Ms. [redacted] was told that her adult children were not interested in her. I asked Ms. [redacted] if she was in agreement that I become her guardian, to which she replied, "yes." That never occurred and the discharge never happened! Now I know why. She was going to be another victim of unjust guardianship. At the age of 92, she was of sound mind and body. She enjoyed taking several walks throughout the day, talking to her neighbors, going shopping, going out to eat, getting her hair done, listening to music, participating in activities where she lived, and helping her friends and neighbors. She cared for, cooked, and cleaned for her daughter that lived directly across from her. Ms [redacted] was subjected to suffering in the hospital. She was a woman that came to the hospital full of life, capable of walking and wearing her own personal undergarments, and kept there for 81 days! They eventually had her using a walker and wearing adult diapers. On June 27, 2019, she was placed in an Assisted Living Facility.

During the time my friend was in the hospital, she was served with a Petition to determine Incapacity and for the appointment of a Guardian. On June 7, 2019, I met with the court-appointed attorney, Ms. [redacted] good faith, to inform her that M [redacted] executed a Durable Financial Power of Attorney and a Medical Power of Attorney. On [redacted] 2019, Ms. [redacted] gned the new documents before two witnesses and a Notary Public. Ms [redacted] asked me for a copy of the documents to which I complied. M [redacted] hearing on the petition was originally scheduled for June 21, 2019. After I met with the attorney, her hearing was moved up. Ms [redacted] nformed me that Ms [redacted] ad been evaluated to determine her incapacity to which I replied that I knew of one of the evaluations because I was present along with my friend [redacted] Ms. [redacted] seemed quite surprised when I told her this, to which she stated that "Ms. Irene could not have been examined in front of us." I told her that on May 28, 2019, at 12:48 pm, Mr [redacted] valuated Ms. [redacted] He asked Ms [redacted] to state her name, which she did. Her birthdate, which she did. He asked her what year it was, to which she replied, "2019." She was asked what time it was, and she replied, "almost 1:00 pm." He had her draw a clock on a piece of paper, which she did and proceeded to place the numbers on the clock correctly. He ask her to repeat some words, which she did. He showed her pictures of animals and asked her to identify them, which she did. She was asked what 100 minus 7 was. She tried to figure it out on paper, but at that moment she was not able to and apologized to him for not being able to do so because she was feeling a little nervous and overwhelmed. Upon leaving [redacted] sked her who the President was, to which she replied, "Donald Trump." Then he asked her what she thought of him, and she replied, "no comment." We all laughed at that moment and he left along with the lady that had accompanied him. Immediately after my visit with [redacted] vent to visit [redacted] t the hospital to take her the clothes I had washed for her and was told that she was no longer in the system. All visits

and phone calls were halted. [redacted] asked me how long I knew [redacted] and if I knew where she did her banking. I replied that "I didn't know and that it was none of my business to know where she did her banking." She also mentioned tha[redacted] had a habit of calling 911 to report harassment. Did [redacted] ot have a right to protect herself? [redacted] finished her conversation by telling me that, "it would be in my best interest to stay away from [redacted] " For what? For advocating for her. My God, where is the compassion in people?

The Petition further stated that the alleged incapacitated person was unable to go to an examination at a doctor's office and needed to be examined where she was presently staying. This was totally false. [redacted] was able and willing to go. I would have taken her myself. She also wanted her own attorney, which she was denied. It is a shame that personnel that knows nothing about a patient, can complete paperwork without even thinking about the ramifications of those decisions. [redacted] was also presented with some paperwork that required her signature. If she was "incapacitated" like they said she was, why did they need her signature? [redacted] in one of our conversations mentioned that the woman who had her sign didn't even acknowledge her with a handshake. She was told to sign the papers and then the woman left. She wasn't given the right to appear in court nor obtain her own legal counsel.

With respect to visiting [redacted] her court-appointed Guardian, [redacted], allowed visits until she learned that I was advocating for my friend. She then put a stop to [redacted] having visits to the facility. She only allowed me to call her once a week. Her reasoning for not allowing visits was that it upset [redacted] Well, I don't blame her for being upset. She was in that facility against her will and banned from the life she was accustomed to. Another time, she used the excuse that the facility wasn't big enough to handle several visitors at one time. After not being able to see her in person for days, I called [redacted] to see if I could once again, visit my friend. She stated, "no, because I had filed false accusations against her." I was dumbfounded. The only thing I did was send an email to [redacted] [redacted] Chief Executive Officer of Aging Solutions, Inc., who employs Ms. [redacted] The reason for the e-mail was to inform her that [redacted] was denying [redacted] visits with her friends and me.

I then called [redacted] of the Office of Public & Professional Guardians to file a complaint against [redacted] He advised that I call [redacted] again and ask to see [redacted] I called her and she said, " there was no money in the budget." So I called [redacted] gain and told him what [redacted] ated. In our conversation, he was more concerned about [redacted] than [redacted] It's ironic how after I got off the phone with him, minutes later [redacted] alls me to say that there was money in the budget and she would arrange to have a supervised visit. These visits were allowed for a while, which I am totally grateful for. Further visits to the facility were not permitted which in my opinion is where Ms. [redacted] eeded it the most. She often made comments that she felt like a criminal and that being in prison would be better because at least she could have visitors. She often wondered why this happened to her and that she was totally against it. She was heartbroken. The last time I saw her alive was December 25, 2020. I took my chances and went to the facility to take her a Christmas gift and saw her briefly from the door. I told her how much I loved her and left. On January 28, 2021, through the grace of God, [redacted] called me and told me that [redacted] was placed in hospice. I immediately went to see her and was able to pray for her, play music for her, and tell her how much I loved her (even though she never opened her eyes). I felt it in my heart that she knew I was there. I stroked her hair and proceeded to leave. As I placed my hand on the doorknob, the same Guardian that tried to keep us apart, told me how much [redacted] oved me. I looked at her and left. Shortly thereafter, God took her home. Now

all I have left are the memories of the times we spent together, the videos of her in her few happy times, many of her heartbroken times, and the numerous letters that I wrote trying to advocate for her.

I can only ask myself will the State of Florida continue to allow the lives of its elderly residents to fall prey to a system that strips them of life, assets, dignity, and freedom? Are we to fear growing old in the State of Florida? Should the elderly move from Florida? How many more victims? When will this all end? Or, will it ever end?

Thank you for your time and hoping that changes are made to protect our elderly and prosecute those that do wrong.

"Our prime purpose in this life is to help others, and if you can't help them, at least don't hurt them."

"A lie doesn't become truth, wrong doesn't become right and evil doesn't become good just because it's accepted by a majority."

"Those who deny freedom to others, deserve it not for themselves."

[redacted]

This ia a brief overview of my mother's conservatorship and my case both are false to gain control of all our money and they did and my moms dead.

The current system of conservatorship dash guardianship in the United states is a shame to our country and it's a shame to our government. If this committee does not realize the atrocities that are being committed against the elderly in the United States of America at this time then I apologize but they must have their eyes closed.

At this time people who would seek to exploit others especially the weak as the elderly tend to be, know that one of the best tools to basically steal someone 's life savings their home their property their dignity until finally their life, is a conservatorship. My mother immigrated to this country from [redacted] she worked for 41 years as a registered nurse my father passed away when I was 17 so it was basically me and my mom we loved each other from the bottom of our hearts. And then these people in my case it was the neighbors [redacted] and her girlfriend [redacted] who filed false allegations with adult Protective Services that I was hiding my mom in her room for 6 months when the fact was my mom was in Peru visiting her family for 6 months the neighbors knew this. Yet [redacted] of Pacific Grove a police officer and a investigator who did not want us moving next to her orchestrated this whole ploy and to be able to utilize the justice system because they know how it is ran because they're in it and exploit my family my mother is dead at this point our estate squandered and my life is very difficult and it's very sad.

Now [redacted] might be one factor but she knew about a system that was easily manipulated because it is a system of exploitation. When in our country do you ever hear of somebody's civil rights being removed in a 5 minute court hearing without the person present yet that is what happened to my mother. Even the court documents from the court investigator stated my mom was not 5150 even the director of this facility that she was put in by the public guardian for awhile he said she was way too functioning but the public guardian [redacted] and [redacted] who also brought up false allegations against me all along with [redacted] they

were friends they were buddies they belonged to same motorcycle club. Another strange fact in my case is I had an ex employer [redacted] who swindled people out of $240 million people like the [redacted] he lives here in LA now and his cousin is [redacted] and I worked for that man and he hates me and there seems to be a lot of coincidences in this case however the system shouldn't be able to be utilized by anybody that way. My mother was a very well taken care of as the doctor said in the hospital. a 75 year old woman who knew where her house was in San Francisco and you see the public guardian once they came over and they accused me of isolating my mom and my mother had just returned from [redacted] we she brought out her passport showed it to [redacted] of adult Protective Services and he didn't know what to do but somebody called and instructed him how to talk and then when he left our house at in [redacted] on [redacted] he didn't walk to a car he walked right to the neighbors right he jumped over the fence in fact so he wouldn't have to walk all the way out to the sidewalk and that's what he did every time he came by he went directly to the neighbors to report. The neighbors had our phones redirected so that they could call people pretending to be me. Anyway they first claimed first they claimed that I was locking my mom in a room then when that got proven false they moved on to more false allegations. they claimed that I was committing financial abuse after 8 months of investigating me they could find nothing they could not file any charges which really bothered them because [redacted] and passes the public garden had been taking out 60,000 40,000 with no reasoning and while they had control still received notification of how much we were making as I handled the investments. We made 60,000 while the public guardian had out accounts it never reflected the accounting. She gave us an allowance giving us a little 2000 that we had to beg for.

[redacted] we didn't even know how much she cost my mother fired her on numerous occasions but [redacted] just ignored it and came back these people take control of your lives and they talk about you like you are you are so low and they are so above you and they're just a bunch of thieves [redacted] ended up I think making 300,000 close to 300,000 in bills in billing statements plus the County Council plus the public guardian [redacted] was my mothers conservator, the DAS lover, [redacted] came to to court and appointed [redacted] as his DA investigator . what was found out later her lover DA

[redacted] she was in an extramarital affair her husband was a police officer on the force and she was having sex with the DA who was convicting me and she was controlling my family 's money and my mother and as soon as I was out [redacted] sought orders to forcibly drug my mother because my mother screamed for her freedom. I was not allowed to testify in my own court proceedings because my attorney threatened me even though that is the whole reason I went to court to testify. I was I was released and I was able to see my mother 3 times she looked scared meek and on one occasion had a black eye I argued about the place where they placed my mother it was called see seniors paradise for seniors. Oh but that but the court appointed attorney [redacted] and [redacted] went on and one what a wonderful place it was and called me crazy, you are crazy miss [redacted] I said I my mother looks terrified last time I got to see my mom I had 3 visits because [redacted] kept me in court from the moment I left after the being released for 6 months he kept me in court trying to violate my probation and he admits that during this time at least he was definitely in the affair which is a conflict of interest and he should have recused himself but he did not recuse himself until he was caught so they needed me away to get to my mother and to get to the money and the house. The last time I saw my mom in person mother they had us meet at Starbucks and when they said visit is over she begged them to have more time with me she was crying while they dragged her away she paid them 7 or $8000.00 a month for their services and she is told what to do by them and we get maybe half an hour we got that 3 times at a Starbucks with police and public guardians all around us recording us listening to us telling us we couldn't speak in Spanish my mother's first language is Spanish. I was told not bring up anything financial to my mother or anything about the house I asked if that was a condition that I would be violated for if I broke that condition so is it a condition I was asking if it was a condition by the courts that I lied to my mother. Of course they said no but I was not allowed to bring it up we don't want to upset her and I said well I don't know about you but most people I know the major concerns are their family their money and their home so I cannot see that my mother would not bring that up period? Of course my mother brought it up in our visit she wanted to go home and she had enough money to have somebody take care of her home she wanted to go back and see her sisters in [redacted] she had 12 sisters and brothers who have maids

and lived very well but she was not allowed to leave [redacted] she when he became a prisoner of [redacted] when the only reason she was in [redacted] was to see me because I graduated with my masters from the [redacted] When I then started to make a lot more noise and I went to the Board of Supervisors and gave them all the information that I could find on guardianships on what was happening in [redacted] with seized houses and [redacted] who I knew throughout my trial was having an affair with [redacted] because I would be in the room and they would be there kissing when nobody else was there but me so as soon as I went to talk to the Board of Supervisors begging them to help my mother I was put away and I never saw my mother again she died while I was away. In my life there has never been any type of criminal history, my mother and I as she stated to everyone it's funny because the court appointed attorney acted like they had a great relationship my mother hated that attorney she said so on video and she said it to many people but [redacted] will totally deny that ohh no because she is pulling the strings the puppet master she worked with the with the public guardian to conserve my mother she admitted that in her final filing and then she realized that she regretted that because the public guardian who got fired for misappropriation of funds fraud in the care of her wards and seniors paradise was closed down by the state of [redacted] for elder abuse that's the home that my mother lived at and when she looked terrified . My mother fell at that home and then broke her hip completely because she was drugged and she fell off the toilet and her hip broke completely and she was then crippled there was no investigation there was no inquiry into her falling in the middle of the night and laying on the floor and her total hip being broken in fact it's hardly mentioned I didn't even know until I skimmed more deeply into the court papers so they cover up their own crimes and they palsy accuse others who were they to come into our lives because [redacted] [redacted] have some revenge wanted to get all of our money ironically I believe I I was I had I I was dating the guy from [redacted] I had caught him stealing I had called the police and I caught him stealing from my mother's account he had the cards one day and I didn't know until I looked for them he was gone and this was the first time it happened [redacted] he was married here in [redacted] to [redacted] as she would say she he picked her clean she left came here a millionaire she left penniless he was stealing from my mom and me and I caught

him and then numerous police reports but [redacted] covered it up for him they wouldn't give me the police reports and that's why you know there was never any charges of financial wrongdoing because the financial wrongdoing they knew wasn't from me it was from them and I believe that [redacted] was a relative of jam jams [redacted] s lover one day [redacted] disappeared and funny because he left his mobile phone and I saw all the messages from [redacted] to a [redacted] [redacted] brother they were all in my house in San Francisco I had it rented out to some students Umm I didn't invite those people in but he did because he was with them and he stole buddy and I have the paperwork where he I have the he's signed that he sold money I have the text messages between him and his sister she offering she's offering to hide me I'll never know so [redacted] knew who stole money and they didn't want an investigation on that because it wasn't me if that is the representatives of our law enforcement and that they have that power to do anything well because I guess her brothers a [redacted] and the other brothers swindled or cousin swindled240,,000,000.00 through his phony [redacted] company. Form some of the richest people in America like the gettys and some football players and I think he put it in an offshore account and he's got it OK they don't do jail time so I guess it doesn't matter if they swindle and cheat and lie and steal but I think murder comes should be considered murder [redacted] of [redacted] committed murder against my mother when she falsely she made false statements to the police knowingly false statements that I was abusing my mom in any sort of way these are sick people but the court system allowed it to happen and I'm not the only case that's happened I don't they're not all none of our cases are exactly the same but what there is very apparent is a long stream of people putting their fingers in that money pot and they and they become rich while another person is the people they're taking care of family goes broke going against wills and trusts and everything in place the charges-that they the fees they charge are exorbitant and in this country we get to choose our own attorneys. We get to speak for ourselves if we would like at least that is last time I read the constitution but maybe it's changed because it sure does seem that way. It's a dirty little secret that I know of what these people did and because of that I have been robbed I have been consistently tracked I've had rumor spread I've had dissing devices put my house all sorts of stuff and they persons with the prior to all of this occurring just prior to [redacted] coming

like I said [redacted] of [redacted] who is somehow tied with [redacted] and [redacted] well there was tampering in my mother's IRA account it had been in $1,000,000.00 and and it went down to 280 and that's when we went together and I said what's going on here to the Lincoln Financial representative it started it was losing money after the financial crisis and it was losing ohh a lot every month but she never received a phone call my mother and that is another story but it's connected very much with is all one and I started to contact an attorney to see what we could do about this because those that money wasn't lost it was given to somebody and we took the account from them and then we bought to Merrill Lynch and then we I've opened up the account in Wells Fargo and it started out with 280 it was up to 550 and then I guess when they see it was 610 so if I was stealing money it's funny way to steal it huh I was accused I was going to sell my family home in [redacted] and I buy the court appointed attorney I was accused of doing my own mother's taxes and I had the emails show me a realtor that I spoke to about selling the house in [redacted] my father pretty much built that house that's my father that's what's left I would never sell it neither would my mother we were buying a home that's what we wanted to do we were buying a second home I didn't know that in America if your neighbor is a dirty cop that they decide where you live and they decided where I was going to live right to get their girlfriend 's cousin or whatever so he wouldn't get accused of anything I would have never believed any of this could happen in life if it hadn't happened to me end these people should be investigated they have committed elder abuse they have perjured they have impeached themselves and they did it all for greed they took my mother's life for her money my mother didn't experience any love once I was gone no companionship forcibly drugged Seroquel more than 100 grams of Seroquel more than one time a day Valium Trazodone these are the these are these the she took these everyday multiple times she was not psychotic but these are more chemical restraint if there's anybody if there's anybody out there who is decent I am not an Angel but I had no criminal record before all this my mother and I were fine everything you know we I wanted to keep my mom alive as long as possible that's my mother I loved her she was all I had left it's very lonely world for me now I have in her in a box of ashes now that's what was given to me now that's my mother now. I would welcome anybody to come and ask me the full story because I have it all except that I

had a computer that was hidden with a lot of evidence the day I took it out all my computers were robbed from me luckily they didn't get everything though and now that's hidden away there's many more actors and a lot more actors but [redacted] are the main ones and they used a premise of a false accusation of elder abuse against me so that they could pill for my family home my everything people went through our things they stole our thing she left the door open of our house when it was empty we were like nutty we had no rights switched our insurance from 1200 a year to 6000 every 3 months if that is money management I don't know I haven't gone to that school because I know financial literacy I'm certified in it I've never heard of that strategy before wel [redacted] could never work taking care of the elderly seniors paradise was shut down for all the abuse that they put their numerous clients through physical abuse withholding food withholding medications hitting them restraining them yes it was a real paradise and boy I guess I was crazy for thinking it might be something bad huh but see I wasn't paid to protect my mother [redacted] was what did she earn for $300,000.00 she earned she worked for herself she answered she got money she did nothing to protect my mother that money should be returned and they should go to prison those people but you these courts don't have [redacted] got to be the truth to do what you're supposed to stand for just don't not the politicians they want to get to the next they want much money in their accounts as they can to get to the next election it's all about it's only elections not people until you're on your last election then it becomes about the people I guess was too late for my mother and it's too late for probably me too because these people persecute me daily they violate everything and they're still after me because of what I know they did and there's nobody I could go to but my name is [redacted] I live in [redacted] I'm from [redacted] I work for the [redacted] to help system impacted individuals the same department that doesn't hire your system impacted individuals I am the only system impact or I'm one of 2 system impacted individuals there my contract ends on [redacted] they need a lot of people but they're not keeping me that's OK even though the whole premise whole whole thing about that was to make people who are marginalized and controlled by systems have input into that system but I know that the people behind my mother's conservatorship also don't want me near anything buddy that could learn the truth my life was

completely different before all this I never had an end I mean you know I I didn't only have friends I had some enemies but now my life is a nightmare every day and then there's [redacted] who lives in [redacted] right next to the [redacted] her and her girlfriend built their house from scratch from the that a piece of land and then there's [redacted] who sent to my mother he was going to take her he told me he was gonna take away my mother from me and my mother yelled at him for that she would never sign over anything to them yet I had every every paper in place because I my mother and I lived together we lived our lives together there's no way that you know she was having the same food the same everything and she had free will which she didn't have once [redacted] from passes took over [redacted] was charged $500.00 for bringing my mother some chocolate chip cookies and how she felt so honored to be in my mother's presence after my mother's teeth got knocked out. Buddy I was accused of trying to sell my mother's house but the first thing that the public guardians office did was try an auction it off for $300,000.00 my cousin luckily retired [redacted] flew out and stopped that but she hadn't they would have done it her and their realtor this shady realtor that they used up there who wanted to said the house was also falling down there's nothing falling down in that house has been standing up ever since and been rented out since they got off the case and it's perfectly fine house is stored up more than any house in that neighborhood everybody sees the big pillars these places will say lie after lie but they say the lie after lie is provable lies but yet there are lies are believed and the truth with evidence is not why why how do you rip somebody from their family how do you dare take their life savings and their homes and throw out their families these people these public guardians these fiduciaries are just low life thug cons who go around and abuse the elderly that is the truth but do you wanna turn around the story and you make these ridiculous narratives of which there is no evidence I had to dictate this letter I have tried to write this letter so many times I have everything supporting my statements every type of document and witnesses so it's it might be a little bit difficult to read but because my computer 's got sold I was locked out of my computers and I am way behind in work even though my work at the [redacted] supporting justice impacted that doesn't have justice impacted people working there by contract ends on [redacted] I have a lot of work but I this was

important it's been very difficult for me to ever talk about my mom but I from side I've wanted to but I know that now [redacted] though they always run behind the scenes [redacted] you know he doesn't want everybody knowing the country that he had an affair with the with his the investigator while he was in court hearings with me not after while and that my hearing my court trial should be overturned and give me a new trial with all the real evidence my mother's too late for but I want her name to be remembered and I will make sure that it's remembered they've taken everything what have I got to lose? [redacted] [redacted] who's continues to destroy my life because they know what I'm saying is true I know what I'm saying is true.

To whom It May Concern

I was contacted by [redacted] of CEAR and asked if I would testify at this hearing on 3-23-2023. I was told to expect contact from the senator's staff.

I have not received any call or email.

I am a 60 yo physician who practiced rheumatology in [redacted] to Florida from 1992-2017. In 2019 I was put into a fraudulent guardianship and stripped of every human and civil right. At the time I had no knowledge of the depth and breadth of the legal industry that is guardianship. [redacted] an ignorant human was given total control over my person and property on Oct 23 2019 by the corrupt probate judge [redacted] I was denegrated at that hearing and told I " needed an ALF(assisted living facility) which I did not. I pleaded with [redacted] to spend 5 minute with me in chambers and she would know I am not incapacitated. (At that time I thought she was being duped by [redacted] I now know she was part of the entire well oiled plan) I was told I wasn't safe to drive , all the lawyers present laughed together at my incredulity at what was being said. After the hearing they watched me climb into my car and drive away.No one called to see if I made it home ... if I was so unsafe how did they let me drive away.It took almost 3weeks for her to send 4 cop cars to my home to throw me in handcuffs and lock me up.

In those 2.5 weeks she emptied my bank account without a word and did not leave me money for food , medicine or gas for my car. I called the local police (sheriff)and a officer [redacted] took a statement and said he would refer it to the fraud unit. I knew something was terribly wrong (couldn't possibly be happening in America) but at that time I had no idea that guardianships are a huge business designed by lawyers to pilfer and steal under the guise of a " guardianship.

[redacted] had the police handcuff me in my driveway and take me to a for profit psychiatric facility where I was denied any access to a phone .I had no clothes, no toothbrush . I had a friend at my house who witnessed the police abduction.She and I had been out that morning and were about to go to lunch!

All other inmates at the facility (convicts and people baker acted for suicide attempts)had rights and could use the phone. after a hellish 8 days of abuse and forced drugging) I was transported to Market Street in Viera Fl (a geriatric dementia facility) , I was 57 at the time and had no dementia . Again [redacted] left strict orders that I was not allowed to contact the outside world. The statutes on the books at the time state that a ward has to be placed in the least restrictive environment. Even if you want to assume the judge was duped that I belonged in a guardianship, she certainly did not bother at all with the laws already on the books . Passing more statutes are not going to remedy the enormous fraud of guardianships. The arrogant judges break the laws with impunity. They are above the law . They are the law.

Within a few days some of the workers recognized that I clearly did not belong there (only person under 85 and not in diapers , wheelchair etc). One brave employee risked her job . She waited until management left for the day and snuck me to a phone .

My story is yours if you want it but the most important thing for you and the committee to know is that the "guardianship horror stories are not a few " bad apples" as is most convenient to believe, but rather a well designed organized industry designed and controlled by lawyers(estate planners, experts in elder law) and the probate judges who cover the stealing and abuse with their robes and legal stamp of approval and orders.

They even named it " the guardianship program " to keep the focus on the uneducated lowest person on the ladder, so that that's who takes the heat if one of these cases comes to press attention.

Quite ingenious. Who really care about rich old people with dementia anyway. Most of the victims have no family to complain, and they have no access to a computer or phone .

After I was dumped out penniless (they even liquidated my IRA) I spoke with [redacted](the immed past president of the National Guardianship Association) , and the head of OPPG responsible for policing the program. He is paid with govt funds and has a staff . His position is, unless the victim files a computerized complaint in the proper format, citing statutes that were violated with documentation of such, then there is nothing amiss!!!!

This is a laughable standard as most victims are locked away , have some dementia, no access to a computer (even if they knew how to use it) and certainly don't know statutes and legalese. I asked him directly (a phone conversation in late 2020) why my calling him with a detailed complaint of abuse etc why that isn't sufficient for him to investigate??? He did NOTHING .

By order of this crooked judge I was never allowed to see my home again. She allowed [redacted]to liquidate all my possessions and denied me access to know what sold for what amount!!! They sold my house(that's a story , contact me if interested) . By the end there were 8 lawyers(they kept hiring more and more lawyers) who were submitting preposterous fee petitions that judge davidson approved , no questions or even a raised eyebrow.

It is my belief and contention that everyone already knows that this is an industry designed to take the savings of the elderly. Everyone is looking the other way and on rare occasion a case makes it to the press with the focus on the guardian . A daughter of a guardianship victim decided to take the guardianship course to see what is required . Any high school graduate pays a few hundred dollars takes a 5 day " course " in an airport hotel , given by a seasoned guardian . There are many breaks for lunch and bathroom. Most of the time is spent explaining how to bill the ward's account. A short " exam" at the end of that 5 day nonsense, a few clerical items later ... presto she is now a legal guardian in the state of Florida!!!!

The brains of the operation has always been the lawyers and judges. There are victims (family of wards) who have become experts at following the money, to find how the probate judges are being remunerated) Lawyers know how to evade cursory detection. We the guardianship advocacy community have done the work and have all the evidence you could need to stop this criminal fraud and punish the judges and lawyers.

Until and unless this committee is willing to acknowledge the big picture as is its 'responsibility , nothing will change.

The notion that the burden is on the victim to report abuse in a computerized format citing statutes and providing documentation/ evidence, is ludicrous on its face. Your committee heard only from the tip of the iceberg of the enormity of the problems. Those who have family members who can make noise (then there are the vicious attacks on these family members using local police to harass and threaten them) The lawyers and judges have all the power to do as they want cloaking it in legal jargon. They have psychiatrists and other doctors in their pocket that they pay handsomely for diagnoses that are patently false. In my case it was [redacted] (calls herself a geriatric psychiatrist) . The guardian met with her before my forced appointment to instruct her on what to document in her notes, then paid her with my money. As you can see this is a fine tuned machine of evil with a hierarchy as with any organized crime ring. They even have a public relations arm ... OPPG and [redacted] (himself an attorney) .

I am one of the few non geriatric people who was made a ward. I am available for questions about the details of my case if you want them .

The bloc of lawyers and judges in each state are connected and powerful and publicly honored. So much so that it is impossible to find a lawyer who will take on a case on behalf of the victim. This makes it even more difficult to fight for justice . I can supply specifics on this charge. These people ruin lives, humiliate, abase and rip families apart.

DO SOMETHING already.

APRIL
Association of Programs for Rural Independent Living

To: Senate Special Committee on Aging, c/o [redacted]

March 23, 2023

The Association of Programs for Rural Independent Living (APRIL) strongly opposes guardianship as it contradicts what our disability-led movement believes: the Independent Living movement. As an institution, guardianship began in 1935 when no opportunities were available for individuals with disabilities. Since then, protections have been put in place to protect the rights of people with disabilities. As amended, the Rehabilitation Act of 1973 affirms that Independent Living programs call for respecting an individual's dignity, responsibility, and self-determination, which guardianships prohibit. In the United States, the need for guardianship develops from implicit bias regarding people with disabilities.

APRIL is national grassroots, nonprofit membership organization with over 260 members from Centers for Independent Living (CILs), Statewide Independent Living Councils (SILCs), other organizations, and supporters of independent Living for people with disabilities throughout the United States. Our mission as a disability-led organization is to advance the equity of people with disabilities in rural communities through systems advocacy, collaboration, shared experience, leadership development, education, and training.

APRIL believes that all efforts should protect the liberty, self-determination, and autonomy of people with disabilities while maximizing their independence. The following assumptions should always be acknowledged:

(1) All people with disabilities should be presumed to have the capacity to live as they wish and accept or refuse support, assistance, or protection as long as they do not harm others.
(2) All people with disabilities should be able to be informed about and, to the best of their ability, participate in managing their affairs.
(3) A person with a disability's values, beliefs, wishes, and traditions should be upheld.
(4) How a person with a disability communicates with others is not grounds for deciding that the adult is incapable of decision-making.
(5) People with disabilities should be allowed to participate to the maximum extent possible in their own decisions, including the dignity of risk like everyone else. Guardianship has evolved into a profitable enterprise full of abuse, neglect, and exploitation, often used to isolate, institutionalize, and limit individuals' freedom while those serving as guardians benefit off the backs of disabled people.
(6) Most guardianships can be mitigated by CIL services.

11324 Arcade Drive, Suite 9
Little Rock, AR 72212
Phone: 501-753-3400
FAX: 501-753-3406
www.april-rural.org

APRIL has priorities regarding youth leadership and transition, and it is essential to note guardianship's significant impact on youth with disabilities and our aging population. Guardianship often serves as a pipeline to dependence on schools, foster care, medical facilities, adult protective services, and systems designed to "protect" disabled individuals. Guardianship has become a profitable school-to-guardianship pipeline, and the consequences are devastating for youth with disabilities. According to the 2015 TASH study, school personnel is the most common referral source for youth guardianship, recommending full guardianship 84% of the time compared with alternative options 16% of the time. Meanwhile, the rate of guardianship has tripled since the 1990s (Blanck & Martinis, 2015), and we know that many of these conversations are taking place as an individual with ID/DD reaches the age of majority.

For example, A recent interview of special education directors in South Carolina (Walters, Allison, & Plotner, 2022) indicates the presence of grave complications in how Local Education Agencies (LEA) balance their obligations under the Individuals with Disabilities Education Act (IDEA) with the independence and autonomy of the young adults they support. Some directors even described processes whereby LEA attorneys and social workers are used to support parent petitions for guardianship.

In a youth case, the parents filed and received guardianship of their 18-year-old son with autism. The judge granted guardianship based off a diagnosis and a simple form that a medical physician submitted. The youth was deemed incapacitated even though he graduated from high school with honors, had a driver's license, worked a part-time job and attended college. The youth reached out to his local CIL to help reverse his guardianship, but the family found out and restricted the CIL from interacting with the youth because the family had that control.

These institutional pipelines isolate people with disabilities because the profit motives for Guardians and Nursing Facilities are substantial. Guardians and nursing facilities liquidate assets and draw down Medicaid funds to warehouse people with disabilities in costly, unsafe institutions. In too many cases, the Administration on Aging (AOA) through its Adult Protective Services (APS) self refers, petitions for, and becomes the Guardian, then blocks third-party protections through their conflicting role as the Ombudsman. Furthermore, APS, hospitals, and nursing facilities used guardianship programs to further exploit our seniors by filing over 70 percent of guardianship petitions without considering less restrictive alternatives.

Centers for Independent Living (CILs) are the only federal programs funded by the Administration for Community Living (ACL), as required by the Workforce Innovation and Opportunity Act of 2014, to provide nursing home transition services and have achieved great success in this effort. Individuals under guardianship find it impossible to transition from nursing homes to independence if their Guardian refuses to permit such a move. In many instances, guardians have denied CIL staff access even to visit nursing home residents. ACL is funding CILs to provide nursing home transition services while at the same time funding programs that petition for guardianship demonstrates how ACL is working at cross purposes.

Even the American Bar Association thinks that guardianship is a "drastic intervention" and that less restrictive options are preferred. Therefore, the rights of disabled people are often removed by professionals or families who lack the training, tools, collaborative partners, and systems

structure to support individuals in exploring how they can be successful, self-determined citizens. Guardianship is often a rubber-stamp process, which is challenging to reverse, and most die trying to restore their rights.

APRIL has become aware of the growing number of abusive Guardianship cases involving the unwarranted and often forced institutionalization of people with disabilities. Several people have approached us needing guidance and direction on this challenging, complex issue with their loved ones. Our member CILs have been fielding calls on guardianship issues that violate IL, ADA, and other fundamental civil & human rights. The guardianship system nationwide is broken and needs significant reform to safeguard more people with disabilities from being forced to live in institutional settings against their will. People under guardianship are denied the fundamental right to self-direct their long-term care services in the community in direct violation of the ADA and the community integration mandate outlined in the SCOTUS Olmstead case. In one abuse incident, an adult woman under guardianship was discriminated against based on her disability. She was living independently in her own home with her partner when neighbors called APS and the County Office of Senior Services Area Agency on Aging (AAA). This resulted in her being removed from her home and placed in a Rehabilitation Center against her will, placed her under guardianship. When her partner passed away, she was not allowed to attend his funeral service.

The individual did not want to reside in a rehabilitation center and with the encouragement and support of her local CIL she is now living in the community with support from her daughter. This oppressive conduct by APS and the AAA caused her to be isolated without justification, and her independence stripped.

In another incident of abuse, an individual was placed in a nursing facility, rather than allowing him to live in the most integrated setting appropriate for him, in the community, with proper support. The individual was living in his family home while it was being foreclosed upon, and he sought help through APS's idea of assistance was to put him into a long-term care facility and place him under guardianship.

The individual did not wish to reside at the long-term care facility. He reportedly has been offered assistance with transitioning to a subsidized apartment by his local CIL. The court-appointed Guardian would not facilitate the individual's transition back to the community, which had caused him to be isolated without justification.

In yet another guardianship abuse case, the individual was placed in a long-term care nursing facility, rather than allowing him to live in the most integrated setting appropriate for him, in the community with appropriate support. The person owned his own home, had Social Security income, and was enrolled in Medicaid with nursing home benefits. He has expressed in writing that he would like to live in his own home and does not want to be institutionalized. His local CIL worked to support him to transition to independent living but has been notified by the State Ombudsman to have no further contact with him. It is clear that this action has served to isolate the individual further.

A case from a Protection and Advocacy agency illustrates the financial abuse that can occur when a person is placed under guardianship. "A friend convinced our client to give him power of attorney, then transferred our client's property to himself claiming our client owed him money. Our client objected to the property transfer and restrictive living arrangements imposed by the Guardian. The Alabama Disability Advocacy Program (ADAP) moved to replace the Guardian and contested the accounting. After ordering an accounting, the court ultimately terminated the conservatorship and appointed as Guardian a person recommended by ADAP".

In short, the guardianship process is "archaic and incestuous" in that the attorneys and judges work with "experts in the medical field." Judges and medical experts lack the knowledge of resources such as Centers for Independent Living--led by people with disabilities, and home and community-based services (HCBS). Some states have documents that physicians complete attesting that the individual is incapacitated; others do not, creating systems that vary significantly across the United States.

Recommended alternatives to guardianship:

- Immediate restoration of full rights of individuals whose rights have been wrongfully restricted by guardianship.
- Greater oversight of current guardians and guardianship arrangements to protect against abuse, neglect, and exploitation.
- Ensure that all individuals who have guardianship have the right to seek review hearings to restore their rights and to work with advocacy & transition organizations such as Centers for Independent Living.
- The U.S. Department of Education should issue guidance to schools and districts on their responsibility of preserving the rights of students with disabilities and avoiding guardianship.
- Implement more alternatives to guardianship to promote the individual's autonomy and personal values while terminating fewer legal rights.
- Immediately audit the use of ACL funds in states to identify financial support going to guardianship programs that do not adhere to the spirit and letter of the ADA and Olmstead decision.
- Immediately apply penalties to states who violate civil and human rights to self-determination and due process of people with disabilities through abusive guardianship practices.
- Consult with disability-led groups such as Centers for Independent Living throughout the country, the Association of Programs for Rural Independent Living (APRIL), and the National Council on Independent Living (NCIL).
- Put in place protections where peer advocates can monitor guardianship.
- Develop federal legislation recognizing alternatives to guardianship, such as supported decision-making and establishing guardianship as the ultimate last resort.
- Elder justice should focus on prevention as in more services.

In closing, the United States government must lead efforts to a total reform when considering guardianship. Alternatives to guardianship must be the first option and guardianship as a last resort, only to be used if alternatives to guardianship cannot protect a person unable to make

choices to protect themselves. The National Center on Law and Elder Rights reported that if the alternatives are working, even a person who is comatose should not need a guardian. Historically, the defense provided in guardianship cases has been weak.

Please do not hesitate to contact me with any questions.

Best,

[redacted]

[redacted]

APRIL Interim Executive Director
Phone: [redacted]
Email: [redacted]

References:

Blanck, P. and Martinis, J., (2015). "The Right to Make Choices: The National Resource Center for Supported Decision-Making," *Inclusion* 3, no. 1: 26–27

Walters, C., Plotner, A., Allison, M., and Mojica, A (2022). "The Exploratory Story of Special Education Director Experiences with Issues Related to Age of Majority, Guardianship, and Alternative Options for Adult Decision-Making Support. *Journal of Special Education Leadership*, v35 n1 p18-32

Individuals With Disabilities Education Act, 20 USC § 1400 et seq. (2008).

Picchi, A., 2015, How Nursing Homes collect debts: Seizing guardianship; CBS News; https://www.cbsnews.com/news/how-nursing-homes-collect-debts-seizing-guardianship/



Nothing about us without us!

The Autistic Self Advocacy Network is the largest and oldest autistic-run organization advocating for the rights of autistic people and others with intellectual and developmental disabilities ("IDD"). ASAN takes a strong interest in issues affecting autistic peoples' autonomy and civil rights, particularly guardianship. We thank the Special Committee on Aging for planning this hearing and for seeking public input on guardianship and similar legal arrangements ("guardianship"). We support the comments submitted by the Consortium for Constituents with Disabilities ("CCD"). ASAN is a CCD member and a signatory to its submission to the record.

Guardianship is a pressing civil rights problem for people with IDD. It is one of the most substantial restrictions on civil rights practiced in the American legal system, especially in its plenary form.[1] Although too little data is available on guardianship across the country, what little exists and much anecdotal evidence suggest that it is a common outcome for people with IDD, including autistic people.[2] People with IDD value their liberty as much as their nondisabled peers but are often deprived of it through guardianship. This takes place because it has for generations, despite the increasing recognition and codification of decision-making supports that do not strip individuals of control over their lives.

[1] When adults are placed under plenary or full guardianship or similar arrangements, they may lose authority over important life domains. These include but are not limited to housing choices, whether to live in an institution or the community, financial decisions, what medical care to accept or decline, whether to work and in what capacity, whether and where to pursue further education, with whom to associate in daily life depending on a specific guardian's powers. *See* Kerry R. Peck, *Understanding Guardianship*, American Bar Association (Feb. 23, 2022), https://www.americanbar.org/groups/senior_lawyers/publications/voice_of_experience/2022/voice-of-experience-february-2022/understanding-guardianship/ (general information on the powers and duties of guardians). Choices such as these establish the shape of a life. Nondisabled adults in the United States, outside of circumstances like military service and incarceration, take broad latitude in them for granted. People with IDD and other disabilities, though, are often deprived of control over these matters through guardianship. Even limited guardianships often require courts to make a declaration of incompetence which is plenary in scope and may have significant collateral consequences despite limitations on a guardian's powers.

[2] *See* National Council on Disability, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities* (2019); *see also* Valerie Bradley, Dorothy Hiersteiner, Jane St. John, and Mary Lou Bourne, *What Do NCI Data Reveal About the Guardianship Status of People With IDD?* (2019).

This problem of autonomy will require multiple solutions. We laud efforts to improve the quality and person-centeredness of guardianship and tame its inherent risks through court reform.[3] However, these measures are not enough to address the fundamental reality that most Americans, given the choice between a well-intentioned, highly qualified, accountable surrogate decision-maker managing their affairs and remaining in control of their own lives, would select the latter. Depriving adults of their liberty, control of their property, and the chance to pursue their own happiness can never be a desirable outcome in a free society.

For that reason, ASAN supports Congressional efforts to promote court reform to the extent that they prevent abuse, neglect, and exploitation and hold guardians accountable for helping adults subject to guardianship thrive. However, because such policies are necessary but not sufficient to extend the full promise of liberty to adults with IDD, we support additional measures, most importantly funding to ensure the availability of legal counsel in guardianship proceedings. Almost no one in American society is equipped to defend their rights in high-stakes legal proceedings without an attorney. Access to counsel would give individuals facing guardianship or seeking to have their rights restored a fair opportunity to be heard.

We would also support Congressional action to shift guardianship out of its default position in the lives of people with IDD. We encourage Congress to fund measures including: state incentives to enact stronger due process protections in guardianship proceedings, pilot programs to test alternatives to guardianship, and training self-advocates, family members of people with IDD and mental health disabilities, educational settings, service providers, and medical settings on the alternatives to guardianship and their benefits.[4] Funding for data collection on guardianship would

[3] While guardianship is often presented as the restrictive-but-safe option for people who are in need of some degree of decision-making support, it carries inherent risks. Stripping people of the bulk of their rights removes any ability they may have to assert themselves in their own defense when they are mistreated. Where guardians are inattentive or ill-intentioned, this can open the door to the abuse, neglect, or exploitation of people who have been rendered helpless to protect themselves by the restrictions inherent to guardianship. *See* Rachel Aviv, *How the Elderly Lose Their Rights*, The New Yorker, (Oct. 9, 2017); see also Melissa Hellmann, *Loss of autonomy: how guardianships threaten people's rights*, The Center for Public Integrity (June 24, 2022); Anthony Palmieri, *Uncovering Guardianship Abuse*, American Bar Association (October 27, 2021), https://www.americanbar.org/groups/senior_lawyers/publications/voice_of_experience/2021/voice-of-experience-october-2021/uncovering-guardianship-abuse/.

[4] Beyond the self-explanatory benefits of educating stakeholders on guardianship and the alternatives, informing the decision-makers in medical and educational settings is a crucial step in preventing unnecessary restrictions on the rights of people with IDD and others with disabilities. This is because of a substantial body of anecdotal evidence among advocates that schools and hospitals are frequent flashpoints for guardianship proceedings. It is not unusual for high schools to believe- and advise the parents or guardians of IDD youth- that guardianship is the only way for them to remain involved in the education of a student who reaches age eighteen while still

provide important information on where the impact of guardianship falls most heavily and what other solutions may be necessary to address the issue.[5]

We appreciate the opportunity to provide the Committee with our perspective on the importance of federal action to promote alternatives to guardianship. We call on Congress to take appropriate steps to ensure that significant restrictions on individual rights like guardianship become rare, limited, and accountable.

enrolled. In most cases, this is inaccurate. It often imposes the collateral consequences of guardianship on teens who are in low-risk situations and already receiving ample decision-making support because they continue to live with their families and attend high school. Many advocates also have stories of hospitals initiating or asking patients' loved ones to initiate guardianship proceedings because of often-misplaced liability concerns and lack of understanding of the alternatives available in the relevant jurisdiction. These anecdotes are supported by the limited data available, but more research on the circumstances that give rise to guardianships would be beneficial to the effort to craft less restrictive solutions. *See* National Council on Disability, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities* (2019).

[5] For example, ASAN is not aware of national data evaluating the composition of the population subject to adult guardianship by race, gender, gender identity, sexual orientation, national origin, or primary language spoken. This absence of information may be obscuring significant inequities. Better data could also be helpful for targeting guardianship-related problems specific to particular states and local areas.

Autistic Women & Nonbinary Network (AWN)
Neurodiversity is for Everyone

The Autistic People of Color Fund

March 21, 2023

ATTN: Senator Robert Casey
United States Senate Special Commission on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Casey:

The Autistic Women & Nonbinary Network (AWN) and the Autistic People of Color Fund (The Fund) appreciate the opportunity to submit commentary to the Senate Special Committee on Aging about policies surrounding guardianship and conservatorship. AWN is a nonprofit organization dedicated to supporting autistic women, girls, nonbinary people, transgender and gender-nonconforming people, Two-Spirit people, and all other marginalized genders. The Fund promotes the advancement, inclusion, and integration of autistic people of color through microgrants, policy research, and community advocacy.

Together, we collaborate to create a society that is more just, equitable, and inclusive for autistic people of all races, genders, sexualities, cultures, backgrounds, classes, and creeds. Both our organizations incorporate principles of disability justice in our work, moving beyond disability rights toward a model that uproots systemic marginalization, rather than palliate it.

Guardianship—also known as conservatorship—is an infantilizing policy that deprives disabled people of their autonomy and dignity.

- In many states, **adults under guardianship are not allowed to vote**.
- Adults under guardianship can be **denied the right to manage property or finances**.
- Adults under guardianship can be **denied the right to marry, drive, or seek and retain employment**.

Although legal guardianships may not last forever, the National Council on Disability's **report** on guardianship and alternatives that promote self-determination states that, although a person can escape a legal guardianship under certain stipulations and guidelines, "unfortunately, restoration of rights is an alarmingly rare occurrence… every

state has a process for restoration, but this process is rarely used and can be complex, confusing, and cost-prohibitive."

Guardianship can improve the lives of caregivers; however, it often fails to uplift the autonomy and independence of the disabled people on the receiving end of these regulations. Disabled people should not be regarded as inconveniences, and the needs of caregivers should not be prioritized over the needs of people with disabilities themselves. Adults under guardianship report feelings of helplessness, hopelessness, sadness, and depression as a result of loss of control over their lives. Specifically, for young adults with intellectual and developmental disabilities (ID/DD), guardianships pose an obstacle to achieving the self-advocacy and self-determination skills necessary for the transition into young adulthood.

Although preserving autonomy is important for all disabled people, it is especially salient when they experience other forms of marginalization that also deprive them of their agency. Guardianships do not make people with disabilities safer and do not stop disabled people from being hurt or abused. For instance, people under guardianship risk undergoing forced sterilization. This practice harks back to the age of eugenics, when marginalized people were thought "unfit" to have and raise children. Forced-sterilization laws were targeted primarily at disabled, poor, Indigenous, Black, and Latine women. Though the disability rights movement has challenged many eugenic policies, the ideology has not been entirely eradicated. The state of Washington, for example, considered allowing guardians to seek sterilization for people with disabilities, and the Supreme Court's *Buck v. Bell* decision, which authorized states to sterilize people thought to be "unfit," has never been repealed.

Because society pays less attention to independent living and supported decision-making, there are countless disabled people who are silenced and overlooked when they try to tell their stories about the benefits of supported decision-making and other alternatives to guardianship. It is therefore essential that we share the individual stories and words of those who have experienced the effectiveness and irreplaceable benefits of alternatives to guardianship. Jenna, a 33-year-old from Massachusetts, was threatened with a legal guardianship but was able to pursue alternatives to guardianship instead. This support included a representative payee, supported decision-making, and independent living training. Jenna says, "these [alternatives to guardianship] have allowed me to help control who is supporting me, because I know I need help. But just because I need help doesn't mean I don't have the ability to make my own choices." Derek, who is 22 and resides in Georgia, uses supported decision-making to live as independently as possible. Derek says, "I have a voice. Don't take my rights. Just because I don't know how to do something doesn't mean you should take my rights." A 64-year-old parent of a disabled child from New York firmly expressed the need for other, more effective options available to support their adult child. Even after attempting to navigate the legal guardianship process, they found that their child

remained unsupported and vulnerable due to his disabilities. As a parent, they found themselves feeling powerless and at the sole mercy of existing, yet flawed, legal guardianship policies and procedures.

All three of these stories possess overarching themes of uplifting the benefits of alternatives to guardianship, while rejecting the supposed need for the existence and perpetuation of legal guardianships. Legal guardianship is far more than a collection of federal policies on paper. The harmful and complex impacts of guardianships far too often outweigh their supposed benefits. Disabled people deserve access to safe, supportive, and valuable resources that will help them lead self-sufficient and meaningful lives.

Fortunately, there are several viable alternatives to guardianship that ensure that disabled people receive the support they need while also maintaining their rights and autonomy. These include powers of attorney, representative payees, independent living training, delegation of rights, educational representatives, surrogate appointments, and more. When alternatives to guardianship are enforced in the lives of people with disabilities, it has been shown to increase independent living and self-advocacy skills, as well as foster overall happiness, self-esteem, and confidence while decreasing anxiety.

These alternatives to guardianship options also include supported decision-making. According to the Center for Public Representation (CPR), a national disability-rights organization, supported decision-making "allows individuals with disabilities to make choices about their own lives with support from a team of people they choose."

We urge the Senate to support the rights of disabled people under guardianships or conservatorships—and create policies that replace these legal statuses with options that preserve their autonomy.

Sincerely,

Finn Gardiner, Director of Policy & Advocacy, Autistic People of Color Fund
Lauren Proby, Policy Fellow, Autistic Women & Nonbinary Network
Mira Bhattacharya, Policy Fellow, Autistic People of Color Fund

[redacted]
San Tan Valley, AZ [redacted]

March 22, 2023

To: guardianships@aging.senate.gov
The Majority Staff of the Senate Special Committee on Aging
Senator Bob Casey, Senator Special Committee on Aging, Chair
Senator Mike Braun, Senator Special Committee on aging, Ranking Member

RE: Senate Special Committee on Aging: Guardianships, Conservatorships, and Alternatives – Hearing

Dear Senator Casey,

I truly appreciate the opportunity to submit our family's story for your review of what is wrong with Guardianships. After enduring this experience for now going on 12 years I do feel I have a lot to contribute on this subject and how it is failing families in American. The fact that you are willing to hear our stories, means we are heading in the right direction.

To put it into perspective my one and only child was 2 years old and today he is 14 and we are still in court. I can't tell you how robbed I feel of the most precious years, days and hours of his life that I have missed due to the completely unnecessary litigious matters surrounding our case. Heartbreaking moments in time that no amount of money can replace.

Just as important to me my precious Mother who by no fault of her own developed memory issues which I feel have been exploited by Judges, Attorney's and Court appointed professionals. All our lives, my brothers, sisters, and mine have changed forever. Shattered forever, by what we consider a completely unnecessary Emergency Petition Guardianship and failed Court processes. Absolutely no Accountability of Professionals.

My Mother stated to me, "They got me" she said you go get these laws changed so what happened to our family doesn't happen to another family. " Since that day it has been our mission to shine light on this subject until real and substantial changes are made. Our only recourse through this corruption has been Media. Our family took our story to the media. Through a series of Articles written by [redacted] we started to receive phone calls from more and more New Mexico families. So we started a informal coalition. That coalition has met every Sunday for the past four years and continues to grow today. The stories are showing us a pattern of practice among the professionals in this industry. I will not be able to go through everyone's stories but please know we would welcome you any Sunday to join a call.

[redacted] Case Start Date – January 9th 2010

Our Parents had a full Estate Plan and end of life contracts prepared by Professionals in place naming who was to oversee everything if they became incapacitated.

One Daughter wanted to have our Mother deemed incapacitated and she wanted professionals to handle her affairs – the other 3 children wanted to follow the Estate Plan already in place. Unbeknownst to the 3 siblings the odd sibling had already filed an Emergency Petition to have our Mother deemed incapacitated.

On Friday afternoon at 5.00 pm a group of 5 women from a Company named Decades showed up on the doorstep of my Mothers house with court papers stating our Mother had been put into a Temporary Guardianship. They stated that from this point forward they would be handling her entire life. By the following Monday they had all her bank accounts in their name and Mother had no access to any of her finances from then on for the rest of her life. It happens that quick and I am sure you can imagine the horror a family goes through. Panicking and trying to make sense of any of it. Our Mother still dressed, walked, talked, Ate just fine... etc.

We thought we would go to court and the Judge would look at our Mothers end of life documents and she would then put the appropriate people in place. People our parents had selected to care for them should anything happen to them. This didn't happen, instead all family was removed from POA, Trustee, every position a family member had we were withdrawn from. The Judge placed all court appointed professionals. The Judge said she had read the Estate Documents, yet no one seemed to abide by anything in those documents, not even the Judge.

I see the following as Key areas of concern.

1. **Emergency Petition Filed - PROBLEM** (what constitutes an emergency? This needs to be identified. These petitions are being misused to take unfair advantage of families at a time when things are shifting due to illness or incapacity. Does a sibling not liking their parents' stated wishes, constitute an emergency or does someone who has slipped in a tub and had no one there to help for 5 days, constitute and emergency?)

2. **Incapacity** - Who is allowed to perform the assessments of weather a person is incapacitated. We recognized by our different cases that in New Mexico primarily one Doctor was being used to perform all these assessment on incapacity. Everyone seems to have a [redacted] Report.

Problem, on our case I tried to get a second opinion as to our Mothers condition because I knew her history and I knew she had a serious head injury that no one was talking about. I thought she had a brain bleed that was causing the cognitive issues. So I made an appointment with another doctor, as I was leaving for that appointment the caregiver asked me who I was taking my Mother to see. I told her and when we reached our appointment it was clear the Guardian had phoned ahead and made the case that we were in denial about our Mothers cognitive issues, stating she had dementia. I had asked for a brain scan to determine what was going on. We were met with great pressure and the doctor didn't want to do it. He eventually did say he would schedule a MRI. However at that point we had no confidence we would receive a impartial opinion. So we opted not to go. It was a grave mistake as they continued to treat our Mother as if she had Dementia and medicated her against her health directive. Years later she did get a scan and it showed she had a brain bleed and probably could have been operated on and been fine. I think this constitutes Mal- Practice.

Problem: Families have no access to the medical records once a Guardianship is put into place. Immediate family should always have access and be consulted and included in medical issues that impact a loved one. Especially when civil rights have been taken away from a person. It will provide another layer of protection and set of eyes for the person.

3. **Estate Documents/Contracts are being ignored by Judges** - Problem: Legally prepared Contracts/Estate Documents are being ignored by Judges. (Families are removed for no cause and court appointed professionals are installed) This is where the problems begin.
    A. At what point do peoples legal documents take effect? Is it upon incapacity, is it when those documents are prepared and you are named? This date & time needs to be established.
    B. Judges should be ordered to follow your legally prepared contracts. It is the law of the land, Contracts must mean something and be enforced.
    We tried on numerous occasions to get the Judges to interpret the meaning of our trust language.. we were never successful in having the court determine the intent or meaning.
    Example: Our Trust stated if the family was removed that a Corporate Trustee must be obtained. So the court removed the family and named a corporate trustee. With in 5 days of their acceptance they removed all the property from the trust and put it into the conservators name. That conservator stated to me that the courts had given him all our property "to do with as he pleased" there are emails from him to the trustee addressing he is not a corporate trustee, merely an attorney. They were still being paid as trustees for months however the property they were supposed to be

protecting had been removed from the trust. Essentially bankrupting the trust.
Problem is there is no transparency from the hand selected (by the conservator) Trustee and again no oversight. No accounting ever provided of any of the transactions that occurred. We lost millions in property value and sales due to this loophole.

Solution – Follow the Estate Plans and demand legitimate accounting be provided to immediately family. Once again there are laws but they are not being followed by the Courts and Professionals.

4. **Establish a Bill of Rights** for any vulnerable person who loses their Civil Rights. I personally don't see why it is necessary to remove anyone's Civil Rights. But if you are going to allow a person's Civil Rights to be taken away then there should be protection from bad actors put into place. Establishing a Bill of Rights and making these citizens a special class of Citizens this would provide another layer of protection.

In closing as I am out of time, o gosh there is so much more. I would like to ask that you keep in mind in the majority of these contested cases families are being painted as the bad actors.... I would like this committee to consider that families are being removed from the power positions on day 1 in court. So I ask who is responsible for these individuals from that point on? Is it the State Court, The Guardians / Conservators? Who owes these individuals fiduciary responsibility when you remove all family. I also would like any plan that is established to be inclusive of Private Pay individuals as well as indigent. This seems to be an issue, if state funds are used there is more recourse but what about private pay clients, don't they deserve the same protection.

Thank you so much for your time and consideration. I am available should you have any further questions or concerns.

Sincerely,

[redacted]
Daughter of [redacted]

To: U.S. Senate Committee on aging, guardianships, conservatorships, and other protective arrangements:

From: [redacted]
[redacted] **Tucson, AZ, USA**

Please eliminate guardianships, conservatorships, court-ordered "treatment" and other so-called "protective" sutstituted-decision-making arrangements that can be prone to abuse and that violate the United Nations Convention of Rights of Persons with Disabilities (CRPD). **Instead, please promote supportive decision-making and/or supported decision-making** as promoted by the CRPD which provides for persons to consult different persons in making their choices.

Please also consider the following:

1. Court-ordered "treatment" can be very abusive under the radar and can't ever have sufficient due process protections and in records can seem "appropriate" as illustrated by the examples below:

a. In the spring of 2005 when I was involuntarily hospitalized in Tucson, Arizona at the Kino Community Hospital that was currently under the auspices of University Physicians, Inc. in a ward with interns who saw posters on the wall that stated that patients shall not have their access to contact outside agencies restricted, I was soon restricted from having access to outside sources soon after the interns had completed their internships and no other interns were frequenting the unit. As most of the time when I've been hospitalized, I've had my telephone privaleges restricted for making alarming telephone calls. In the hospital, I had orally verbalized so many different complaints of violations of my rights and others, that the

staff repeatedly medicated me with Haldol medication and repeatedly increased my dosage of Haldol medication until i was medicated on such high dosage of Haldol that i was practically comatose and spent the entire time laying on the floor barely lifting my head to barely say anything to my husband and only getting up to eat and use the restroom. The psychiatrist wrote that my "behavior had improved" or something to that effect and recommended that the dosage of medication be yet further increased by the outside agency. Fortunately, my husband was willing to take a day off from work and accompany me to my first appointment with the agency charged with implementing the outpatient court-ordered "treatment" to help me complain about the medication (at my request because i had the wisdom and experience that i wouldn't otherwise be believed). Very fortunately the "treatment" agency couldn't locate the discharge sheet from the hospital. The outpatient agency psychiatrist fortunately told me that based upon what my husband was urging, she would decrease the medication only because she didn't have any other recommendation to go by. Then at my next appointment, the psychiatrist informed me that the discharge paper had since been located and recommended increasing the dosage of medication and that if she had seen that discharge paper she would have increased the medication dosage yet further despite the complaints of me and my husband.

b. Under court-ordered "treatment" I have also been involuntarily medicated with a very high dosage of Invega Sustenna and have other antipsychotic medications added to that very high dosage of Invega Sustenna. Invega Sustenna and other antipsychotics (e.g., olanzapine, seroquel) forced upon me raise blood sugar. Invega Sustenna also taxes the kidneys.

c. Arizona laws have stated that persons court-ordered to "treatment" have to pay for their own "treatment" which can consist of extremely expensive hospitalization and extremely

expensive medication and other extremely expensive "services." In approximately 2004, I was sued by a collection agency for part of the costs of 2 days of my involuntary hospitalization when on court-ordered "treatment" in April of 2000 and 5 days in September of 2001. I took out a personal loan to pay off the judgment of approximately $13,000.00 plus 10% interest. It took me more than 10 years to pay off that personal loan, for which I had student loan money to help me pay for my living expenses at the time while I attempted to pursue an online Ph.D. program while I continued to struggle with repeated psychiatric hospitalizations and had been psychiatrically hospitalized for months at a time two different times during the subsequent 10 year timeframe.

d. With each court-ordered "treatment" on which I've been placed during the past 23 years, for which I've spent most of the time on court-ordered "treatment", the court-ordered "treatment" has always restricted my travel such that I have been repeatedly required to seek permission to travel outside the county, even for travel within the same state and violating the U.S. Constitution's right to interstate travel. All of that occurs, even though I have never been found to be a "danger to others" by any mental health court, though allegations have often been made for such in order to attempt to justify "treatment."

e. Most persons, including myself, who have been subjected to court-ordered "treatment" and/or criminal prosecution, have had ineffective assistance of counsel, an issue which I have raised to some extent when I have done some of my own appeals representing myself.

f. Judges have denied sufficient time for patients to present their cases. For example, in July of 2020, a mental health court judge denied my right to have my hearing endure more than 2 hours nor be continued for any time beyond 2 hours.

g. The courts, including in different states, seem to have systemic problems with creating a record of case for the patient. In the summer of 2020, when I represented myself at a mental health court hearing in Tucson, Arizona, much of my questions and testimony were inaudible via the videotape. In the summer of 2021, when I was represented by an attorney at a mental health court probate hearing, the judge indicated that her tape recorder had stopped working and likely didn't catch the cross-examination of the psychiatrist nor my testimony.

h. In May of 2022, when I represented myself for a judicial review for court-ordered "treatment" the judge agreed that the court-ordered "treatment" was "doing more harm than good" though the judge added "at this time."

6. Even when there appears to be sufficient procedural due process in the legislative record, most of the time the judicial process lacks sufficient procedural and substantive due process.

For example, in Arizona, the laws do not require the following:

a) a timeframe for when an agency needs to file its judicial review with the court and the mental health agency implementing court-ordered "treatment" delayed filing the required paperwork for an entire week

b) a requirement that a court must grant an evidentiary hearing for a judicial review when the appellant requests such, and I've had a judge deny my right to an evidentiary hearing for a judicial review.

c) any requirement that "treatment" providers must file any and all statements of

disagreements with the court-ordered

7. The state of Connecticut does not seem to provide appeal rights to mental health patients court-ordered to "treatment" through its probate court that provides for court-ordered "treatment."

8. Although the United States federal healthcare law seems to require that patients be able to provide a statement of disagreement which must be maintained as part of the record, there seems to be no requirement that any healthcare providers provide those statements of disagreements to any supervising court nor to any persons or agencies that requested the records prior to the filing of the relevant statement(s) of disagreement.

9. In the real-world, there doesn't seem to be likely any procedures that can guarantee sufficient procedural and substantive due process for substitutive decision-making.

[redacted]

Dear Senate Committee:

I would like to let you know what the Guardianship/Conservatorship is REALLY like. I can speak from the perspective of my mother being a victim of this system. I am also a victim of this system.

First my mom:
[redacted] of [redacted] Idaho and now of [redacted] Idaho was misdiagnosed in April 2019. St Luke's hospital would not accept her POA to take her from the hospital. She had her home paid for, her new vehicle paid for, was attending doctor appointments, driving and taking care of herself at age [redacted]
The following has happened to [redacted] in IDAHO since April 2019

1) Taken from her home and never allowed to return to live her life freely
2) CHEMICALLY restrained against her will at [redacted] Hospital in [redacted] Idaho, which includes FORCIBLY HELD DOWN AND INJECTED WITH PSYCHOTROPIC DRUGS AGAINST HER WILL, BUT ALSO GIVEN ORAL DOSES TOO.
3) CHEMICALLY restrained against her will at [redacted] Idaho to the point of needing Hospice within 2 months. HELD DOWN AGAINST HER WILL AND FORCIBLY INJECTED.
4) Staff at [redacted] were laying in my mom [redacted] s twin bed and cuddling and fondling her. She was so drugged she could not resist and later informed me how upset she was.
5) Neglected and missed appointments with Dentist and her eye specialist for glaucoma and eye conditions.
6) Her $430,000 home sold with no communication to [redacted] or her family.
7) [redacted] has NO SAY in her own belongings, including heirlooms, clothing, photos, trinkets from her life.
8) Over kill on medications to silence her and incapacitate her.
9) ISOLATION FROM FRIENDS AND FAMILY
10) RETALIATION AGAINST ME, FOR SPEAKING OUT
11) Judge [redacted] of ADA county involved heavily.
12) Guardian ad litem attorney [redacted] of [redacted] Law involved
13) Personal attorney Leslie K Smith involved
14) [redacted] of [redacted] Law also involved. (family court does not care about conflict of interest what so ever)
15) Multiple Guardians, and Conservator have drained [redacted] s estate to an alarming figure. She had a half million dollar estate two years agao and now has less than $100k left which at [redacted] will not suffice to keep her in assisted living.

16) She is currently in [redacted] of [redacted] Idaho and is being ISOLATED FROM HER FAMILY AND FRIENDS. MAINLY ME, HER DAUGHTER FOR BEING HER ADVOCATE AND SPEAKING OUT.
17) Idaho Legal Aid refuses to help our family

[redacted] has NO RIGHTS.

I have personally complained to the following State of Idaho offices and people and received **ZERO HELP EVER**

1) Guardianship monitoring board in [redacted] county Idaho
2) Guardianship monitoring board in [redacted] county Idaho
3) [redacted] in [redacted] and [redacted] Idaho
4) [redacted] Police Department
5) [redacted] police Department
6) Idaho attorney general's office
7) Idaho governor Brad Little
8) Wrote to Senator Risch and Daines
9) Adult Protective services in [redacted] and [redacted] Idaho
10) Judge [redacted] in [redacted] Idaho has been alerted and does nothing to help, even when [redacted] is being chemically restrained and isolated from her family.
11) Judge [redacted] allows perjury to occur in his court by Guardians, And attorneys.
12) Judge [redacted] allows [redacted] to be ISOLATED since May 2022 again.

My mother [redacted] has been abused by the acts of rogue Guardians and the court system does nothing to stop it.
GAL (guardian ad litem attorney) are all in on this scheme against our most vulnerable.
It's about the MONEY.

Due to trying to ADVOCATE and help my mother I have also been victimized by a court system that is rigged to help the ones in charge of this rotten Guardianship system.
I have had the following happen to me as a direct result of trying to advocate for my mom, [redacted].

1) **I have a FALSE PROTECTION ORDER FILED AGAINST ME BY A GUARDIAN.** They use your legal system and ABUSE it to ISOLATE their WARD from family that speak out. I have at least ONE HUNDRED other people in same situation that can verify this to be true.
2) GUARDIANS are weaponizing the Protection Order system to keep families apart. NO EVIDENCE is needed to place these false orders upon a law abiding citizen. FAMILY COURT JUDGES rubber stamp the FALSE PROTECTION ORDERS LIKE GIVING OUT CANDY!!
3) My reputation has been smeared by the Guardians, GAL, and others that I have sent legitimate complaints to.

4) I am retaliated against for speaking out for my mom. Including being TRESPASSED BY [redacted] IDAHO POLICE from my mom's assisted living. WITH NO REASON GIVEN. I have it on video but no one cares to view it!!!
5) **My communication has been severed from my mom [redacted] several times.**
6) **Currently I am unable to see my mom due to the Guardian having me trespassed from the assisted living facility FOR NO REASON.**
7) **I have not seen or spoke to my aging mother since May 2022 and trespassed since JULY 2022!!! All due to rogue actions of a Guardian in [redacted] Idaho**
8) **I have had to endure thousands of dollars in attorney fees to defend myself. I am [redacted] years old. I hold professional degrees and never had a record before being falsely given a protection order in [redacted] COUNTY IDAHO.**

9) **Guardians are allowed free and unchecked power over WARDS. This needs to STOP**
10) **NO ONE CARES that there is no evidence or need to ban family and friends.**
11) **Guardians actively and routinely BAN FAMILY and ISOLATE WARDS**
12) **Guardians Use the CRITERIA listed on "RESIDENTS RIGHTS TO VISITATION" for their false smear campaigns.**
13) **State officials let it continue. IN four years time, <u>NOT ONE PERSON HAS HELPED OUR FAMILY.</u>**
14) **Guardians have no training on specific needs of WARDS.**
15) **Guardians can have DUI records and still be a Guardian in IDAHO**
16) **Guardians AND Conservators can have RECENT BANKRUPTCY FILINGS AND STILL BE CERTIFIED IN IDAHO**

Guardians have unlimited power over a WARD. NO one can question them or complain about them without expecting RETALIATION.

Guardians are filing false Protection Orders against INNOCENT people at an alarming rate
WARDS are being <u>ISOLATED</u> from their loved ones at an alarming rate. Due to spiteful actions of guardians with unchecked power over another human being.
ESTATES are being drained.
WARDS are being CHEMICALLY RESTRAINED by Guardians with NO TRAINING on the subject matter.

Assisted Living facilities are aware of the abuse and do nothing.

It's all about the money!!!

I have not seen my mom in over EIGHT MONTHS
I can't call because the Guardian has severed her phone contact as well.
My mom has missed family holidays, birthdays and visits.
My mom has not had a visitor since October 2022
My mom, [redacted] is locked up and has less freedom that a an Idaho prison inmate.
[redacted] wants to see her entire family but gets no choices of her own.
gets no say in her life
gets no say in her belongings or care
has been held down, while screaming, and injecting. This is terrible treatment and what I have been fighting against.
NO one will help.
No one has cared.

When my mom is broke and is sent to a Medicaid State run facility, and all the people above don't have free access to their piggy bank called [redacted], I bet they won't care about fighting to keep her in their system.

SHAME On the USA government for allowing this to happen to my mom, [redacted] and also to me [redacted] of Idaho and Montana!

It needs change and I am willing to help if anyone will listen and take input from a person that's family and lives have been ruined by this system. I miss my mom. I am being kept from her. This has to stop!

Sincerely,
[redacted]

[redacted]

From: [redacted]
Sent: Friday, March 17, 2023 11:35 AM
To: Guardianships (Aging)
Subject: Comments on GUARDIANSHIP CONSERVATORSHIP

Dear Senate Committee on Aging: March 17, 2023

I have a mother in law that is in a conservator/guardianship in the state of Idaho. She had a half million dollar estate just a few years ago and it is now down to less than one hundred thousand. It goes pretty fast when there are four attorneys, a conservator and a guardian all sucking out of the same pot of money. I will be straight up and not pull any punches here, **this is not financial abuse, it is organized crime.** If you speak out or question anything that they are doing, you are first threatened, if that does not work, they file a protection order against you. That is exactly what has happened to my wife. They have weaponized the court system to get their way. They do not have to show evidence against you, the judges believe everything they say and if you try to show evidence that they are lying it is thrown out and you are shut down and not allowed to speak to the judge. This is supposed to be the United States of America where we are all treated equally, that is until you step into the crooked world of guardianships and family court. This is not the only case like this, there are literally hundreds of these cases across the U.S. and there have even been movies made about this very subject. My mother in law was misdiagnosed and sent to a mental facility. When they found out that she owned her house and all of her belongings were paid for she was declared "incapacitated" by a judge and had a conservator and guardian appointed for her. My mother in law took care of her house, did all of her own yard work, paid her monthly bills, and walked four blocks to Walmart and back every day to do her shopping all by herself. All of the sudden, she is placed in this system where you have no freedoms and are not allowed to leave the assisted living facility. This system is predatory and should be illegal. The elderly and their families are the victims in this sick, twisted system. It does not need reform, it needs to be abolished!

Do you know what it takes to become a guardian? You take a test online, it takes about an hour to complete it and when you pass it you are given a certificate and can start taking care of the elderly. That's it, no formal training or schooling, no degrees involved. I know what you are thinking, the background check will flush out the bad ones. Nope, it doesn't. My mother in law's guardian has multiple traffic citations, a DUI, and filed for bankruptcy less than three years ago. And yet, somehow that makes her qualified to drive my mother in law around and make financial decisions. It seems that the only thing she is qualified for is lying and filing protection orders against the family members.

The system is broken and needs massive changes. **If the family does not get along with a guardian, that guardian should be replaced immediately with no questions asked**. The guardian should not be able to retaliate and file protection orders against the family just because they questioned something that she was doing. My mother in law has not had any visitors since October and we have not seen her since July when we had the police called on us and were trespassed from the assisted living facility by the guardian. None of the grandchildren will even go see her because they are afraid that they will become the next target of the guardian. They are in fear of going to jail or losing their jobs just to see their grandmother. Is this the kind of system that the U.S. Congress supports? Please act immediately.

Sincerely,
[redacted]

HOnorable members of the Special Committee on Aging, Allow me, if you will, to introduce myself. My name is [redacted] I am a longtime survivor/victim of guardianship abuse. I have been antiguardianship for a long time, and have spoken to the [redacted] House of Representatives regarding issues around guardianship abuse. I want to tell you about the problems and solutions to the guardianship matters and how best to solve them. LEt me start with my own story.

When I was seventeen, barely an adult, having suffered years of psychological abuse and some gaslighting by a family that did not want me in the first place, and having been the illegitimate child of a mother who simply married another man who was not biologically related to myself, my parents decided to dish out guardianship because in their minds, I was wholly incapable of doing a variety of tasks including but not limited to food preparation, money management, and housekeeping. It got worse. They declared me incompetent so they could, in my adopted father's words, "take care of me." What they really could have meant could scare a lot of you but I learned years later it could have been, "so we can kill you" or perhaps "so we can institutionalize and isolate you." This is a common problem in guardianships. Guardians have a certain playbook, and I will describe it now.

First, they take your money. Guardians will tell you you are incapable of financial management, and require assistance, but what they really mean is we want your money. It doesn't matter whether it's a young disabled poor person on SSI or Britney Spears, this happens on and on and on and never seems to stop. In the movie I Care A Lot, the attorney and guardian characters dip into their clients' accounts and use that money for upscale dining and patting themselves on the back. This happens all too many times in real life. My parents used guardianship to steal my privacy and financial decision making and worse, they used it to attempt to leave me penniless. Retired attorney [redacted] who represented my guardians/parents told them flat out to spend all my money. They claim they didn't, but how true is it! I found out later that they went to Italy on some 25th anniversary trip to celebrate their marriage, and it makes me sick to wonder if they used my SSI if they had the chance. Who wants to bet Marla Grayson, the main character in I Care A Lot would do the same? It isn't hard to guess, but I am very sure she would.

Next, isolation. Guardians oftentimes isolate their victims, the protected person is told never to associate with people they care about. [redacted] a dear frend of mine in [redacted] Florida, was targeted for this such thing. WE were both told not to see each other, and my parents finagled my friend [redacted]'s parents into believing I was crazy. It made me upset, but furthermore caused a hospitalization because I didn't have many friends to begin with after high school. When the guardianship was finalized in [redacted] 2004, one of the rights I was denied was the right to socialize. They wanted to filter everybody out, and this provision in the guardianship is so common that even elders such as [redacted] of [redacted] Florida, was also denied her right to associate, locked in a room for hours upon hours, and was financially exploited in the manner stated above. Many elders in nursing facilities have guardians willing to exploit them and steal their money, but furthermore, they get isolation. You are never allowed to see your daughter or your son, let alone a dear friend you met online. Isolation causes early death, and I am of the firm belief it can also cause some forms of psychotic imbalance. I was so isolated in 2006 and the years after that I lost track of my ability to center and tell time, my brain switches literally flooded and stimulating themselves. This is not how I want to live my life nor should it be for any person who wants to live their life happy and healthy.

Overmedication is another issue guardians frequently play with. In my case, I was overstuffed with psychological drugs including a mood stabilizer called Trileptol and an antipsychotic called Abilify, common name for eripiprozol, and both of these medications put together were supposed to make me "compliant." In the eyes of guardians, a protected person must be managed. What happens in overmedication is sad. Elders should never be prescribed psychotropic drugs such as abilify or any mood stabilizing drugs because death is a sure side effect, but furthermore, compliance and the word

"comply" is something you use with prisoners. I was a prisoner in my own body and my parents were the game wardens.

Cremation after death always happens to be a problem in guardianship cases. Example after example I could show you demonstrates the disrespect a full fledged guardian whether family or not has over a dead client or loved one. [redacted] of [redacted] Nevada recently got jailed for killing off clients and exploitation. The scariest thing happened when a man bought a locker storage unit [redacted] had used and that unit contained boxes and boxes and boxes of ashes! The ashes were the cremated remains of clients, and [redacted] had kept these boxes in a locker, not in proper urns as is proper and required for the dead. I would never want to be kept that way upon my own demise.

Sterilization via IUD is what [redacted] calls, "standard fare" for women in guardianship bondage. I am lucky I made my point clear that I won't use an IUD. Ironically, it was a mercy my parents weren't into birth control. I later took that pill for years but now, I'm about to bear my partner a son. HE and I decided we wanted kids, and we want to raise our son to be a productive and happy member of this country, but I also am openly discussing alternatives to guardianship for me and our children with my dear partner.

My partner is totally blind and born that way as I am. We both love each other, and I tld him point blank I want to look into powers of attorney for medical reasons, something my partner flat out said to me, "I want you to have the freedom to change or get rid of it." This is the opposite of what my own parents said and did. Because I was their victim, they also tried to further victimize me by stating they wanted nothing to do with my son, and told me to adopt him out. I can't imagine why I'd do that, but my partner and I won't be adopting him out. I'm free of this burden called guardianship as of December 2020, and my son will be born in a month or two. I am so excited about his arrival, but also cautious. I hope he will be a strong and noble character who will fight for all of the vulnerable and innocent survivors of all types of crime, up to and including guardianship. All of what I stated above are problems I'm not the only one witnessing with guardianships.

What are the solutions? I can see only one solution to fit the needs of adults. Abolish all guardianship and conservatorship arrangements. It is highly imperative that these arrangements be made illegal for all adults eighteen and older. A power of attorney can serve as a great way for my partner or my soon to be eighteen year old son, in eighteen years, to advocate for my needs. IF god forbid I'm diagnosed with dementia or Alzheimer's disease, I swear on my right hand and all the hands of those I love that I do not want under any circumstances to be abandoned or put away in a nursing facility. My son by then should know his mother's wishes, and the POA would be designed to make that possible such that I am taken care of away from nursing facilities. Second thought, if you have an intellectually disabled person or someone with developmental disability, even autism, supportive decision making is the way to go. It doesn't have to be rendered by a court or ordered as such. [redacted] has Down's Syndrome and fought for her right to be with friends, and that's exactly what she got. Though she is ID and has a job at a thrift store, she still matters to all of us. She was forbidden from doing things she loved in guardianship bondage, hence why I am calling for the abolishment of such protective practices. We have to change our whole attitude about the people most vulnerable in our society. We must do better.

Please consider reframing all thought of guardianship arrangements in the federal legislature if possible, but it must be done one way or another. It doesn't have to be specific bills or laws, but if it involves such, I'll be there to push for all of it so we as a society can change our narrative regarding the disbaled, elders, those who should mean the most to us.

Sincerely,

[redacted]

HOnorable members of the Special Committee on Aging, Allow me, if you will, to introduce myself. My name is [redacted] I am a longtime survivor/victim of guardianship abuse. I have been antiguardianship for a long time, and have spoken to the Colorado House of Representatives regarding issues around guardianship abuse. I want to tell you about the problems and solutions to the guardianship matters and how best to solve them. LEt me start with my own story.

When I was seventeen, barely an adult, having suffered years of psychological abuse and some gaslighting by a family that did not want me in the first place, and having been the illegitimate child of a mother who simply married another man who was not biologically related to myself, my parents decided to dish out guardianship because in their minds, I was wholly incapable of doing a variety of tasks including but not limited to food preparation, money management, and housekeeping. It got worse. They declared me incompetent so they could, in my adopted father's words, "take care of me." What they really could have meant could scare a lot of you but I learned years later it could have been, "so we can kill you" or perhaps "so we can institutionalize and isolate you." This is a common problem in guardianships. Guardians have a certain playbook, and I will describe it now.

First, they take your money. Guardians will tell you you are incapable of financial management, and require assistance, but what they really mean is we want your money. It doesn't matter whether it's a young disabled poor person on SSI or Britney Spears, this happens on and on and on and never seems to stop. In the movie I Care A Lot, the attorney and guardian characters dip into their clients' accounts and use that money for upscale dining and patting themselves on the back. This happens all too many times in real life. My parents used guardianship to steal my privacy and financial decision making and worse, they used it to attempt to leave me penniless. Retired attorney [redacted] who represented my guardians/parents told them flat out to spend all my money. They claim they didn't, but how true is it! I found out later that they went to Italy on some 25th anniversary trip to celebrate their marriage, and it makes me sick to wonder if they used my SSI if they had the chance. Who wants to bet Marla Grayson, the main character in I Care A Lot would do the same? It isn't hard to guess, but I am very sure she would.

Next, isolation. Guardians oftentimes isolate their victims, the protected person is told never to associate with people they care about. [redacted], a dear frend of mine in [redacted], Florida, was targeted for this such thing. WE were both told not to see each other, and my parents finagled my friend [redacted]s parents into believing I was crazy. It made me upset, but furthermore caused a hospitalization because I didn't have many friends to begin with after high school. When the guardianship was finalized in November 2004, one of the rights I was denied was the right to socialize. They wanted to filter everybody out, and this provision in the guardianship is so common that even elders such as [redacted] of [redacted] Florida, was also denied her right to associate, locked in a room for hours upon hours, and was financially exploited in the manner stated above. Many elders in nursing facilities have guardians willing to exploit them and steal their money, but furthermore, they get isolation. You are never allowed to see your daughter or your son, let alone a dear friend you met online. Isolation causes early death, and I am of the firm belief it can also cause some forms of psychotic imbalance. I was so isolated in 2006 and the years after that I lost track of my ability to center and tell time, my brain switches literally flooded and stimulating themselves. This is not how I want to live my life nor should it be for any person who wants to live their life happy and healthy.

Overmedication is another issue guardians frequently play with. In my case, I was overstuffed with psychological drugs including a mood stabilizer called Trileptol and an antipsychotic called Abilify, common name for eripiprozol, and both of these medications put together were supposed to make me "compliant." In the eyes of guardians, a protected person must be managed. What happens in overmedication is sad. Elders should never be prescribed psychotropic drugs such as abilify or any mood stabilizing drugs because death is a sure side effect, but furthermore, compliance and the word

"comply" is something you use with prisoners. I was a prisoner in my own body and my parents were the game wardens.

Cremation after death always happens to be a problem in guardianship cases. Example after example I could show you demonstrates the disrespect a full fledged guardian whether family or not has over a dead client or loved one. [redacted] of [redacted] Nevada recently got jailed for killing off clients and exploitation. The scariest thing happened when a man bought a locker storage unit [redacted] had used and that unit contained boxes and boxes and boxes of ashes! The ashes were the cremated remains of clients, and Parks had kept these boxes in a locker, not in proper urns as is proper and required for the dead. I would never want to be kept that way upon my own demise.

Sterilization via IUD is what [redacted] calls, "standard fare" for women in guardianship bondage. I am lucky I made my point clear that I won't use an IUD. Ironically, it was a mercy my parents weren't into birth control. I later took that pill for years but now, I'm about to bear my partner a son. HE and I decided we wanted kids, and we want to raise our son to be a productive and happy member of this country, but I also am openly discussing alternatives to guardianship for me and our children with my dear partner.

My partner is totally blind and born that way as I am. We both love each other, and I tld him point blank I want to look into powers of attorney for medical reasons, something my partner flat out said to me, "I want you to have the freedom to change or get rid of it." This is the opposite of what my own parents said and did. Because I was their victim, they also tried to further victimize me by stating they wanted nothing to do with my son, and told me to adopt him out. I can't imagine why I'd do that, but my partner and I won't be adopting him out. I'm free of this burden called guardianship as of December 2020, and my son will be born in a month or two. I am so excited about his arrival, but also cautious. I hope he will be a strong and noble character who will fight for all of the vulnerable and innocent survivors of all types of crime, up to and including guardianship. All of what I stated above are problems I'm not the only one witnessing with guardianships.

What are the solutions? I can see only one solution to fit the needs of adults. Abolish all guardianship and conservatorship arrangements. It is highly imperative that these arrangements be made illegal for all adults eighteen and older. A power of attorney can serve as a great way for my partner or my soon to be eighteen year old son, in eighteen years, to advocate for my needs. IF god forbid I'm diagnosed with dementia or Alzheimer's disease, I swear on my right hand and all the hands of those I love that I do not want under any circumstances to be abandoned or put away in a nursing facility. My son by then should know his mother's wishes, and the POA would be designed to make that possible such that I am taken care of away from nursing facilities. Second thought, if you have an intellectually disabled person or someone with developmental disability, even autism, supportive decision making is the way to go. It doesn't have to be rendered by a court or ordered as such. [redacted] has Down's Syndrome and fought for her right to be with friends, and that's exactly what she got. Though she is ID and has a job at a thrift store, she still matters to all of us. She was forbidden from doing things she loved in guardianship bondage, hence why I am calling for the abolishment of such protective practices. We have to change our whole attitude about the people most vulnerable in our society. We must do better.

Please consider reframing all thought of guardianship arrangements in the federal legislature if possible, but it must be done one way or another. It doesn't have to be specific bills or laws, but if it involves such, I'll be there to push for all of it so we as a society can change our narrative regarding the disbaled, elders, those who should mean the most to us.

Sincerely,

[redacted]

STATE OF WISCONSIN
BOARD ON AGING AND LONG TERM CARE
1402 Pankratz Street, Suite 111
Madison, WI 53704-4001

Ombudsman Program (800) 815-0015
Medigap Helpline (800) 242-1060
Part D Helpline (855) 677-2783
Fax (608) 246-7001
http://longtermcare.wi.gov

MEMBERS of the BOARD
Abigail Lowery
Tanya L. Meyer
Dr. Valerie A. Palarski
James Surprise
Dr. Dale B. Taylor

EXECUTIVE DIRECTOR
and
STATE OMBUDSMAN
Jessica L. Trudell

March 23, 2023

Senate Special Committee on Aging
Sen. Bob Casey, Chair
G16 Dirksen Senate Office Building
Washington, DC 20510-6050

Sent via email to guardianships@aging.senate.gov

Dear Chairman Casey and members of the Committee:

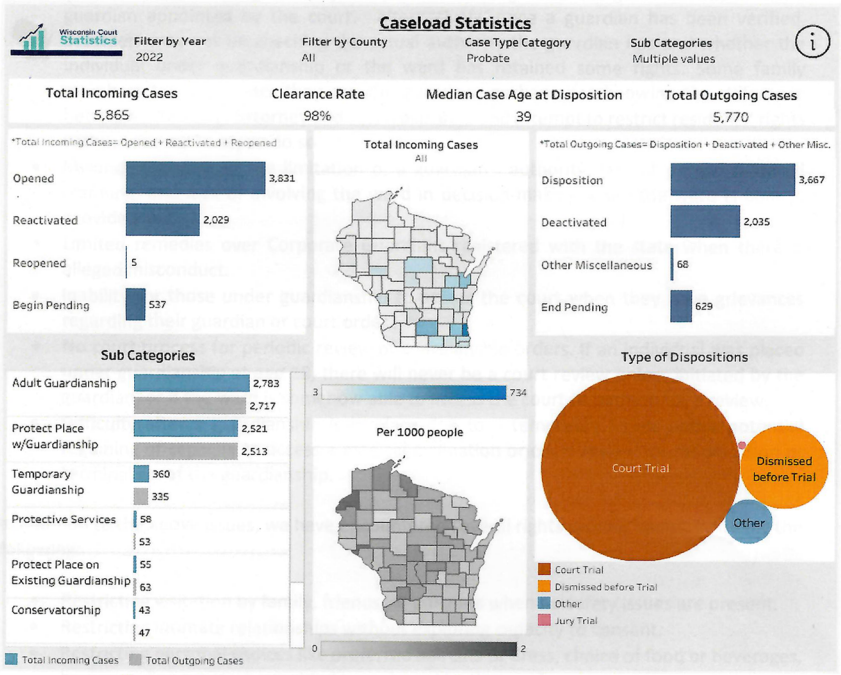
Thank you for the opportunity to provide input to the Committee regarding its examination of guardianships, conservatorships, protective arrangements, and alternatives.

The mission of the Wisconsin Board on Aging and Long Term Care (BOALTC) is to advocate for the interests of the state's long-term care consumers and Medicare beneficiaries, to inform those consumers of their rights, and to educate the public at large about Medicare and long-term care. BOALTC houses the Ombudsman Program, Volunteer Ombudsman Program and the Medigap Helpline and Part D Helpline.

The Long Term Care Ombudsman Program is Wisconsin's version of the federally mandated program which provides trained and certified professional advocates who represent the interests of and speak on behalf of older adult residents of long-term care facilities, as well as for those who receive their home and community-based services through the state's managed long-term care programs, namely Family Care, Family Care Partnership, PACE (Program of All-Inclusive Care for the Elderly) and IRIS (Include Respect I Self-Direct). Ombudsmen respond to complaints lodged by or on behalf of these clients and advocate to protect their health, safety, welfare, and rights. Ombudsmen also serve as consultants and educators to providers and citizens on a variety of issues, including conflicts with legal decision-makers, resident rights, facility-based advocacy and managed care. Under Wisconsin law, individuals under guardianship retain the right to access their advocate from Disability Rights or the Board on Aging and Long Term Care.

In calendar year 2022, there were 5,865 cases in the state of Wisconsin related to adult guardianship, protective placement, protective services, temporary guardianship and

conservatorship. Nearly 78% were disposed of by a court trial, 15.6% were dismissed, 4.5% other disposition and only .14% of cases had a jury trial. Below are several graphics that provide additional details on these cases.



Source: https://www.wicourts.gov/publications/statistics/circuit/circuitstats.htm

Through complaints and advocacy work, BOALTC has encountered several areas of concern related to guardianships, conservatorships, and protective placements. These include:

- Lack of support and funding for Guardian ad Litems (GAL). Some counties in Wisconsin have shifted to contract flat rate payment for GALs at low rates. This potentially provides a disincentive to do the most thorough investigation when work is not compensated at a fair hourly rate for attorney work and investigation.
- Discovery that there are some residents who may have resided in that facility for many years without anyone having legal authority to have admitted them (or continued their residence). In Wisconsin, if a person resides in a nursing home or Assisted Living community known as a Community Based Residential Facility (CBRF) over 16 beds and the

resident did not have capacity to admit themselves, there must have been authority given to a Power of Attorney agent under a valid Power of Attorney for Healthcare document, or there must be a court ordered guardianship and protective placement.

- Providers not checking to verify the person claiming to be the guardian was in fact a guardian appointed by the court. Alternatively, once a guardian has been verified, providers may not be checking the actual authority the guardian has and whether the individual under guardianship or the ward has retained some rights. Some family members tell a provider they are the guardian, perhaps not knowing the difference between a Power of Attorney and a guardianship, and attempt to restrict residents' rights without the authority to do so.
- Misunderstanding of the limitation of a guardian's authority, lack of person-centered planning, and lack of involving the ward in decision-making when the ward is able to provide input.
- Limited remedies over Corporate Guardians registered with the state when there is alleged misconduct.
- Inability for those under guardianship to access the court when they have grievances regarding their guardian or court order.
- No court process for periodic review of guardianship orders. If an individual was placed under guardianship at age 18, there will never be a court review unless initiated by the guardian, or if the ward is somehow able to access the court to petition for a review.
- Difficulty after a guardianship is in place due to a temporary illness and a potential regaining of capacity to access a medical evaluation or court review for modification or termination of the guardianship.

In addition to the above issues, we have encountered several rights-related issues, including the following:

- Restricting visitation by family, friends, or partners when no safety issues are present.
- Restricting intimate relationships without exploring capacity to consent.
- Restricting personal choices like preferred haircuts or dress, choice of food or beverages, how spending money is provided to and used by the ward.
- Violation of privacy, including "supervising" personal cares and bathing at a long-term care home.
- Not allowing private access to attorneys or other advocates.
- Restricting access to phone or private mail.
- Unwillingness of guardians to follow the wishes of their ward even in circumstances where the ward can clearly articulate what they want. We have seen this especially in guardian refusals to consent to DNRs even though state law gives them authority to do so when the ward is also a qualified patient.
- Guardians directing staff of long-term care settings to withhold treatment such as pain medication if it conflicts with the guardian's personal beliefs.
- Guardians declining to permit follow up visits for their wards to dentists and other health care professionals, even when the ward experiences discomfort or signs of infection.

- Guardians making choices about where their wards live based on their own convenience, or based on financial relationships with particular providers.
- Guardians deferring decisions about where their wards live to a managed care organization or other entity and a failure to evaluate whether the new placement meets the ward's desires and needs.
- Guardian unwillingness to request re-evaluations for competency when a ward's status has changed.

Please consider the following recommendations from BOALTC:

Promotion of Supported Decision-Making and Alternatives to Guardianship

- Wisconsin passed a Supported Decision-Making law in 2018[1]. This allows any adult who identifies as having a functional impairment to name a supporter or a helper to assist them in certain areas of life such as where the adult wants to live, services, supports and medical care the adult wants to receive, where the adult wants to work, without impeding their self-determination. The formalization of Supported Decision-Making in the state has allowed us to have a new conversation around capacity, legal decision-making and formal and informal support structures.
- Streamlined and concerted efforts to provide statewide and national education regarding Advance Directives and other alternatives to guardianship.
- Encourage healthcare providers to ask questions before incapacity or incompetency arises, to provide education and information regarding advance directives, to increase conversations about advance directives with patients of all ages, review documents for any clerical issues before it is too late and to ensure advance directives are known and accessible in a patient's file.
- Supported Decision-Making alternative for older adults has not been widely embraced by some adult protection services professionals, corporate guardians and aging and disability resource centers based on a belief that if an older adult is displaying any physical or cognitive frailty, promoting a SDM alternative only puts off the inevitability of needing a formal decision-maker.

Resources for Guardians

- In Wisconsin, we have a Guardianship Support Center[2], which staffs an attorney to provide unbiased education and consultations statewide to those with questions regarding guardianship. This has been a great resource in Wisconsin and we would encourage similar programs in other states. However, additional funding and attorneys are needed to support high call volumes and complex consults.
- Wisconsin recently passed required guardian training before court appointment and hope this will be key to reducing guardian overreach and preventing abuse. We would support any training opportunities for guardians to assist.

---

[1] Wis. Stat. ch. 52

[2] https://gwaar.org/guardianship-resources

- Undertaking the role of a court appointed guardian for a family member can be extremely overwhelming. The guardian might find themselves in situations where they need to consult with an attorney or an accountant to sort out complex finances, sell real estate and provide inventory and accountings to the court. We would support any additional training or funding to support family guardians in this role that could ease their burden.

We also would encourage requiring when a guardianship petition is filed, appointment of defense counsel to ensure the proposed ward receives due process. We would also encourage support, training and/or funding for Guardian ad Litems who play such an important role in the guardianship process and can be an important safeguard of constitutional rights.

Thank you for your consideration and attention to this important issue.

Jessica L. Trudell

Jessica L. Trudell, JD
Executive Director/State Ombudsman
State of Wisconsin Board on Aging and Long Term Care

Wisconsin BPDD
Wisconsin Board for People with Developmental Disabilities

March 22, 2023

Senate Special Committee on Aging
Sen. Bob Casey (Chair)
G16 Dirksen Senate Office Building
Washington, DC 20510

Sent via e-mail to guardianships@aging.senate.gov

Re: Statement for the Record on guardianships, conservatorships, protective arrangements, and alternatives.

Dear Sen. Casey and members of the committee:

Thank you for the opportunity to provide suggestions for protecting the civil rights of people who are currently under guardianship or are at risk of having their civil rights to make their own decisions removed by the courts through a guardianship process.

The Wisconsin Board for People with Developmental Disabilities (BPDD) led the passage of Wisconsin's Supported Decision Making statute (Wis. Stats. Ch 52) and statutory training requirements for prospective guardians (Wis. Stats. Ch 54.26), and actively trains families, people with disabilities, and professionals on alternatives to guardianship and impacts of overly restrictive guardianships.

People with disabilities--especially people with Intellectual and Developmental Disabilities (I/DD)—are disproportionately impacted by unnecessary or overly-restrictive guardianships.

Wisconsin law presumes all adults are competent to make decisions. Cultural bias (Ableism) presumes people with disabilities are incompetent, which undermines individual's self-direction and can lead to guardian overreach (see Appendix A). The incorrect presumption that the presence of a disability is a sign that an individual should not be making their own decisions is a driving factor for many professionals recommending guardianships for young people with I/DD or assuming every person with I/DD has someone else making decisions for them.

Systems—including health care, banking, and human service providers—have policies and practices in place that assume the presence of a disability necessitates or automatically means there is a guardian. BPDD has heard from many people with disabilities that professionals do not believe them when they state they do not have guardian and have described encounters where professionals refused to communicate with them about their health care options, opening a savings account, or getting assistance with other personal business etc. unless they could prove they did not have a guardian.

Often guardianships are imposed upon young people with I/DD early (age 18) and are rarely revisited much less reversed. Many families of children with disabilities are instructed to petition for guardianship by teachers, doctors, and other non-legal professionals. Parents routinely tell us that guardianship is presented as the only option and is portrayed as administrative process rather than a decision that has permanent legal ramifications for both the individual and families. (See Appendix B and C).

The spirit of Wisconsin's guardianship law rightly seeks to place the least restrictions on the individual's rights and requires guardians to place the least restrictions possible on liberty and honor their wards' preferences. The statutory language is good; however, guardianships are distressingly easy to obtain. Parents and advocates for people with disabilities have described the courts' role in obtaining guardianship as a formality rather than a deliberative evaluative process. Many guardianship petitions take less than 15 minutes. In some counties, advocates have been told by judges that all guardianship petitions are granted as full guardianships, sometimes in contradiction to the petitioner's request.

Most guardianships are not modified or reconsidered once they are in place. For many people under guardianship this results in permanent restrictions of their civil rights for years, decades, and even lifetimes. It also means many appointed guardians are serving in that role for decades while aging themselves.

Wisconsin aging and disability advocates collectively hear similar stories and concerns regarding guardians overstepping their authority, and variability between jurisdictions on whether guardianships are deliberated adequately, the scope of rights taken away in a guardianship order, and how much oversight courts exercise in guardianship cases. While many guardians act in accordance with Wisconsin's limited guardianship law, that is not universally the case. Some guardians do not fully understand the roles, responsibilities, and limitations of a guardian's authority, and this leads to actions that are not in keeping with the spirit of Wisconsin's law. Other appointed guardians are deliberate in their actions to exert control over an individual and it veers into abuse that often goes undetected.

The scope and scale of the abusive guardians is unknown due to lack of authentic monitoring. There have been egregious cases of physical and financial abuse that have been uncovered; many more are likely unseen. We have reports of corporate guardians acting within their authority who are not acting in the best interests of the individual or who are not seeking the least restrictive options. Recently, human trafficking experts are identifying an emerging issue that people under guardianship are being deliberately trafficked for sexual exploitation.

There is a startling lack of oversight and supervision of guardians. Courts have many cases and do not have the capacity to proactively monitor each guardianship order. In practice, only the most egregious cases of abuse, neglect, and guardian overreach come to the attention of the court. Violations of the spirit of Wisconsin's guardianship law are routine, and many people with disabilities describe a progressive erosion of rights as guardians make more and more decisions. Professionals are often complicit in this erosion of rights when they enable guardians to make decisions they are not authorized to make under their guardianship order.

If a guardian is overreaching there is little recourse for wards--especially if they are indigent and are socially, financially, and technologically isolated. Although the law includes a process to petition to restore rights or remove a guardian, the ward must know about and be able to access the process, and be able to prove their rights were incorrectly removed or that their condition has changed sufficiently to warrant restoration of a right. Few wards can overcome the barriers to request a court review and advocate for their rights.

Families are interested in alternatives to guardianship. Since the passage of Wisconsin's supported decision-making law in 2018, the total number of guardianships pursued has precipitously declined. In 2017 there were 5,147 petitions; in 2021 that number had declined to 4,146 (See Appendix D).

In January 2023, the statutory requirement to have all prospective guardians go through standardized training on core requirements of guardians and alternatives to guardianship went into effect. In the first seven weeks, 613 individuals have completed the training. The training free and open to the public so, in addition to prospective guardians, adult protective services staff, county employees, state employees, attorneys, people who are current guardians and others can learn about what the statutes require of guardians and alternatives to guardianship. Some prospective guardians have chosen not to proceed with their guardianship petitions based on the training.

Recommendations

- **Require prospective guardians to go through training on the requirements of their state's guardianship law and available alternatives to guardianship prior to appointment**. Wisconsin recently passed a law (Wis. Stats. Ch 54.26) that outlines core topics of the training, and requires it to be free, plain language, and available in paper format upon request.
- **Require each guardianship petition to appoint a defense counsel to the proposed ward** with the assigned role of vigorously representing and defending the preservation of the proposed ward's civil rights.
- **Require courts to consider whether alternatives to guardianship have been tried and exhausted before considering a guardianship petition.** Wis. Stats. 54.10 (2) and (3)(b)), requires judges to consider *"Whether any alternatives to guardianship, including supported decision-making under ch. 52, have been attempted, and, if applicable, the degree to which they have been attempted, the length of time they have been attempted, and whether they have been attempted in a manner sufficient to demonstrate that alternatives to guardianship are insufficient to enable the individual to adequately exercise the right or rights in question."* We believe this is an appropriate consideration that all states should consider.
- **Routine review of guardianships.** People can regain or acquire new skills and decision-making capacity throughout their lives. Many people recover from traumatic injuries and illnesses and adjust to living with conditions over time. Guardianships which may have been appropriate in one moment in time, do not always continue to be so. Regular review by the courts recognizes the possibility of improvement and change that may lead to restoration of rights.
- **Routine review of guardian's willingness and ability to continue as guardian.** It is appropriate for courts to routinely discuss how the guardian is serving in their role, what support they need, or whether their capacity to serve as a guardian is changing over time, and any family changes that may affect who is named as a standby or successor guardian. As guardians age, face serious illness, or declines in physical or mental abilities, routine review can help courts and guardians identify potential stand-by or successor guardians and work with the ward to have a plan to transition guardianship roles and responsibilities should the need arise. Routine review can help courts prevent having to act in response to crisis.
- **Requirements for more robust oversight of corporate guardians.**

- **Aggregate state data on guardianships.** Important data points to collect include: total number of guardianships; basic demographic information (such as whether a ward is a person with I/DD, physical disability, mental health condition, or older adult); what rights have been transferred to a guardian; type of guardian (corporate, family, or volunteer); the current age of the ward; age of the ward at time of appointment; amount of assets managed by guardian; number of guardianships where rights were restored and what rights were restored; number of guardianships that were removed; number of guardians that were removed as guardian. This data is critical to understand the outcomes of the current system, differences between jurisdictions, and to inform statewide policy analysis.
- **Data sharing across states.** It is important for courts to know whether a prospective guardian has been sanctioned or removed as a guardian for abuse or neglect. are not re-appointed or appointed to be another individual's guardian if they move across state lines.
- **Uniform recognition of Supported Decision-Making Agreements and Powers of Attorney across states**. Wisconsin is one of a growing number of states that has Supported Decision-Making statutes, however individuals and supporters are unsure if their valid Wisconsin agreements will be recognized if they travel across state lines. A guardianship order is recognized across state lines, and alternatives to guardianship—including supported decision-making agreements and powers of attorney—should similarly recognized.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities[1]. Improving the guardianship system directly correlates with improving the self-determination, independence, productivity, integration, and community inclusion of people with I/DD.

Thank you for your attention to this important issue and for your consideration of our comments.

Beth Swedeen

Beth Swedeen, Executive Director,
Wisconsin Board for People with Developmental Disabilities

[1] More about BPDD https://wi-bpdd.org/wp-content/uploads/2018/08/Legislative_Overview_BPDD.pdf .

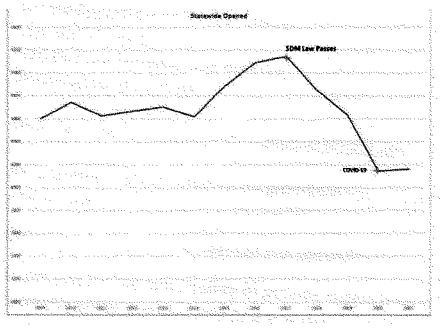
"I can pick who will be the next guardian" *(false)*	"A person with a disability needs any help, they must have a legal guardian" *(false)*
"If I'm a guardian and my ward violates the law, they will not go to jail." *(false)*	"All guardians are acting in the best interest of their wards" *(false)*

Appendix C: Serious long-term consequences of guardianship

Consequences for individuals under guardianship (ward)	
People with disabilities are rarely consulted about decision-making support needs or guardianship	Many Guardians maintain or assume increasing control over daily decision-making regardless of the terms of the guardianship
May not be aware someone is petitioning to become their guardian.	
Many wards are unaware of what rights they have and what rights have been removed.	Most providers and third parties assume the guardian makes all decisions.
No training for wards about the rights they retain, ways to reduce the likelihood of abuse and neglect.	Third parties rarely check to confirm who is the guardian or what the terms of the guardianship are.
Many people with disabilities experience and describe an erosion of their rights.	Once imposed, a guardianship usually lasts a lifetime.

Consequences for families	
Petitioning for guardianship is rarely done in the context of long-term family future planning.	Once the Court has found someone incompetent and appointed a guardian, it is difficult (and costly) to reverse or change. The court approves or denies petitions.
Many petitioners do not know what rights they are taking away	Courts are charged with oversight of guardianship cases. They may appoint a new guardian at any time for cause.
Many petitioners are not aware limited guardianship is an option	When there is no willing or appropriate successor to a family guardian, courts will appoint another guardian. It may be a corporate guardian. Many corporate guardians have multiple wards
Courts are not always willing to grant limited guardianships.	Guardians have roles, responsibilities, and administrative duties required by state law.

Appendix D: Decline in number of guardianship petitions after passage of Wisconsin Supported Decision Making law



Written Statement of [redacted]
Pittsfield, Massachusetts

For the U.S. Senate Special Committee on Aging

Guardianship, Conservatorships, Protective Arrangements, and Alternatives

March 15, 2023

Hi, I am [redacted] When Supportive Decision-Making (SDM) was mentioned to me, I liked the idea because it fit perfectly within my life goals to start making my own decisions and choices.

I have always been able to make my own choices. However, my mom and dad have been my guardians for most of my life.

When Nonotuck and CPR came to my house to explain about The SDM Pilot Project, I liked the idea that my sister [redacted] could be included in my care and help me understand decisions that will come up. She is the primary one that I spend quality time with outside my parents. I also liked SDM, because my parents could also be a part of my team. I tend to lean on my mom to help me understand decisions that need to be made when I am at home and in the community. My dad is also there to extend his help as well.

On Nov 17, 2015 (my Mom's Birthday), I was the first person in Massachusetts to have my guardianship relinquished for the Supported Decision-Making Model. This moment was very special, because I felt my own freedom for the first time.

Since I have started SDM, I have made some big decisions with my team. I made the decision to go to California and Las Vegas with friends. This was huge decision for me, because I am not a big traveler. However, my friend [redacted] approached me about the California trip and the idea of seeing the sets of my favorite TV Show Pretty Little Liars at Warner Brothers Studios, and I could not resist. My SDM Team helped me understand the full extent of the trips and the decision I was about to make. After a long conversation and going over the pros and the cons of the trip, I decided to take the chance and go to California. This was the Best Trip of my Life! In 2022, I also enjoyed going to Las Vegas with my housemate [redacted]

With using the SDM Model, I have made decisions about getting a job and trying different types of living arrangements out. Some living arrangements did not work, and this gave me experience for the next time.

With support from my SDM Team, I have taken more leadership with my medication decisions and have added more psychiatrist appointments if I felt I needed them.

In closing, Supported Decision Making is really important to me. I love my family and they will always be there to support me.

You can learn more about my story at
https://supporteddecisions.org/stories-of-supported-decision-making [redacted]

hi ...
My name is [redacted]

My Father was taken out of his home while he was having a cookout by police & [redacted] waving an "emergency order" 4 guardianship
on June 07, 2020.

[redacted] had been REVOKED from being my Father's POA for
ABUSE OF POA on June 02 , 2020.
(documented & Notarized & witnessed
by 2 life long friends of my Dad)

I was contracted as Durable Power of Attorney by my Father on that day. (same document).

When served and Notified of the Revoke, and told to bring bk all Dad's keys, ID, paintings, gold coins and other personal belongings...she , always thinking of herself,
petitioned for "guardianship".
I'm assuming that was the "emergency" since Dad was healthy and fine & nothing else had happened on
June 02, 2020.

An emergency hearing w/o an emergency or proof of danger
is FRAUD. (The Law)

On June 03, 2020 ST. LUCIE COUNTY CIRCUIT COURT of FLORIDA and the public servanT acting as judge [redacted] manufactured an order to give
[redacted] he abuser of my Dad, "guardianship" without NOTICE to myself, my 2 brothers, or my Father.
The speediness of this hearing WOW
blatant bias, inappropriate and conceived in Perjury and by
violating Dad's unalienable Rights
NOT IN THIS COUNTRY!!

Due Process was denied and his Rights were Violated, this order and All others are Void ab Initio.

Title 18 Sec 242 of the U.S. Constitution
guarantees due process be given before life, Liberty and Pursuit of happiness can be interfered with.

[redacted] would never qualify to be a guardian nor would the "new" guardian for she has bankruptcies, goes against HB 709 & SB 994 and uses a false name on all documents.

FRAUD
[redacted] is an alias for [redacted] Statewide Investigation substanciate my claims.

This conspiracy has isolated my Father for 2.5 years another Civil Rights Violation and they have tortiously interfered with my DPOA Contract.

ST LUCIE COUNTY FLORIDA CIRCUIT COURT even fraudulently manufactured an emergency order to revoke my lawful powerful contract with my Father w/o ever having subject matter jurisdiction or Personal Jurisdiction.

They did this revoke w/o an emergency or proof of aka FRAUD & w/o Due Process to me, [redacted]

They have committed Grand Larceny, Extortion, Elder Abuse , Perjury and many more crimes. Every judge involved has allowed the Unenforceable order to be used and caused harm injury and loss.

Pursuant to my authority, I am demanding a Citizens ArresT on all individuals involved.
I add more names of public officials in breach of their duty daily..
while my Father waits to be picked up out of this abusive facility, put in there w/ an "emergency order" from 3 Years Ago. His life is Valuable and Priceless.

ST. LUCIE COUNTY, FLORIDA IS 100
RESPONSIBLE.

Qualified immunity is losT when RighTs are Violated. Period.

Thank you

[redacted]

*my Tik Tok is private

March 14, 2023

Senator Casey and Members of the Special Committee on Aging,

Thank you for the opportunity to address concerns about guardianships, conservatorships, protective arrangements, and alternatives. My statement focuses on the triggering mechanisms to protect elders from financial exploitation by a family member and why the identification and prosecution of this particular crime is so difficult with laws as they exist today.

About My Family

My 95 year-old mother is an only child of a dairy farmer and currently lives independently in a small town in New York. She never had to grapple with conflicting visions of legacy and love. Instead, she struggled with the burdensome inheritance tax when her parents passed away. After selling off half her land in the 1980's to satisfy hefty estate tax obligations, she emerged with a smaller farm, but the family dairy survived. From that day forward, she took her estate and financial planning very, very seriously.

My law degree and financial background made me, the youngest of three, my parents' logical sounding-board and appointee for all things "just in case" as they created and revisited their estate and financial plans. They never dreamed doing so would make me an unwilling witness to my elderly mother's financial exploitation.

I have written articles for Bloomberg BusinessWeek and Nature. My most recent article on elder financial exploitation can be found in *Financial Advisor*. I will provide links upon request.

Financial Exploitation

Because of a devastating family dynamic, I've become painfully aware of the impotence of laws intended to protect our elders from financial abuse. Financial exploitation by a family member is a serious and widespread problem that affects many vulnerable seniors but is hidden by the victims and is underreported.

Elder financial abuse by family members can have devastating consequences for the victims and society. It can cause physical harm, emotional distress, loss of dignity and independence, reduced quality of life, increased risk of poverty and homelessness, increased need for public assistance and health care services, and even premature death.

The Problem of Initiating Protections

The standard for determining competency is low, yet the bar to prove undue influence is high. Many elders can be determined to be competent by a spectrum of professionals that may not include medical professionals. Being deemed competent prevents the elder from accessing many of the legal protections that would be triggered if they were seen as infirm.

Current Laws

Current laws are better able to protect elders when the perpetrator of the fraud, theft or exploitation is outside of the family. As you are aware, elder financial abuse by family members encompasses illegal or improper use of an elder's resources and can take many forms. Outright theft, such as stealing cash or valuables, forging checks or documents, misusing credit cards or bank accounts, are easier to identify, stop, and prosecute. In my family's sad circumstance, this crime includes coercing and deceiving an elder into signing over assets and denying the elder access to their own funds or property.

California may have one of the best laws intended to protect elders. California Welfare and Institutions Code Sec. 15610.70 states four elements to prove undue influence. In summary they are: (1) vulnerability of the victim, (2) apparent authority of the wrongdoer, (3) actions and tactics of the wrongdoer, and (4) an inequitable result. Yet, an elder who is determined to be competent can thwart the best protections.

Thwarting Protections:

There are three factors that contribute to the prevalence of exploitation of an elder by a family member and why it's nearly impossible to identify, stop, and prosecute:

1. The shame elders feel contributes to their own victimization.
2. Professional confidentiality inhibits identifying the patterns of abuse.
3. The presumed competency of the elder to freely make decisions makes determining undue influence extremely difficult.

1. Shame

One of the challenges in addressing elder financial abuse by family members is that many victims are reluctant or unable to report it. Elders fear retaliation from their abusers. Elders feel ashamed or guilty for betraying their family members. They may be unaware of their rights or options, be isolated from other sources of support, be dependent on their abusers for care or companionship, be cognitively impaired or mentally ill, or be influenced by cultural norms that discourage exposing family problems. When an elder is competent, their shame is felt that much more acutely.

2. Professional Confidentiality

What the elder wants is for the abuse to stop, but they do not want the abuser to "get into trouble." Ironically, the confidentiality that professionals give their clients in professional relationships exacerbates the problem. These relationships create "silos" of information. They are not at liberty to discuss their client's circumstances with others, and this inhibits them seeing other troubling events or seeing pressures that the elder may be experiencing. When in an environment where they feel safe enough to talk, many elders, including my mother, wish that the professionals who have become aware of the potential exploitation could be grouped together by "someone" who could then spearhead actions to get the unrelenting assault on her financial nest egg to stop.

Examples of missed opportunities include:

- Adult Protective Services have done three investigations of my mother. Two because of suspected fraud and one during an involuntary guardianship proceeding initiated by her abuser,
    - The tool of guardianship was weaponized against my mother to gain control over her assets via petitioning for removal of trustees, executors, and Power of Attorney for the abuser's benefit. After a thorough investigation, the court forced the petitioner (her abuser) to withdraw the guardianship request as my mother was determined competent and she had the right people and documents in place.
- Her former estate attorney was aware she unwittingly signed over ownership of her home when she transferred stock of the family's closely-held business.
- Her financial advisor "red-flagged" her accounts due to unusual withdrawals:
    - An urgent request for $50K for repairs on the home she no longer owned,
    - Another request for $300K to pay legal bills for her abuser,
- Her CPA is concerned about the devastating tax ramifications of improper reporting of "gifts" and "bad loans" of money and land,
- Her doctor has treated her for suicidal ideation, anxiety, and depression,
- Her local bank closed accounts and opened joint accounts with her abuser but didn't question the unusual actions.
- These professionals are also aware of the recent revisions to her estate documents. Few questioned that these revisions were made by a new attorney who is also her abuser's attorney.

Each of these professionals took the actions expected of them. The doctor referred my mother to a therapist. The investment advisor evaluated her case in their complex risk department. Her bank relied upon years of relationship with my mother and her family member. APS determined her to be competent.

My mother does not want her abuser's reputation to be diminished in their small town nor does she want to be seen as a victim. She is embarrassed.

3. Competency

The ability to understand circumstances and to freely determine a course of action is an elder's right. In the above relationships, the professionals will look to the ability of the elder to comprehend and express their understanding. Once an elder is determined to be competent, that professional must then act on that elder's request even when they know such action may be against that elder's best interests.

Yet, how is appropriate for financial experts to determine an investor's competency? How are caseworkers in Adult Protective Services able to identify sophisticated financial fraud? The standards they apply to determine competency are low and easily reached by an elder. Busy professionals are ill-equipped to take on the additional burden of determining undue influence.

Competency becomes an abuser's best defense and makes an elder the perfect victim. My 95 year-old mother has not been medically determined to have dementia.

The professionals ask the right questions, but my mother, like many elders, will not answer truthfully because she is afraid. The professional may not see nor care if the elder is co-dependent. Because of her fear, she will only state she loves her son and wants to support him and his business. She is well into the millions of dollars given by fear.

Competency also becomes the family's burden. How does a family initiate the protections that may be needed but that effectively take away autonomy? Family's may be already at a breaking point and may see outside intervention as a way not to further divide the family.

Patterns Speak When Elders Can't or Won't

Patterns must speak for the elderly when co-dependency, fear, and shame take their voices from them. Professional silos of confidentiality cannot be allowed to be weaponized by a savvy abuser.

Initiating an involuntary conservatorship or guardianship is often seen as a hostile act. A voluntary conservatorship or guardianship presents the elder with a Solomon's choice and one they are loathe to take on.

Therefore, I urge you to support stronger legislation and policies that can prevent and combat elder financial abuse by family members. Some of the possible actions include:

- Enhancing training and resources for professionals who work with older adults to identify *patterns* of abuse

- Strengthening reporting, investigation, and *linking* mechanisms for suspected cases

- Make the standard of meeting "undue influence" more appropriate to weakened elders

- Increasing public awareness and education about elder financial abuse by family members

- Providing more legal protection and assistance for victims

- Holding abusers accountable and imposing appropriate sanctions

- Supporting research and data collection on the prevalence and impact of elder financial abuse by family members

My story's complexity exposed the gaps in legislative protections I seek to remedy. I live in Massachusetts and my mother lives in New York. I, too, have felt the chilling effect of her abuser's wrath because any actions I take only increase the threats and bullying she experiences. Hope is gone for resolving this within my family. This is why I'm channeling my efforts to legislation.

I appreciate your time and attention to this important issue. I hope you can use my voice in advocating for the safety and well-being of older adults in Massachusetts.

Sincerely,



March 23, 2023

We are an elderly couple who live in [redacted] Illinois. My husband is a farmer and has lived practically his entire life at our residence. I am his wife and I have lived at the same residence for 23+ years. I have a 4 year bachelor degree in nursing. Neither of us had any legal dealings with law-enforcement or the judicial system, and I had no parking or speeding tickets either.

Our weapons were taken illegally from us the first time 2018! At the time, my husband only had a FOID card. We were detained illegally for 8-1/2 months without due process - never a Hearing showing probable cause, them presenting evidence of our guilt, or allowing us to present evidence of our innocence! This was attempted a second time 2020-2022 via ambush warrant arrests based on nothing but mere accusations by others, again without probable cause, our sides being asked, and not knowing - essentially siezed from our home, from our car off a public road trying to get to our farm ground, and off the street while away from home!

2016 was the beginning of our living nightmares that continue as of this e-mail. We reside rurally and there are NO residential homes in any direction around ours for approximately 1 mile.

2016 I was [redacted] years old and my husband was [redacted]. Two years prior to this - at least - we had been experiencing various, multiple revving's, slow moving or stopping vehicles, people in and out of our drive or coming to our house, etc., so we had finally had enough when on Christmas Eve a dirt bike made a double drive-by and revved the motor many times each way just in front of or near our residence like all other unwanted similar activity. We never pursued it fully, because the sheriff's deputy was supposedly off duty, and he never called us back, nor did we call him - Deputy [redacted]

2017 everything started to explode and has continued and progressed negatively for us! We have essentially been the only ones punished in every way imaginable since then, and our constitutional rights and many laws are repeatedly and continuously violated without any accountability or responsibility to those abusing us, or violating the constitutional laws that should protect us, especially now that we are elderly. Our FOIA rights were even stripped of us by Sheriff's Department Lieutenant [redacted] without probable cause or reason AFTER our criminal property damage, coincidentally.

2017 one of many vehicles who had honked continuously past our house at night that we provided a license plate for, belonged to a sheriff's deputy, who was dating one of our non-farming neighbor's daughter. Nothing happened to him.

2017 Another vehicle we provided a license plate number to, who has illegal all blacked out windows, and no front plate, also honked continuously while passing our home; he is married to another of our non-farming neighbor's daughter. Nothing happened to him.

Then, 2017 at midnight, another neighbor used a truck to criminally damage our security system camera; he drove perpendicular to our country road toward the front of our house traveling nearly 100 feet to do so. He was not fined, or jailed; his tickets were all dropped, and he does not have a criminal record of any substance. The assistant state's attorney - [redacted] - even lied to us about the 'Court Order' given us saying it prohibited him from passing our home for 2 years. However, he violated that, but nothing happened to him, and we discovered there was no record of the Court Order with law

enforcement to uphold (LEADS). After that, he blocked our vehicle in using the same vehicle he criminally damaged our property with, but nothing happened to him again.

2018 Yet another of our non-farming neighbor's squatting girlfriend, who was a felon, was allowed and assisted by our Administrative Judge [redacted] in violating us by granting 'emergency stalking orders' against us as retaliation for our complaints about their illegal animals, trespasses, and property damage. NOTE: The assistant state's attorney [redacted] who handled the case where our neighbor criminally damaged our property 2017 was in attendance at the second 'Emergency Stalking Order' hearing against us! The attorney ([redacted], who represented her, knowing he had no evidence of our guilt, is now the state's attorney. To this day our state's attorney [redacted], and sheriff's department allow this non-farming household and others to continue mowing our property(ies) telling us it is county ground. These bogus 'Emergency Stalking Orders' caused us to lose our guns for 8-1/2 months, we could not travel freely to access our farm ground, and the only attorneys we could find to help us kept allowing bogus and/or 'courtesy' hearing/Order extensions against our protests! We were never allowed a hearing to 'present evidence of our innocence,' and they never presented evidence of our guilt, just 8 1/2 months of various delayed continuances.

2020 at the age of nearly [redacted] for me, and [redacted] for my husband, we were both 'ambush warrant arrested' 21 days after (May [redacted] 2020) - 1 of 3 supposed events while away from home and unknowing about any arrest accusations or court dates, let alone given the chance to prove our innocence. Again, essentially seized from my home, seized from our car off a public road and seized off the city streets while away from home even though making it appear, that's not the case by waiting so long after the occurrences to enforce bogus charges against innocent, elderly citizens!

One of my accusers [redacted] Illinois [redacted] came to our country residence May [redacted] 2020, believing our residence to be that of another non-farming neighbor of ours! He left claiming I alarmed and disturbed him! Essentially, he had more rights than we had at our own home to protect ourselves and/or our property from his possible trespass. Our home surveillance video with sound was intentionally never asked for by Deputy [redacted] nor allowed for presentation to the jury before deliberation by Judge [redacted] Even if they did see it after deliberating, it was not viable! This continued for 1-1/2 years, while the other 2 connected & similar cases were present at each hearing. The sitting state's attorney was [redacted] who was voted out late 2020 with attorney [redacted] replacing him at year end. Attorney [redacted] allowed the felon to pursue the 'Emergency Stalking Orders' against us, and then again - as state's attorney - would pursue these bogus arrests against us for 2 years! Assistant state's attorney, [redacted] wrote up the bogus arrest complaints and Judge [redacted] approved and signed off on the warrants with all involved knowing we had no prior criminal record, and that we were falsely detained 2018-2019 based on similar neighbor/third-party abuse & harassment. How could they not know, since they - as government law enforcement - have direct access to everyone's court records and histories?

The second accuser, this time of me and my husband, occurred May [redacted] 2020 ([redacted] when we were trying to get to our property and were attacked by the owner's - a veterinarian - dog that was illegally stray, attacking, non-registered, and non-inoculated! Her husband is a farmer like us, and had criminally damaged our property at midnight 2017. The same sheriff's deputy was involved in this ambush warrant arrest of both of us, and her name is [redacted] The illegal dog had more rights than property owing, elderly people trying to access their farm ground while in their car on a public road!

My third accuser May [redacted] 2020 was [redacted], a postal employee, who claimed I alarmed and disturbed her, and that my hand was in my purse in a way that led her to believe I had a gun! The same sheriff's deputy was involved in this ambush warrant arrest of me, and her name is [redacted] again! It is a little unnerving that this was an attempt to take our weapons illegally the SECOND time!

The attorneys we had great difficulty finding to hire all worked against us, sabotaged us, tried to set us up and stole our money while doing so just before withdrawing at critical times. We hired a total of 3 different attorneys for the 'Emergency Stalking Order' fiasco 2018-2019, while all our accusers always had the same attorney, [redacted] who is now our state's attorney! We had two different attorneys for the ambush warrant arrests 2020-2022 with attorney [redacted] now prosecuting us as State's Attorney. Whenever we tried to sue these various parties for abuse of process, etc., they were all defended by attorney [redacted] now State's Attorney, and/or attorney [redacted] who was the administrative judge that allowed the 'Emergency Stalking Orders' against us by a felon 2018-2019!

The cases were always sat over by some of the same judges - either Judge [redacted] or Judge [redacted] predominantly to do the dirty work by enforcing the punishment against innocent, elderly property owners with proof of their innocence.

We cannot begin to remember all the abuses, but we had a person pull up and urinate in front of our home - [redacted] We have had a gun, and/or gun emulations in front of our home with one even fired off in front of our house, behind us, or on the way to our home, with many neighborly gun parties at all hours. Too many to count fingerings, cursing, name-calling, revving, honking, stopping, pulling in and out of our driveway, house buzzed by a helicopter with a searchlight and/or airplanes, noise disturbances of various kinds, all types of illegal vehicles - no plates, all dark, blacked out windows, blown out mufflers, ATV's, ROHVs, state police search lighting our home, mowings, trespassing, property damage, intimidations, stalking, nudity, our homeowner and senior exemptions stripped of us one year, and then while held hostage by the court 2020-2022 for supposedly alarming and disturbing everyone, we were then placed under investigation 2021 because of yet another neighbor's accusations against us while they were at the veterinarian's house, whose husband criminally damaged our property 2017.

All this with nothing allowed to alarm and disturb us that was punished or happening to the majority of our accusers and abusers even though we've provided multiple license plates after license plate, proof, pictures, video with sound, etc.! Instead, the judicial system is weaponized against us as retaliation for complaining, when this easily should have been nipped in the bud at the beginning. The result has been blatant character assassination, we have been discredited, persecuted and prosecuted for not staying silent, and for telling the truth!!!

[redacted]

Dear Senators,

Guardianship abuse has become America's dirty little secret. I am very happy to see you will be having a public hearing on what I am so many others have suffered from without any state or local government interest. I had no idea that anything like what I have endured the past 22 months was even possible until it happened to me.

My parents [redacted] and [redacted] created their estate plan in 2013 naming me their durable power of attorney and creating a Trust at their banking institution PNC, I was named Trustee, they also named my brother [redacted] as second on both if I should somehow be unable to serve. Three years later both my parents begin developing signs of dementia and eventually both are diagnosed with dementia of the alzheimers type.

In December of 2018 everything came to a head when my father left his home and we could not find him. When we eventually found him he was blocks from home crying and hugging a tree. It was December in Michigan and it was very cold and raining. Both of my parents were already forgetting to take medication, awakening in the night and thinking it was morning cooking, taking medication, etc. My father began saying my mother was pregnant at 84 by my brother in law. My father was not bathing, lots of signs we needed to take action as a family to protect them. My husband and I talked with my siblings and together we came up with a solution that would keep them safe, with family, and not drain their savings. Our solution was to build what we called the "Grand Pad" in my home where they could still have some privacy and independence but also have oversight and any care needed. We used half of my garage and our exhisting family room to create what we called the grand pad. My mother wanted to bring her walk in bathtub with her so my husband created a handicap accessible bathroom that included her walk in bathtub. The Grand Pad was done by April of 2019 and was beautiful. It took some adjusting but my parents settled in and were both happy and well cared for. Sadly my fathers dementia continued to worsen to the point his doctor suggested hospice. A week before he passed away on Sept 23, 2019 we had a consultation with hospice in our home but I feit he was not ready and declined services. After my fathers death my mother never mentioned leaving her home within my home the "Grand Pad " she remained for over 2 years.

In June of 2020 we sold my mothers home and I put the full check amount into her Trust Account at PNC bank. As a family we decided to sell it as my father was gone and my mother would not be able to return. We did not tell our mother as we did not want to cause her added grief. My brother [redacted] sold about $1000 worth of our parents belongings and used the money to take my Mom and Dad out to dinner as the process started when my father was still alive. My sister [redacted] also sold our parents belongings and kept the proceeds. My husband redid the hard wood floors at their house, painted the interior, put in a new bathtub and tile, and also cleaned up the outside of the house. My brother changed all the electrical, put new sensors in the automatic garage door, painted the basement ect... Everyone in the family was given the opportunity to go through the house and take what they wanted. My niece [redacted] took the most, my fathers boat, a wooden swing and canopy, tables, knick knacks, pictures etc.

Fast forward to May [redacted] 2021 my niece [redacted] takes my mother for a birthday party and refuses to return her so I am forced to call the police who tell me it's a civil matter. I called Adult Protective Services who told my brother [redacted] and I to take my Durable Power of Attorney and go to my nieces home and call the police and request a civil escort. We do what Adult Protective services say and the State Trooper comes out to our car and tells us my niece has a new power of attorney and my mother is stating she doesn't want to see us because we "Sold her house and stole her money." I said "she can't have power of attorney, I have had it since 2013" and the Michigan state Trooper said "it's a civil matter" there is nothing she can do. We were in stunned disbelief and left, we went straight to my mothers bank knowing my niece's character, we knew this would be her next step. I was in the bank manager's office when my niece pulled into the drive through window with my mother in tow handing the teller a revocation of my power of attorney and a new power of attorney she not only drafted without my mothers identification but she also personally notarized it. The bank manager sent the documents to their fraud division and my mothers Trust account was closed and I received the check. The bank failed to do their job because they did not report the incident to the police or the FDIC.

At this point I called the attorney that drafted my parents estate plan and he told me I needed to file for guardianship and gave me the number to Attorney [redacted]. After I filed I was told guardian ad [redacted] was appointed and I would need to call her. We spoke for about 30 minutes on the telephone and she said she would be going out to speak to my mother. I explained my mothers mental state that although she has good communication skills she has suffered from dementia since 2016 and it was much worse since my fathers death in 2019. My mother can hold a conversation but she is also highly susceptible to manipulation, something my niece was a master at. Around May 4, 2021 my brother [redacted] my husband [redacted] and myself all received restraining orders filed by my niece stating we had gone to her house with the police and we made her sad. Again in stunned disbelief that a restraining order would even be accepted on those grounds we now had this strike against us and had to hire attorneys to fight these charges. Not to mention my brother [redacted] served in the United States Marine corp and my son is a [redacted] Police Officer we have never engaged in behavior that would warrant a restraining order. My niece was a notary and a paralegal who had worked in estate planning and was very familiar with Probate Court and their reputation for corruption. She also knew that a restraining order would aid in isolating us from our mother.

On May 7, 2021 we had our first day in court via zoom with Judge [redacted] in [redacted] County Probate Court. My then 86 year old mother was seated next to my estranged sister [redacted] and my estranged niece [redacted]. My mother appeared to be suffering a urinary tract infection because her behavior was very uncharacteristic of her normal behavior and indicative of a UTI. She was shaking her fist and calling my brother [redacted] my brother [redacted] and myself crooked as a dog's hind leg. She accused my brother [redacted] of stealing his fathers tools which was ridiculous as my brother was a diesel mechanic in the Marines and had every tool imaginable. When my brother [redacted] began

to cry my sister was very animated and smiling appeared very happy. My mother had to be told by the judge several times that she was in a court of law and could not curse like she was doing.

Judge [redacted] suspended my durable power of attorney and allowed my mother to remain with her kidnapper and he chastised us for having personal protection orders against us. We told the judge [redacted] created a fraudulent revocation of my durable power of attorney and notarized it and the judge ignored it. He ignored her going to my mothers bank and trying to access her account. I was in complete and total shock the judge completely ignored our parents estate plan from 2013 when they were both of sound mind.

Three months into our nightmare I found out my mother was in the hospital with sepsis and had lost 23 pounds. She developed sepsis from an untreated urinary tract infection which was clearly neglected. We were desperate to see our mother but when my brother [redacted] went to the hospital the guardian ad [redacted] called security and had him removed and he was told not to return. Nothing is more painful than knowing your mother is hospitalized with sepsis that can be fatal except not even being able to visit or have any contact. The guardian ad [redacted] even put in the hospital records that me and my brothers were suspected of malfeasance and were to have no contact. What an evil and cruel thing to do to an 87 year old mother, grandmother, and great grandmother in the final years of her life. When my mother was released from the hospital they recommended she go to in patient rehab and my niece refused and took her back to her home where she had been neglected. Not only was this guardian ad [redacted] making egregious accusations against my brothers and I she refused to speak to any of us and would not visit my home to see where my parents had both lived. After our initial conversation she told me personally to never call, text, or email her again. She refused to do any investigation at all and went so far as to tell Adult Protective Services I embezzled Millions from my parents. My father worked on the assembly line at [redacted] plant and lived in [redacted] where I and my siblings were raised. Not only did my parents not have millions my husband and I had to give them $120,000 to buy their $127,000 home in 1999 so my father would agree to move out of [redacted] as their neighborhood was becoming unsafe.

I was accused of malfeasance for using my parents' Trust to build the Grand Pad even though my durable power of attorney gave me the power to do that and my siblings were all in agreement. The judge ordered that me and my brothers and our families were not allowed to see our mother that included 25 family members in total. Every court hearing I was shredded by my mothers guardian ad [redacted] and Court appointed attorney [redacted] I was threatened by the judge to drop my guardianship application in December of 2021 and to stop talking about my mothers case on social media or I was going to be arrested, sanctioned, fined, and ordered to pay my nieces attorney and the court appointed guardian and court appointed guardian ad lidem court fees. My brother [redacted] was also threatened with arrest, sanctions, fines, and court fees if he didn't withdraw his guardianship application as well. My brother and I were afraid the judge would make good on his threats as he made us go into his courtroom for this hearing and we were told to bring our toothbrushes.

I am incredibly disheartened with the blatant corruption found in our Probate Court System that has zero accountability or oversight. It has been 22 months since my nightmare began and I have over $160,000 in personal legal fees, my mother is stil living with her kidnapper, they have taken all of my mothers $275,000 Trust and are using it to pay guardian ad [redacted] Court appointed attorney [redacted] owner and Conservator of Family Option Services, and their attorney [redacted] My mother never received any due process but was treated with zero respect, she was emotionally tortured with the abscense of her 3 children as well as our families, and she was robbed of her $275,000 Trust. I have never heard of anything so blatantly criminal in my life and sanctioned by a sitting judge no less. It is appalling to think the State of Michigan would allow its citizens to be held in such low regard. My hope is that by sharing my mothers story that this will not ever happen to another family again. I have lost so much. My poor mother is 88 years old now and will turn 89 in June but she is a mere shadow of her former self. We finally got visitation with our mother after 14 months of isolation but only after I was in New York States Capital building for a press conference introducing the bill known as "Karilyns law" with Senator Palumbo and Christine Montanti whose mother the bill is named after. Karilyns law would guarantee an evidentiary hearing within 10 days of a guardianship application being filed and would prevent isolation unless abuse was proven during the evidentiary hearing.

For 14 months I cried myself to sleep not knowing if I would ever see my mother again. My mother begs to stay with me when she visits and it is so hard to have to take her back. She did nothing wrong, she had her estate plan in place and it should have protected her from my estranged niece [redacted] my estranged sister [redacted] Judge [redacted] Guardian ad l [redacted] who was appointed by Judge [redacted] Court Appointed Attorney [redacted] Guardian [redacted] owner of Family Option Services appointed as the Conservator and their attorney [redacted]

My oldest brother [redacted] lives in Tennessee and is united with me and my brother [redacted] has routinely been left out of hearings and not served with notices of court hearings. This should never happen to another family and I am hoping you will draft a bill that will protect the elderly and disabled from being exploited by Probate Court appointed attorneys and Judges. I have continued to work with [redacted] in New York state on the bill named after her Mother [redacted] I have met with Senator Palumbo and Senator Borello both senators in New York for a guardianship round table discussion where I along with other victims told our horrifying stories of guardianship abuse. I believe at this time the only way anyone will hold these predators accountable is by the media. If I had not received media attention I don't believe we would have ever received visitation. That is why they threaten families with arrest, sanctions, fines and court fees to keep them silent so they can continue to profit off our most vulnerable citizens. Thank you for taking on this monumental task that will protect other families from suffering the egregious horrific actions that my family has endured at the hands of those tasked with their protection.

I am enclosing some media of my involvement with Karilyns law as well as some of the evidence that proves my case.

Please feel free to contact me at [redacted] if I can assist you with anything further that can help put safeguards in place to protect our most vulnerable the elderly.

Sincerely

[redacted]

March 23, 2023

Via Email guardianships@aging.senate.gov

Senator Bob Casey, Chairman
Senator Mike Braun, Ranking Member

Senator Kirsten E. Gillibrand
Senator Richard Blumenthal
Senator Elizabeth Warren
Senator Mark Kelly
Senator Raphael G. Warnock
Senator John Fetterman

Senator Tim Scott
Senator Marco Rubio
Senator Rick Scott
Senator J.D. Vance
Senator Pete Ricketts

Special Committee on Aging
United States Senate
G16 Dirksen Senate Office Building
Washington, DC 20510-6050

Dear Distinguished Members of the Senate Special Committee on Aging,

We are California organizations that are committed to the rights and needs of Californians with disabilities, including those who are under conservatorship (California uses the term "conservatorship" to describe what most states call "guardianship") or those who are at risk being placed under such conservatorship. Far too often, disabled Californians are funneled into unnecessary conservatorships and lose their autonomy and legal rights. Once under conservatorship, it can be impossible for the person to exit this status.

In 2022, we came together to support and help enact AB 1663: The Probate Conservatorship Reform and Supported Decision-Making Act. The new law recognizes "supported decision-making" under California law. Supported decision-making is a process in which adults with intellectual, developmental, psychiatric, age-related, and other disabilities consult with trusted supporters to make choices that further their own self-determination and autonomy. The law also strengthens the rights of people who remain under conservatorship, including by creating pathways for the conservatorship to change or end where appropriate, and ensuring that people under conservatorship receive accessible information about their conservatorship, and the rights they retain. We built the Support Without Courts website to educate the public about this groundbreaking legislation.

Disrupting the Guardianship / Conservatorship Pipeline and Promoting Alternative Models of Support

We are united in our belief that guardianship is a rights-eliminating status that should be used only when it is truly the least restrictive option for the disabled individual. While

media reports about guardianship often focus on the financial abuse of seniors, it is equally important to assess and mitigate the deprivations of personal choice that guardianship imposes on disabled people, who are often young adults. Many people with disabilities end up in guardianship soon after they turn 18, as part of the "school to guardianship pipeline,"[1] and may remain in guardianship for most or all of their adult lives. Guardianship eliminates the right to make personal choices in all areas of life from where to live and who to spend time with to what to study in school and whether to marry. *Cf. Conservatorship of* [redacted], 58 Cal. App. 5th 1018 (2020) (reviewing and reversing probate court order requiring [redacted] an intellectually disabled adult under conservatorship, to have supervised visitation and to attend therapy with her father; [redacted] had a "genuine fear" of her father and reported that he had sexually assaulted and raped her).

Whenever possible, disabled adults should retain autonomy over all life decisions, with support from chosen adults; guardianship should never be the default. Further, all people with disabilities are entitled to the supports they need to enhance and demonstrate their capacity to make and communicate their decisions. Assessing capacity *with supports* – and prior to subjecting a person to the deprivations of guardianship – is required not only by due process but also by the Americans with Disabilities Act.

Any Congressional review of the question of guardianship must focus on diverting people with disabilities from the guardianship pipeline into less restrictive alternatives such as supported decision-making. While important, it is not sufficient to focus on improving due process and oversight *within* guardianship hearings and court processes – we urge the Special Committee and its members to focus equally, if not more, on helping people avoid guardianship altogether.

Supported decision-making is defined in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act 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 decisions, and in communicating a decision once made if consistent with the individual's wishes."[2] Supported decision-making is a voluntary way for people with disabilities to get help

---

[1] National Council on Disability, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities* (June 10, 2019), 29-37, https://ncd.gov/sites/default/files/NCD_Turning-Rights-into-Reality_508_0.pdf; *see also* Matt J. Jameson, Tim Riesen, Shamby Polychronis, Barbara Trader, Susan Mizner, Jonathan Martinis, and Dohn Hoyle, *Guardianship and the Potential of Supported Decision Making With Individuals with Disabilities*, Research and Practice for Persons with Severe Disabilities, at 36-51 (2015).

[2] Uniform Guardianship, Conservatorship and Other Protective Arrangements Act (2017) § 102(31); *see also* §§ 301(a)(1)(A), 310(a)(1).

from people they trust, to make their own decisions, without the loss of rights or court involvement.

Supported decision-making has been adopted by 19 states and the District of Columbia. It is a recognized best practice of contemporary disability law and policy and should be embraced by this Committee.[3] Any federal legislation related to guardianship must include provisions designed to reduce the overuse of guardianship and to promote alternatives such as supported decision-making.

Enhancing Due Process Within Guardianship / Conservatorship.

We also believe that people with disabilities who are under guardianship are entitled to due process rights, including counsel and a procedure for seeking an end to guardianship where appropriate.

Too often, guardianships become effectively permanent. It is far easier to get into guardianships than to get out. This is partly for practical reasons – guardians routinely control a person's money, monitor their communication, limit their ability to travel, and limit their access to the internet, which can make it virtually impossible for a person under guardianship to effectively petition the court to end or change the guardianship. State laws also present barriers to exiting or changing guardianships – such as placing the burden on the person under guardianship to prove that the guardianship is no longer necessary, while also failing to guarantee representation by counsel.[4]

Any Congressional review of the question of guardianship must consider the due process rights of individuals under guardianship, including their right to funded independent counsel and an effective process for seeking changes to their legal status. Any federal legislation must include provisions designed to strengthen the due process rights guaranteed to disabled people under guardianship.

---

[3] *See* Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability, Recommendations Adopted by Summit Delegates (2021), https://law.syracuse.edu/wp-content/uploads/Fourth_National_Guardianship_Summit_-_Adopted_Recommendations_May_2021.pdf.

[4] *See* Erica Wood, Pamela Teaster, Jenica Cassidy, American Bar Association Commission on Law and Aging with the Virginia Tech Center for Gerontology: *Restoration of Rights in Adult Guardianship: Research and Recommendations* (2017), https://www.americanbar.org/content/dam/aba/administrative/law_aging/restoration-of-rights-in-adult-_guardianship.pdf; American Bar Association Commission on Law & Aging, *Representation and Investigation in Guardianship Proceedings* (August 2020), https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartrepresentationandinvestigation.pdf; National Coalition for a Civil Right to Counsel, *Status Map*, http://civilrighttocounsel.org/map/.

Thank you for your attention to the important issues raised by the practices associated with guardianship / conservatorship. Please do not hesitate to reach out to us with any questions or concerns. We are happy to share our expertise.

Sincerely,

Sponsors of California Assembly Bill 1663

California Advocates for Nursing Home Reform

California Community Living Network

Disability Rights California

Disability Rights Education and Defense Fund

Disability Voices United

Free Britney L.A.

State Council on Developmental Disabilities

Additional Supporters

ACLU California Action

California Down Syndrome Advocacy Coalition

California Foundation for Independent Living Centers

Cal TASH

Choice in Aging

Consumer Attorneys of California

Exceptional Rights Advocacy

Integrated Community Collaborative

National Down Syndrome Congress

PRAGNYA

CONSORTIUM FOR CONSTITUENTS WITH DISABILITIES

Statement for the Written Record
from the Undersigned Members of the

Consortium for Constituents with Disabilities (CCD)

Submitted to
The Special Committee on Aging
United States Senate

Hearing on
Guardianships, Conservatorships, Protective Arrangements, and Alternatives

March 30, 2023

On behalf of the undersigned members of the Consortium for Constituents with Disabilities (CCD) Rights Task Force, we thank the Special Committee on Aging for planning this hearing and for seeking public input, stories, and suggestions for reform related to guardianship, conservatorship, interdiction, and other protective arrangements (collectively referred to here as "guardianship"). CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance.

Guardianship Is a Disability Rights Issue

We appreciate you recognizing the need to take federal action to address concerns around the overuse and abuse of guardianship. As highlighted in the 2018 and 2019 reports of the National Council on Disability (NCD), while guardianship systems are embedded in state law, they implicate critical constitutional and federal civil rights, including those under the Americans with Disabilities Act (ADA). Guardianship must be understood as a disability rights issue. Virtually every person under guardianship or at risk of guardianship either has – or is being perceived as having – a disability that substantially limits their ability to manage their own affairs, and thus is protected by federal disability rights laws.[1]

[1] *See* National Council on Disability, *Beyond Guardianship: Towards Alternatives That Promote Greater Self-Determination*, 41-42 (March 2018) (hereafter, "NCD 2018 Report"), https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives; National Council on Disability, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*, 24-35 (June 2019), https://ncd.gov/publications/2019/turning-rights-into-reality (hereafter, "NCD 2019 Report"); *Rethinking Guardianship (Again): Substituted Decision Making As a Violation of the Integration Mandate of Title II of the Americans with Disabilities Act*, 81 U. Colo. L. Rev. 157 (2010).

820 First Street, NE Suite 740 • Washington, DC 20002 • PH 202-567-3516 • FAX 202-408-9520 • Info@c-c-d.org • www.c-c-d.org

Lived Experiences of People with Disabilities at Risk of or in Guardianship Warrant this Urgent Call to Action

Guardianship – particularly in its plenary form – is a severe intrusion on many adults with disabilities' most basic right to make choices about their own lives. As recognized by this Committee in its November 2018 report on this topic, there is a long history of well-publicized stories of abuses of people under guardianship that demonstrate a continued and pressing need for widespread reforms.[2] As emphasized by the NCD reports, these stories are neither limited to older adults nor to allegations of financial exploitation. They include the stories of adults of varying ages and disabilities whose personal and civil rights – the rights to vote, marry, procreate, associate, travel, and live and work in the community – have also been deeply impacted. The NCD reports share stories of people with disabilities under guardianship being placed in segregated living environments, sent from competitive employment to sheltered workshops to make subminimum wage, denied control over the management of their own health and bodily autonomy, and prevented from communicating with families and friends.[3] Just this month, after a six-month investigation, a national news outlet released a 5-part series of articles highlighting more stories that illustrate the severe and negative impact overbroad, overly restrictive, and abusive guardianships can have on adults in all walks of life.[4]

Advancing Court Improvement Initiatives Is Not Enough

We are aware of mounting interest in advancing federal legislative actions designed to promote the improvement of and funding for court guardianship systems.[5] We support efforts to improve guardianship processes and bolster due process protections, including ensuring access to zealous legal representation for people in guardianship or who are facing guardianship proceedings, and clear and accessible ways for terminating a guardianship. *However*, such reforms alone will not be sufficient. Such singular investment could be seen as only legitimizing a prevailing model that systematically deprives people of their decision-making rights. The federal government must simultaneously and equally invest in strategies that encourage states and territories to divert their constituents *away* from guardianship and court systems and *towards* less restrictive options, including Supported Decision-Making (described below). Such strategies will not only benefit

---

[2] U.S. Senate Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans*, at 9-10 (Nov. 2018), https://www.aging.senate.gov/imo/media/doc/Guardianship_Report_2018_gloss_compress.pdf.

[3] *See* NCD 2018 Report, *supra* note 1, at 28-29, 63-64, 71-72, 105-106; NCD 2019 Report, *supra* note 1, at 67-68, 72.

[4] *See* Bloomberg Law, *In the Name of Protection* Series. Parts 1 to 5 (March 2023), https://news.bloomberglaw.com/interactive/guardians-dark-side-lax-rules-open-the-vulnerable-to-abuse (describing the experiences of Matthew Mendiola from New Mexico, who has mental health disabilities and allegedly experienced financial, personal, and physical abuses while under a private guardianship; Ruby Campos from Texas, who was placed under guardianship after she aged out of the foster care system and was denied requests to visit relatives or have her own debit card; Nicholas Clouse from Indiana, who has a history of a traumatic brain injury and was placed under a familial guardianship that impacted how he could support his own child; Kalei Bulwinkle from Georgia, a 22-year-old woman with developmental disabilities who describes the removal of her right to vote and the restrictions on her ability to drive and spend her own money; among others).

[5] *See* Summit Delegates, *Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability - Recommendations Adopted by Summit Delegates*, 72 Syracuse L. Rev. 29, 39-40 (2022), https://lawreview.syr.edu/wp-content/uploads/2022/09/29-40-Preface-2.pdf (describing recommendations relating to Congressional funding of a Guardianship Improvement Program).

people with disabilities whose rights are being unnecessarily curtailed, but also the court systems that are currently overburdened with unnecessary guardianship petitions and proceedings.[6]

Federal Initiatives to Promote Less-Restrictive Alternatives and Data Collection on Guardianship Are Key

There are three key components that must be included in any federal legislative package seeking to address the problems associated with guardianship – namely (1) federal grants and other financial incentives to states and territories to reduce the number of unnecessary or overbroad guardianships and increase access to other options, including Supported Decision-Making; (2) investment in a long-term national technical assistance center to promote Supported Decision-Making models and to provide states and territories the support they need to advance them successfully; and (3) funding and other requirements for states and territories to collect detailed data on guardianship and report them to a national data collection entity. These three components are essential, complementary, and inseparable for a successful outcome to be achieved.

1. Establish Grant Programs To Incentivize States and Territories To Make the Shift to a "Supported Decision-Making First" Model

Congress should establish grants and other financial incentives to encourage states and territories to decrease the use of guardianship and increase the use of Supported Decision-Making and other alternatives. Supported Decision-Making is an alternative to guardianship in which people with disabilities and older adults make their own decisions with the assistance of supporters they choose and trust.[7] It has gained widespread recognition as a best practice and as an avenue by which many people may be able to avoid overbroad and undue guardianship.[8] It has also been linked to the Americans with Disabilities Act, as a way in which to reasonably accommodate a person's disability.[9]

This federal legislation could be modeled in part on the Transformation to Competitive Integrated Employment Act (TCIEA).[10] It would provide grants, resources, and technical assistance to states and territories to help them transition to a "Supported Decision-Making First" model that would include the development of guardianship diversion programs located outside the court system, the creation of innovative and far-reaching Supported Decision-Making projects, and the ultimate reduction in the number of guardianships. The funding should be long-term and nationwide, and not simply for pilot programs in a few states.

---

[6] For example, since state legislation that would formally recognize supported decision-making was introduced in Wisconsin, the annual number of petitions to courts for guardianship decreased by almost 20 percent. *See* WSAW-TV, *Guardianship requests decline as knowledge of alternative legal option grows* (Aug. 2021), https://www.wsaw.com/2021/08/10/guardianship-requests-decline-knowledge- alternative-legal-option-grows/.

[7] *See* Summit Delegates, *supra* note 5, at 30 (defining Supported Decision-Making or "SDM").

[8] *See id.* at 32-34 (recommending the funding of SDM projects and the mandatory consideration by courts of SDM alternatives to guardianship), 36, and 39 (recommending the provision of wide-spread training on alternatives to guardianship, including SDM). *See also* Center for Public Representation, *U.S. Agencies and National Organizations Promoting Supported Decision-Making*, https://supporteddecisions.org/about-supported-decision-making/organizations-advocating-for-supported-decision-making (last accessed Mar. 17, 2023) (includes the American Bar Association, the National Guardianship Association, the National Council on Disability, the U.S. Senate Special Committee on Aging, the Fourth National Guardianship Summit, the Uniform Law Commission, among others).

[9] *See* Summit Delegates, *supra* note 5, at 34 (recommending that SDM be recognized as a possible "reasonable accommodation under the Americans with Disabilities Act of 1990, as amended, in supporting an individual in making their own decisions and retaining their right to do so").

[10] *See* S. 533, 118th Congress (2023-2024).

- Like the TCIEA, the legislation should adopt a tiered approach to its overall grant awarding strategy. It would first make initial five-year grants available to support states and territories meeting certain minimum requirements to become Supported Decision-Making First states, during which the infrastructure, data collection, and related processes needed to measure progress would also be built or reformed. The legislation would then provide additional on-going funding only for states and territories that can demonstrate they have met particular benchmarks for increasing the use of Supported Decision-Making and decreasing the use of guardianship.

- The state grantees should be required to use a significant portion of the funds for grants to nonprofit entities to develop and implement Supported Decision-Making initiatives that promote diversion from and termination of overbroad and undue guardianship. This should include targeted projects that seek to reach people who face barriers in accessing Supported Decision-Making, such as those who lack natural supports or who experience barriers to communication and being understood.

- Similar to the approach of the TCIEA, the legislation should require state grantees to establish an advisory council to monitor and advise the state in the process of transforming the state system into a "Supported Decision-Making First" model. The advisory council should include people with disabilities with lived experience of guardianship and alternatives; their family members; representatives of the legal services, Protection and Advocacy, and Parent Centers networks; and representatives of the state developmental disability agency, behavioral service agencies, office of aging, educational agency, and adult protection agency.

2. Provide Long-Term Investment in a National Technical Assistance Center to Promote Supported Decision-Making

Similar to Title III of the TCIEA, the federal legislation should provide funding for a nonprofit entity to provide on-going and national technical assistance to "Supported Decision-Making First" grantees. The national technical assistance center would promote Supported Decision-Making, provide states with the support they need to advance it successfully, and lead development of standards, competencies, and training. The investment in the national technical assistance center should be long-term and significant, so that the center has the ability to lead the development of standards, competencies, and trainings that reach the public broadly, including people with disabilities, families, court personnel, attorneys, health care providers, adult protection agencies, and other professionals. The funding should come primarily through the Administration for Community Living (ACL), which has extensive expertise in addressing knowledge gaps through its Projects of National Significance (PNS) and other programs.[11]

3. Require Collection of Comprehensive Data on Guardianship

Currently, there is minimal reliable data on the use of guardianship in the United States, with experts struggling even to estimate the total number of people under guardianship.[12] The federal legislation should incentivize states to collect comprehensive data on guardianship, including making grant funds contingent on data collection. Data should include information on the total number of people under guardianship; type of guardianship (*e.g.,* limited or plenary; of the person

[11] *See* Administration on Community Living, *Projects of National Significance*, *available at* https://acl.gov/programs/strengthening-aging-and-disability-networks/projects-national-significance (last visited Mar. 17, 2023).

[12] *See* NCD 2018 Report, *supra* note 1, at 65-70.

or of the property or both; permanent or temporary); key demographic information, such as age, gender identity, race, ethnicity, and primary language; type of disability; whether the person has a communication disability (*i.e.*, vision, hearing, or speech); the length of the guardianship; the type of guardian (*i.e.*, family member, friend, professional private guardian, or public agency); type of residence (*e.g.*, institution, group home, community setting); county; number of new guardianships each year; and number leaving guardianship each year, disaggregated by reason (*e.g.*, termination of guardianship or death). In addition, states should be required to collect specific information on the use of professional guardians, including the ratio of professional guardians to people under professional guardianship. Data should be reported and captured into one national data collection system, through the auspices of either the U.S. Department of Health and Human Services or the U.S. Department of Justice.

We also would support data collection efforts by federal agencies, such as the U.S. Census Bureau, the American Community Survey (ACS), Centers for Medicare and Medicaid Services (CMS), and Social Security Administration (SSA). Although such efforts may not provide a comprehensive snapshot of all people under guardianship, it may assist in filling in gaps in state-collected data and identifying trends among federal benefit program participants.

****

We appreciate the opportunity to provide the Committee with our perspective on the importance of federal action to promote access to alternatives to overbroad and undue guardianship. We look forward to working with Congress and the Administration to ensure that people with disabilities do not have their rights removed unnecessarily.

If you have any questions or if we can be of any assistance, please do not hesitate to reach out to [redacted]CCD Rights Task Force at [redacted] or [redacted]

Sincerely,

Access Ready
American Civil Liberties Union (ACLU)
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
Center for Public Representation
CommunicationFIRST
Disability Rights Education and Defense Fund (DREDF)
Epilepsy Foundation of America
National Association of Councils on Developmental Disabilities (NACDD)
National Center for Parent Leadership, Advocacy and Community Empowerment (National PLACE)
National Health Law Program
Quality Trust for Individuals with Disabilities
RespectAbility
TASH
The Advocacy Institute
The Arc of the United States
World Institute on Disability

March 23, 2023

Senator Bob Casey, Chairman
The United States Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, D.C. 20510-6050

Dear Senator Casey:

As a voter in Pennsylvania, I am writing you to express my deep concerns with the current guardianship practices that exist in our country. I am writing in support of a wonderful family whose loved ones have been experiencing extreme stress because of a questionable guardianship system in Montgomery County, Pennsylvania.

First, I would like to give you some background information about myself, and why I believe I have a right to questions these practices. I have worked in the human services field for over 30+ years. I am a senior myself. I have worked as a private duty home care aide, as a Certified Nurse Assistant and Discharge Planner in a nursing home, and in the offices of a home health care agency. As part of the office staff my role was to assess individuals for care which was appropriate for our agency. If I felt that an individual needed a higher level of care, I would recommend that we refer the individual to an agency that provided nursing care. For those individuals who were financially limited, I would give them information on how to access assistance through the local office of aging. In these various roles I saw a great deal of positive collaboration among the various professionals. I was also a legal secretary working for a semi-retired lawyer who often defended older individuals whose children were trying to have their parent deemed as incompetent – not a very happy experience!

In the mental health field, I have held numerous positions: Partial Hospital Therapist, Intensive Case Manager (originally hired to work with our elderly clients), Certified Peer Specialist Supervisor, Discharge Planner at a hospital behavioral health unit, Crisis Specialist and currently a Vocational Specialist. Many of these positions required me to assess individuals for their abilities to remain independent. I was a great resource for my clients.

This takes me to the present. My dear friend was living with her older son in a manner which satisfied her. She has always been close to her family and her two daughters have always taken great care of their mother. I first met my friend through my mental health career. She then introduced me to her daughters and son. My relationship with the family began close to 20 years ago. My friend was a vibrant individual who worked tirelessly in her profession and as an animal advocate.

My friend has always been sharp but some time prior to the introduction of COVID she began to decline. However, she was safe in the home that she was most familiar with. As a result of my positive experience with other people in the office of aging (not in Montgomery County!) I encouraged my friend to call for assistance with home care, and possibly consider becoming her mother's legal guardian (along with her sister).

My friend called the office of aging and did not obtain the assistance her mother should have been entitled to. Instead, another professional reported concerns to the office of aging because of what he felt was a less than stellar living situation (My friend never had any major illnesses or injuries until she was whisked out of her home and placed in a nursing home (quite an inappropriate name when you consider how she has been "managed" since being forced to reside in this facility). I do not have time to list all my concerns. Instead, I will discuss my concerns as a result of one hearing I attended to support my friend and her family.

My friend was taken out of her home before the office of aging staff did any kind of investigating. They did not ask for medical or dental records. If they had, they would have seen that my friends were vigilant about taking their mom to doctor appointments. It was implied that she was not getting proper nutrition because she did not eat a hot meal – are you kidding me? I would say that the "professional" who made such an ignorant statement should, perhaps, let a qualified Registered Dietician make that determination. A request of medical records would have provided the answer to that question. The intellectual ability of my friend's son was questioned (could he dial 911 if needed). I can assure you; he is far more intelligent than me but is severely impacted with mental health issues. Here again, are these "professionals" – the judge, guardian, attorney etc. – qualified to make these judgements – NO THEY ARE NOT.

Far worse than any of this ignorance is what appears to be outright corruption in this system. My friends have spent thousands of dollars defending themselves from people who just seem to want to drain the pockets of innocent people. I am not naïve, I understand elderly abuse does exist, but my friends are the most loving children I know. My friend brought her mother to numerous doctors' appointments when the nursing home staff were not addressing serious issues – not exactly the behavior of abusive or neglectful children. My friend and her siblings now have guardianship of her person but are still fighting for full guardianship. Meanwhile, this "guardian" has cost fees for bills which were late. She has also not provided explanations for all her bills. Apparently, she does not have to. I do not pay a bill unless I understand what all the fees are. My friends should be afforded the same courtesy. Also, at one point the guardian tried to imply that she would sell the condominium out from under her son's feet, thereby threatening the welfare of my friend's son, who has special needs. How dare she.

The" guardian's" efforts in caring for [redacted] and her knowledge of [redacted] seem to be completely lacking. During the hearing the attorney who supposedly represents [redacted] asked the "guardian" a very simple question and her answer was ignorantly vague. She could not give anybody answers to simple questions. She did not have any data to refer to and stated that she had about 70 clients and could not address everything. In short, the "guardian" came to the hearing completely unprepared. Really? I REALLY don't care that she has that many clients. Not one professional challenged this so-called guardian when she could not provide answers to reasonable questions. Unfortunately, I did not see where my friend's attorney was much better. For that reason, she is no longer the attorney. As a former case manager, I went to the hearings of clients prepared with a written timeline and a synopsis of the events in question. Another issue is that the "professionals" questioned [redacted]s dementia status as far back as 5 years earlier. They had no medical data as a reference, yet they were implying that my friend's might have taken financial advantage of their mother. My friend and her children sometimes helped each

> medical unqualified individuals making critical decisions tyrannically. Worse yet they have interfered with his family being able to fully provide for [redacted] as they have excellently for 18 years (immunologist, neurologist, endocrinologist, physical therapist, complex care nursing, nutritionist etc). Additionally, safely removing the polypharmacy of over a dozen antipsychotics/drugs that are causing dangerous adverse reactions leaving poor [redacted] to be a shell of a human. Life threatening situation leaves [redacted] to suffer inhumanely. (Specialists letters will be provided)

Due process for the families is severely restricted leaving individuals like [redacted] vulnerable. The law currently allows third party representatives of the state to restrict the basic protected rights of the disabled individuals and their families based on hearsay, no evidence, and without due process. The court system is limited to interpretation of the law as it is written, however it is imperative that the legislature explore the current codes and explore new policies to safeguard from systematic deficiencies of the law, individual misuse of the law, and to preserve individual liberties regardless of disability. State agencies and their conglomerates should not be able to unilaterally interfere with familial relations and restrict disabled individuals from living with the least restrictive regulations for their own self interests. The first amendment of the constitution prohibits that conduct, but the current health code as they interpret it gives unfettered authority to Department of Developmental Services (DDS) and Tri Counties Regional Center (TCRC) without safeguarding constitutional protections for the disabled individual and their families. Reforms are needed immediately that respect patients & families rights and take away the capacity for state agencies to wield this kind of totalitarian power as if they know best.

The laws are currently failing the individuals and their families it was intended to protect. After ABC10 and others contacted TCRC and DDS they have retaliated against [redacted] and his family and further isolated and neglected [redacted] with no access to his family at all. They are not operating appropriately within any law as it is against the law to isolate a developmentally disabled medically complex dependent person from their family ignoring and oppressing their voice and choice. False imprisonment is not within the law. The "guidelines" they mention are something they have created in their best interest unilaterally as coercive tactics, not [redacted] and his families wishes and best interest. Save and Free [redacted] before it is too late to stop further suffering or death.

I would appreciate a meeting to discuss the details further to save [redacted] life and others suffering this injustice. Please help make a difference before it is too late and prevent this from happening to others.

Sincerely,

[redacted]

CC: Honorable Assemblymember [redacted]
Honorable Assemblymember

DANIELLA LEVINE CAVA
MAYOR
MIAMI-DADE COUNTY

March 08, 2023

Felix Jimenez
Miami-Dade County Inspector General
601 NW 1st Court
Transit Village South Tower, 22nd Floor
Miami, Florida 33136

Mr. Jimenez,

As Mayor of Miami-Dade County, I am committed to doing everything I can to care for the nearly 3 million residents of our community – particularly those who are most vulnerable, including our older adults. I know you share this charge and I'm grateful for all that the Office of the Inspector General does to support these aims.

In recent news reports, a private 501C3 organization, Guardianship Program of Dade County, Inc., has been implicated in the alleged exploitation of those in their care alongside private real estate company Express Homes. Tasked with the protection and financial stewardship of vulnerable families and individuals, it is now being alleged that the Guardianship Program of Dade County used their position of trust to take advantage of our residents through the coordinated sale of private properties.

As we discussed several days ago, I am formally requesting that the Office of the Inspector General launch a full-scale investigation into these sales. It's vital that we take action to fully understand the role of the Guardianship Program – a nonprofit that receives public state and local taxpayer dollars – in these activities. Given the ongoing nature of these coordinate sales I ask that you bring immediate findings within the next 30 days.

You have the full support of my office, and of Miami-Dade County, in leading this investigation. On behalf of the families of our community, we thank you for your efforts as we work to protect those who are most vulnerable from harm and exploitation.

Sincerely,

Danielle Levine Cava

Danielle Levine Cava
Miami-Dade County Mayor

IN THE MATTER OF GUARDIANSHIP OF [redacted]
AN INCAPACITATED PERSON
Case [redacted]

Senator Bob Casey: March 23, 2023

My name is [redacted] my wife [redacted] was a teacher in [redacted] Taught [redacted] grade, and was a very sought after teacher.

A year before retirement, while mentoring 3 other teachers, [redacted] suffered a cranial aneurysm, a stroke.

[redacted] survived an operation and at retirement applied for her pension. Our children also applied for her pension and she wound up in the hands of the [redacted] Public Guardian as a ward.

Instead of making me, her husband, the guardian, the court made the [redacted] Public Guardian the guardian.

I am fully qualified (through PhD and Psychiatric Testing) to care for myself and my wife. It is now thirteen years later, and we have had a trial (Oct [redacted] Dec [redacted] 2018) that denied restoration. [redacted] has been found to be competent and not in need of a guardian, through testing and testimony by a PhD in testing and a Psychiatrist as well as independent witnesses. It is my opinion, the guardians do not want to let go of [redacted] and her pension and the income it generates for them. Thus, in conjunction with the judge, the guardians refuse to acknowledge [redacted] as restored to normal life competency.

The situation is so absurd that all that hear the story can't believe this is happening in America.

Things have come to the point where the guardianship has abducted [redacted] and placed her in (I believe) an assisted living institution. I, her husband and others, without cause, are not allowed to know where she is being held, speak with her or to visit her and she is not allowed to communicate with us.

These restrictions are a violation of human rights, religious freedoms, and fulfills the criteria as an abduction and human financial slavery.

The mission of a Guardian is to strive to maintain the maximum level of independence for the Ward. Living in the community and in her home, where she was receiving speech, occupational and physical therapy on a 24/7 basis, as well as social interactions with the community is what the PhD tester and Psychiatrist recommend as best for [redacted]

Financial exploitation of the elderly and those with disabilities is a growing problem in our society and it appears that this guardianship is falling into this undesirable category.

The court is ratifying and supporting the actions of the guardianship; actions which I and the general public find very, objectionable and not in conjunction with the mission of guardianship.

Respectfully,

[redacted] Illinois

[redacted]

3. Clarify that SDM is an accommodation under the ADA that allows people to retain the right to make informed decisions about their own lives, per the recommendation of the Fourth National Guardianship Summit.[18]

4. Establish federal grant programs and other financial incentives for states and territories to reduce the number of guardianships and increase access to other options, including Supported Decision-Making. The federal government should work with states and guardianship network organizations to educate stakeholders – courts, lawyers, guardians, school personnel, families – about SDM.[19]

5. Establish federal incentives for states to enact laws that establish robust due process protections in guardianship proceedings,[20] with the goals of preventing unnecessary guardianship from the outset, promoting access to less-restrictive alternatives, and overcoming barriers to rights restoration. These due process protections should guarantee the person who is facing or under guardianship has the right to zealous legal representation of their stated interests by an attorney of their choosing and at the state's expense, if they cannot otherwise afford one.

6. Establish requirements for states and territories to collect detailed data on guardianship and report them to a national data collection entity.[21]

7. Establish long-term investment in a new nationwide technical assistance center to advance the practice of SDM and address gaps in SDM implementation.

In summary, federally funded programs must prioritize alternatives to guardianship, ensure that investments are made to help states improve access to them; and ensure additional research and technical assistance on best practices for SDM is consistently funded over time.

We appreciate the opportunity to provide the Committee with our perspective on the importance of federal action to promote access to Supported Decision-Making and less-restrictive alternatives to guardianship. We look forward to working with Congress and the Administration to ensure that people with disabilities do not have their rights removed unnecessarily.

Respectfully submitted,

[redacted]
Executive Director

[redacted]
Director of Supported Decision-Making Initiatives

[1] *See* CTR. FOR PUB. REPRESENTATION, *Initial SDM Pilot: CPR and Nonotuck*, https://supporteddecisions.org/supported-decision-making-pilots/initial-supported-decision-making-pilot-cpr-and-nonotuck/ (last visited March 21, 2023) (includes information about SDM pilots, including formal evaluations).

[2] *See* CTR. ON YOUTH VOICE, YOUTH CHOICE, https://youth-voice.org (last visited March 21, 2023)

[3] *See* Cathy E. Costanzo, Kristin Booth Glen, and Anna M. Krieger *Supported Decision-Making: Lessons from Pilot Projects,* 72 SYRACUSE L. REV. 99 (2022), https://lawreview.syr.edu/wp-content/uploads/2022/09/99-163-Costanzo-2.pdf; Morgan K. Whitlatch, Rebekah Diller, *Supported Decision-Making: Potential and Challenges for Older Persons*, 72 SYRACUSE L. REV. 165 (2022), https://lawreview.syr.edu/wp-content/uploads/2022/10/5.-Whitlatch-Diller.pdf.

[4] Summit Delegates, *Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability - Recommendations Adopted by Summit Delegates,* 72 SYRACUSE L. REV. 29 (2022), https://lawreview.syr.edu/wp-content/uploads/2022/09/29-40-Preface-2.pdf (see Recommendations 2.1, 2.2, 2.3, 2.4, 3.3, 3.4, and 5.2).

[5] *See* NAT'L COUNCIL ON DISABILITY, *Beyond Guardianship: Towards Alternatives That Promote Greater Self-Determination*, 92-94 (March 2018) (hereafter, "NCD 2018 Report"), https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives; NAT'L COUNCIL ON DISABILITY, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*, 29-36 (June 2019), https://ncd.gov/publications/2019/turning-rights-into-reality (hereafter, "NCD 2019 Report");

[6] *See* ABA COMM'N OF LAW & AGING AND THE VIRGINIA TECH CTR. FOR GERONTOLOGY, *Restoration of Rights in Adult Guardianship: Research & Recommendations* (2017), https://www.americanbar.org/content/dam/aba/administrative/law_aging/restoration%20report.authcheckdam.pdf.

[7] *See, e.g.,* BLOOMBERG LAW, *In the Name of Protection* Series. Parts 1 to 5 (March 2023), https://news.bloomberglaw.com/interactive/guardians-dark-side-lax-rules-open-the-vulnerable-to-abuse.

[8] *See, e.g.,* U.S. GOV'T ACCOUNTABILITY OFFICE, *Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors* (September 2010), https://www.gao.gov/assets/320/310741.pdf (report finding hundreds of allegations of physical abuse, neglect, and financial exploitation by guardians in 45 states and D.C. between 1990 and 2010); U.S. GOV'T ACCOUNTABILITY OFFICE, *Elder Abuse: The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults* (Nov. 2016), https://www.gao.gov/assets/690/681088.pdf.

[9] *See* NCD 2018 Report, *supra* note 5, at 92-94; NCD 2018 Report, *supra* note 5, at 29-36.

[10] *See* Whitlatch & Diller, *supra* note 3, at 178-181.

[11] U.S. SENATE SPECIAL COMMITTEE ON AGING, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans*, at 6-7 (Nov. 2018), https://www.aging.senate.gov/imo/media/doc/Guardianship_Report_2018_gloss_compress.pdf.

[12] *See id.* at 7 and 22.

[13] *See* Whitlatch & Diller, *supra* note 5, at 172, fn. 22 (citing myriad of studies linking better life outcomes to promotion of self-determination).

[14] Valerie Bradley, Dorothy Hiersteiner, Jane St. John, and Mary Lou Bourne, *What Do NCI Data Reveal About the Guardianship Status of People with IDD*? National Core Indicators Data Brief, at 6 (2019), https://legacy.nationalcoreindicators.org/upload/core-indicators/NCI_GuardianshipBrief_April2019_Final.pdf

[15] *See* CTR. FOR PUB. REPRESENTATION, *U.S. Agencies and National Organizations Promoting Supported Decision-Making*, https://supporteddecisions.org/about-supported-decision-making/organizations-advocating-for-supported-decision-making/ (last accessed Mar. 21 2023).

[16] CTR. FOR PUB. REPRESENTATION, *SDM as an International Movement*, https://supporteddecisions.org/about-supported-decision-making/sdm-as-an-international-movement/ (last accessed March 21, 2023).

[17] *See* NCD Report 2019, at 80; Summit Delegates, *supra* note 4, at 34 (Recommendation 3.3).

[18] *See* Summit Delegates, *supra* note 4, at 34 (Recommendation 2.4).

[19] *See id.* at 32-34 (Recommendations 2.1, 2.2, and 2.3).

[20] *See id.* at 31-32 (Recommendations 1.2 and 1.3).

[21] *See id.* at 36 (Recommendation 4.1).



CITIZEN' S PUBLIC SAFETY NETWORK

April 18, 2021

To Whom It Should Concern,

If your state or federal funded organization's mandated duty is to track regional elder abuse, negligence and exploitation matters, then your institution should be interested in verifiable citizen group research and private investigator evidence concerning the elder exploitation of functionally disabled, vulnerable seniors faced with physical and cognitive challenges. Over the past several years' evidence has been gathered that confirm certain estate planning attorneys work in concert with various care providers, hospital employed patient advocates, primary care physicians and neurocognitive psychiatrists in Spokane and Kootenai County.

In multiple Kootenai county circumstances these aligned business relationships presented a problem for elderly persons due to the concealment of diagnosis coupled with the withholding of essential information that would have aided in the clarification of exploitative circumstances regarding vulnerable persons with diminished capacity & serious health complications. Often the focal point for the collaborative geriatric service referrals amongst these professionals is for the purpose of concealing or disguising material facts of abuse, negligence or exploitive circumstances, as valid evidence confirms.

The *Legal Issues Related to Elder Abuse; A Pocket Guide for Law Enforcement* provides insight into the exploitation & health risks inherent in such affiliations. These events are more than just civil matters because they also involve compounding public safety concerns relevant to *CFR Title 42 regulations*, *SSA Act Title 18*, *20* & *Sec. 2042*, *Subtitle— B Elder Justice*[1], 2020 Reauthorization of the *Older Americans Act* legislation & prevention funding as well as *IC 18-1505*, *IC 39-5303*, *IC 39-3132* state codes in conjunction with *Idaho Administrative Code* (IDAPA) 16.03.17, 15.01.02, 18 & 24 and *ICOA APS Implementation Guidelines*.

Licensed professionals, working in association with *Medicare* funded Hospitals, have a legal duty to provide safe, quality of care for vulnerable *Medicare* beneficiaries, while in their care, having medical procedures at these facilities. However, in some cases, due to the concerted activities between various professionals serving the seniors various legal and geriatric service needs, the opposite is occurring. Moreover, these circumstances also involve mandatory vulnerable person reporting, or lack thereof, to state agencies concerning at risk individuals and disclosure of material facts to the court when they receive orders concerning Physician's Declarations to do so — as opposed to aligned professionals intentionally concealing circumstantial facts and relevant medical records to neurocognitive clinicians being coordinated by the senior's estate planning attorneys, homecare providers and/or other fiduciaries whom have agency over the susceptible senior's affairs.

The *Center for Medicare and Medicaid* (CMS); *Quality Improvement Organization* (QIO) Kepro, *Idaho Medicaid Fraud Unit* (MFCU), Idaho State Insurance Investigators (SHIBA), Idaho State Tax Commission, *Senior Medicare Patrol* (SMP), *Humana* SIU, *Idaho Facilities Standards, Idaho Dept. of Health, CoventBridge Group, DNV-GL Healthcare*, Department of Justice; *Office of Victim Crimes* -Elder Fraud Unit, FBI, elder rights groups, several congress members and investigative news agency's social services reporters have been provided some of the following information. In the phone calls these agencies audio record incident reports. In some instances, case ID's were issued and electronic file transfers occurred. These case ID numbers are available for further inquiry, as warranted. These incident reports are also tracked by additional organizations doing comparative research on the following scenarios since they are not exclusively unique to North Idaho and Eastern Washington.

Intent is defined by conscious decisions someone, or two or more people, voluntarily undertakes to deliberately engage in an unlawful or negligent act, to harm or exploit someone else. In relation to this issue, the repeating patterns over time indicate that specific estate planning/guardianship attorneys are coordinating with various primary care professionals, neurocognitive clinicians and Hospital employed LSW's/patient advocates with a side business in guardianship/conservatorship services appear to be, based on the planned timing of events, web form submitted grievances, audio transcripts & litigation documents, coordinating efforts while cross-referring each other services concerning disabled, vulnerable elderly women in the *Kootenai Health District.*

To best describe the nexus between regional legal and medical services professional's illicit, coordinated involvement with vulnerable persons, listed below are 3 actual examples indicative of the types of repeating exploitation patterns targeting cognitively challenged, functionally disabled elderly women:

1) Hospital affiliated neurocognitive Psychiatrist(s) confirming that memory impaired vulnerable elderly persons are being brought to their clinic for neurocognitive evaluations by family care providers and asked to perform neurocognitive evaluations without medical records (review neurocognitive evaluations guidelines: *ABA/APA Assessment of Capacity in Older Adults For Psychologists* pg. 34 "Reviewing the Records):

    a) These events occur in coordination with estate planning attorneys and without medical records thereby concealing the elderly patients recent physical and neurocognitive health crises prior to estate document signings, asset or trust transfers and related elder exploitative events.
    b) Intentional concerted concealment of evidence concerning near fatal organ failure or strokes as causation for: brain damage, permeant cognitive disabilities, and related functionally disabilities of at risk elderly women with such health events concealed in tactically timed neurocognitive evaluations. Such matters are compounded by the various professional's concealment of material facts that would have revealed the elderly persons Acquired Brain Injuries (ABI)/memory loss diagnoses in quashed subpoenas and not disclosed in Primary Care Physicians (or their assistants) Physician Declarations.

2) Hospital-employed patient advocates (whom also own a guardianship services company) in a liaison position facilitating matters concerning the blocking of immediate family members to elder while convalescing at a State Medicare funded facility while the patient advocates

company is also being motioned as a court visitor company by one of the party's guardianship & estate planning consulting attorney in the same elder patient's protective guardianship proceeding. One particular incident involved correlated effects occurring within 1.5 hrs. of one another as testable evidence confirms (some of these matters stated within this letter were audio recorded, electronically logged by the Hospital employees in the Hospitals online web forms, the hospitals recorded call logs/ investigator recordings and litigation motions in various cases). Evidence is available via reports and flash drives to confirm.

3) Kootenai Health District/hospital affiliated primary care physicians and in some cases their assistants concealed material facts in court motioned physician declarations germane to physical and cognitive impairments of vulnerable patients. These events occurred under the direction of primary homecare providers, guardians or estate planning/ guardianship attorneys. These events are far more likely to occur after the vulnerable person's primary care physicians is changed after their onset of memory impairments or health emergencies such as stroke, cardiac arrest or acute kidney failure. Care providers and in some cases physicians encourage elective, often unnecessary, Ill-timed/dangerously botched surgeries due to age & poor health that are the catalyst agent for the diagnosis of Acquired Brain Injury or related memory loss disorders *ICD-10-CN R41.3*.

In each of the aforementioned circumstances the correlating variable or repeating pattern amongst the professionals whom have agency and a duty of care for the senior, focused on covering up events and material facts of perilous health related circumstances in order to facilitate dubious wealth transfers from the at risk elderly person. Additionally, the concealment and manipulation of the senior's health related matters created compounding risks because elder individuals with multiple health conditions require multiple specialist doctors whom require accurate, fully-disclosed patient health status information.

If your organization would like more details and the verifiable evidence pertaining to the who, what, when, where, why and how on specific case-by-case events, that have and continue to occur, please respond to this communication stating so.

These matters are not isolated, nor should they continue to be ignored because they will assuredly get worse in the era of Covid-19 — particularly if agencies duty bound by *42 U.S. Code § 3058i*, SSA Title 18, SEC. 2011. [42 U.S.C. 1397j] *Subtitle— B Elder Justice*, Medicare/Medicaid regulations , *IDAPA 16.03.17* protocol and related Federal and State codes, do not gain a clear and comprehensive understanding that these matters are common occurrences as citizen investigations, documentaries and grass root organizations in liaison with various Congress members across the nation can confirm.

Thank you,

Inland Northwest Advocate
CITIZEN' S PUBLIC SAFETY NETWORK
CitizensPublicSafetyNetwork.com
Email: research@CitizensPublicSafetyNetwork.com

SENATE HEARING ON GUARDIANSHIP [redacted]

The information contained in this report is an abbreviated documentation (extracted from close to 2,000 documents) of the neglect, isolation, dehumanization, and abuse [redacted] has suffered since being appointed a Guardian/Conservator (his spouse) by the court system during 2013 to 2015.

THE MAN

[redacted] is a husband and father of three adult children. He is the second child of six children, all of whom are still living. [redacted] grew up in Atlanta, Georgia where he graduated from [redacted] High school in 1972. He was a beloved student, an accomplished athlete and was voted Best All Around in his class. He attended Samford University and upon graduation cofounded Campus Outreach, a large campus ministry that has grown to have an international presence. [redacted] was on staff at Briarwood Church in Birmingham, Alabama until he retired due to the progression of his illness caused by a rafting accident and near-drowning during a father-son church trip in 2003. He is loved and respected by many people around the country and the world.

IN HIS OWN WORDS

[redacted] has journaled extensively about his experience under guardianship. One entry reads, "NO ONE TOLD ME I WOULD STAY IN THIS FACILITY UNTIL I DIE." After being prohibited from visiting [redacted] for six months, his two sisters managed to arrange to see him at the facility where he was being housed. During this visit [redacted] shared, "Put it this way: there is a lot out there, almost like a Super Highway in my mind that is going by me; and I'm standing on the side with my thumb out and nobody will pick me up. That's how I see it in my mind."

COURT DECLARED INCOMPETENCE IS EASILY WEAPONIZED BY GUARDIANSHIP

If a person is declared "incompetent" in court, whether or not they truly are, there is often no recourse. The individual, or "ward" as they are now known, is left at the mercy of a guardian or conservator. Though the wishes and best interests of the ward are supposed to be protected, sometimes they are not. No matter how egregious the deprivation of their rights may be because they have been declared incompetent, the ward is now essentially a persona non grata. Their cries for help fall on deaf ears.

THE INCIDENT DESCRIBED BELOW IS AN EXAMPLE OF WEAPONIZED GUARDIANSHIP:

A former staff member (nurse) at Country Cottages, where [redacted] was a resident before being moved to the Hanover facility, shared on the stand in court that an incident report and police report were made describing the incident in which the Guardian and her long-time friend visited the facility to retrieve papers from [redacted] When he refused to turn them over, the friend pinned him to the bed while the Guardian took the papers. The friend was banned from the facility and the Guardian was told she must only come when management was there. Soon after this occurrence the Guardian moved [redacted] to the Hanover facility. She then wrote a letter to leaders at Briarwood Church stating that visitors would not be allowed at the new facility because [redacted] needed time to adjust. This entire incident proves the lack of sufficient accountability required for guardians. Even after the police report was filed by the facility, the Guardian was able to relocate [redacted] to another facility without an investigation of any kind. The Guardian was also able to further restrict him from interacting with people who cared about him.

LEGAL AND COURT SYSTEM FAILURES

In 2013 [redacted] hired an attorney, Joe Strickland, to appoint his friend, Chuck Weldon, as his Power of Attorney (POA) to manage his healthcare, finances, and other personal matters. The Guardian discovered [redacted] actions and went to court to become his emergency temporary guardian. (Not sure

if this is legal since he already had a POA in place.) [redacted] went back to his attorney to have the emergency guardianship revoked. [redacted] reported that his Guardian threatened him with an ultimatum that if he did not withdraw this request, he would no longer be able to see his daughter who has Down's Syndrome. Additionally, the Guardian had [redacted] declared incompetent by a judge around this time; he was not allowed to appear in court because his Guardian reported he was a flight risk.

In May 201[redacted] was visited by a divorce attorney, [redacted] who determined he was clear enough to make the decision to file for divorce from the Guardian in an attempt to remove her as guardian. In her introductory remarks the attorney characterized the Guardian as his estranged wife based on everything she learned. Judge [redacted] in Jefferson County family court advised that it would be difficult for the divorce to occur based on [redacted] having been declared incompetent by the court, and that even if the divorce was granted, his estranged wife would retain guardianship. The judge advised that his family (three siblings & cousin) take this to probate court.

From January to September 2019 concerned family members, friends, and facility appeared three different times in probate court in Columbiana County under Judge [redacted] in an attempt to remove [redacted] Guardian. Based on what little effort was put into the hearing by the concerned family's attorneys and the Guardian ad Litem (GAL) appointed to represent [redacted] it seemed abundantly clear that the decision was made before they even went to court. For one year the attorneys refused to subpoena nursing home staff who actually asked to testify (an audio recording is available of the nurse telling his sister how much she wanted to testify). A subpoena was finally issued for several nurses, but by then it was just days before the last hearing. The attorneys claimed they could not find the nurses. They also refused to subpoena medical records for months even though nursing staff strongly advised there were problems with [redacted] records and with his physician, D[redacted]

MEDICAL DIAGNOSES ARE USED AS A MEANS TO RESTRICT AND REMOVE RIGHTS

In October of 2013 [redacted] was taken to Trinity Hospital and was led to believe he was undergoing a sleep study observation. During this time, his spouse had an injunction issued to keep him at the hospital for a 14-day evaluation. After an unsuccessful attempt by his spouse to have him involuntarily committed, Judge [redacted] seeing no grounds for keeping him, released [redacted] & when his spouse expressed not having a place to put him and not feeling comfortable taking him home, the judge released him to go visit with his sister in south Alabama where he did well.

In January of 2014 [redacted] was given a neuropsychological evaluation by Dr[redacted] He was not rested prior to this evaluation. His medications were also incorrect before testing. The final report noted cognitive limitations but only mild impairment of simple activities and every day functioning skills. The physician suggested a supportive environment where a range of needs could be met, including socialization.

Eventually an MRI showed atrophy in his brain. These findings led to a diagnosis of Frontotemporal Dementia (FTD). While it's been said that his family doesn't believe anything is wrong with him, this is not the case. However, we take issue with the fact that we have witnessed [redacted] essentially become characterized by that diagnosis and his personhood lost. It has been talked about more than he has and has seemingly been used to discount many of his concerns and uncomfortable truths he exposed.

There was a significant lack of medical care given to [redacted] for several years after his initial diagnosis, even though it was communicated by his Guardian that his brain was being "eaten away" and he would not likely make it more than two to five years. Ultimately, after his family pressed the issue during probate court, a re-evaluation was done in December of 2020. This evaluation included

bloodwork. [redacted] Vitamin D levels were low enough to cause an onset of rickets and dementia. A family member's personal doctor was consulted about [redacted] diagnoses and lack of treatment, and he was dumbfounded that the Guardian never sought any treatments to attempt to rehab or heal [redacted]

It appears that [redacted] has not had any medical intervention other than medication since at least 2014. There were recommendations made by multiple doctors including pain management and counseling, and yet the Guardian admitted in court that she had not followed through with them. In fact under oath, she explained not providing updated eye glasses because people with dementia can't read [redacted] was recorded reading on video multiple times) and not scheduling counseling because what would people with dementia talk about.

It is important to note that at the time of his re-evaluation in December of 2020, nearly 20 medications were listed as currently being taken.

ISOLATION IS USED TO PUBLISH FALSE MEDICAL NARRATIVES AND TO EXPEDITE PHYSICAL AND PSYCHOLOGICAL DETERIORATION

[redacted] Guardian placed restrictions on the short list of visitors who were able to visit him. At the same time, the Guardian tried to convince those who wanted to visit him that he was in a much worse physical and mental condition than was actually true. The Guardian repeated a narrative in which he was able to deceptively "marshal up" and "fake out" people about his condition. At one time, church leaders visited more frequently and were upset about what they saw. However, one of those leaders expressed fear of retaliation for speaking up to the Guardian and to the other leaders at the church.

The guardianship program has caused [redacted] to be subjected to the complete loss of his rights along with increased isolation and a steady decline in his quality of life. At times [redacted] was denied the right to send and receive mail. He has been denied possession of a mobile at different times. His frequent requests to attend service at the church where he worked and was a member for decades have been denied repeatedly.

GUARDIANSHIP AWARDS AN INORDINATE AMOUNT OF CONTROL TO THE APPOINTED GUARDIAN

Even though the probate judge wrote in her final order that [redacted] should not be isolated from family, the Guardian was granted ultimate power which has resulted in more isolation for [redacted] The judge's order has not been met with compliance by the Guardian, and since that time [redacted] seems to have become much more depressed, inexpressive, and subdued. He was hospitalized multiple times as his mental health declined. Whose wouldn't in those conditions! Tragically, he has now been "hidden" from most of his family and friends since June 2021. Those loved ones have not been allowed to see him, speak to him, or even know where he is located or details about his well-being. The Guardian reports that family agitates him and that he doesn't want to see them, but he's repeatedly shared that he felt pressured into saying things like this to the Guardian. A pastor friend recently asked about visiting [redacted] and was told that he was too unstable to see anyone. His own father asked to know his location and was told it's not necessary; he requested to call [redacted] for the eighteen months before his passing in November and was denied. [redacted] sister reached out to the ombudsman to see if she could speak to or see [redacted] on his birthday on March 2. The guardian denied that request but agreed to allow her to send a recorded message for the Guardian to play for him.

The ombudsman explained that no matter what [redacted] tells anyone else, if he does not directly make a statement to the ombudsman, then there is nothing that can be done. This creates a terrible dilemma for [redacted] who has also expressed a mistrust for professionals after years of his pleas for help falling on deaf ears and a fear of retaliation from his Guardian after repeated incidences. Multiple ombudsmen have expressed concerns, one expressing her sentiments that she hoped he could divorce the Guardian, and another affirming the sister's idea of contacting Adult Protective Services, and yet they have been unable to rectify his situation. The ombudsman system is yet another broken component of court ordered guardianship. The laws do not protect [redacted]

OBSTRUCTION OF JUSTICE USING THE GUISE OF MEDICAL EXPERTISE

On January 28, 2019, concerned family members nearly missed the first probate hearing after being led to believe that it was canceled due to snow. Critical medical documentation for [redacted] provided to the attorney by his sisters wasn't even brought to court. They made big promises to [redacted] and his family, but ended up using less than one percent of the documentation provided to adequately represent his case in court. The judge's request for [redacted] to appear in court was ignored because the Guardian-selected doctor wrote a letter saying that a court appearance would have a negative effect on [redacted] even though the judge made it plain her interview would be in private.

During one of the hearings a nurse from the facility where [redacted] was a resident testified that she quit due to what she saw happening to [redacted] including the fact that he had a DNR (Do Not Resuscitate) order on his life in his early 60s.

Two respected ministers who are friends of [redacted] also testified that they care about his Guardian as a person, but that she is not an appropriate guardian for [redacted]

For the second probate hearing on April 11, 2019 [redacted] was told that he might be going to court, but once again his doctor sent a letter right before the court date to keep [redacted] from appearing. Prior to the third probate hearing on Sept. 13, 2019, the neurological exam from [redacted] was provided. It contained multiple errors in [redacted] family mental health history. This false information was provided by the Guardian in a seeming attempt to play up [redacted] mental health issues as justification for locking him away.

GUARDIANSHIP CAN EASILY BECOME A COMPLICATED AND INESCAPABLE IMPRISONMENT

Mishandled guardianship, as in the case with [redacted] encourages a slow and humiliating death of those entrapped by it. It is the ultimate 'bait and switch', promising care and then using legal means to deny care, frustrated due legal and medical processes, all while protecting those with a vested interest in the silencing, abuse, and death of those they are entrusted to protect and care for.

From 2015 to 2019 Curtis repeatedly stated that he wanted a different Guardian and has a sister who was and is more than willing to do that. After being accused of wanting to do this for financial gain, family members agreed to sign something stating that they didn't want a penny; all they wanted was to care for their brother. At that time [redacted] impairments did not require that he be in a facility. He could have easily lived in a loving home with supportive care and supervision. His family takes no issue with the Guardian not being in a position to do this but takes serious issue with the fact that she will not allow them to step in and provide the support he needs.

He also made it clear that he would like visitation with his daughter, visitation with friends and family that his Guardian would not approve to be added to his list of visitors. He made frequent requests for sightseeing, a bigger bedroom, and to be able to attend church services. Additionally, [redacted] repeatedly requested physical rehabilitation, a medical re-evaluation, an opportunity to speak to a judge for himself in court, as well as a meeting with an ombudsman. For each request, his Guardian insisted that [redacted] was incompetent and did not know what was best for him. When he supposedly says that he doesn't want to see friends and family, all of a sudden he seems to know what is best for him and his wishes are honored. It can't be both.

GUARDIANSHIP ALLOWS FOR A COMPLETE DISREGARD OF QUALITY OF LIFE

Staff at the Hanover facility talked about [redacted] if he were a volunteer rather than a resident. He was in a facility with people who were on average twenty years older than he was and who suffered much worse impairments. Other residents at the facility could be seen playing with baby dolls, carrying their own feces, and screaming incoherently. Below is a list of many nice things staff members said about [redacted] as well as some of their observations:

- He requires little to no assistance with daily routines, like showering
- He has a positive attitude in the middle of this very difficult situation
- He inspires me
- I have never had an unpleasant encounter with him
- Even with the anger, depression, frustration and grief he feels and can clearly express over his situation, he remains kind
- He has less rights than a person in prison due to her restrictions
- He is so easy to love
- He is really a leader here in the facility
- He is a great listener and encourages us
- He is patient
- He has a good sense of humor and is able to laugh even though he is hurting
- He is very clear on what he wants – freedom
- [redacted]hould be in a place with more freedom
- [redacted]as never been hostile or violent
- [redacted]an shower and dress himself fine
- [redacted]hould be able to get out and spend time with his friends and family
- There's no reason he couldn't live in an assisted living place
- He loves his daughter and why can't he see her more
- [redacted]needs more to do and is bored and that's why he sleeps so much
- He doesn't have any stimulation and is sensory deprived
- His wife is evil
- What's being done to your brother is evil and unfair
- This makes no sense
- His guardian has placed restrictions on him that no other patients have
- I wish you could take [redacted]o your home for Thanksgiving
- M[redacted] generous and kind and when you all come it brightens his day (This is the same staff person who said his sister was the first family she had met)
- I have never seen his guardian here on the weekends until this weekend, nor never seen her clean his room before. (She wondered if it was due to court coming.)
- I really hope you all can do something to fix this situation because it's not right
- Why is [redacted] doing this to him?
- [redacted]ers to come and only stay for a short time and create some type of issue so
- [redacted]records in the sign in book that she stays longer than she does

UNFORTUNATELY, CURTIS IS ONE THE EXCEPTION

As a result of her fight f[redacted]s sister has met many other families who are enduring the same type of injustice and torture of their loved ones. The failures of the current guardian system in the United States don't just effect the "wards" (victims) but those who love them. In 2021 an article written by Terri LaPoint about Curtis' situation, *Forbidden: Basic Human Rights Denied by Guardianship* was published in Real News Spark. In 2022 his sister was interviewed twice via podcast by an advocate for victims of guardianship abuse. When all the avenues that were supposedly put in place to protect the rights of citizens are exhausted, it seems all that is left is to lift up our voices until they are heard. If Ghandi is right, and a society is judged by how it treats its most vulnerable, we have work to do here. Please join us.

Before being completely banned I was able to take [redacted] out on outings during my six-to-twelve-hour visits from Atlanta to Birmingham. He was very much coherent and engaged our entire visit with occasional moments of confusion or forgetfulness. These visits occurred after his Guardian reported in 2015 on Facebook tha[redacted]was "no longer here" and she didn't plan to "post much more because it's only going to get worse until if finally takes his life."

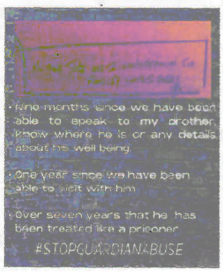


[redacted]nails (hands & feet) (below) needed grooming almost every time that I (his sister) visited and sometimes were infected (below). His room where he was housed was almost always dirty and this is what I would sweep up.



After [redacted] attempted to divorce his wife/guardian, he was moved into the smallest room in the assisted living facility. Initially, the guardian reported to family that the staff thought it would be best which they denied. They were very upset because they knew my brother has claustrophobia & is a big guy. Then the Guardian told the ombudsman that she couldn't afford the larger rooms (there were many empty larger rooms), so we (his siblings) offered to come up with the money for the difference, and the guardian refused. My brother's room was so tiny that he had to put his dresser in the tiny bathroom (above). He has a great sense of humor, so he made jokes about it, but it was infuriating and seen as retaliation. You had to walk sideways to get past his bed. His Guardian sold their home and another home left to her by her girlfriend and purchased a new home for over 400K (below) and yet we often heard she was struggling financially as if to justify where she has warehoused him. Plantation Manor, his last known residence, was described as the public housing of assistant living by an assistant attorney general who expressed concern to us over Curtis' situation.

[redacted]ave me dozens of pages of his journals for safe keeping in which he clearly states what he wants & details his perspective on his mistreatment, abuse, isolation, & the violation of his rights and freedoms at the hands of his Guardian & his desire to get help. The entry below is the hardest to read. The two posts (below) were comments written on the *Word of the Word* Facebook page by the nurse who was one of [redacted] caregivers and who testified in probate court.



I can't tell you how relieved I am that more awareness is being brought to this issue. For years I have struggled with the guilt of not being able to do more for a patient who was under my care at a long term care facility. This person was literally imprisoned against their will by their own spouse. This individual had some "mild" issues with memory and during a moment of weakness, and because they trusted their spouse, allowed themself to be admitted to what they thought was a temporary place to get treatment. Unbeknownst to this person the spouse was able to apply for and get guardianship over every aspect of the patient's life. The spouse refused to allow certain friends and family to visit, never allowed this person to leave for any reason and never brought the couple's children to visit. This patient was early 60's, in great physical condition, and the spouse was able to get a DNR (Do Not Resuscitate) order put in place. This person was forced to live behind locked doors with other patients in their 80's and 90's who were incontinent, unable to carry on conversations, and given no privacy whatsoever. Every bit of dignity and respect was stripped from this person. They had zero rights. I voiced my concerns with the administrator, the director, the patient's doctor, DHR to no avail. Every time I thought something would be done to help this person the spouse would find a legal loophole to remain in control. This patient even had family members who begged to allow their close relative to come live with them, but the spouse refused. I know this sounds "too crazy to believe ". I'm sure most of you could never imagine this is reality for so many but it is. It's appalling. It's outrageous and it needs to stop. You asked for suggestions on ways to improve the situation. I wish there was something in place where healthcare workers could report (without fear of losing their jobs) when they feel a patient is being held against their will. The current laws regarding guardians give them complete and absolute power. These laws protect the oppressor, not the oppressed. Healthcare workers should be given the same leeway that we are given when we encounter a patient who shows signs of abuse. We are REQUIRED by law to report it. Required to. Schools have to call DHR when a child appears to be in trouble. Doctors call police when a woman comes in with signs of abuse. Why aren't we allowed to call and report when someone appears to be confined against their will for no valid reason? It's the reason I quit. I could no longer be a part of holding this person hostage. That was 6 years ago. It still haunts me. The last I checked this person is still being held captive against their will.

Witness Testimony for United States Senate Special Committee on Aging

Predatory Guardianships

[redacted]FL

March 23,2023

Submitted by [redacted]

My name i[redacted]and I fled Communist Cuba in 1979 and asked President Carter for political asylum in 1980.

In 1986, I met[redacted]nd we immediately became lifelong partners later through marriage and business partners until the end. We built a estate worth 200 million dollars and gave millions to charities and different causes including South Florida Baptist Hospital, where the [redacted]Surgical Center" was built in Plant City, FL, where[redacted]was born. The Mayo Clinic also received hundreds of thousands of dollars and as[redacted]ot older, we got the best treatments possible[redacted]and I have both relied on Mayo Clinic for care since 1993.[redacted]nd I even met [redacted]who treated[redacted]or Alzheimer's and he dedicated his Alzheimer's Disease Book to us.

Yet at the very end o[redacted]fe, he found himself in an isolated house waking up to strangers that all had lengthy criminal records for drugs, theft, assault, fraud, and the care manager had recently had DUI. One caregiver was actively on parole for possession of drugs and drug paraphernalia. Investigators for DCF found[redacted]with no food, no medicine and alone in the house with a broken hip. The local Tampa Hospital filed complaints abou[redacted]care and the local pharmacist filed complaints because no one was picking up his medicine.

So how did this nightmare downfall occur?

[redacted]had recently been diagnosed with sundowner's syndrome which comes at the beginning stages of Alzheimer's. As the name implies, it described mood disorders and anxiety in the evenings as the sun is going down. During the day[redacted]was fully active and driving his truck several hours a day alone and we were running all the businesses, as usual. It would take several years for[redacted]o move into the stages of full Alzheimer's, since he was diagnosed by Mayo as a slow early stage of the Alzheimer's disease, but never the less Mayo Clinic advised me to get[redacted]rust documents in order since the disease was going to affect his memory. [redacted]had a revocable trust that dated back to 1994 and routinely made amendments to protect his estate. He entrusted Tampa probate attorney[redacted]r the last 10 years and paid him close to 100k in legal fees to protect all his assets. But in the end[redacted]hrew [redacted]under the bus and recently merged his firm with the opposition party that took control of the estate called[redacted]Law Firm even though[redacted]case is still open in Probate.

On January 25, 2019, attorney[redacted]led a petition for me to be granted guardian, Trustee and health care surrogate as nominated in the family trust documents a[redacted]conditions was slowly getting worse. The petition was filed at the local courthouse in the small

town of Bartow Florida. I also entrusted local attorney [redacted] to help protec[redacted] from his condition.

What I did not know at the time was the significant public corruption in Polk County taking advantage of the elderly.

My son, [redacted] started helping me back to January 2020, after a restraining order was filed against me by [redacted]

Below are some of his discoveries:

Probate Judge [redacted] has acquired close to 60 real estate properties tied to probate and foreclosure Polk County cases. Polk County Sheriff [redacted] has acquired at least 10 properties with the most recent property being [redacted] Rd Winter Haven that was part of a probate case where [redacted] was the presiding Judge. The purchase price was $145,000 in May 2020 which is half the market price of $287,500 according to Zillow and other recent sales. The properties purchased by [redacted] and Sheriff [redacted] all had discounts ranging from 50% to 95% off the real estate market values. Property [redacted] Exchange Ave Lakeland, FL purchased by Judge [redacted] for $5,000 and was later sold for $180,000. [redacted] realtor and front door neighbor to Judge [redacted] was also used on many of the transactions, even filing property appraisals to the court and renting out [redacted] properties. I also didn't know attorney [redacted] and attorney [redacted] had a long history of working guardianship cases together.

In the beginning of the court proceedings [redacted] nd I were pleasantly greeted by the Per Florida Statue randomly selected court appointed attorney [redacted] who spent a few months getting to know [redacted] and me. He met with [redacted] privately on several occasions and submitted [redacted] o a 3 medical examination committee. Based on the conversations with [redacted] nd the 3 separate medical narratives it became clear [redacted] entrusted me with everything and wanted his Will to be honored and implemented as it was written. The medical narratives and will documents match up perfectly.

During this time Judge [redacted] was on a European Vacation with his Wife [redacted], who was a senator for the State of Florida. Once he returned, he immediately unprovoked issued a Sua Sponte order and replaced court appointed [redacted] ith attorney [redacted] in violation of Florida law. This immediately created hostility as [redacted] was the registered agent for [redacted] Professional Guardian LLC. In fact, he represented [redacted] as her lawyer on many active cases. One affidavit by medical providers testifies saying [redacted] was visiting [redacted] and telling him I had remarried and was after his money trying to agitate him. Later, [redacted] sent a letter to Judge [redacted] that [redacted] did not want me as his trustee and guardian and that he and [redacted] disinherited sons were going to take care of his estate.

During the mediation at [redacted] ffice, [redacted] was walking around the office while holding a military assault rifle demanding and arguing I couldn't be trustee, guardian, or healthcare surrogate. Both of my attorneys filed a motion immediately after demandi[redacted]

[redacted] be removed from the case and attached affidavit of the gun assault. An excerpt from the affidavit states:

Attorney [redacted] affidavit Line 8. "I advised Mr. [redacted] **three times** during our conversation that the firearm made me uncomfortable, and I requested that he remove the firearm from my presence."

And yet Judge [redacted] according to court transcripts did absolutely nothing against [redacted] and instead was suggesting more ways to remove me from the case. At this point [redacted] had already threatened me that if I didn't sign the settlement agreement, I would never see [redacted] again. The first time I refused to settle [redacted] reduced the visitation to see [redacted] to 4 hours per week. The second time I refused to settle at mediation [redacted] reduced visitation to 2 hours per week.

My only hope for relief and justice was for [redacted] to remove [redacted] from the case but Judge [redacted] denied the order and I settled the very next day giving up control of the 200-million-dollar estate. But being allowed to visit Pete and help him with my support and love.

Two months later [redacted] was moved to a private 500k house purchased by the judge's neighbor, [redacted] realtor and employee to [redacted] and all the qualified staff were fired and replaced with people off the streets with lengthy criminal records. I immediately noticed [redacted] being exploited and abused even catching staff smoking around [redacted] and refusing to cook for him. On January 2020 I filed a complaint with DCF and the FBI in Tampa, [redacted] was notified of the investigation on [redacted] and two weeks later Professional Guardian [redacted] quit but not before helping [redacted] on an ex-part injunction on me saying I had a toxic effect on [redacted] and was signed after being fabricated by all the people working for [redacted] and [redacted], preventing me from ever seeing [redacted] again. According to Florida law ex-parte injunctions can only last 15 to 30 days without a hearing. Judge [redacted] extended the hearing indefinitely and after hiring a different attorney to help me, he resigned three months later as his second cousin was one of the people falsely accusing me of hearsays in the restraining order, I sent a letter to Judge [redacted] pro se, since I did not have any attorneys at that time. [redacted] died 2 months later never letting him see or speak to me again. [redacted] and the professional guardian also refused me from attending the public funeral.

Today we know from all the 3rd party complaints that all my concerns and complaints were substantiated.

I finally hire[redacted] from Boston to represent me, but Polk County refused to give me the opportunity to have my day in Court.

We appealed to the Court of Appeal in Tampa and since Judge [redacted] was promoted to the Court of Appeal by Governor DeSantis, our appeals were denied because the judges there knew Judge [redacted].

Today I want to get justice for [redacted] and me, I was treated wrong, [redacted] was isolated and tortured because in the end they kept him drugged all the time and again, I reported them to the DCF.

I witnessed the behavior of Adolph Hitler people in United States of America, I know well, they do not represent this country and justice should prevail.

This is not a Republican or Democrat case, this is a bipartisan case because it is a criminal case.

[redacted] nd I are both republicans.

Please in the name of GOD help us to get justice to help others, not to ever suffer what we have suffered.

My son comments:

"The problem in our probate system is there is no incentive for the lawyer you hired to protect your estate and will. Because the facts are the attorneys can make millions in fees causing chaos and division in the family. All these lawyers that came into the case that [redacted] ever hired have made hundreds of thousands of dollars if not millions like th[redacted] irm. All of [redacted] Trustees including [redacted] Wells Fargo and [redacted] grandson [redacted] ave been revoked. [redacted] died mysteriously 30 days after [redacted] death and a clause on the will says if you died 60 days after [redacted] ou lost your inheritance. [redacted] lawyer was found guilty in two cases stealing from the elderly and today is still practicing law. Our elderly Americans are facing absolute lawlessness by these predatory probate lawyers, and it needs an emergency federal executive order to stop what describe as elderly human trafficking. "

[redacted] was [redacted] and dedicated the last 34 years of his life with me to just work and build a ranch that was his dream and I had named it [redacted] n Okeechobee County. We both worked very hard, and they killed him.

Thank you,

[redacted]

March 10, 2023

Honorable Senator Bob Casey
Committee/Chair on aging
Honorable Senator Mike Braun
Chair of Special senate Committee on Aging

Dear Honorable Bob Casey and Mike Braun,

I have become aware of several families including my dear son [redacted] and other young disabled adults who have been separated through unwanted overreaching state Limited Conservatorships. These developmentally disabled dependent adult children, often with complex medical conditions that are ignored by the state and university medical institutions, are taken without parental consent, and are denied the ability to see their families in person, with severely limited video visitation and restricted from talking about or enjoying expressed preferred interests such as "Disney" "how the family member is feeling" or about "going home". When these families file for conservatorship for their disabled family members, the Department of Developmental services files a competing one usually exparte. This renders the family and the disabled family member legal strangers. DDS often becomes conservator through nomination from a regional center, who then returns care and illegal control for the young disabled adult back to the regional center, funded by DDS. 86% of these disabled persons are then placed in a DDS funded group house where they are severely neglected and warehoused, over drugged or worse die. This is a very concerning conflict of interest for young disabled adults pipelined into this system against the wishes of their families petitioning to care for them. The details are extremely disturbing, especially that these families were not allowed to know the whereabouts of their disabled family members for torturously prolonged periods of time repeatedly. This treatment is both cruel and inhumane. Most prisoners are granted far more civil rights.

I implore you to do the following:

1) Please view this coverage from ABC10 entitled "Price of care, taken by the state" and take action to reunite the families of disabled adult children separated by unwanted state conservatorship.

   www.abc10.com/priceofcare

please especially watch episode 2 of the [redacted] family and [redacted] s horror.

2) Also attached is an amicus brief written by Families for Early Autism Treatment (FEAT) explaining this unbearable situation further and how families of special needs children are wanting to leave the regional center system and the state of California entirely which could reduce federal funding to the state by the billions.

3) Help restore [redacted] **Human and disability civil rights** per ADA and Lanterman act. [redacted] clearly expresses his desperate desire to live with his mom in the least restrictive environment, call his mom "I miss mommy", see his cherished belongings at home. Family has had no way to see or call [redacted] daily in 4 years. False imprisonment. (A petition for instructions will be provided that clearly details the law and needs)

4) Your assistance with moving [redacted] back to his birthplace of the Sacramento area (Alta regional center catchment) from the Lompoc (TCRC regional center) where he is being held hostage, isolated from family, and medically neglected. This is important for multiple reasons. First is the availability of medical and therapeutic care providers that [redacted] desperately needs. The central coast and TCRC have not provided [redacted] with specialists for his critical complex medical and therapeutic needs. [redacted] and his family have longtime friends and a support system in the Sacramento area as well as an enhanced supportive living agency (STEP) that could better serve [redacted] n a more positive environment. Deveraux, the current agency, has a long history of abuse and neglect country wide, has been a very negative restrictive environment and lack the expertise and resources that [redacted] desperately needs.

5) Obtaining the appropriate lifesaving medical and therapeutic care [redacted] critically needs. TCRC/DDS have medically neglected [redacted] and non-

medical unqualified individuals making critical decisions tyrannically. Worse yet they have interfered with his family being able to fully provide for [redacted] as they have excellently for 18 years (immunologist, neurologist, endocrinologist, physical therapist, complex care nursing, nutritionist etc). Additionally, safely removing the polypharmacy of over a dozen antipsychotics/drugs that are causing dangerous adverse reactions leaving poor [redacted] to be a shell of a human. Life threatening situation leaves [redacted] to suffer inhumanely. (Specialists letters will be provided)

Due process for the families is severely restricted leaving individuals like [redacted] vulnerable. The law currently allows third party representatives of the state to restrict the basic protected rights of the disabled individuals and their families based on hearsay, no evidence, and without due process. The court system is limited to interpretation of the law as it is written, however it is imperative that the legislature explore the current codes and explore new policies to safeguard from systematic deficiencies of the law, individual misuse of the law, and to preserve individual liberties regardless of disability. State agencies and their conglomerates should not be able to unilaterally interfere with familial relations and restrict disabled individuals from living with the least restrictive regulations for their own self interests. The first amendment of the constitution prohibits that conduct, but the current health code as they interpret it gives unfettered authority to Department of Developmental Services (DDS) and Tri Counties Regional Center (TCRC) without safeguarding constitutional protections for the disabled individual and their families. Reforms are needed immediately that respect patients & families rights and take away the capacity for state agencies to wield this kind of totalitarian power as if they know best.

The laws are currently failing the individuals and their families it was intended to protect. After ABC10 and others contacted TCRC and DDS they have retaliated against [redacted] and his family and further isolated and neglected [redacted] with no access to his family at all. They are not operating appropriately within any law as it is against the law to isolate a developmentally disabled medically complex dependent person from their family ignoring and oppressing their voice and choice. False imprisonment is not within the law. The "guidelines" they mention are something they have created in their best interest unilaterally as coercive tactics, not [redacted] and his families wishes and best interest. Save and Free [redacted] before it is too late to stop further suffering or death.

I would appreciate a meeting to discuss the details further to save [redacted] life and others suffering this injustice. Please help make a difference before it is too late and prevent this from happening to others.

Sincerely,

[redacted]

CC: Honorable Assemblymember [redacted]
Honorable Assemblymember

DANIELLA LEVINE CAVA
MAYOR
MIAMI-DADE COUNTY

March 08, 2023

Felix Jimenez
Miami-Dade County Inspector General
601 NW 1st Court
Transit Village South Tower, 22nd Floor
Miami, Florida 33136

Mr. Jimenez,

As Mayor of Miami-Dade County, I am committed to doing everything I can to care for the nearly 3 million residents of our community – particularly those who are most vulnerable, including our older adults. I know you share this charge and I'm grateful for all that the Office of the Inspector General does to support these aims.

In recent news reports, a private 501C3 organization, Guardianship Program of Dade County, Inc., has been implicated in the alleged exploitation of those in their care alongside private real estate company Express Homes. Tasked with the protection and financial stewardship of vulnerable families and individuals, it is now being alleged that the Guardianship Program of Dade County used their position of trust to take advantage of our residents through the coordinated sale of private properties.

As we discussed several days ago, I am formally requesting that the Office of the Inspector General launch a full-scale investigation into these sales. It's vital that we take action to fully understand the role of the Guardianship Program – a nonprofit that receives public state and local taxpayer dollars – in these activities. Given the ongoing nature of these coordinate sales I ask that you bring immediate findings within the next 30 days.

You have the full support of my office, and of Miami-Dade County, in leading this investigation. On behalf of the families of our community, we thank you for your efforts as we work to protect those who are most vulnerable from harm and exploitation.

Sincerely,

Danielle Levine Cava

Danielle Levine Cava
Miami-Dade County Mayor

IN THE MATTER OF GUARDIANSHIP OF [redacted]
AN INCAPACITATED PERSON
Case [redacted]

Senator Bob Casey: March 23, 2023

My name is [redacted] my wife [redacted] was a teacher in [redacted] Taught [redacted] grade, and was a very sought after teacher.

A year before retirement, while mentoring 3 other teachers, [redacted] suffered a cranial aneurysm, a stroke.

[redacted] survived an operation and at retirement applied for her pension. Our children also applied for her pension and she wound up in the hands of the [redacted] Public Guardian as a ward.

Instead of making me, her husband, the guardian, the court made the [redacted] Public Guardian, the guardian.

I am fully qualified (through PhD and Psychiatric Testing) to care for myself and my wife. It is now thirteen years later, and we have had a trial (Oct [redacted] Dec [redacted] 2018) that denied restoration. [redacted] has been found to be competent and not in need of a guardian, through testing and testimony by a PhD in testing and a Psychiatrist as well as independent witnesses. It is my opinion, the guardians do not want to let go of [redacted] and her pension and the income it generates for them. Thus, in conjunction with the judge, the guardians refuse to acknowledge [redacted] as restored to normal life competency.

The situation is so absurd that all that hear the story can't believe this is happening in America.

Things have come to the point where the guardianship has abducted [redacted] and placed her in (I believe) an assisted living institution. I, her husband and others, without cause, are not allowed to know where she is being held, speak with her or to visit her and she is not allowed to communicate with us.

These restrictions are a violation of human rights, religious freedoms, and fulfills the criteria as an abduction and human financial slavery.

The mission of a Guardian is to strive to maintain the maximum level of independence for the Ward. Living in the community and in her home, where she was receiving speech, occupational and physical therapy on a 24/7 basis, as well as social interactions with the community is what the PhD tester and Psychiatrist recommend as best for [redacted]

Financial exploitation of the elderly and those with disabilities is a growing problem in our society and it appears that this guardianship is falling into this undesirable category.

The court is ratifying and supporting the actions of the guardianship; actions which I and the general public find very, objectionable and not in conjunction with the mission of guardianship.

Respectfully,

[redacted] Illinois [redacted]

Senator Bob Casey, Chairman
The United States Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510-6050

March 23, 2023

Dear Senator Casey:

I am very glad to hear that you are looking into the state of guardianships, protective agreements and alternatives in this country.
I knew very little about this until the last year and a half, and I have since been appalled by what I have learned. I live in Montgomery County, Pennsylvania, but I have learned that the abuses in the process of forced guardianship are rampant not only in my state, but across the country. My first introduction came through the horrible experience of [redacted] the mother of my friend, [redacted]. I have since learned about many eerily similar cases in many states, specifically through news organizations' investigations into many similar breaches of trust in many different states.

You have received a letter from [redacted] detailing her family's experience, so I will not repeat that, except to say that I have known her family for eight years. It is a close-knit, loving family, full of fun and support for each other, through thick and thin. They have all been devastated by the horrific abuses of the County agencies that are supposed to help those in need. And it seems that everything that has been done to them is legal! Immoral, unethical, callous, harmful in every way, but legal! The laws that allow this must be changed.

The fact that the state agencies whose stated purpose it is to help people live better lives in their own homes is used to abuse, terrorize and do great harm to people has put a big damper on my desire, and that of everyone I know, to ever seek help from them, lest we be dragged into a Kafkaesque nightmare. The sole purpose of these forced guardianships is to gain control of a person's money, and to do this, they must first gain control of the person. This requires collusion among agency workers, judges, lawyers, court-appointed guardians and nursing homes.
As unbelievable as this may sound, I assure you that it is so prevalent in so many jurisdictions that it must be believed.

This lovely, intelligent woman, whose family and doctor were just asking for some help for her as her memory was beginning to decline, was forcibly and against her express wishes, dragged from her home and family and warehoused in a sub-par nursing home, deprived of any care, and deprived of the company of her family. The hearing that the county agency on aging required her to attend was a sham. The judge listened only to the social worker who knew nothing about her or her situation state that she was "neglected" and required a guardian. No proof was required, no testimony from her or her family or her doctor was heard, and the court-appointed attorney who was supposed to represent [redacted] did no investigation, knew nothing about her, and was disinterested in finding out. He was there just to satisfy the requirement that she had to have an attorney.
So many lies were told by the social worker and taken at face value by the judge. The testimony of the family was either not allowed or ignored. No attempt to ascertain the truth was made. The judge sided with the county agency, ruled that no one in [redacted]'s family was capable of being her guardian, and appointed someone who was totally unqualified to be a guardian and showed no interest in doing anything for [redacted] except put her into a nursing home. This particular guardian has been appointed in

many cases by this judge, even though there have been multiple complaints against her and her practices. There and then, without any warning or time to prepare, [redacted] was forcibly removed from court and driven directly to the nursing home.

The vindictiveness of all parties involved is astounding. No one has [redacted]'s interests at heart. Her physical, mental and emotional condition have deteriorated markedly due to her isolation from her family and the lack of care she has been subjected to. Her finances are being depleted by the supposed guardian who needs no proof of the expenses that she submits to the court. This scenario has been repeated in case after case across the country.

The laws must be changed. There must be strict rules that have to be followed before depriving a person of his or her liberty. This is no small thing.
At present, anyone can file a petition to have someone put under guardianship. No real investigation by an impartial entity need be done.
A court-appointed guardian needs no qualifications for the job. There is too cosy a relationship among judges, lawyers and guardians. And there is no oversight of these procedures by any independent agency, even when State law requires it. State agencies do not follow the rules and guidelines set in place by the state laws which govern guardianships. The first consideration should be: is an intervention warranted? Then, what is the least intrusive intervention? How can the person be helped to remain in his or her own home? If a guardian is needed, a close family member should be the first choice. Every decision should be made after careful and impartial investigation. A person under threat of guardianship must be appointed a competent, independent attorney. And there must be constant oversight of the system by a respected and impartial entity!

This is a long-standing stain on the judicial system of the United States, and I am grateful that you and the committee are looking into it. I hope that meaningful legislation will be the result!

Sincerely,

[redacted]

[redacted]

[redacted]
Disability Policy Director
Senate Special Committee on Aging

Dear [redacted]:

The issue of guardianships, conservatorships and potential alternatives to those court-ordered situations has long been of serious concern to me.

As a freelance investigative journalist, author and syndicated columnist I have been writing about problems within the guardianship/conservatorship system since 2015. Several of my early Creators Syndicate columns focused on the abusive guardianship case of [redacted] Lancaster, Pennsylvania. Once I revealed her struggle under an unwanted guardianship, the floodgates of complaints poured in from worried and angry families from across the country. I came to realize that the exploitation of the elderly, those with physical and intellectual disabilities, and even young people who had access to substantial trust funds or legal settlements was a NATIONWIDE problem.

Along the way I discovered shocking financial, emotional, physical and even sexual abuse of wards of the court. I also documented law enforcements almost uniform reluctance to investigate family complaints even when presented with compelling evidence of financial fraud, exploitation, kidnapping, forced isolation, unwarranted surveillance and physical neglect perpetrated against a ward. The excuse was always the same, "This is a civil case. A judge has ruled. We only investigate criminal cases."

In late 2016, I wrote an in-depth six part series for the *Albuquerque Journal* entitled, [redacted] was able to pierce the heavy veil of secrecy surrounding guardianship cases in New Mexico thanks to the courageous [redacted] family. In desperation they decided to defy the court's gag order, went on the record with me, and shared both important documents and their personal story about what happened to their mother [redacted] at the hands of a questionable guardian and a duplicitous conservator. Other New Mexico families agreed to be interviewed for the series but fearing retribution asked that their names be withheld. The series garnered several awards including the 2017 Institute for American Studies prestigious Clark Mollenhoff award for Outstanding Investigative Journalism. Less than a year later the FBI announced the arrest of several prominent Albuquerque businesspeople who ran guardianship companies and had collectively stolen some $15 million from their wards. One guardian, [redacted], was sentenced to 47 years in prison. Several others also received lengthy prison sentences.

Over the years I have continued to investigate and collect stories about abusive adult guardianships/conservatorships that scream for attention to be paid. My book, *"We're Here to Help: When Guardianship Goes Wrong,"* will be released this fall and is published by Brandeis University Press. The book delves into the long and troubled history of the states-run system, it explains the complexities and various players within the system, and it reveals the personal struggles of dozens of families as they tried to protect their guardianized loved ones from unscrupulous court appointees. The book also explores judicial responsibility and alternative programs judges can choose from when full guardianship isn't necessary. And finally, I offer tips for citizens to protect themselves and their loved ones from both unwanted guardianships and the ever increasing number of unlicensed and largely unsupervised bad actors who fill various positions within the system.

The bottom line, [redacted] when I first started writing about this topic it appeared that it was primarily at-risk elders and profoundly disabled citizens who became wards of the court. That is no longer the case. Over the years the victim pool has grown tremendously. For example: those who once suffered a stroke or a traumatic brain injury and were conscripted into guardianship have found it next to impossible to extricate themselves once they get well. A young person in Staten Island, New York who was damaged at birth and received a $1.9 million medical malpractice settlement went on to develop a mild case of cerebral palsy, a condition that in no way affects his intellect. But at age 18 his long time court-appointed guardian continued to insist the young man (who had graduated from high school with honors) was mentally deficient. The judge inexplicably extended his guardianship for another six years finally freeing him right before Christmas 2022. The young man and his family told me they have no idea how much money is left because the judge never demanded the mandatory annual financial reports be filed.

And consider this: There is an estimated $50 billion in ward's money/estates coming under court control every year. Since the average guardianship lasts about six years that's *a combined pot of $300 billion dollars at any given time*. Is it any wonder that the criminal element is attracted to become involved? Since only a couple states require a guardian to be licensed, and few guardians are ever criminally prosecuted, what have they got to lose? A few states are passing reform legislation but they are seen as largely Band-Aid bills that crafty players soon learn to navigate to their benefit. To date, these quick fixes don't address the fundamental problems: it is too easy to place someone into guardianship these days. And frankly, judges are either uncaring, overworked and/or ill-informed about the real life consequences of their guardianship decisions.

If the Senate Select Committee on Aging is looking for someone who has devoted the better part of eight years speaking to citizens across the country about their experiences with guardianship/conservatorship and alternative programs, I am here to help. Interestingly, years ago (okay, decades ago!) I used to cover Capitol Hill as a rookie radio correspondent for National Public Radio and the RKO Radio Networks. I even remember then-Congressman Claude Pepper's 1987 landmark hearings on guardianship.

One more quick note that may be of interest to Senator Casey. I discovered many cases of allegedly abusive guardianships in his home state of Pennsylvania, and I write about some of them in detail in the book. The most eye-opening—and never before reported to my

knowledge—were cases in which Pennsylvania divorce attorneys counseled their male clients to ***go for guardianship of their uncooperative wives because once declared incapacitated she would be unable to hire an attorney to fight back***. This is an obvious misuse of the guardianship system but I found the practice has happened in Pennsylvania and other states. I write about that eye-opening finding in depth in my book.

I'm not sure when your next committee hearing will be held, but if you think any member might benefit from reading an advance copy of [redacted] can contact my publisher and ask if that is possible.

Thank you very much for your time in reading this letter, sir. More importantly, thank you and the committee for continuing to explore this system that affects not only an estimated two million Americans who have now been stripped of their civil rights, but their family members as well. I've heard their heartbreaking stories and am at a loss when they ask me, "Why doesn't somebody, somewhere fix this obviously broken system?"

Respectfully submitted,

[redacted]

Author of four books including the upcoming, "[redacted] published by Brandeis University Press, Fall 2023.

DISABILITY LAW CENTER
Your rights matter.

Public Comment / Senate Special Committee on Aging: Hearing on Guardianship & Other Protective Arrangements
March 23, 2023

Katie Cox / Staff Attorney & UMLP Coordinator
kcox@disabilitylawcenter.org
Andrew Riggle / Public Policy Advocate
ariggle@disabilitylawcenter.org
(801) 363-1347 / (800) 662-9080
disabilitylawcenter.org

The Utah Medical-Legal Partnership (UMLP) is a collaboration between the state's civil legal aid agencies and several community health centers. The UMLP's goal is to help Utah's community health centers disrupt the cycle of returning low-income or uninsured Utahns, individuals whose first language is not English, and those who are members of underserved ethnic and geographic communities to unhealthy conditions by addressing the social and environmental factors that negatively impact well-being. These patients experience health-harming civil legal issues caused by social and environmental factors, and often do not know where to turn to resolve these legal issues. By helping mitigate risks driving health disparities, the UMLP increases access to justice and the legal system for those patients.

Through the UMLP, the Disability Law Center (DLC) is working to identify ways to engage in guardianship-related work that furthers our mission. This includes increasing self-determination through representation, technical assistance, and systemic advocacy. We focus on the most egregious cases. For instance, a protected person is neglected or abused by their guardian, their wishes or desires are ignored and/or controlled by their guardian, or they are limited in ways that are illegal, such as forced sterilization or unwarranted restrictions on association.

Examples

- Obstacles often encountered by a protected person or proposed protected person working with the DLC include either intentional or unintentional miscommunication about what a guardianship means and a lack of understanding of the process. Consequently:
    - At age 18.5, a proposed protected person was told they were being "adopted" into the family by their professional parents so they could be a real part of the family. This is what they thought happened until recently, even though the hearing resulted in a conservatorship and limited guardianship that granted the guardian authority over all major decisions. The protected person retained ability to make certain decisions, such as what to eat and what to wear.
    - At age 30, a proposed protected person was told by parents that guardianship was needed to help budget money and make financial decisions (including to continue to apply for Social Security benefits after several denials) and help to manage a

The Disability Law Center (DLC) is a private, non-profit organization, designated by the governor as Utah's Protection and Advocacy agency. The DLC envisions a just society where Utahns with disabilities are free from stigma, discrimination, and abuse. They have the authority to make their own decisions. They have the same rights and opportunities as those without disabilities. Their voices are heard, which inspires discussion and motivates change. Utahns with disabilities have equitable access to supports and resources needed to be as independent as possible and to be full participants in their communities. The DLC works toward this vision by enforcing and advancing the legal rights, opportunities, and choices of Utahns with disabilities. DLC services are available free of charge statewide, regardless of income, legal status, language, or place of residence. Even though our focus is on cases that can help as many people as possible - because time and resources are limited - we at least offer information and/or referral options to everyone who contacts us.

  - $20,000 personal injury settlement. They were told to say "yes" to whatever questions the judge asked.

  - Several individuals who can communicate their wishes and desires clearly, have DSPD services, rep payees, and other community-based supports, and live independently found themselves in a full guardianship following an emergency or temporary one.

- In the fall of 2020, the DLC partnered with attorneys from the private bar to represent a 35-year-old man in a petition to terminate guardianship. The client has lived independently with his girlfriend for over seven years. He has his own apartment, a driver's license, and a job at a local restaurant. He participates in extracurricular activities, does his own grocery shopping, and manages his medication and refills, among other tasks of daily living. Despite these abilities, the client had been subject to a plenary guardianship for approximately 13 years. He repeatedly voiced opposition to his then-current guardian and representative payee, and believed his wishes and preferences were not being considered. He repeatedly stated his only desire is to make basic decisions about the people with whom he associates and the type of assistance he requires. In the summer of 2021, the legal team, in coordination with the Division of Services of People with Disabilities, was able to negotiate a change of the representative payee from the guardian to a professional representative payee. Following approximately 20 months of work on this case, the parties were able to negotiate a settlement in which the Office of Public Guardian agreed to step in as the guardian of last resort. As of May 2022, the former guardian has been completely released as guardian and conservator, the plenary guardianship is no longer in place. OPG is the client's guardian for medical and financial needs, residential placement, and end of life care. He meets with OPG once a month to review any necessary matters and continues to work closely with the rest of his support team. The client feels a decrease in the daily stress that stemmed from anticipated heated interactions with his former guardian. The DLC also gained an understanding of the legal hurdles associated with clawing back rights once they have been taken away.

- The DLC requested a court visitor be appointed to evaluate if a protected person's needs were being met. This allowed an independent party to meet with the guardian and protected person to assess the situation. The Visitor found the guardian was not providing the ward with necessities. They recommended the guardianship be terminated. At a hearing, the judge agreed.

- The client was under a restrictive guardianship. The relationship with parents/guardians had broken down, but guardians refused to change the status quo. The DLC became involved as an interested party. We brokered a stipulation between the parties requesting the court to review the ongoing need for a guardian and to terminate the guardianship if it determined that was appropriate. The judge terminated the existing guardianship, reasoning the relationship was not working and the extent of help previously in place is not needed. The court then appointed a limited guardian to assist with paperwork and services, as needed.

- The DLC appeared as an interested person in a case where the protected person filed a motion to terminate guardianship (medical and financial) and conservatorship. Protected person is a transgender woman, and guardians do not agree with gender-affirming choices such as clothing and accessories, nor with medical treatment related to transition. The court ordered the parties to participate in mediation to resolve the conflicts. We will be representing protected person in the mediation.

Lessons Learned

Representation

- How can a court help ensure a proposed protected person has their choice of counsel? This is especially important when an attorney is appointed, is available at the last minute, or is not available at all.

Communication

- Allow time for a person to process and communicate before moving on, both during in-person and, especially, virtual hearings.
- Ask basic and specific questions. Communicate in plain language as much as possible.
- Utilize supporters, if needed, to understand what a person is communicating.
- Pay attention to gestures and one-word responses. Ask questions that can be answered with a yes or no, however it is communicated by a person or their supporter.

Participation

- If possible, find out ahead of time if a person is more comfortable appearing in-person or virtually. Make sure the preference is the person's, not the petitioner's.
- Ask what a person needs to fully participate and express themselves in a hearing (include a checklist of possible accommodations with an "other" section). Can these and other accommodations be handled by a clerk? Either way, the person, judge, and court staff will be better prepared.
- The court should clearly explain the purpose of a hearing and what a guardianship is. A judge should ask the question a few different ways and give the proposed to protected person enough time to respond (e.g. Do you understand what this means? Is this what you want? Is this what you think you need?).
- To evaluate the freedom the proposed protected person has to answer, a judge could ask, "Has anyone told you what to say today, or suggested how you should answer?"
- Perhaps the proposed protected person's attorney could have these conversations and attest to the outcome.

Pre-appointment

- Based on a person's ability to make and communicate decisions with or without assistance, determine whether guardianship or an alternative is appropriate.
- If counsel does not raise the feasibility of an alternative(s) to guardianship, the conversation should be prompted by a non-exhaustive list included in the court's bench book.
- The presumption should rest with a petitioner to demonstrate why nothing less than a guardianship is appropriate.
- If a guardianship is appropriate, its degrees should be determined based on what a person can do with or without assistance.

- If a court finds it does not have sufficient information to adequately address any of these issues, a judge can and should direct the parties to return with additional evidence. Alternatively, a judge could ask the parties to come to a hearing with a statement detailing the proposed protected person's specific functional deficits and why a particular alternative(s) is not appropriate or sufficient to meet the proposed protected person's needs.
- Thoroughly assess the suitability of a potential or existing guardian. It is crucial they are invested in the potential protected person's well-being and growth, as well as have the tools and resources to foster it.

Post-appointment

- Be as flexible as possible regarding process to increase access to justice for current protected persons who may not know what to do or who to contact with questions.
- Provide training to guardians on their duties, how to perform them, and promote the protected person's legal rights.

Systemic Concerns

- Potential conflict of interest between counsel for a petitioner and a proposed protected person, e.g. a professional or social connection.
- Over-reliance on the basic need provision of the incapacity standard, rather than the proposed protected person's ability to make and communicate decisions with or without assistance.
- Underutilization and misinterpretation of Utah's statutory preference for limited guardianship.
- Using the Healthcare Information Portability and Accountability Act to persuade families or others to seek a guardianship to ensure a protected person's access to healthcare. A lack of knowledge about healthcare powers of attorney or healthcare directives may contribute to this.
- Facilities encouraging, even facilitating or participating in, the appointment of a guardian to prevent a resident from leaving or seeking a less restrictive, community-based option.

Systemic Advocacy

The DLC has presented to families and the Elder Law and Estate Planning section of the bar on alternatives to guardianship. We are also in the process of convening focus groups of parents, educators, medical professionals, attorneys, and judges designed to help us figure out how to shift the conversation around guardianship.

Along the same lines, the DLC encourages inclusion in schools, so that students with and without disabilities are in class together. We also provide information about alternatives to guardianship during transition fairs and other community meetings. Our attorneys hold clinics with transition-aged students getting pushback from their school district regarding the next steps in their education and life. Additionally, we meet with individuals, often in their late teens and early 20s, in restrictive guardianships and looking for help.

Additionally, several years ago the DLC reached a settlement agreement with the state. Consequently, the Administrative Office of the Courts revised its bench card and book to encourage judges to ask what alternatives have been tried, and the result, before granting a

guardianship. Shortly thereafter, we were successful in adding statutory language directing a guardian to consider a protected person's values, preferences, strengths, and skills, and to include them in decision-making processes to the greatest extent possible. Similarly, we recently helped pass a Guardianship Bill of Rights.

Unfortunately, the DLC has been less successful in guaranteeing independent, zealous representation to a respondent. Counsel is not required when the petitioner is a parent, the proposed protected person appears in court, and the court appoints a visitor. A proposed protected person does not have to appear if they have an intellectual disability and an IQ under 25. Likewise, no plan is required. On top of this, if a guardian or co-guardian is a parent of a protected person, a report is not necessary.

The DLC tried to remedy this and other gaps several years ago by advocating adoption of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. Even though we suggested amending current code to only include key components, the fiscal note for representation was a nonstarter. Since then, we have primarily focused our efforts on pursuing process and procedural change through the Working Interdisciplinary Network of Guardianship Stakeholders.

Utah does not prioritize alternatives and certainly does not make them easy to use. Despite this, the DLC hopes to succeed next year in its second attempt to pass supported decision-making agreement legislation. Until then, we will continue offering suggestions to improve the information new guardians get about their job, especially their duty to make sure the person they are responsible for can make as many of their own choices and have as much control over their life as possible.

Finally, the DLC concurs with the 22 recommendations of the Fourth National Guardianship Summit in 2021. We also support the National Disability Rights Network's request for dedicated funding, so the Protection and Advocacy agency in each state and territory can focus on this critical work, including ensuring individuals are educated about their rights, understand alternatives to guardianship, and receive adequate representation when appropriate.

Please contact us with questions or for more information. Thank you for your time and considering our perspective.

Statement of the disAbility Law Center of Virginia
For the Senate Special Committee on Aging
On Guardianship, Conservatorship, Protective Arrangements, and Alternatives

The disAbility Law Center of Virginia (dLCV) is the dedicated protection and advocacy (P&A) system for Virginia. dLCV is also a member of the National Disability Rights Network (NDRN). dLCV has access authority through federal statutes and regulations that permits it access to facilities that provide care, residents, and records in order to conduct investigations or monitoring for health and safety hazards, as well as for rights violations.

dLCV routinely assists clients with the removal of guardianship, usually along with the implementation of an advance directive or supported decision-making plan. One of our strategic goals and focus areas is to ensure that Virginians with disabilities have maximum individual choice by advocating for individuals with disabilities to have choice and control over themselves and their environment through supported decision-making and alternatives to guardianship.

Guardianship is a cumbersome, expensive, and unnecessarily restrictive intervention which is neither practical nor necessary to resolve the vast majority of situations to which it has traditionally been applied.

In most cases a person who is placed under guardianship loses not only their legal rights, but also their right of self-determination, which is the essence of their humanity. A court has taken away their right to make the most basic choices that affect their lives: to decide where to live, what doctor to see, and how she will spend her time or money. This makes the person increasingly dependent on her guardian, and her independence, judgment and ability to live her own life atrophies and withers away.

The situation is no better for the person's family, or for society at large. Guardianship requires legal action to impose, remove, or modify. As a result, it is almost always expensive, and it is often impractical and counterproductive in cases where individuals and families of limited means lack the resources required for them to seek desperately-needed changes.

Guardianship may be the only alternative when an individual is comatose, or completely unable to make or communicate a decision. But most guardianships seem to be imposed on people who actually CAN make decisions— they just may not make the decisions others think they should make.

In reality, there is little a guardian can do to force a determined, uncooperative individual to comply with their directions. If the individual presents fairly well and does not disclose that she is under guardianship, the guardian's ability to prevent her charge from exercising "rights" she does not have may be rather limited.

Guardians are not universally available, and public or appointed guardians are often overburdened and rarely see their charges. Individuals often end up warehoused in mental hospitals, nursing homes, and similar settings where they are considered "safe" and the guardian does not have to spend much time dealing with them. These are the most common type of guardianship removal case dLCV does.

Guardianship is not a training or protected learning environment. Statutes require guardians to work to develop their charge's capabilities. But, in practice, few guardians commit the time or resources to that responsibility, so they just "do" for the person, and the person's capabilities atrophy and waste away.

Most of these individuals would be better served by a Supported Decision-Making Plan, buttressed as necessary by narrowly drafted substituted decision making instruments such as Health Care Advance Directives, Durable Powers of Attorney, Joint Banking arrangements, or Social Security Payee Arrangements.

For fiscal year 2023, dLCV has undertaken to develop and disseminate a guardianship removal resource for public guardians to assist dLCV in preparing for removal of guardianship cases, as well as to create three new resources for the supported decision-making page on the dLCV website. In addition, dLCV represents a limited number of individuals each year, to prevent, modify, or terminate guardianship where there is evidence of capacity and to facilitate the development of advance directives or supported decision-making plans. dLCV also serves on several legislative workgroups related to guardianship and alternatives.

dLCV believes that the P&A system is uniquely situated to handle removal of guardianship and prevention of guardianship cases, based on our expertise in issues related to capacity, choice, and the law in Virginia. Unfortunately, dLCV is often limited to use of its Protection and Advocacy for Individual Rights (PAIR) grant to fund these cases and this grant is often stretched thin. dLCV recommends that the Senate provide direct funding to the P&A system to handle such cases. This funding would greatly increase the capacity of dLCV to handle more cases and protect more Virginians. We provide the following summary of cases we have handled over the past few years to highlight our work.

Examples of dLCV Guardianship Advocacy

Case #1

Naeem had autism and came from a very politically active family. As he was approaching age 18, his family decided to pursue guardianship. Through their attorney at the time, they asked the court to carve out Naeem's voting rights when issuing the guardianship order. The presiding judge refused to do so, instead stripping Naeem of all

rights, including his right to vote. Each election cycle since, Naeem's sadness about his inability to vote grew and his family remained at a loss about how to contest the judge's prior decision. When they learned about dLCV, hope was restored as we were able to successfully work with the court to restore Naeem's voting rights without so much as a hearing. Naeem was overjoyed to cast his first-ever ballot in November, and his family felt moved to make a generous donation to support our continued work in this important area!

Case #2

Colt and his family contacted dLCV after they appeared in a news story about losing rights through guardianship. dLCV helped Colt, a young adult with autism, and his family gather the documentation needed to petition the court for restoration of his voting and driving rights. We then represented Colt in a court hearing in early October during which he won back his right to vote and drive. Colt's rights were restored just in time for him to register for the 2021 election, and he was delighted to cast his first-ever ballot in November! Colt has since let us know that he is saving up for a driver's education course, the next step in his journey to independence.

Case #3

Zied's mother contacted dLCV for information about, and assistance with, decision-making options as her son approached age 18. dLCV encouraged Zied and his mom to check out our Supported Decision-Making resource page and explained the many rights that are lost under guardianship. Zied's mom reviewed our resource page; she also met with an attorney to discuss guardianship. Ultimately, Zied's mom was not comfortable with the extreme loss of civil rights that accompany guardianship and she decided not to pursue this restrictive option. Instead, she and Zied utilized dLCV's DIY Power of Attorney (POA) form. Another person with a disability maintained their civil rights.

Case #4

dLCV successfully represented Kate in restoration of her civil rights through a guardianship and conservatorship termination hearing in June. Kate is a Cuban immigrant who resides in Florida, however, she was placed under a full guardianship during a period of hospitalization in Northern Virginia. In a collaborative effort, Disability Rights Florida helped the client gather documentation from her local neurologist demonstrating she has fully regained capacity and dLCV subsequently petitioned the appropriate court here in Virginia using that documentation and provided representation in the guardianship termination hearing itself. Thanks to dLCV's advocacy, Kate can once again vote, enter into contracts, marry, make decisions about her healthcare, and much more!

Case #5

dLCV received a report from a frustrated paid guardian that the county had recently had her appointed guardian over a homeless woman who was quite able to make her own decisions. As reported by the guardian, the woman was not only able to make decisions, but actively insisted on doing so. The guardian further reported that the woman would not recognize the legitimacy of the guardianship or the authority of the guardian. She ran away from the placement the guardian obtained for her, refused to surrender personal or identifying information, and otherwise interfered with the guardian's efforts to keep her safe and to obtain the services APS had determined the woman needed. The guardian told dLCV she was "at a loss" as to how to carry out her duties to a woman who could make her own decisions and refused to allow her to interfere with that. After the woman accepted dLCV's offer to represent her, dLCV collaborated with service providers to obtain two favorable psychiatric evaluations, filed a *Petition for Release of Guardianship and Conservatorship*, and represented her in two evidentiary hearings. Her petition was granted.

Case #6

dLCV successfully represented a state hospital patient who was clinically ready for discharge, but who was not released because his legal guardian refused to approve a placement. dLCV successfully petitioned the court to remove the guardianship and restore the individual's competence so he could be discharged. He was discharged to a step-down program shortly thereafter.

Examples of dLCV Projects

Project #1

In FY22, dLCV trained five community groups on supported decision making to ensure people with disabilities are able to maintain, or regain, their right to self-determination. Our trainings reached more than 200 individuals. Training and event collaborators included: Partners in Policymaking, Albemarle County Open Doors Adult Education, The Center at Belvedere (senior center for Charlottesville and Albemarle), VOCAL Peer Support Specialists, and Eastern Shore CSB. This topic is one that is both popular and much-needed in the community. Most audiences in past years have been exclusively DD-focused, but dLCV presented to more varied audiences this year, including mental health consumers, seniors, adult learners, and the entire workforce of a Community Services Board.

Project #2

In FY21, a long-awaited report called *Improving Virginia's Adult Guardian and Conservator System* was released by the Joint Legislative Audit and Review Commission (JLARC). This report provided the framework for a number of critical changes and enhancements to Virginia's guardianship system during the 2022 General Assembly session. dLCV specifically educated policymakers about legislative opportunities to prevent and terminate unnecessary guardianships through supported

decision-making and other means. We participated in the state's new Supported Decision-Making Stakeholder Workgroup as well.

Project #3

dLCV sent an informational letter to every Foster Care Services Director across the state, reaching a total of 122. We explained the unique issues faced by young adults with disabilities when aging out of foster care - especially when no family ties remain. We stressed the important role foster care workers can play in helping transition age youth understand their advanced care planning rights and options. All 122 Directors received copies of dLCV's supported decision-making and Coming of Age resources (such as our DIY power of attorney forms) and were encouraged to share them widely!

Project #3

dLCV developed four new factsheets for our Supported Decision-Making webpage. The factsheets are called: The Guardianship Process, Modification and Termination of Guardianship, People Involved in a Guardianship Case, and Rights Lost When a Guardian is Appointed. The intended audience for the factsheets, which use plain language and graphics to ensure accessibility, is individuals facing the prospect of having a guardian appointed.

Report to the United States Senate Special Subcommittee on Aging

prepared by

Dr. Sam Sugar

March 2023

To the Committee

Thank you for your invitation to speak today and to be a voice for countless American families and individuals who desperately want to see radical changes in the way government affords so-called protection to vulnerable Americans.

You have requested the following:

- *Stories and examples of problems with guardianships,*
- *Stories and examples of alternatives to guardianships,*
- *Suggestions for protecting the rights of people being considered for or currently covered by guardianships, conservatorships, or other protective arrangements.*

The purpose of collecting this information is to document the scope of problems related to protective arrangements and to identify potential solutions.

I am Dr. Sam J Sugar a board-certified Physician specialist in internal medicine, a subject matter expert on matters concerning abusive guardianships and conservatorships, the founder of Americans Against Abusive Probate Guardianships and the author of *Guardianships and the Elderly the Perfect Crime*. Over my multi-decade involvement in guardianships which began with personal painful experience, I have consulted on, researched, documented, counseled and advised thousands of families and individuals across the country who are or have been Involuntarily ensnared in guardianship/conservatorship proceedings involving their families or loved ones. I have also been a witness to and a student of the proceedings of this committee's activities through the committee's archives as well as in real-time.

This committee has enjoyed leadership from both political parties over the years and irrespective of which major political party was in the majority at the time, many dozens of witnesses and hundreds of hours of testimony later, victims and advocates will again come before you today as they have for decades and tell their stories of how they were personally impacted by a system that many consider thoroughly corrupt and desperately in need not of improvement, but of replacement. It is my hope today to bring forth illuminating, meaningful information to the committee that ultimately leads to the inescapable conclusion that:

- Though concentrated in a minority of cases, there is a massive amount of corruption in probate guardianships all over the country and it is anybody's guess as to exactly how much there is and how much it costs American citizens and families.

- our current state-based guardianship conservatorship systems are not fulfilling their primary purpose of providing protection for the weakest in our society
- probate courts are in many areas of the country acting unconstitutionally and even in a criminal manner,
- only federal intervention can overcome the strangle hold state courts have over their victims, as it very unlikely States will remedy their own improper behavior
- Probate courts operate in defiance of the Federal government's major initiative to promote diversity, inclusion and equity in all aspects of our government.
- and most importantly as currently executed, the state based American probate guardianships system poses an imminent and direct dire threat to the treasure, freedom and very lives of our most vulnerable Americans.

Overview

The first reason why guardianship reform is necessary is because of the prevalence of mounting evidence of abuse and exploitation in the current system. According to a report by the Government Accountability Office (GAO), there are widespread problems with guardianship abuse and exploitation in the U.S. This includes cases of financial exploitation, neglect, and physical and emotional abuse of wards. The report found that many states have inadequate safeguards in place to protect wards from abuse and exploitation by guardians.

Secondly, the current guardianship system is often biased against individuals with disabilities or mental health issues. According to Disability Rights Texas, many people with disabilities are placed under guardianship unnecessarily, and are then denied their basic rights and freedoms. This can include the right to make their own medical decisions, to vote, or even to get married. Furthermore, while guardianships are easy to create, they are nearly impossible to escape, leaving people with disabilities trapped in abusive or restrictive situations for life.

Thirdly, the current guardianship system appallingly lacks transparency and accountability. According to a report by the American Bar Association, many if not most guardianship proceedings are closed to the public, making it difficult for advocates and family members to monitor the actions of guardians. In addition, there are few mechanisms in place to hold guardians accountable for their actions, even in cases of abuse or neglect.

Each of these factors generate opportunities for profit for the court insiders.

Given these problems, it is clear that radical reform or replacement of the guardianship system is necessary. Some possible solutions include:

1. Establishing better safeguards to prevent abuse and exploitation, such as background checks and regular monitoring of guardians.
2. Reducing the use of guardianship and promoting alternatives that prioritize the autonomy and rights of individuals with disabilities or mental health issues, such as supported decision-making.
3. Increasing transparency and accountability in the guardianship system by opening up proceedings to the public and establishing mechanisms to hold guardians accountable for their actions.
4. Improving education and training for judges, lawyers, and other professionals involved in the guardianship system to ensure that they are better equipped to recognize and prevent abuse and exploitation.

It is important to emphasize that secrecy and the ability to quash information and restrict access to it (couched as the right to privacy) is one of the major cudgels used by the guardianship system, known by many as the probate guardianship racket, to allow the civil and constitutional rights of innocent individuals to be stripped, their assets to be seized and distributed to the guardianship court insiders without any chance of meaningful oversight or monitoring. As a direct result of the desire to suppress any meaningful information about the courts probate activities, despite countless initiatives, legislation changes and exposes, meaningful statistical data on any aspect of guardianship in nearly every state simply does not exist. If you can't count it, you cannot understand the severity of any problem and without up-to-date reliable detailed data, the federal government certainly cannot even begin to assess the severity of the problem or potential ways to make better, let alone fund interventions of any size or type. This, and the tradition that the Federal government cannot interfere in matters of State inheritance, has paralyzed and prevented this advisory committee from making any meaningful impact for decades while millions of American wards have been abused and even murdered for lack of government protection.

A good example of this is the repeated reference to decades old data from federal agencies and other sources(A) that there are roughly 1.3 million guardianships active in the United States at any given time. I believe the number is much higher, but since there are only one or two states in the country that have even attempted to collect rudimentary information on guardianship prevalence or incidence, it is not surprising that this committee has never been able to consider up-to-date granular information that would be instrumental in making its recommendations to the Senate at large, and at least defining the steps to obtain such data. Without such data the Federal government is incapable of acting or understanding how many billions of dollars a year are extracted by color of law and a complicit judiciary and Bar from Americans who had committed no crime yet are given life sentences of all types of abuse, isolation, neglect and actual torture by the very social structure designed to prevent exactly those inhumane crimes.

Guardianship Crimes against the elderly are egregious and each case can affect at least three generations of innocent Americans. The elderly Ward, their children and grandchildren are greatly affected by the legalistic long-term purloining of their family's wealth.

It is telling to note that comprehensive legislative reform of the entire national guardianship system has been fully developed by Chicago-based Uniform Law commission and endorsed by the Bar and even national guardianship Association. The Legislation known as The Uniform Guardianship, Conservatorship, And Other Protective Arrangements Act or the UGCPAA. To date this comprehensive plan of reform has been offered to all states. It has been implemented completely by only two states namely Washington in 2019 and Maine in 2018.

Other states have incorporated convenient portions of this legislation including Colorado, Minnesota, Alabama, Massachusetts, and the District of Columbia. Notably absent from the list of states where reform measures succeeded are states like New York, Florida, California, Texas, New Jersey, New Mexico, Arizona and others with large senior populations full of potential highly lucrative guardianships where the rapacious greed of the court insiders can be sated.

DEI

Guardianship abuse is perpetrated by court insiders (judges, lawyers, guardians, clerks, law enforcement and others) who routinely pervert the very principles of Diversity Equity and Inclusion under the guise of state government protection. But the root causation for any malevolent action spawned from the guardianship court always emanates directly from and could

not happen without the very Judges who create them. Because they face little or no consequences for routinely failing to monitor the guardianships they impose and guarantee--as is their duty—that they function solely for the benefit of the ward, Judges must be held accountable for any and every aspect of guardianship gone wrong.

ABERRANT JUDGE BEHAVIOR

State Court Administrative Equity Judges claim to protect any prospective ward by ensuring that any existing advance directives, such as a durable power of attorney or designation of health-care surrogate, are honored to the extent possible in guardianship pleadings, when any such directives exist. Judges are required to consider, if a guardianship absolutely is needed, the ward's expressed wishes regarding who should be appointed as their guardian, as well as the care they receive. The court is supposed to review any conflicts of interest that may exist with a proposed guardian.

If only these requirements were fulfilled!

The Judicial obviation of Advance Directives is the most egregious and common complaint of families who have been abused in the process.

The court is supposed to appoint an attorney for each alleged incapacitated person to ensure due process rights and present the individual's position and wishes to the court and the potential ward is supposed to be allowed to substitute their own counsel for the one appointed by the court. But, in abusive for profit cases,(C) more often than not the court appointed attorney is appointed despite the well constructed written wishes of the potential ward and is typically a court insider whose income is determined by the number of times he is appointed by a given judge and thus has an incentive to make his primary responsibility not to his client but to the pleasing of the judge.

The court has a duty to take away only the rights that place the person at risk, often resulting in a limited guardianship that allows them to keep as many rights as possible. If only! Limited guardianships represent a small fraction of total guardianships created this country. Who controls this? Judges do.

RACIST JUDGES

The large majority of probate judges in the United States are white and of those, most are male, a vestige of white supremacy. Under currently popular political thinking at the highest levels, this would make the Judges and the guardianships they create racist and make the insiders terrorists. Fighting Terrorism is the purview of the Federal government—except when it happens to the vulnerable in guardianships. Why?

DEI

DIVERSITY

Despite the fact that probate courts are actually called courts of equity, outcomes of for profit probate guardianship decisions are not the least bit equitable--- instead they and the massive fees generated by staged litigation are determined by the financial means of the proposed Ward (or person in need of protection, the PINP). Family guardianships are far and away the most common type of guardianships and require no massive fees and are performed by family members pro bono. Public Guardianships for penurious individuals result in very little litigation-- the simplest and most common form
of improper enrichment of guardianship insiders.

EQUITY

Disproportionately, for-profit and guardianships of individuals with substantial means all too often result in years or even decades of lucrative staged litigation. Equity would require that all types of guardianships take place and result in similar if not identical outcomes, but that is rarely the case. The poor are quickly thrown onto the government dole, and those with means can wind up there too when their entire fortune is taken in legal and guardianship fees.

INCLUSION

Potential Wards, entitled to all the rights and privileges of citizenship in this country, rather than being helped to remain included in society despite their alleged disability, are systematically excluded from society, isolated, impoverished, and deprived of their rights, property, family, associations, health care, homes and lives by an equity court system whose purpose is actually

not to prevent guardianships but rather to selectively create them and enrich court insiders. Who facilitates this? Judges.
Because the malfeasance/misbehavior of its Administrative Hearing officers, the American guardianship system is hopelessly flawed and all too often can produce the very abuse and exploitation of the people it is meant to protect. After decades of futility, it is time for this committee to take the lead in the effort to radically reform or replace the American guardianship system.

Over the last four decades this committee has heard testimonies from a variety of sources indicating the urgent need to reimagine the entire guardianship concept because the guardianship system is rife with conflicts of interest. Guardians are often appointed by the court without adequate oversight or consideration of alternatives such as supported decision-making. Once appointed, guardians have near-complete control over their ward's life and finances, and there are few safeguards in place to prevent abuse. As a result, there have been countless known and unknown cases of guardianship abuse, including cases where guardians have exploited their wards for financial gain or denied them basic human rights such as the right to vote or the right to choose their own medical care. Who is supposed to ensure that? Judges.

Second, the guardianship system is outdated and does not take into account the evolving understanding of disability and the capabilities of people with disabilities. Many guardianship laws are based on a paternalistic view of disability that assumes people with disabilities are unable to make decisions for themselves. However, this view is increasingly being challenged by disability rights advocates who argue that people with disabilities should have the right to make their own decisions with appropriate support, rather than under absolute control. Who decides whether a case is referred for alternative programs ? Judges.

Third, there are alternatives to guardianship that are less restrictive and more empowering for people with disabilities. Supported decision-making is a growing movement that emphasizes the importance of providing people with disabilities with the support they need to make their own decisions. This can include providing information, training, and support to help people with disabilities make informed decisions about their lives. Judges control that process.

Finally, there is growing recognition among policymakers and legal scholars that the guardianship system needs reform. In recent years, there have been a number of proposals for reforming guardianship laws, including increasing guardian oversight, requiring training for guardians, and promoting alternatives to guardianship. None have addressed the root problem of reckless unsupervised Judicial behavior without consequences.

It is time for radical reform or total replacement of the American guardianship system. This can include a shift towards supported decision-making, increased oversight and training for guardians, and a re-examination of the legal and ethical underpinnings of guardianship. We must ensure that the legal system is protecting and empowering vulnerable individuals, not enabling their abuse and exploitation. The reform must start with increased scrutiny and accountability from Judges who are at the heart of all that is wrong with this system and are the most resistant to scrutiny or meaningful change.

But as experience has shown particularly regarding this committee, urgently needed granular data on incidence and prevalence guardianships, frequency and incidence, types and severity of abuse simply do not exist today. Although some states are doing a better job than others beginning to curate it, such information simply not available to anyone anywhere mainly because Judges invoke suppression orders that prevent granular analysis and knowledgeable critiques of their work. Sequestering information on guardianships can no longer be tolerated in a free society.

But, from the sheer volume of complaints brought before this and other governmental agencies, it should be apparent that abusive guardianship is a highly prevalent and increasing dire threat to any innocent American who is now might become even minimally disabled or develop a need for protection from abuse neglect and exploitation from actors outside the court system.

SOLUTIONS

So to address these issues, and while efforts to collect data continue (which will take many years) this group can create and request funding for a Special DOJ Civil Rights Section task force dedicated to investigating grass roots complaints of systemic civil rights abuse in guardianships by screening complaints for claims of common judicial misbehavior.

- Screening for any guardianship proceeding that lasts more than one year
- screening for any guardianship procedure that generates annual fees of more than 3% of the value of the ward's estate at the time of guardianship creation.
- screening for obviation of pre-existing advanced directives
- screening for evidence of intentional unnecessary isolation
- obtaining court records for dispositive evidence of abuse
- discovery of super guardians with huge numbers of cases and complaints
- screening for "hotspot" jurisdictions of problematic cases

and refer violations to the Prosecutors at DOJ which has the authority to sue any State Judiciary that accepts Federal moneys for operating a sham court.

This approach avoids the prohibition against the federal government becoming involved in matters of inheritance and has a high likelihood of ultimately creating the necessary constraints to ensure that our most vulnerable citizens are no longer at risk of being abused by the government to protect them.

CONCLUSION

In conclusion, the guardianship system in the U.S. is in dire need of radical reform or replacement. The prevalence of judicially generated abuse, neglect and exploitation, the bias against individuals with disabilities, lack of checks and balances and blatant disregard for DEI make it an unsafe and unreliable way to provide our most vulnerable citizens with protection from predators from outside and within the courts.

The Committee must act now to assure this broken system is either fixed or replaced.

Thank you.

NOTES:

A. according to a report from the National Center for State Courts in 2018, there were approximately 1.3 million active guardianships in the US. As for conservatorships, the numbers are harder to estimate as they are handled at the state level and the laws and regulations regarding conservatorships vary widely from state to state.

B.

Guardianship can become abusive when the appointed guardian without needed oversight by the Judge who appointed them, violates their duties and responsibilities, abuses their power, or fails to act in the best interests of the person they are supposed to protect. Some specific actions that can constitute abusive guardianship include:

1. Financial exploitation: The guardian uses their position to exploit the ward's finances, including stealing money or assets, misusing funds, or charging excessive fees.
2. Neglect: The guardian fails to provide adequate care, such as neglecting to provide necessary medical treatment or basic necessities such as food and shelter.
3. Physical or emotional abuse: The guardian physically or emotionally harms the ward, including physical assault, verbal abuse, or neglecting the ward's emotional needs.
4. Isolation: The guardian restricts the ward's social contacts or freedom, often as a means of controlling them.
5. Conflict of interest: The guardian may act in their own interest, rather than in the best interest of the ward, such as selling the ward's property to themselves or their family members.
6. Overmedication: The guardian may overmedicate the ward or subject them to unnecessary medical procedures or treatments, often to gain control over them.
7. Restricting communication: The guardian may restrict the ward's access to communication devices, including phone calls and mail, to control information flow and maintain control over the ward.

Abuse in guardianships can take many forms, including physical, emotional, and financial abuse. Guardians may overstep their bounds and make decisions that are not in the best interest of the

person they are supposed to be protecting. They may also isolate the person, deny them contact with friends and family, and control their every move.

It's important to note that not all guardianships are abusive, and many guardians take their responsibilities seriously and act in the best interests of the person they are appointed to protect. However, it's essential to be aware of the risks and to take steps to prevent abuse from occurring, such as regularly checking in on the person, staying involved in their life, and reporting any signs of abuse to the appropriate authorities.

C

Unlimited judicial power in guardianship can pose several dangers, including:

1. Abuse of Power: When the judiciary is given unlimited power in guardianship, it can lead to the abuse of power by individual judges. This can lead to decisions that are biased, arbitrary, or not in the best interests of the ward.
2. Lack of Accountability: When there are no checks and balances on the judicial power in guardianship, there is a lack of accountability. Judges may make decisions that are not subject to review or appeal, leaving the ward without recourse.
3. Denial of Rights: Unlimited judicial power in guardianship can result in the denial of the ward's rights, such as the right to make decisions about their own life, the right to choose their own medical treatment, or the right to decide where they want to live.
4. Financial Exploitation: When a judge has unlimited power over a ward's finances, it can open the door to financial exploitation. The judge may appoint a guardian who takes advantage of the ward's finances or makes decisions that are not in the ward's best interests.
5. Lack of Transparency: Without adequate oversight, there may be a lack of transparency in the guardianship process. This can make it difficult to determine if the ward's rights and best interests are being protected.

Overall, unlimited judicial power in guardianship can lead to serious even lethal abuses of power and denial of rights, making it crucial to have proper oversight and accountability in the guardianship system.

D

Probate judges are supposedly subject to various checks and balances to ensure they perform their duties ethically and in accordance with the law. Here are some of the common ones:

1. Judicial oversight: Probate judges are overseen by higher courts, such as an appellate court or state supreme court. These courts have the power to review the decisions made by probate judges and ensure they comply with the law.
2. Legal standards: Probate judges are bound by legal standards and codes of conduct that dictate how they should behave in court. These standards are set by state laws and judicial rules.
3. Public accountability: Probate judges are elected or appointed by elected officials and are therefore accountable to the public. If a judge is found to be engaging in unethical behavior or breaking the law, they can face impeachment, removal from office, or criminal charges.
4. Professional oversight: Judges are members of the legal profession and are therefore subject to oversight by legal professional organizations. These organizations can discipline judges for unethical behavior or violations of professional standards.
5. Citizen complaints: If a citizen believes a probate judge has acted improperly, they can file a complaint with the appropriate oversight body. This can lead to an investigation and potential disciplinary action against the judge.

While these checks and balances are designed to ensure probate judges act fairly and impartially, and that they follow the law and ethical standards of their profession, as shown in myriad cases and complaints of the years, these checks and balances can easily be overcome by any Judge at any time.

E

Probate guardianship can be a complex and challenging process, and there are several common complaints about it. Some of the most frequent complaints include the following. These complaints provide the clues to how we can achieve reform and replacement of the current system.

1. Lengthy and Expensive Process: The probate guardianship process can take a long time and be very costly, which can be frustrating for families who are trying to care for a child or vulnerable adult. The court process can also be difficult to navigate, requiring multiple court appearances and extensive paperwork.
2. Lack of Parental Rights: Probate guardianship removes parental rights from the biological parents, which can be a difficult and emotional process for both the parents and the child. This can create tension and conflict within families and can also have long-term effects on the child.
3. Lack of Support for Guardians: Many probate guardians feel that they do not receive enough support from the court system or other agencies. This can include inadequate financial support, limited access to resources and services, and a lack of training and education about their role as a guardian.
4. Limited Oversight: Some critics argue that there is insufficient oversight of probate guardians, which can lead to abuses of power and neglect of the child or vulnerable adult under their care.

These complaints have long been documented in various sources. For example, a report by the American Bar Association highlights concerns about the lack of resources and support for guardians.

in this paper guardianship, conservatorship, probate guardianship are used interchangeably

References:

1. American Bar Association. (2018). The Guardianship Process: A Handbook for Families and Friends. American Bar Association.
2. American Civil Liberties Union. (2019). Guardianship Abuses: An Overview.
3. Autism Society. (2021). Guardianship: An Overview.
4. Bagenstos, S. R. (2018). Guardianship and the ADA. Harvard Law Review, 131(5), 1545-1618.
5. Brown, M. R. (2021). Guardianship reform: A framework for legislative action. Journal of Elder Law and Capacity, 13(2), 155-176.
6. Disability Rights Education and Defense Fund. (2018). Supported Decision-Making: An Alternative to Guardianship.
7. Disability Rights Washington. (2020). Guardianship and Alternatives.
8. Elder Law & Advocacy. (2021). Alternatives to Guardianship.
9. Equal Justice Initiative. (2020). Guardianship

Disability Rights
FLORIDA

Written Statement of Disability Rights Florida for the Senate Select Committee on Aging Regarding Guardianships, Conservatorships, Protective Arrangements, and Alternatives

March 23, 2023

Disability Rights Florida is the state's designated Protection and Advocacy (P&A) system for individuals with disabilities in the State of Florida. The P&A system exists to ensure the safety, wellbeing, and success of people with disabilities. We thank you for the opportunity to comment on matters which are important to the individuals we assist.

Nationwide, there are over a million individuals placed under guardianship, and in Florida, there are estimated to be over 40,000 individuals placed under guardianship. Florida has one of the highest percentages of elderly population in the United States, and has a substantial number of individuals under guardianship as a result. Plenary guardianship is properly conceived as a true civil death: it strips a citizen of the rights to contract, to marry, to have a say in where they live or where they travel, and both how and with whom they spend their time and whether or not they work and earn a wage.

Disability Rights Florida fully supports and assists individuals in obtaining less restrictive alternatives to guardianship such as supported decision-making, power of attorney, and advance directives. These allow an individual to maintain independence to the greatest extent possible. Often, guardianships are overbroad, and are not necessary to accomplish assisting an individual with support and protections.

Less restrictive alternatives place less of a burden on the court system, and make it easier for the individual to pursue full rights restoration if necessary. Once guardianship is put in place, it is often permanent, and very difficult to restore an individual's rights. If the guardian opposes rights restoration, it further complicates the individual's probable success in restoring their rights. This could potentially leave an individual "locked-in" to a guardianship forever.

Enhancing protections for individuals under guardianship and promoting restoration of rights should be a priority. Courts should default towards protecting individual rights and supporting rights restoration and imposing a guardianship permanently should be a last resort and regarded as extreme. Additional protective efforts could include education for judges and the public on supported decision-making or other guardianship alternatives.

Abuse, neglect, or exploitation of individuals under guardianship can take many forms, including financial fraud, physical abuse or withholding medical care, isolation, and most importantly, preventing the individual from making any impactful decisions about their life. When a guardianship is imposed by the courts in Florida, there is almost no oversight to protect the ward from abuse, neglect, or exploitation by their guardian. This is due to a lack of staff in the courts, a lack of laws and regulations for protection, and new fraud and abuse schemes by guardians or others designed to take advantage of individuals under guardianship. Disability Rights Florida has had multiple clients report suspected financial exploitation, including, but not limited to, the sale of property for below market value. Additional financial exploitation frequently involves the guardian or others misusing Social Security funds or personal funds of the individual.

Recently in Miami-Dade County, the Guardianship Program of Dade County had funding frozen by the Mayor[1] due to allegations of working with a realtor to flip houses for profit. The Guardianship Program is allowed to sell individual properties to pay for health care or other needs of the individual, and in these instances did not appear to get market value for the homes. It is unclear yet if the Program benefited from the arrangement, but the appearance of impropriety is enough for the media to have raised questions about the issue.

Currently, there is no centralized information accessible in Florida to ensure individuals are not taken advantage of. For example, an appointed guardian is given the responsibility to inventory all of the individual's possessions and provide an inventory to the court. There is no proper safeguard to ensure that the guardian lists all possessions honestly. Once a guardian is in total control of the finances, there is practically no limit to the amount of financial harm that can occur to the individual under guardianship. Promoting or requiring education for the court system and family members or caretakers on the responsibilities of guardianship and how to recognize neglect, fraud and abuse could be beneficial in preventing the worst abuses and risks associated with guardianship. Another solution would be an independent agency tasked the creation of inventory during the initial stages of the guardianship proceedings, and oversight of the inventory later on in the process.

Disability Rights Florida recommends that preventing financial exploitation could include additional oversight or audits by the courts to monitor possessions of the individual under guardianship and financial transactions initiated by the guardian. All

---

[1] Douglas Hanks, *Miami-Dade freezes funding of Guardianship Program after property sales questioned*, Miami Herald (Mar. 8, 2023), https://www.miamiherald.com/news/local/community/miami-dade/article272903710.html

properties and possessions sold by guardians to pay for medical bills or debts should be sold for market value. Without a standardized and enforced audit requirement, financial abuse will continue to occur.

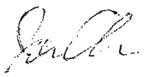
No system is perfect, and abuses will still occur, but there must be greater efforts by the states and federal government to minimize potential harms inherent in the current guardianship scheme. Guardianship was originally intended to prevent individuals without capacity from being taken advantage of or allowing harm to occur because of a lack of capacity. Unfortunately, it is now guardianship itself that all too frequently exposes individuals to predation.

Disability Rights Florida promotes alternatives to guardianship, such as supported decision-making and advance directives. Often, caretakers and the court system will try to impose a guardianship without understanding that alternatives exist. Family members or others who pursue guardianship often do not realize the permanency of guardianship and that the decision-making power is truly shifted to the court. This affects family dynamics and is not a continuation of the parent-child relationship as is often intended by parents. Guardianship often creates an incentive to not allow the individual to pursue or learn independent living skills, due to the restrictive nature of constraining the individual's right to maintain their finances, vote, travel, and other rights.

- Disability Rights Florida recommends that preventing financial exploitation could include additional oversight or audits by the courts to monitor possessions of the individual under guardianship and financial transactions initiated by the guardian. All properties and possessions sold by guardians to pay for medical bills or debts should be sold for market value. Without a standardized and enforced audit requirement, financial abuse will continue to occur.

Legal protections could include enhanced protections of individuals under guardianship, and promoting restoration of rights should be a priority. Disability Rights Florida sees cases where individuals have temporarily fallen ill and truly experiences diminished capacity, however, their condition has improved over time, only to find that they have been stripped of their rights through the guardianship process. The individual then has full capacity, but is trapped in a guardianship with no legal rights and very little recourse. Individuals have had properties sold, their bank accounts drained, and moved to facilities such as nursing homes or assisted living facilities without their consent. Other examples include young adults that have been placed in guardianship by parents, and the individuals have no rights even though they have capacity to make their own decisions, and will limit their ability to pursue a full and meaningful life.

Courts should lean towards protecting individual rights and supporting rights restoration, and not automatically upholding a guardianship permanently. Additional efforts could include mandatory education for judges and the public on supported decision-making or other guardianship alternatives. For guardianship matters, assistance with funding to the P&A system would provide additional advocacy for individuals with disabilities. Thank you for your attention to this important issue, and we look forward to assisting with additional efforts towards improving guardianship and alternatives for all involved.



Jordan Chastain
Senior Staff Attorney
Disability Rights Florida
2473 Care Dr. Ste 200
Tallahassee, FL 32308
JordanC@disabilityrightsflorida.org

DISABILITY RIGHTS MAINE

Written Testimony of Disability Rights Maine
to the United States Senate Special Committee on Aging
March 23, 2023

Chair Casey, Ranking Member Braun, and Members of the Committee, thank you for this opportunity to submit testimony for this very important hearing. My name is Lauren Wille, and I am a managing attorney with the Developmental Disabilities team with Disability Rights Maine (DRM). DRM is Maine's Protection and Advocacy agency. We provide legally based advocacy services and legal representation to people with disabilities, and our mission is to advance justice and equality by enforcing rights and expanding opportunities for people with disabilities in Maine.

Guardianship[1] is widely recognized as one of the most severe restrictions the law can impose on an individual aside from imprisonment. It takes away a person's ability to make decisions most of us take for granted, including decisions about where to live, with whom to associate, how to spend money, and decisions about medical treatment. Given the fundamental rights at stake, one would assume individuals subject to, or at risk of becoming subject to, guardianship, would have extensive due process protection in law and in practice. When I began guardianship work in 2017 after years in private practice, one of the first things I discovered was that this assumption is absolutely wrong. Even where due process exists in law to protect the most fundamental rights, it so often does not exist in practice. Over the past few years, DRM has directly represented dozens of individuals in terminating, limiting, and defending against adult guardianships, and there has not been a single case that has not shocked our attorneys in some way. We regularly work with clients who have come under guardianship based upon partially completed court forms, or based upon the opinion of a visitor or doctor who met with a person for less than an hour who recommended lifetime guardianship based on diagnosis alone, or based upon a "feeling" that the person was too cognitively impaired to be able to make their own decisions. We have worked with clients who were placed under guardianship as they reached the age of majority for seemingly no other reason than being an 18-year-old with a disability. Not a single one of our clients whom we have terminated guardianship thus far was represented by their own attorney for the initial appointment. In every single termination case, our clients stated that they did not understand their rights, or what they were consenting to when they opted not to challenge the appointment. No one reported being told they had a right to their own attorney. No one knew what less restrictive alternatives may have been available. No one knew how

[1] Although "guardianship" is used throughout this testimony, some states use the term "conservatorship" to refer to the process of appointing a surrogate decision-maker for an individual determined to "lack capacity" by a court.

160 Capitol Street, Suite 4, Augusta, ME 04330
207.626.2774 • 1.800.452.1948 • Fax: 207.621.1419 • drme.org

difficult it would be to terminate a guardianship once it was put into place.

Despite the frequency of guardianship and the severe limitations it places on the fundamental rights of people, there is not a lot of data on guardianship. This lack of data can serve as a barrier to true systemic reform, although the data that does exist indicates reform is needed. We know that people with developmental disabilities face a higher risk of being placed under guardianship.[2] We know that, nationally, about 28% of people who receive services for developmental disabilities are under full guardianship, and that in Maine this percentage skyrockets to **68%**.[3]

Looking solely at the law as written gives the impression that there are adequate protections in place to ensure that people are not placed under guardianship unnecessarily, that less restrictive alternatives are considered, and that people subject to guardianship have meaningful explanation of what guardianship is and of their right to be represented by their own attorneys. In 2019, Maine was the first state in the nation to replace its entire probate code with one based upon the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), which was a model law created after years of input from stakeholders to improve and reform guardianship. Among other things, the law emphasized less restrictive alternatives such as Supported Decision-Making, enshrined the right to an attorney for appointments, modifications, and terminations of guardianships, and requires court orders to explicitly justify full guardianship over limited. This was a huge achievement for Maine and for the rights of people with disabilities. However, as the American Bar Association notes: "The real progress in guardianship reform lies in turning good law into good practice."[4] This is where the rubber meets the road.

In practice, DRM attorneys continue to see significant deviation from legal requirements, both under the current law, and under the pre-2019 probate code. We see guardianships that were ordered based on incomplete court paperwork, or based upon the flimsiest of evaluations. Most guardianships are "agreed-upon," meaning the person coming under guardianship did not contest the guardianship in court. None of the clients with whom we have worked had attorneys in the initial matter, and based on the hundreds of guardianship records we have reviewed, most people don't. In Maine, a person for whom guardianship is being sought has the right to a court-appointed attorney, but only if specifically requested, if someone involved in the case recommends it, or if the court determines one is appropriate. Try to imagine being asked to consent to a court order that indefinitely deprives you of almost all of your fundamental rights without the advice of your own counsel. This would never be acceptable nor advisable, and we

---

[2] National Council on Disability, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*, https://ncd.gov/publications/2019/turning-rights-into-reality (last accessed March 23, 2023).

[3] National Core Indicators, Chart Generator 2017-18, National Association of State Directors of Developmental Disabilities Services and Human Services Research Institute, https://legacy.nationalcoreindicators.org/charts/2017-18/?i=137&st=ME (last accessed March 23, 2023).

[4] Elizabeth Moran, *2021 Guardianship Legislation: Highlights and Trends Effectuating Improved Processes and Outcomes in U.S. Guardianship Systems*, BIFOCAL, A Journal of the ABA Commission on Law and Aging, vol. 43, issue 4 (March-April 2022), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-43/bifocal-forty-three-four/2021-guardianship-trends/ (last accessed March 23, 2023).

would be hard-pressed to imagine a case in which it would not be appropriate for the Respondent to have their own legal counsel. Yet, this is the rule rather than the exception when the litigant has a disability or an age-related illness. There are many possible explanations for this, including the shortage of experienced and willing attorneys to take these cases, but we suspect there is a deeper reason. We have seen so many guardian ad litem and visitor reports opining that the person should not have an attorney because they are too incapacitated to work with one. In this view, there is no "point" to assigning an attorney to, at the very least, ensure the person is understanding their rights and what they are being asked to give up. Note the paradox in this kind of thinking—we are forgoing the right of counsel to a person by assuming incapacity, while at the same time accepting they have capacity to consent to such a restriction on their own. When this happens, incapacity is already being presumed, in direct contravention of the law.

Another repeated reason we see for the lack of counsel is to avoid making the process too "adversarial." This often occurs when well-meaning parents are seeking guardianship of children with disabilities as they reach the age of majority. All too often, schools and service providers for students with disabilities have drummed it into both parents and students that guardianship is an inevitability that should not be questioned. Meaningful discussion of less restrictive alternatives is lacking, if it exists at all. In this context, it is no surprise when a family, or a student, is discouraged from challenging this "inevitability," or even from asking questions about its implications. The idea that the young adult would request their own attorney to help protect their interests and understand the consequences of guardianship is unimaginable. In fact, many young adults are discouraged from attending the final hearing for fear it would be overwhelming. Discussion of reasonable accommodations that might mitigate these concerns is nonexistent. A recent case of ours involved an individual who was lacking physical vocals cords and could not speak (yet could communicate in other ways). A guardianship had been ordered long before DRM's involvement, but court records showed the visitor's report opined that the individual could not attend the court hearing because he could not speak. There was no discussion of accommodating the individual in any way, such are allowing him to communicate via writing or with a communication device.

Many argue that individuals do not need attorneys in all guardianship cases by claiming a visitor is always appointed to protect the rights of the person. A court-appointed visitor has a specific role, but it is not to protect the rights of the person. The visitor's role is to investigate and report to the court their own opinion on the individual's capacity. This role can be in direct contravention to protecting individual rights, nor do visitors necessarily know the law to be able to understand the due process that might be lacking. In Maine, there is no required training for visitors. Court-appointed visitors are fallible humans, and they can be influenced by the same ableist misconceptions about disability that influence our culture at large. The example noted above is not the only time DRM attorneys have read reports in which expressive communication difficulties have led to fundamental conclusions about capacity.[5] In one case, a person with an unusual speech pattern contacted DRM seeking assistance with obtaining an attorney to challenge a pending guardianship. Upon reading the visitor's report, the DRM attorney noted the visitor met very briefly with the client, did not explicitly ask him if he agreed to a guardianship

[5] This is equally true for physician/psychologist reports, which are often completed by a person's primary care doctor after a cursory meeting with the person. It is very rare for a primary care doctor to have specific training on assessing individuals with disabilities, yet, these reports are heavily relied upon by courts.

or that he had a right to an attorney, and concluded in his court report that the individual had no capacity to work with an attorney and would need a guardian "for the rest of his life." Despite this seeming incapacity, the person was able to call DRM to request assistance, demonstrating that he was in fact able to express an opinion and to request an attorney. DRM was able to communicate this to the court and an attorney appointed to him, but the real question is why the visitor was not able to get this information. This is but one example to demonstrate that the concept of the court-appointed visitor protecting the rights of people subject to guardianship is a fallacy.

The system as it functions now is rife with other examples of systemic barriers and lack of due process for individuals subject to guardianship. Courts will incorrectly advise people that it will cost them hundreds of dollars (money they don't have or don't have access to) in court fees to challenge their guardianships. Courts will decline to accept valid requests for termination or modification of guardianships by insisting the person also have medical documentation to support the termination. This is essentially asking the individual to prove their case to get inside the courthouse door. And because people under guardianship almost never have the authority to make medical decisions or consent to medical services, they are being requested to provide documentation that they are legally unable to obtain (or dependent upon their guardian, the adverse party, to obtain). An attorney is needed to properly advise an individual to challenge incorrect assertions by courts, and to help the individual develop their case. Even though Maine law requires the court set a hearing and appoint an attorney for anyone seeking to modify or terminate a guardianship, this very rarely happens. DRM attorneys have faced many of these systemic barriers when directly representing clients in which a termination is agreed upon by everyone, including the guardian. Even when there is full agreement that termination is appropriate and the person has experienced legal representation, the process can take many months and can be confusing to even the most seasoned attorney. Navigating the system without counsel is nearly impossible.

This is not to suggest that the system is full of bad actors. In fact, there is almost no one involved in these cases who is intentionally trying to deprive individuals of civil rights and due process. The issues are the consequence of a plethora of problems: lack of funding for both court and attorneys, overwhelmed court systems (probate courts in Maine are part-time courts), lack of training on guardianship law and reasonable accommodations for both courts and attorneys, lack of knowledge and creative thinking surrounding alternatives to guardianship, and fundamental misconceptions about disability.

There is not one solution to the many problems outlined above. A multi-pronged approach is required. First and foremost, the solution requires a light to be shined on the problem. For this, we thank you for holding these hearings and for seeking this input. For too long, the rights of people with disabilities and others under guardianship have been ignored and discounted. Recognizing the problem exists at all is crucial to the remedy.

In our view, there is one thing that would make the most difference to improving this system, and that is for every people subject to guardianship (or at risk of appointment) to have an attorney. Guardianship cases involve the loss of such fundamental rights, they can legitimately be compared to the rights at stake in criminal prosecutions: guardianship involves the loss of the right to make medical, financial, educational, and housing decisions. It implicates decisions

about marriage and voting. It implicates decisions about who people associate with. The best way to ensure that the law is followed and that a person's individual rights are protected is to ensure that every person for whom guardianship is sought has their own zealous advocate. This does not mean every guardianship case will be adversarial. Attorneys would be beholden to what their clients expressed interests are. There will be many cases in which a person may agree to a guardianship. Even in those cases, a person needs to be made aware of the implications in order to make an informed decision.

There will also need to be training for attorneys to represent clients in these cases. In 2022, Disability Rights Maine created and presented a half-day legal training for attorneys and judges on termination cases. The training included a panel of self-advocates (individuals with disabilities who had lived experience with guardianship) to help educate attorneys on implicit bias and ableism. The training was intended to increase expertise and interest in such cases, and the feedback was very positive.

Another aspect of this is to better educate students and families when they are young in order to disrupt the pipeline to guardianship. The message should never be that guardianship is simply a part of life for students with disabilities. Families should be taught about less-restrictive alternatives such as Supported Decision-Making, informational releases, Powers of Attorney, etc. so that they understand that guardianship is a last and extreme resort not to be taken lightly. DRM is currently working to encourage Maine's Department of Education to disseminate language and materials for students approaching the age of majority on transfer of rights to ensure that the notice required under the IDEA does not push families to seek guardianship without understanding all the more appropriate alternatives.

Protection and Advocacy agencies are uniquely suited to do this work, and this is a resource that should be utilized and funded. P&As have decades of experience as independent entities and exist solely to advance the rights of individuals with disabilities. They have an incredible amount of experience working with individuals subject to guardianship, and come with a wealth of experience on the issues inherent in guardianship. Adequately funding work surrounding guardianship reform would allow other P&As to utilize some of the efforts that DRM has undertaken, and to take reform even further. P&As should be funded to provide direct representation to individuals with disabilities, training and technical assistance to attorneys, and to engage in systemic efforts toward fixing the broken system of adult guardianship/ conservatorship.

The best way to convey how important this issue is, is to lift up the voices of those with lived experience. Please accept the following statements from former clients of DRM who have successfully terminated guardianships. The cases highlight the crucial role that legal counsel play in safeguarding the rights of individuals subject to guardianship. Thank you for the opportunity to provide these comments.

Sincerely,

Lauren Wille
Managing Attorney
Disability Rights Maine

Testimony of [redacted]

The first time I was ever told about adult guardianship was by a staff member in my high school when I was 17. The staff person recommended that my mother start looking in to obtaining guardianship over me when came of age due to my developmental disability and microcephaly diagnosis. My case manager at the time told my mother that obtaining guardianship was the only way she could continue to help me make medical decisions and speak with my doctors on my behalf. There was no mention of less restrictive alternatives to guardianship, such as Supported Decision Making or even a medical power of attorney arrangement. That same case manager even said that I would likely never be able to live independently. When it came time for the guardianship appointment hearing, not only was I not informed that I could object to the guardianship, but my mother and team prevented me from even attending the hearing out of concern that I would be "too overwhelmed". In 2011, at the hearing that I was not allowed to attend, nor had legal representation representing my interests, I was placed under adult guardianship.

While under guardianship, I enrolled myself in the University of Maine's Onward Program and graduated with my degree in journalism. It was around this time that I started to feel that my guardianship situation was not right. I had concerns that my guardian was no longer doing the right things, and that I was capable of making my own decisions. In 2015, I initiated the process to change my guardianship and was appointed an attorney by the court. My attorney filed a petition to remove my mother as guardian and asked for a successor guardian to be appointed. A hearing was held in June of 2015 and the court suspended my guardianship finding that my mother, as guardian, acted without authority by holding my Social Security Income and other belongings against my wishes. The Court went on to order my counsel at the time to obtain an updated Physician's/ Psychologist's Report on my behalf to be able to consider termination. However, that is where that processed stopped. The court did not appoint a successor guardian, nor did my appointed counsel work to obtain the updated report, and as a result I was stuck under a "suspended" guardianship for over 5 years. In 2021, I reached out to Disability Rights Maine seeking assistance with finally terminated my guardianship. At that point, I was still living independently, managing my own finances, and working as an administrative specialist for the Center for Community Inclusion and Disability Studies at the University of Maine. Even though I had been acting without a guardian for several years, everyone was in agreement that the guardianship should be fully terminated, and I had proper legal representation from Disability Rights Maine, it still took almost 9 months for the case to make its way through the probate court and for the guardianship to be officially terminated.

Being under guardianship was extremely difficult; it took away my independence and negatively impacted my relationship with my mother. My life without guardianship is much improved, as not only do I live in better housing and have a better relationship with my mother, but I successfully live alone in my own apartment. I was happy to not have my growth limited by individuals such as my guardian or my former case manager who said I would never live independently. My experience with guardianship has taught me how important it is for individuals to be educated on their rights around guardianship, including their right to attend their own hearings and be represented by council who is knowledgeable about adult guardianship.

Testimony of [redacted]

My name is [redacted] I am 36 years old and have an intellectual disability. For the vast majority of my life, I lived with both of my parents in our family home. They were both supportive of me and assisted me when I needed help. They also became my powers of attorney to be able to provide me additional support when needed. In 2021, my father passed away, and I continued to live with my mother. In August of 2022, my mother passed away, leaving my two siblings and I to handle the estate matters. However, I quickly realized that the support and understanding I received from my parents would not be continued by my siblings.

On October 18th of 2022, my siblings went to probate court and petitioned for emergency guardianship and the appointment of guardianship over me. A hearing was held that same day and I was placed under emergency guardianship. The major issue being I was unaware that any of this was taking place. I was not notified that my siblings had filed a petition for emergency guardianship, I was not aware a hearing was taking place, and therefore I was given no option to even attend the hearing or find my own legal counsel. After they returned from court, my siblings notified me that they had been granted emergency guardianship over me and that they had made plans for my brother and his family to move in to my parent's house with me and I had no choice in the matter. I was extremely against being placed under guardianship and being forced to live with my brother and his family against my wishes.

In the following days I reached out to my natural supports for help. I had several relatives and family friends on my side who helped me reach Adult Protective Services who completed a guardianship study on my behalf. Adult Protective Services found that I did not need a guardian and assisted me and my natural supports to contact Disability Rights Maine. Disability Rights Maine immediately took on my case and filed an objection to the emergency guardianship on my behalf. Based on the probate rules, a hearing was required to be held within 14 days of the appointment of the emergency guardianship. The day of the hearing, I was represented by my attorney from Disability Rights Maine and had the joint support of my relatives and family friends, along with a representative from Adult Protective Services in attendance and ready to provide testimony on my behalf. After my attorney presented our case, and hearing the little evidence from my siblings in support of the guardianship, the judge terminated my emergency guardianship. In the following days, my siblings withdrew their remaining petition for the appointment of guardianship over me and for the first time in weeks I felt like my independence and personhood were safe from interference.

In reflecting on these events, it scares me just how easily my siblings were able to get emergency guardianship over me without my knowledge or participation. It made me question who else this has happened to, and if those people weren't fortunate to have the same level of support as I did, are they still under guardianship? I question whether or not I'd still be under guardianship if I didn't have my natural supports in place who were able to assist me in connecting with Adult Protective Services and Disability Rights Maine. My experience showed me just how important it is for a person subject to the appointment of guardianship to have access to a protection and advocacy agency who is able to immediately step in and help.

Testimony of [redacted]

I was 18 when I started talking to my parents about guardianship. We decided that the best option for me was for my parents to be my guardians. At the time, I was in high school. I wasn't ready to be my own guardian. So my parents and I decided that it would be best that they became my guardians. They always told me that when I was ready I could take back my guardianship of myself. As they were my guardian, they never kept me out of any decision making for me.

They continued to be my guardians until November of 2022. We started talking about me being my own guardian about 10 months before. It was a mutual agreement. When we decided that I should be my own guardian, we then talked with Disability Rights Maine. As we got help from DRM, there was still some information that I did not know. The DRM advocate that we were working with helped review the paperwork. I actually ended up having to fill out paperwork twice instead of just once.

I did try to fill out a form that was supposed to make it so that I would not pay any of the fees to the court for filing the paperwork and for paying the appointed visitor. However, the form and court clerk stated that I had to put down that my parents and I were one household. However, by that point, I was actually in my own apartment and not living with my parents. Therefore, for the court to see us as one household was not actually the case. Because of this, my fees were not waived.

When I filed my guardianship paperwork I still had to pay out of pocket for the court fees. I paid over $300 to terminate my guardianship. I did not know that the fees could still be waived if I had an attorney. I didn't find that out until after my guardianship was terminated. I am grateful to DRM and Lauren Wille for the support to help me reach my goals.

ELDERLY LIVES MATTER USA

Attn: US Senate Committee On Aging
Senator Bob Casey

From: Elderly Lives Matter USA

Dear Senator Casey,

We are Elderly Lives Matter USA, we are a group of Nationwide Activists dedicated to supporting and preserving the rights of the Elderly in America. We seek to expose and deliver solutions to the intensely dark details of Elder Abuse in our country and to obtain justice for the severe stripping of the Human and Civil Rights of the Elderly, in and out of the legal system. Our group consists of Founders of Elder Rights Groups and Dependent Adult Groups, bold enough to stand up to the Judicial system for the egregious judicial misconduct committed against our citizens and loved ones and we bring an additional approximate 5,700 victims along with us. Although we all come from varied backgrounds, ethnicities, ages, genders and preferences we and especially our elderly have all suffered the exact same fate equalizing the saddening injustices placed upon millions of Aging Americans.

Our personal stories of abusive Conservatorships and Guardianship stories are shocking but revealing including abusive videos, photos, audios, falsified police reports, bribery, intimidation, retaliation, hidden depositions, isolation, physical violence which many times resulted / results in death of our elderly loved ones, police brutality inflicted upon those who stand up for the Elderly and Dependent Adults, State Bar violations and denial of evidence in every state, along with detailed court documents detailing violations of Elder Human and Civil Rights. We have not only lost our dear Elderly loved ones unethically to unnecessary and early deaths, many of the victims in our group have lost homes, their life savings, their jobs, their relationships, some have been jailed to "keep quiet" and many have lost their reputations standing up for Justice, as a result of being retaliated against by the probate court, court appointed lawyers, "bought" lawyers representing us who have turned on us, gang-stalked by groups of people working to stop us from speaking out, libeled and defamed, again for standing up for Justice.

We as a group have been granted meetings with US Congressman Adam Schiff's office (CA), to hopefully come to a true resolution via a proposed Federal Law to wholly protect the Elderly in America. Congressman Schiff and his staff have shown us great kindness and understanding in regards to this very serious and ongoing issue. Attached below is a link to an approx. 60 minute Zoom Call meeting that we held with the Legislative Director for Congressman Schiff on January 31, 2023, we are scheduled for another Zoom Call with Mr. Schiff's office next month, April 2023. Here you will hear briefly but in depth stories of the viciousness of the Probate Court nationwide towards our beloved Elderly and Dependent Adults in regards to Conservatorships and Guardianships.

ZOOM CALL LINK, January 31, 2023 – with US Congressman Adam Schiff's Office
https://www.dropbox.com/s/k4wnxolw50gab3q/ElderlyLivesMatterUSA2023videoZoomMar2023.mp4?dl=0

OUR PERSONAL STORIES:
THE ELDERLY VICTIM [redacted] Woodland Hills, CA & New Mexico. Died in a Conservatorship. Endured physical, verbal, psychological abuse, isolation, theft and the sale of the only property that she wished to live and die in, the removal of her from her home-estate, against her will,

denied her right to go to court to stand up for her rights and for her final wishes. Lost approximately 50 pounds after being placed into a Conservatorship, found within court documentation to only be fed junk food instead of the healthy food that she was used to, photo of her missing a tooth while under a conservatorship. Misdiagnosed with Severe Dementia in 2013, escaped a rest home she was forced into in 2013, went on to film TV, Film and get nominated for her performances. Fleeced by an ex-talent manager and eventually by her own son whom she was afraid was going to sell her home and throw her into a rest home, in which with the help of the probate Court and Judge [redacted] he was actually successful in doing so. [redacted] eventually began experiencing memory loss but it was not severe, she was able to operate happily and fully with assistance before Conservatorship. Given she developed this disability, the rights of the disabled, her rights, were still ignored as she attempted to plan via video what she wanted in her final years in 2013. Extreme abuse audios, videos, deposition of a whistleblower, documentation bribery attempts, falsified police report, and court records available.

THE ACTIVIST, "LIKE A DAUGHTER" [redacted] **rallies).** [redacted] has called [redacted] like a daughter" to her (on video publicly), [redacted] has called [redacted] like a 2nd Mother. [redacted] asked [redacted] to stand up for her rights if her son or anyone tried to bring harm to her or place her in a rest home again which was once done by her son in 2013. [redacted] kept this promise to [redacted] and stood up for [redacted] Human and Civil rights for approximately 4 years in court and fought fervently and publicly for [redacted] freedom, and for her Human and Civil Rights. In doing so [redacted] has been libeled, slandered, retaliated against and defamed by [redacted]'s family and physically followed and stalked by one of [redacted] families' team members. [redacted] son's attorney, promised to "smear [redacted] in the media" if she did not "shut up" about [redacted] wishes. They have worked to bury the Human and Civil Rights Work online that [redacted] has done for [redacted] thus hiding the abuse and egregious judicial acts committed upon [redacted].

THE ELDERLY VICTIM - [redacted] ([redacted] Los Angeles, CA. Died in a Conservatorship. Died in a locked nursing home alone against her wishes for over a decade due to a fraudulent Conservatorship. Forced into conservatorship via an entirely perjured and fraudulent petition, severely abused, isolated, estate stolen, she died alone. [redacted] was Not mentally ill, she was organized, did her own laundry, went to her own medical appointments, but was constantly lied to by her Conservator about what she was unable to, she was heavily drugged against her wishes by her Conservator the entire time via lies and fabricated false events to her physicians. In fact, the conservator was caught writing a letter for [redacted] psychiatrist to sign which was totally false but could have been used in court by the conservator to support her lies. The Court was provided cashed checks for two bank accounts totaling over $200K which the conservator never reported to the court and kept for herself. Even with evidence of fraud upon the court, perjury, theft and a 2005 LAPD report stating the conservator had burglarized [redacted] home, the court did nothing to protect Gertrude. THE ACTIVIST, HER SON - [redacted], (Creator of [redacted] and [redacted] Tech and Artist, Activist) An ex-Police Officer, [redacted] was libeled, defamed, slandered and ignored for standing up in court for fighting for the Human and Civil Rights of his mother. He was removed from his home in the middle of the night by the Pasadena police department after he exposed what was being done to his mother on the internet and thrown into Jail for 3 days, later told he was only detained. He was released with only a T-shirt, jeans and a pair of flip-flops. Although deeply hurt by the court and by his own colleagues within the police force, he decided to continue to fight even harder. [redacted] created a website

to inform individuals of the Judges who have several victims and who sadly do not follow the Law, so that other Probate Victims will know that they are not alone and so that many of us can unite.

THE ELDERLY VICTIM - [redacted]. Los Angeles, CA. **Died in a Conservatorship.** Heavily abused, over medicated and isolated, moved from hospital to hospital so his adult children could not locate and visit him in his final days. When [redacted] died his youngest daughter, [redacted] and her siblings were not allowed to see their father. Their stepmother who forced [redacted] into a Conservatorship took his body overseas and had [redacted] buried in an unknown/undisclosed location. His children did not know where their father was buried for several years until a fan of [redacted] located his grave and notified [redacted] as to where his grave was. To this day instead of giving precious family items to the family, [redacted]'s widowed wife has auctioned off what may mean nothing to her but would mean the world to [redacted] and her siblings.

THE ACTIVIST, HIS DAUGHTER - [redacted] **(Founder of** [redacted] **Radio Show Host, Actress, Speaker, Producer, Entrepreneur, Activist)** [redacted] fought for her Father's life as he was egregiously isolated from seeing his children whom he loved during the final hours of his life. [redacted] fought in court to save her father and afford him his Human and Civil Rights. Her father [redacted] died in a Conservatorship, he suffered a difficult death as he asked for his children and was denied that right and desire by his wife. [redacted] has been libeled, slandered, defamed and violently stalked by those who did not want her to stand up for the love she had for her father and for his rights which were his to have. In order to fight back and to help others experiencing Elder Abuse, [redacted] wrote into Law and established a Visitation Law in approximately 20 states so others would not have to be denied the right to visit their parents or loved ones who are in a Conservatorship.

THE ELDERLY VICTIM - [redacted] **Westchester, PA. Died in a Conservatorship.** Forced into conservatorship, beat, starved, raped by her own son in a rest home, died. Her family home estate and land was stolen through the courts by a home-flipper who has heavy known associations with the Courts, Judges and the authorities, her body was thrown into an unmarked grave naked, ordered by the Judge, court documentation is provided in regards to this extreme egregious act by the Judge [redacted]. Her final resting place was eventually found by her daughter who found the tilled soil in the graveyard and discovered it was in actuality her mother.

THE ACTIVIST, HER DAUGHTER - [redacted] **Activist).** [redacted] as a Caucasian Woman has been beaten up by the police for standing up for the rights of her mother. A Judge told her if she didn't stop fighting for her mother after her death that she, the Judge, would throw [redacted] mother's body, [redacted] into a wood box, then into a grave with just a sheet to cover her Mothers' body, and the Judge in actuality did this. Mary was lucky to find out where her mother was buried. Since her mother's death [redacted] is ignored by the local police, they have tried to create a criminal case against [redacted] for being a "nuisance" and demanding justice for her mother. She has been deemed a Vexatious Litigant. She is also constantly harassed by her next door neighbor, the house flipper who literally stole her mothers' home through the court, she is harassed by her neighbor filming her, cutting her phone and power wires and building a fence around "her" entire property. She has had to watch as this neighbor has thrown away all of her family's and mother's heirlooms from this illegal home sale. [redacted] fears for her life and well-being on a daily and continual basis. The local authorities refuse to assist her. [redacted] has video of the police refusing to help her even though her "powerful in the community" neighbor cut her power lines.

THE DEPENDENT ADULT VICTIM - [redacted] **New Jersey. Forced into a Guardianship. Alive.** Isolated not allowed to see his young son of 7 years old. Five years have passed and [redacted] Guardian, his sister, refuses to allow his son, her nephew, to see his father [redacted] 7

year old son is acutely aware of his fathers' illness. He sadly but expertly knows the cruelty of the Guardianship that his father is presently in, he misses his father terribly but remains as strong as his young soul can be. Videos and Court Records available.

THE ACTIVIST, HIS GIRLFRIEND OF 20 YEARS & MOTHER OF HIS YOUNGEST CHILD - [redacted] Brings up her child without his father, watches daily as her son processes his life without his Dad. Friends have turned away from her, she has been libeled, slandered and defamed for standing up for the rights of her son's Father and for the love of her life Yusef Davis. [redacted] has contacted her local lawmakers to no avail and no help in reunited her son with his father and reuniting herself with the love of her life. She currently filed a 90 page petition full of factual evidence in hopes that Yusef will be released from his unethical and isolating Guardianship.

THE ELDERLY VICTIM - [redacted] **Died in a Conservatorship. Los Angeles, CA.** forced into a conservatorship, abused, commercial building properties stolen by the Conservator-a family member, at the allowance of the probate court, and sold, money, trusts and investments stolen. [redacted] Human and Civil Rights were egregiously stripped from her.

THE ACTIVIST, HER SON - [redacted] **(Founder of** [redacted] **Psychologist, Activist)** A Hard-Working Man, A Psychologist and Social Worker not only lost his beloved Mother to Conservatorship Abuse, he also lost a large portion of his Inheritance bequeathed to him by his parents. [redacted] has been libeled, slandered, defamed and has almost been thrown in jail several times for standing up in Court and for speaking the Truth against the Judges who deeply hurt him and his family. [redacted] ontinued his fight and is responsible for two Probate Judges being removed from their Seat in Los Angeles at the Stanley Mosk Courthouse. He also runs a website that reveals the misdeeds of the Stanley Mosk Courthouse in Los Angeles which is the same Courthouse in which Britney Spears suffered. Currently, a Stanley Mosk Courthouse Judge, Judge [redacted] has named [redacted] a Vexatious Litigant and is working to prevent [redacted] from ever filing a petition again in the state of California which reduces his civil rights to that of a Black African American Slave with no right to seek Justice in any court in California.

THE ELDERLY VICTIM - [redacted] **Sacramento, CA. Died in a Conservatorship.** Forced into a conservatorship, thrown into a rest home by the conservator, severely abused, visually lost weight and teeth while in rest home initially. Was malnourished in the rest home, acquired a blockage in her colon due to not being fed correctly, forced to have preventable surgery to remove blockage, accuired breathing issues due surgery, died after surgery in the rest home. Videos and Court Records Available.

THE ACTIVIST, HER NIECE - [redacted] **(Founder of** [redacted] **Former Probation Officer)** [redacted] has been libeled, slandered, defamed, severely retaliated against by the Conservator and lawyers involved in the case and has had to spend a significant amount of money standing up for Justice for her Aunt and for herself. Due to her Activism she still has ongoing legal battles and she is constantly harassed by those who want her silenced for standing up for her Aunt's Elderly Rights.

THE VICTIM "DEEMED" INCAPACITATED DEPENDENT ADULT – [redacted] **(Caucasian Woman) CA. Alive. Worldwide Musical Icon. Singer, Songwriter, Performer, Actress.** [redacted] was wrongfully diagnosed with dementia at a very young age and unable to manage her life and her own affairs. Her family who had a substantial financial interest in controlling [redacted] personal finances for their own use, medicated her against her will utilizing Lithium and possibly other drugs. She was not allowed to marry a man of her choice; her children were stripped from her to be raised solely by her ex-husband, she had an IUD (Intra-Uterine Device) forcibly placed into her body against her will, she had no privacy when she showered as her father ordered bodyguards to observe while cleansing herself, she was not paid while

her Father, Mother, Sister and Management Team greatly profited off of her earnings. And while wrongfully "deemed" incapacitated she was forced to work overtime preparing, rehearsing and performing in high grossing entertainment shows/concerts. She essentially was "good enough" to perform and earn but wrongfully "deemed" by the court to not be good enough to have control over her own life, health or finances. She was finally freed from her Conservatorship after 13 years of suffering. [redacted] is one of the rare individuals who became free out of a Conservatorship but she and her legal team still fight for true Justice for what happened to her through the CA Stanley Mosk Courthouse under Judge [redacted] who allowed many of the atrocities to happen in [redacted] life.

THE ACTIVISTS – [redacted] (Founders of [redacted] Professionals in Marketing, Healthcare and Corporate Entertainment, Activists) The original Founders of the [redacted] Movement, these individuals passionately fought for the Human and Civil Rights of [redacted]. They obtained court records, rallied, connected with additional [redacted] Activists and Advocates around the world in order to free [redacted] from her Conservatorship as well as to bring awareness of the judicial misconduct of Conservatorships as a whole. They stood alone for years and persisted for [redacted] rights. In doing so they were eventually egregiously harassed by [redacted] family, her management team – Tristar Entertainment and undercover security who create docket's on [redacted] members. They suffered libel, defamation and slander and still persist to stand up for the rights of the Dependent Adults and well as the Elderly. They also were successful in writing the CA Supported Decision Making Law SB-1663, one of the first laws of its' kind.

THE ACTIVISTS – [redacted] (Founder of The [redacted] Professional & Activist) Joao, a strong and original [redacted] worked for and passionately fought for the Human and Civil Rights of [redacted] and many others. [redacted] ensured that essential facts of [redacted] case and others were front and center online. [redacted] also worked fervently to maintain and assist those who were suffering in the Elder Abuse Community and Adult Dependent Community as a whole. As a solid Activist, he suffered libel, slander and defamation. He continues to fight for Justice for [redacted]

EXAMPLES OF SOLUTIONS

1. Abolish Conservatorships and Guardianships nationwide and replace these ineffective, harmful and deathly court ordered relationships with a wholly effective Federal Law. (which would entail some particulars of the following)

2.Supported Decision Making for the Elderly, (with legally protected disabilities such as dementia, Alzheimers or decreased mental cognition), and Dependent Adults. Additionally, The Elderly, Dependent Adults and totally incapacitated Adults can only be ethically diagnosed with determined disability or complete incapacitation by a minimum of three (3) doctors who can attest ethically or legally under penalty of perjury that the individual cannot maintain an independent life without assistance.

3. No Judicial Immunity - Probate Judges who ignore / do not acknowledge pertinent evidence, who deny the Elderly or Dependent Adult from testifying in court upon their own behalf, who ignore prior attempts by the elderly to plan for their future in the manner of wills, trusts or viceos, who allow family members or others to physically harm, over-medicate, medicate against the elderly individuals' will currently or without prior consent, psychologically abuse, financially harm, rape, starve, thirst, remove from their homes, place in rest homes against their will, force the elderly or dependent adult to unusual punishment by denial of experiences, services, food, etc that they would normally be accustomed to, denial of water, any act/decision that the Judge may make that would be against the common rights of any individual should be absolutely punishable by loss of employment and loss of pensions. Additionally, in order to determine if the mentioned Judges have committed these egregious acts against the Elderly or Dependent Adult, ***they will be judged by an independent group of non-Judges or non-attorneys, thus an Independent Council of Individuals with knowledge of the law and ethics.*** Judges who commit Crimes against Humanity should not be able to judge their colleagues whom they fraternize with on a daily basis.

Senator Bob Casey, Chairman
The United States Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510-6050

Via email: guardianships@aging.senate.gov

March 22, 2013

Dear Senator Casey:

Thank you for taking the time to review harmful, often unwarranted "guardianships". As a Montgomery, PA resident, I was horrified to learn that we live in a hotbed of these overused and detrimental arrangements. My siblings and I were shocked and dismayed to experience our mother being handed over to a complete stranger who, for 16 months now, has devastated her life and ours.

It is absolutely essential that those of us whose lives have been so negatively and irreversibly impacted by these archaic ownerships, be given a voice at any and all hearings regarding such. Swift and extreme reform is needed to the existing system. Currently the judges, lawyers, area agencies on aging, and others who profit significantly from forced, stranger-controlled guardianships, guide the process and regulations. This only serves to strip our elders of their civil liberties, comfort, dignity and happiness.

A. **Some background on our case:** Pre-2021: Due to a botched cataract surgery in May 2015, Mom [redacted] lost her right eye. The lens in her left eye was placed incorrectly, so she is legally blind. From 5/31/2015 to 8/31/2016, [redacted] lived with her daughters. As she was suddenly forced to stop driving and tutoring, and was presented with a new set of challenges, we took her to a multitude of eye specialists as well as the dentist, podiatrist, and anywhere else she needed to go. We paid a friend to help with eye meds, companionship, and transport. Her older son is also unable to drive, so we took on Mom's role of driving him to HIS appointments. Mother and son disliked living apart, so we found a home with no stairs, where they could reunite. We sold our family home in August of 2016 and continued to provide support, taking much time from our jobs and life responsibilities. At [redacted]s adamant request, her younger daughter purchased a larger car to more easily transport everyone (this later becomes one of the focuses of the county attack).

Fast forward...

B. **The takeover of [redacted]'s life begins. Early August, 2021.** [redacted]'s son, asks a visiting doctor to request some transportation, housekeeping or other help. He recognizes that we are physically, emotionally and financially exhausted from assisting him and Mom for the last several years. We know services exist, but have not been successful in getting assistance. On **8/11/2021** the doctor contacts the county, and states on a phone call to [redacted]'s son, that she clearly indicated a "need", NOT neglect. **Also note that contact was due to a request within the family. What transpired after that, was exactly the opposite of help .**

8/13/2021 Adult "Protective" Services visits [redacted]s condo and as it is messy, they make wild assumptions and outright false statements. They get no litmus test for who Mom is, what she normally wears, how she eats, the fact that she has insisted on living with her son his entire life, that she's trusted him to pay bills, and that the majority of decisions were made well before her cognitive decline. A county "social worker" comes to allegedly discuss services. Nothing is offered, there is only questioning (In court on 11/30/2021, social worker states that son "turned down services". No record exists of services offered.

8/16/2021, 11:00 a.m. APS social worker contacts me. We speak at length and I state our appreciation of any type of assistance. She gives the impression she wants to help. She tells me they will do an "evaluation" the following Wednesday (I never see such), and may insist on allowing caretaking and cleaning services into the condo (we are OK with this – we want help.) I tell her we are hoping with help (we later find the Montgomery County Association for the Blind and other resources, but are refused the right to use them), we can keep up. Despite this long conversation, petitioner makes the blatantly false

statement "daughters were uninvolved and unforthcoming". Social worker repeats this outright falsehood in court on 11/30/2021.

8/18/2021 Older son checks himself and Mom into a hotel. Petition indicates this was done "with an agreement ", as if the county suggested it. Another untruth. We plan to keep Mom out of the process of cleaning and condo repairs. We make significant progress (noted in the petition but not respected in court.)

9/20/2021 An "expert", again part of the county system – no independent review – evaluates Mom with the clearly preconceived notions fed to him. For example, he states she is wearing a coat in summer. She refuses to take off outer-garments, being constantly cold. We have many pictures of her, heavily dressed while others are in shorts and sundresses. While we didn't dispute Mom's cognitive decline, nor her and our need for some help, the quest by the county to vilify our family and keep her in a situation less comforting and less safe for her, is clear from the outset.

10/19/2021 Court Appointed Attorney (CAA) is foisted on us (no input from us or Mom) as Mom's legal "counsel", presumably to give her a voice in court. However, she is a vicious, unempathetic woman who does not take Mom's wishes onto account - just another profiteer from the resulting ownership of Mom.

10/25/2021 Initial Petition. Everyone involved was selected **by the county.** No independent review of Mom's functionality, no explanation to Mom (except from us) regarding what any of this means. No interest by any parties, in hearing rebuttal to the petition, gathering medical records or bloodwork, no call to Mom's regular pharmacy, no review of our at-home care plan, no REQUIRED attempt to look at less restrictive alternatives, no interviews with friends, relatives, neighbors or doctors about Mom's ongoing care, her long-accepted living arrangements with her son, **nothing** except the COUNTY worker's **flawed** report. Clearly cut and paste from other petitions, this one goes as far as to assign us a fictitious sibling.

11/16/2021 8:30 a.m. Mom and I have an unpleasant and unproductive Zoom meeting with the CAA. She insults and accuses us, unwilling to discuss any background, history or family dynamics. She insists Mom MUST have a hot breakfast (we all got through school with honors and no hot breakfast. This is an irrational factor in determining if Mom is well fed). I show her that Mom can get around the clean condo and is wearing a coat because she WANTS to. CAA continues her unfounded accusations.

Note that during this entire process, including an "expert " to evaluate Mom at taxpayer expense, no one has noted that an emergency exists, requiring removal from the home or assignment of a "guardian ". This contributed to our absolute shock at her being abruptly taken with no notice, causing much trauma to her.

C. [redacted] is abruptly, traumatically extracted from her life. 11/30/2021; [redacted] daughters and their proposed guardian, attend "Orphan's" Court. We are given NO TIME to acquaint ourselves with, or background check, the insidious Court Appointed Guardian (CAG) thrust upon us in court. Just before assignment of the "guardian", Mom is asked by CAA: "How do you feel about where you live?". Mom replies, "OK." (a reasonable, inconclusive response.) No probing questions, no asking if we took her to appointments, if she felt well-treated, etc.

11/30/2021, approx 2 p.m. CAG is announced. She approaches me to ask for Mom's SSN (so she can take over the money), and informs us that "Manor Care has a bed". We ask for how long, truly thinking this is just respite care until things are figured out. She says, "I don't know". **She leaves the courthouse without as much as introducing herself to Mom.**

A review hearing is set for 6/7/2022. We spend the next three months scrambling every day to get someone to help us rectify the occurrences of this day, and expedite the review hearing.

County social workers force [redacted]'s daughters to walk her to a strange car, baffled and worried, as she cries, "Why did you lie to me? You promised not to put me away! Why don't you love me anymore?" County workers stare like statutes. CAG is nowhere to be seen at this traumatic moment where a "guardian" should

be comforting. We promise to come right over, and Mom is taken by the stranger, scared and confused. **She is forced into a facility with a serious and perpetual COVID outbreak, with no transition time.** We arrive at the facility; the CAG has not been there, assessed Mom's likes and dislikes, dietary requirements, or needs in general. We give Mom clothing and her favorite snacks, and sit with her while she cries and begs us to take her home. We console her, promising we will be there as often as we can.

[redacted]s worried older son calls the CAG, who says we need to be by the phone when she calls, as she does not leave voicemails or emails. This seems odd and suspicious to us. We start emailing daily anyway, for documentation purposes. We receive little to no response.

D.[redacted]s children create ongoing documentation of unhealthy, unhelpful, and dangerous conditions to which[redacted]has been subjected; retaliation leads to further isolation and extreme detriment to[redacted] Note that MANY instances occurred other than those listed. I focus here on the most critical of them.

12/1/2021- 1/4/2022 We document filthy conditions, talk to staff about clothes not being changed for ten days, email concerns about lack of accessible call button, the fact that staff didn't know Mom had a prosthetic eye, that unknown individuals who also sleep there are coming into her room and eating her food, that she is not receiving the supervision for which she was allegedly taken from us, and that she has perpetual scratches and black and blue marks. I film Mom's reaction to being in the facility; she clearly expresses dismay at being separated from us, and shock at us being accused of any neglect or wrongdoing.

12/14/21 CAA sends [redacted]'s older son a blatantly threatening email, demanding many financial documents in a very short time frame. If deadline is not met, CAA will drag this terrorized disabled individual, recently and abruptly separated from his mother after 59 years, into court. CAG tells such son she will oust him from the house. We meet the deadline, and request that CAA and CAG cease harassment of our brother.

1/5/2022 On a Zoom call falsely labeled as a Care Meeting, the CAG says we must CURB phone calls and visits! We are told, with no written notice and no rational justification, that we may only be at the facility when the social worker there, can watch us. All of us must be supervised. For two one-half hours per week. **Now there will be much less interaction for a sad, scared, lonely, confused woman who was just torn from her home and her disabled son. Our fears are confirmed, this is not about care at all.**

1/6/2022 – 2/14/2022 – We contact every conceivable agency, elected official, non-profit group and individual who can explain the benefit to Mom of our restricted visitations. We don't know who, but someone asked for the visitations to be lifted, and for our review hearing to be expedited (see notes below on 2/15/2022 and 3/8/2022).

1/6/2022 Our first supervised visit. Mom is crying and asking why we aren't coming more often. We ask that the social worker document that we are respecting the guidelines (which we were not given) so that we can have the restrictions lifted. It doesn't happen. There is a spelling bee on the activity calendar. We request that Mom please be taken to it, as she loves words and is now completely deprived of normal socialization and family interaction. It doesn't happen.

2/2/2022 and 2/6/2022–[redacted]**is prohibited** from attending her brother-in-law's (whom she had known for 68 years) funeral on 2/2, and his Shiva on 2/6, due to us being on unnecessary and extremely punitive restrictions, and not being allowed to drive her. The facility is asked to allow her to watch the funeral or communicate with her sister via Zoom, but does not do so. This adds to her confusion and isolation.

2/6/2022,possibly 2/7: Between our extremely restricted visits on 2/3/2022 and 2/8/2022, Mom's nose was significantly injured. Being prohibited from accessing actual records, we were simply told she was found bloody in someone else's bed. Nothing like this ever happened when she was at home.

2/10/2022[redacted]'s younger son asks the CAG why she has not acted upon any of our complaints. She says our emails are too frequent and lengthy. **Rather than focusing on the content and validity of the messages advocating for Mom's improved care, she focused on their length and frequency.** Throughout

weeks of severely curtailed visitation, there is NO response by the CAG. regarding Mom's actual quality of care. However, the CAG can, with no review or oversight, charge hours for whatever she claims she did.

2/11/2022 [redacted] reminds nursing staff and CAG of essential eye specialist appointment that Mom has on 2/28/2022. More than sufficient notice to arrange transport, which we are currently prohibited from doing. NO RESPONSE.

2/15/2022 We meet with CAG in Mom's room. Visitation restrictions are lifted (due to impending expedited hearing), but we are threatened that they can be imposed again at any time.

We also discussed Mom's food choices and how they were lacking at the facility. **We have been asserting the whole time, that Mom is not being fed better than she was before entering the facility.**

2/25/2022 I ask if transportation to 2/28/22 appointment has been arranged. It has not. I state that I will drive Mom, but am told I cannot - but that I can ride in the van with her OR MEET HER THERE (so if I didn't push this, a scared, confused, legally-blind woman would be stuck alone in a van, again with a strange man).

3/8/2022 In court, our lawyer asks the CAG how she has acted on our concerns regarding Mom's care. Her response is, "I've gotten copies of the concern forms from the facility, and I've gotten lots of emails from the family". This is an avoidance technique that makes her appear involved, but in no way addresses anything she has actually done. The judge asks the CAG if she wants to remain CAG. We are there proving that we have continued to be the actual responsible parties, yet the CAG makes the decision. On this date we did, however, get a court order stating no future restriction should be placed on visitation without a court review.

Mom sustained a minimum FOUR injuries OF WHICH WE WERE AWARE, from 11/30/2022 to 3/8/2022. There could be more, as we were severely restricted for a number of weeks and found things like her black and blue face and severely bruised left forearm by accident. By design, we were not to be informed of any incidents. She didn't suffer four injuries in 10 years, at home. Though albeit less than perfect, she was in a comfortable space with someone who truly was in 24/7 attendance with her. Someone who truly cared, who accompanied her everywhere, and who talked to her for hours every day.

3/16/2022 Mom falls and experiences a severely broken wrist, which was wrapped in an ace bandage and not properly casted until I took her to the orthopedic surgeon a few days later. We were not yet allowed to make medical decisions.

3/19/2022 Mom receives a head injury. Blood is everywhere, she has a broken wrist, and she is not taken to the ER. We were not yet allowed to make medical decisions. **We are still striving to find anything beneficial to Mom, about this arrangement.**

5/1/2022 A facility nurse told [redacted]'s younger son that Mom was difficult. She claimed that if Mom, dementia or not, states she doesn't want to be changed, then they "have to respect those wishes, otherwise it's deemed senior abuse/" This is quite hypocritical, given that when Mom OPENLY VOICED HER MISERY OVER BEING REMOVED FROM HER FAMILY ON NOV. 30. NO ONE RESPECTED HER WISHES THEN!!!

5/1/2022 We are informed that snacks should be limited **because Mom is diabetic!!** Since this is news to us, we ask the CAG how this was determined. We are to now be notified of significant medical changes. She also is not being treated for diabetes. NO RESPONSE. Classic example of dereliction of duties.

Because of the 3/8/2022 court order, we are at least able to take Mom out to family gatherings and such. On **9/20/2022, after thousands of hours of work and thousands of dollars in legal fees,** we win joint guardianship of the person. The uninvolved strangers still control Mom's money.

Winter into spring of 2022/2023: Civil suits against [redacted] mount, from credit companies who, since the takeover, receive no payments. Debts increase due to late fees and extra interest. The CAA has stated, "there isn't enough money to pay the cards" but puts in appearances in various counties so that she can "defend" [redacted] against legitimate charges made to such cards, by both [redacted] and her long-term authorized users. Meanwhile, CAA racks up charges payable to HERSELF, for such "defense", at $300 per hour! County charges (at taxpayer expense) for sheriffs and more court dates, pile up.

Part of the alleged reason for placing Mom's life under the control of an uninvolved stranger, was that her finances were allegedly not being handled properly. The CAA claimed to know Mom's state of mind in 2016, five years before they met. MOM'S FINANCIAL SITUATION HAS NOT IMPROVED SINCE FORCED-ENTRY INTO THE FACILITY. MANY OF HER BILLS HAVE BEEN UNPAID, HER HOUSE WOULD BE IN FORECLOSURE HAD WE NOT BEEN KEEPING UP WITH THE MORTGAGE, HER 2021 TAXES WERE NOT FILED TIMELY EVEN THOUGH SHE IS TYPICALLY DUE A SUBSTANTIAL REFUND, AND HER CHILDREN ARE PAYING HER COPAYS FOR DOCTOR AND DENTAL VISITS.

E. Six key points for reform

1. **Presumption of innocence. This is the cornerstone of our justice system, but was not afforded to us.** The county petition for guardianship was replete with rash judgments, exaggerations and outright falsehoods. All of these assumptions led to Mom abruptly being seized, which has completely and negatively impacted the last 16 months of her life.
2. **Prohibition on seizing ANYONE without warning; in this case a blind grandmother with memory problems and a panic disorder. This absolutely must change. Though it may be Legal - though I do believe it violates civil rights – it's emotionally criminal.** There must be practices put into place for proper explanation and transition. Barring proven abuse by family members, they should be involved in the process. Everyone being forced into guardianship, is at some level elderly, disabled or both. They deserve better.
3. **No Ownership** of a human being by a stranger, to the "protected" person's detriment. There must be more oversight, and a remedy to remove the guardian. The CAG now has **complete** control over the other human being. "Guardianship" fast tracks entry into a facility, and adds another layer to nursing home neglect. The guardian and the facility protect each other, not the patient. The staff is excused as being "overwhelmed". They get a pass for everything, even though they are allegedly paid professionals. (We got a pass for nothing.). The "guardian", who is not medically trained, can refuse emergency treatment or other valid medical interventions.
4. **Accountability for ongoing "care", or lack thereof .** There's no one to whom to report the guardian for lack of action, and whenever we complain to the facility they just report to her. Again, a whitewashing to benefit the facility and the "Guardian", not protect the allegedly protected person. If you're going to force someone into a guardianship and place a non-family member in charge of their life, there must be a mechanism for emergency relief or some other way to assess and correct the situation without waiting for months to go back to court. PERHAPS SOMEONE WHO CANNOT RESPOND TO FAMILY CONCERNS, SHOULD NOT ALLEGEDLY ATTEMPT TO MANAGE 70 PEOPLE AT ONCE. If she can't fulfill her duties, she should be removed. As it stands, there is a complete lack of remedy for reversing a "guardianship" even when such egregious harm has resulted to a person's mental and physical state.
5. **Enforced review of less restrictive options, as required by state law.** We were not afforded this opportunity, This is required by PA state law. Working in conjunction with Community Connections, Montgomery County Association for the Blind, and any other county or **non-county** resources, could easily have resulted in a much better outcome for Mom's mental and physical health. This has implications for both guardianship and nursing home care.
6. **Legal representation that truly represents.** A court-appointed insider, in place to get people into the system, is not sufficient to consider the "guarded" person's needs and wishes. There should also be opportunity to remove a CAA when it is clear they are not performing.

Thank you again for your willingness to review this well-intended yet poorly regulated system, and involving the victims so that there can be meaningful reform. I look forward to officially testifying.

Sincerely,





March 23, 2023

To: U.S. Senate Special Committee on Aging

In response to the Committee's call for information on guardianship and less restrictive options, this statement is in support of an *ongoing federal guardianship court improvement program*. My support is based on many years of work in guardianship law and policy, much of it at the American Bar Association Commission on Law and Aging before I retired in 2020. This statement represents my own views and not necessarily those of the ABA.[1]

In the past four decades guardianship laws have changed to improve procedural due process protections in adult guardianship, to emphasize limited orders, and to further the use of alternative decision-making arrangements.[2] But implementation in practice has lagged. The Senate Committee in 2018 found "persistent and widespread challenges" in adult guardianship,[3] and since then the media have continued to expose aggravated cases of abuse and deep-seated systemic problems.[4]

Reforms are underway to address these problems. Some 20 or more states have Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) to identify and act on statewide challenges and solutions.[5] The HHS Administration for Community Living has made elder justice guardianship grants to 10 states to work intensively on tools for court oversight

---

[1] This statement derives from, builds on and summarizes similar resources developed by the ABA, and for the National Guardianship Network Fourth National Guardianship Summit.

[2] American Bar Association Commission on Law and Aging, *WINGS Briefing Paper: Advancing Guardianship Reform and Promoting Less Restrictive Options* (2020), https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-wings-briefing-paper.pdf

[3] U.S. Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans* (2018).

[4] For example, see Balch, Bridget, *Unguarded: A Three Part Series on Richmond's Guardianship Process,* The Richmond Times-Dispatch, Fall (2019), https://richmond.com/news/local/unguarded-a-three-part-series-on-how-richmond-s-guardianship-process-leaves-vulnerable-people-unprotected/article_d39e242e-9213-5600-8150-da9566c143b7.html#tncms-source=login ; Farrow, Ronan & Tolentino, Jia, *Britney Spears' Conservatorship Nightmare, The New Yorker*, 7/3/21, https://www.newyorker.com/news/american-chronicles/britney-spears-conservatorship-nightmare ; Devine, M., "Guardianship Forces Pop Art Legend Peter Max to Live as Shut-In, Pals Say," New York Post (September 29, 2021); Greene, Ronnie, "Guardians' Dark Side: lax Rules Open the Vulnerable to Abuse," US Law Week, Bloomberg Law (March 2023)

[5] ABA Commission, *WINGS Briefing Paper*

and ways to promote alternative arrangements instead of guardianship.[6] Organizations such as the Center for Public Representation have piloted supported decision-making projects and advanced its recognition nationwide.[7]

These efforts are bringing about notable advancements in protecting rights. However, they are piecemeal, as well as uneven across the states. They are not sufficient by themselves to bring about sustained change and improve outcomes because they are not ongoing and not nationwide. Over the years, interest in improving court practices and limiting the use of guardianship as a drastic intervention has ebbed and flowed. A consistent, continuous national focus, backed by modest federal funding, is required.

A model for adult guardianship reform exists in the child welfare context. Congress has provided funding to state courts through the child welfare Court Improvement Program (CIP) since 1993. The CIP supports state courts in conducting assessments of their foster care and adoption laws and judicial processes, and implementing a plan for system improvement.

The CIP is administered by the HHS Administration for Children and Families, Children's Bureau. Initially each state court conducted a self-assessment and had discretion to identify priority areas for improvement. With the success of the program, in 2006 Congress authorized additional CIP grants for data collection and analysis, as well as training and education. The CIP seeks continuous quality improvement. State courts submit a five-year strategic plan based on their assessment and quality improvements. For the last several years, Congress has funded a total of $30 million annually for the CIP, for distribution among the state courts.[8]

A 2010 report by the Conference of State Court Administrators noted that:

> "The CIP has, among other things, reduced judicial delay in child protection cases through the enactment of tighter state deadlines, the application of case flow management principles, and restrictions on continuances; prepared judges and attorneys to handle the complexity of these cases better through the development of standards, educational materials and trainings; and improved the review and monitoring of cases through more effective judicial administration, increased collaboration with child protection agencies and judicial self-assessments."[9]

---

[6] For 2021 grants, see Administration for Community Living, "Elder Justice Innovation Grants FY 2021;" for 2022 grants, see "Over $2.6 Million in 2022 ACL Elder Justice innovation Grants Address Guardianship; Opiods and Substance Use," https://acl.gov/news-and-events/announcements/over-26-million-2022-acl-elder-justice-innovation-grants-address#:~:text=ACL%20is%20proud%20to%20award,involving%20opioids%20and%20substance%20use

[7] Center for Public Representation, "Supported Decision-Making," https://www.centerforpublicrep.org/initiative/supported-decision-making

[8] Pogach & Wu

[9] Conference of State Court Administrators, *The Demographic Imperative: Guardianships and Conservatorships*, (2013), p. 17. https://cosca.ncsc.org/__data/assets/pdf_file/0009/6030/cosca-white-paper-2010.pdf.

Since its beginning, the CIP has shown significant results in:

- Development of standards and training for judges and attorneys
- Court monitoring and review processes
- Data improvements
- Collaboration between courts and child welfare agencies
- Promotion of best practices among states

The concept of an Adult Guardianship Court Improvement Program has broad support. It was a key recommendation of the National Guardianship Network's 2021 Fourth National Guardianship Summit.[10] The recommendation provided that:

> " Congress should establish a Guardianship Court Improvement Program modelled on the successful Child Welfare Court Improvement Program, and provide funding directly to the highest court in each participating state in order to enhance the rights and well-being of adults subject to, or potentially subject to, guardianship by:
>
> • Effectuating consistent and meaningful data collection.
> • Improving oversight and accountability.
> • Avoiding unnecessary or overbroad guardianship.
> • Enhancing collaboration and education among courts, agencies, and organizations that have an impact on adults subject to, or potentially subject to, guardianship."

National organizations such as the Conference of Chief Justices/Conference of State Court Administrators, the American Bar Association, and the National Council on Disability have expressed support for an adult guardianship court improvement program.[11]

---

[10] Syracuse University College of Law, *The Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability,* Recommendation 6.1, https://law.syracuse.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-maximizing-autonomy-and-ensuring-accountability/

[11] Conference of Chief Justices and Conference of State Court Administrators, Resolution 3 in Support of the Guardianship Accountability and Senior Protection Act (adopted February 1, 2012), In Support of The Guardian Accountability and Senior Protection Act, ABA Resolution 105, adopted August 3 – 4, 2020, 105 20A (americanbar.org); National Council on Disability, Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination (ncd.gov), p. 21 (2018); Robert, Amanda, "ABA pushes for a federal guardianship court improvement program," ABA Insider (Feb 1, 2021), https://www.abajournal.com/magazine/article/aba-pushes-for-a-federal-guardianship-court-improvement-program.

To the Distinguished Panel

My name is [redacted] and I worked in Adult Protective Services in San Diego County for over 25 years.

I was also the Chairperson for San Diego FAST (Financial Abuse Specialist Team) for 10 years.

My experience includes conducting hundreds of unannounced home visits in response to reports of abuse and neglect of people 65 and over and adults 18 and over with disabilities.

As a supervisor I also trained staff, reviewed and closed cases as well as doing presentations nation wide in the area of financial abuse. My reputation included being direct, firm and transparent.

The LA Times in November 2005 did a three part investigative series that exposed problems within the Probate Courts of southern California.

The articles described a million dollar industry that appeared to benefit attorneys, the courts while the rights of the conservatees and too often their families were ignored.

In conducting APS investigations the conservatee always expressed a desire to see all family members. It was unclear to them why they were being denied access.

I clearly stated to attorneys, fiduciaries, probate investigators and judges that denying them visits free from undue influence is considered isolation and unacceptable. I saw how easily the courts would accept the attorneys

word without the person attending the hearing or be so intimidated by the system that it became necessary to appear in court to ensure their voice was heard.

To think in 2023 when California had the opportunity to lead the way to prevent this from happening nation wide is so unfortunate. I strongly support the actions taken by

Nevada in addressing the abuses within their Probate Courts. I strongly urge this panel to recommend nation wide probate reform such as Nevada's.

Respectively,

[redacted]

March 23, 2023

By Email to Guardianships@aging.senate.gov

Re: Statement for the Record on Guardianship from Georgia's DD Network

Dear Senate Special Committee on Aging:

The partners of Georgia's Developmental Disabilities Network (DD Network) and other disability and health organizations – including the Georgia Council on Developmental Disabilities (GCDD), the Georgia Advocacy Office (GAO), the Center for Leadership in Disability (CLD) at Georgia State University, the Institute on Human Development and Disability (IHDD) at the University of Georgia, the Arc Georgia, the Statewide Independent Living Council (SILC) of Georgia, Georgia Options, and Georgians for a Healthy Future – offer this testimony to the Senate Special Committee on Aging in advance of it hearing to highlight the need for robust guardianship reform and potent alternatives that are widely accessible.

We support the dignity and autonomy of people with disabilities and are committed to upholding the human and civil rights of all people. Together we offer services to and provide advocacy on behalf of Georgia's most vulnerable citizens who are routinely at risk of guardianship and thus their right to act as autonomous adults and experience the benefits and protections of civil capacity. While our organizations act in various capacities – from providing direct representation to people with disabilities to remove their guardianship, offering education on alternatives to guardianship, and creating pathways to autonomy and self-determination – we all recognize the need to increase the opportunities available to people at risk of guardianship that do not infringe upon civil and human rights.

Guardianship is often billed as a benign arrangement to meet the needs of people who experience disabilities. In reality, guardianship represents an over-utilized legal tool that places people at risk of greater harm and removes the person's right to direct their life. While the problems surrounding guardianship have been widely known for quite some time, public attention has been captivated by recent developments in a series of high-profile cases. Each case is unique, but the battle to regain legal capacity is overwhelmingly common for many people subject to guardianship regardless of their age or previous social standing. Guardianship restricts all decisions, from the most minor to the most consequential: who to spend time with, where to live, where to work, how to spend or save money, whether to marry or have children, and whether to receive or reject medical treatment.

In light of the many essential civil liberties at risk, there need to be robust due process protections embedded throughout the process. People subject to guardianship should have adequate access to reasonable and meaningful notice, zealous representation by counsel, as well as an accessible hearing with the opportunity to bring and refute evidence. These protections are needed to ensure the rights of people at risk of guardianship both at the time of petition and

during any process seeking dissolution of the guardianship. However, the availability of due process protections varies widely from state to state, often with lackadaisical enforcement. According to the 2018 National Council on Disability (NCD) *Beyond Guardianship* report, only about one-third of respondents were represented by an attorney during guardianship hearings.[1] The majority of hearings lasted no more than 15 minutes, and 25% of hearings lasted less than five minutes. Additionally, it was reported that 'hearings' averaged seconds, not minutes, and lasted less than average traffic cases.[2] It was also noted that in most states, there are no or very minimal procedures for the person to elicit and challenge evidence, and the evidence of incapacity itself was cursory and based on presence of disability.

In its subsequent report, *Turning Rights Into Reality*, NCD goes on to highlight that in some states more than half of guardianship petitions filed involve a person who was turning 18 and that schools are often the first suggesters of guardianship.[3] Young adults with disabilities are at particular risk as "guardianship may be an obstacle to the development of self-determination skills necessary for life after high school, such as critical thinking, self-advocacy, and knowledge of one's own skills, interests, strengths, and weaknesses." [4]

We would like to echo many of the reforms presented to the subcommittee and found within the recommendations of the Fourth National Guardianship Summit.[5] Most importantly, we ask Congress to establish minimum due process safeguards that support Constitutional protections and rights guaranteed under other federal disability rights laws. We must ensure the due process rights of all people at risk of guardianship to include the right to notice, counsel, meaningful and accessible participation in hearing, and zealous representation.

Additionally, we request formal recognition of alternatives to guardianship. Specifically, the Department of Justice (DOJ) should recognize Supported Decision-Making (SDM) as a "reasonable modification" as defined by the Americans with Disabilities Act as a means to offer people with disabilities equal access to decision-making opportunities. Moreover, as recommended by the National Council on Disability, the DOJ should allocate resources to train judges in the availability of alternatives to guardianship, including supported decision making.[6]

---

[1] 1National Council on Disability, Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination (2018, March 22), available at: https://ncd.gov/newsroom/2018/federal-report-examines-guardianships.

[2] National Council on Disability, Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination (2018, March 22), available at: https://ncd.gov/newsroom/2018/federal-report-examines-guardianships.

[3] National Council on Disability, Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities (2019, June 10), available at: https://ncd.gov/publications/2019/turning-rights-into-reality.

[4] National Council on Disability, Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities (2019, June 10), available at: https://ncd.gov/publications/2019/turning-rights-into-reality.

[5] Syracuse Law Review, Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability (2021, May), Syracuse University College of Law. available at: http://law.syr.edu/uploads/docs/academics/Fourth_National_Guardianship_Summit_-_Adopted_Recommendations_%28May_2021%29.pdf.

[6] Syracuse Law Review, Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability (2021, May), Syracuse University College of Law. available at:

In addition, Congress should direct the Department of Education (DOE) to issue guidance to educator training programs and vocational rehabilitation agencies, requiring them to include the full range of decision-making options in transition programming and discussion of accommodations for students with disabilities. Also, the DOE should fund technical assistance and demonstration projects on using alternatives to guardianship.[7]

We endorse the recommendation that federal agencies, including the Social Security Administration, the American Community Survey, and the Centers for Medicare and Medicaid Services undertake data collection efforts on guardianship, which may assist in filling in gaps in state-collected data and identify trends across benefit programs. In addition to collecting needed information on the state of guardianship, Congress should authorize and fund research on and promulgation of best practices in SDM through the Administration on Community Living's National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) program. We would also welcome Congressional action to ensure oversight of private, for-profit guardians and close loopholes that allow bad actors who have been sanctioned or disallowed in one state from resuming services elsewhere. Congress should also authorize and fund a program specifically for the Protection and Advocacy Systems (P&As) to challenge existing guardianships and to investigate potential abuse and neglect while ensuring Courts are complying with minimum due process standards.

Finally, we recommend the establishment of a Court Improvement Program. This program would educate judges, guardians ad litem, court evaluators, and other legal professionals on the need for enforcement of due process protections, the risk and impacts of unnecessary and overly broad guardianship, and availability of SDM and other alternatives to guardianship. In addition, we encourage a system to evaluate cases for the availability of community-based resources to meet existing support needs. This federal program should work in conjunction with state courts and support their reform efforts.

We, the undersigned members of Georgia's Developmental Disabilities Network and other disability and health organizations, thank you for the opportunity to submit this written statement into the record of the Special Committee on Aging. We also offer the full support of our respective organizations to assist you and your staff as you move forward with potential recommendations.

Thank you for your time and consideration.

Sincerely,
[Signatures on Next Page]

---

http://law.syr.edu/uploads/docs/academics/Fourth_National_Guardianship_Summit_-_Adopted_Recommendations_%28May_2021%29.pdf.

[7] Syracuse Law Review, *Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability* (2021, May), Syracuse University College of Law. available at: http://law.syr.edu/uploads/docs/academics/Fourth_National_Guardianship_Summit_-_Adopted_Recommendations_%28May_2021%29.pdf.

[redacted]
Executive Director
Georgia Council on Developmental Disabilities
[redacted]

[redacted]
Executive Director
Georgia Advocacy Office
[redacted]

[redacted]
Director
Center for Leadership in Disability
Georgia State University
[redacted]

[redacted]
Director
Institute on Human Development and Disability
University of Georgia
[redacted]

[redacted]
State Director
The Arc Georgia
[redacted]

[redacted]
Executive Director
Statewide Independent Living
Council, GA
[redacted]

[redacted]
Executive Director
Georgia Options, Inc.
[redacted]

[redacted]
Executive Director
Georgians for a Healthy Future
[redacted]

STATE OF HAWAI'I
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAI'I 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543

March 23, 2023

Senate Special Committee on Aging
Sen. Bob Casey (Chair)
G16 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Casey and Committee Members:

Thank you for the opportunity to provide insight on challenges surrounding guardianship for individuals with Intellectual/Developmental Disabilities (I/DD) in Hawai'i. Our state's guardianship laws (Haw. Rev. Stat. § 560:5-102) have not been updated since 2004, leaving individuals without support and often in unnecessarily restrictive guardianships offering them little to no independence or autonomy.

It is common in Hawai'i for I/DD individuals to be automatically assumed or placed into full guardianship, ceding the maximum amount of rights and decision making to the guardian. Under current law, full guardianship is actually easier to obtain than limited guardianship, and care agencies and community resources encourage families to seek full guardianship as it is assumed to be almost an inevitability.

Federal support for guardianship arrangements would protect the civil liberties and independence of I/DD individuals. Incentives to states to improve guardianship law are needed, such as subsidizing Supported Decision Making Statutes and training for states to implement their own alternative policies. Placing an individual under full guardianship has permanent and life-changing ramifications, and we have a responsibility to ensure guardianship arrangements support and promote the individual's rights to self-determination and independence to the best of their ability. Protecting the rights of those under guardianship should be a priority in supporting independence, community inclusion, and self-determination of people with I/DD.

Thank you for your attention to this pressing issue in our communities.

Sincerely,

Daintry Bartoldus
Executive Administrator

Heather Connors, Ph.D

Statement submitted March 23, 2023 to the

U.S. Senate Special Committee on Aging

I am [redacted] the executive director of the Center for Excellence in Guardianship, based in Andover, Massachusetts.[1] I am also currently serving as the President of the National Guardianship Association.[2] I am proud to lead both organizations that are committed to improving the delivery of guardianship services.

I also had the privilege to serve as co-chair of the national task force that drafted a model Bill of Rights for Adults With a Guardian. This task force was convened by the National Guardianship Network (NGN) to implement one of the recommendations of the Fourth National Guardianship Summit held in May 2021.[3] The National Guardianship Network (NGN), a collaboration of thirteen national organizations that advocate for quality guardianship procedures and practices,[4] brought together 125 experts involved with guardianship reform to review current guardianship policies and practices and to make recommendations for guardianship reform for the next decade. The first among the twenty-two recommendations was to convene a task force charged with drafting a model national Bill of Rights for adults with a guardian.

The Bill of Rights task force included NGN members, national disability and aging organization representatives, persons formerly subject to guardianship, as well as family and professional guardians.[5] The members researched existing statements of rights, court decisions addressing individual rights, and academic literature on rights, as well as the United Nations Convention on the Rights of Persons with Disabilities[6] and the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.[7]

Organizational structure

Summit recommendation 1.1 directed the task force to categorize rights into three tiers: those rights which are always retained after a guardian is appointed, those personal rights that the court may restrict but cannot be delegated to a guardian, and the rights that may be delegated to the guardian to exercise on behalf of the adult.[8] The tier-one rights are subdivided into groupings of rights that relate to access to justice and the courts, basic human rights, and decision-making rights.

Rights Retained

Access to justice (Rights 1-8): The group of access to justice rights are the cornerstone to enforcement of all the other rights. Like the existing due process rights afforded a person subject to a guardianship proceeding, the adult with a guardian needs to be able to be seen and heard by the court throughout the life of the guardianship and must have an advocate at all stages after adjudication. The access to justice rights a person had prior to the initial hearing remain after the hearing. A finding of incapacity in no way diminishes the right to due process. The adult should be present and participate at all subsequent hearings just the same as the right to be present and participate at the initial hearing.

Because a guardianship may continue for years, or even decades, adults with a guardian should have access to the court to raise any concerns. The summit delegates emphasized the importance of having the court reevaluate the on-going necessity for the guardianship. Recommendation 1.3 asserts that states and courts must ensure full access to a full or partial restoration of rights as soon as possible after

a right is legally restricted. Steps addressed by the summit delegates to ensure this right include notice of the right to restoration and meaningful periodic review of the necessity for the guardianship. The Bill of Rights specifies that the adult has the right to let the court know of any concerns and the right to ask the court to review the need to change the guardianship.

It is well understood that everyone's abilities change over time. The disability that precipitated the need for the appointment of a guardian may get better or worse. The capacity to make a decision may be improved through medical treatment, education, training in decision making skills, rehabilitation, and support. Additionally, the level of capacity needed to make decisions varies depending on the type of decision. A person who may not be able to manage large investments can have the capacity to manage day-to-day financial matters. The criteria for determining testamentary capacity is distinct from the criteria to evaluate the need for a guardianship. Due to these variations over time and decision type, the adult whose capacity is being challenged and whose rights may be restricted has the right to an assessment by a professional who is qualified to evaluate what the adult can do and whether each specific right may be restricted or restored. Bill of Rights #6 reflects Summit Recommendation 1.2: "An impartial, valid, and reliable assessment by a compensated and qualified person...who has knowledge and training about decision-making in the area(s) related to the proceedings."

Full citizen participation in court proceedings requires supports and accommodations that ensure the adult's ability to effectively communicate with the court and understand the proceeding. Perfunctory notice does not protect the due process rights that citizens have. For adults to know what their rights are, their rights must be explained in a way the adult understands, in their preferred method of communication and in the language of their choice.

The summit delegates and the task force members were well-aware of the difficult issues concerning the appointment of counsel and the role of counsel in guardianship proceedings. The key barrier historically to legal representation has been the cost of paying for counsel, both to the state and to the adult's estate. Nevertheless, the summit recommendations make three specific references to the right to legal representation to provide meaningful due process.

- Recommendations 1.2 and 1.3 each call for "a qualified and compensated lawyer, paid a reasonable fee through the use of public funds if the adult is unable to pay, and appointed by the court should the adult not have a lawyer of their own choosing."
- Recommendation 3.1, which calls for the adoption of the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act, reiterates the need for appointment of a qualified and compensated lawyer to represent the adult's expressed wishes in all guardianship proceedings.
- Recommendation 4.3 calls for appropriate funding for advocacy measures to safeguard the rights of adults with a guardian including, among others, "continuing representation by a qualified lawyer appointed at the outset of the case" with the suggestion that the appointment be a legal services, public defender, or other public service lawyer to minimize expenses to the state or estate.

In line with the summit recommendations, Bill of Rights #2 simply states that the adult has the right to a lawyer who advocates for the outcome the adult wants. The ethical responsibility to represent client wishes, rather than some devised formulation of what could be in the client's best interest, must be

honored in all stages of a guardianship proceeding. The distinction between the role of counsel and the role of a guardian ad litem is protected in this bill of rights.

Core Human Rights (Rights 9-15): All adults have basic human rights. Those rights do not disappear following a court's finding of some level of decisional incapacity. Rights #9 through #15 enumerate those rights all people have and value: to be treated with dignity and respect, to be free from abuse, to be as independent as possible, to have religious freedom, personal privacy, safe environments, and sexual expression.

Decision-making Rights (Rights 16-21): An adult with a guardian does not lose the right to continue to participate in decisions that are being made on their behalf. It is incumbent on the guardian to respect and advocate for the adult's goals, needs, and preferences when making decisions. Because a court has determined that a guardian is needed to protect the safety and well-being of the adult's person and property, the guardian's primary responsibility is to ensure that the adult receives the necessary services that enhance their well-being and provide for their safety. Prudent management of the adult's resources is essential to provide for the adult's financial security. The right to decide what matters to keep confidential is the same as it is for those without a guardian.

Rights Restricted

Depending on the adult's special circumstances, it may be appropriate for the court to restrict some personal rights, but it should do so only when the court has made a specific finding of the necessity to restrict that specific right. This grouping of rights includes those rights that cannot be delegated to the guardian. These rights are to have a driver's license, vote, travel, be educated, and be employed. Each of these rights entails a different capacity determination. The need to restrict driving privileges is significantly different than any need to restrict the civil right to vote. The criteria to restrict the right to vote should be no different than for all other citizens--the inability to express a desire to vote. The court needs to give specific approval for any restrictions on the rights to communicate and interact with others, change marital status, be educated or employed, travel, or to maintain reproductive health and procreation.

The access to justice rights, including the right to on-going legal representation and the right to an assessment of specific capacities, apply when restricting any of the rights in this group.

Rights Delegated

The final grouping contains those rights which the court may find it necessary to authorize a guardian to exercise on behalf of the adult. These rights may be delegated to the guardian only after the court's specific determination that it is necessary for the guardian to make decisions concerning these areas of personal choice for the adult's safety and well-being and that the decisions the guardian makes are consistent with the adult's preferences and values. Whether the guardian is making decisions about obtaining needed services, consenting to medical treatment, or determining a place of residence, the adult has the right to participate in those decisions to the greatest extent possible. Decisions delegated to the guardian concerning the legal rights to sue, contract, gift and manage money are also to be made consistent with the adult's preferences and values, and with the adult's participation to the extent they are able and willing to be involved.

NGA Adoption of the Bill of Rights

The National Guardianship Association (NGA) is the first national organization to fully embrace and adopt the Bill of Rights. Further, NGA's *Standards of Practice*, updated in 2022 to reflect all the summit recommendations, directs that guardians respect, advocate for, and support the person's exercise of their civil, constitutional, and personal rights.

"The guardian shall:

A. Make decisions in a manner which respects, and does not violate, the person's civil, constitutional, and personal rights.
B. Advocate for preservation and protection of the person's civil, constitutional, and personal rights which have not been removed.
C. Support the person in exercising any personal, civil and constitutional rights which have not been removed.
D. Promptly apply to the court for instruction if the guardian believes that exercise of a person's civil, constitutional, and personal rights would result in substantial harm to the person or the person's estate."[9]

As President of NGA, I am proud of the steps our members are taking to protect the rights of the persons they serve. I have attached a copy of our Bill of Rights so that the members of this committee may know of the positive actions of the guardianship community to advance excellence in guardianship practices.

---

[1] The Center for Guardianship Excellence, Guardianshipcenter.org.

[22] National Guardianship Association, www.guardianship.org.

[3] The Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability | Syracuse University College of Law.

[4] The member organizations of the National Guardianship Network include AARP; ABA Commission on Law and Aging; ABA Section of Real Property, Trust and Estate Law; ADvancing States; Alzheimer's Association; American College of Trust and Estate Counsel; Center for Guardianship Certification; National Academy of Elder Law Attorneys; National Adult Protective Services Association; National Center for State Courts; National Center on Elder Abuse; National College of Probate Judges; National Disability Rights Network; and National Guardianship Association.

[5] Sally Hurme, J.D., co-chair, representing the Center for Guardianship Certification; Nick Clouse, individual whose rights had been restored; Heather Connors, Ph.D., co-chair, representing the Massachusetts Center for Guardianship Excellence; Melinda Coulter, Florida family guardian, former senior court operations consultant to the Florida Supreme Court and a member of Florida WINGS; Kathy Greenlee, J.D., representing ADvancing States and former Assistant Secretary for Aging, Administration for Community Living; Elizabeth Moran, J.D., representing the ABA Commission on Law and Aging; Elizabeth Priaulx, J.D., representing the National Disability Rights Network as Senior Disability Rights Specialist; Ira Salzman, J.D., Goldfarb Abrandt & Salzman (ret.), Executive Committee of the Elder Law Section of the New York State Bar Association and the past chair of its Guardianship Committee; Dan Smerken, Washington State Certified Professional Guardian; and Larkin Taylor Parker, J.D., representing Disability Rights North Carolina; now Legal Director, Autistic Self Advocacy Network.

[6] Convention on the Rights of Persons with Disabilities (CRPD) | United Nations Enable.

[7] Guardianship, Conservatorship, and Other Protective Arrangements Act - Uniform Law Commission (uniformlaws.org).

[8] All citations to the Summit recommendations can be found at https://law.syracuse.edu/wp-content/uploads/Fourth_National_Guardianship_Summit_-_Adopted_Recommendations_May_2021.pdf.

[9] Standard 1III, *National Guardianship Association Standards of Practice* (2022), www.guardianship.org/standards.

Bill of Rights for Adults Who Have a Guardian

You have the following rights at all times when you have a guardian

Access to Justice Rights

1. You keep all rights that the court has not granted to your guardian.
2. You have the right to a lawyer who advocates for the outcome you want.
3. You have the right to be present and participate in all court hearings.
4. You have the right to let the court know your concerns or complaints about your guardianship.
5. You have the right to ask the court to review the need for your guardianship to change, continue or end and whether your guardian is right for you.
6. If there is a question about your capacity to exercise a specific right, you have the right to have a qualified person evaluate what you can do and whether to have some or all your rights restored.
7. You have the right to the support and accommodations you need to be able to effectively communicate with the court and to understand the court proceedings.
8. You have the right to have your rights explained to you in your preferred method of communication and in the language you choose.

Core Human Rights

9. You have the right to be treated with dignity and respect.
10. You have the right to be free from abuse, neglect, exploitation, and discrimination.
11. You have the right to remain as independent as you can.
12. You have the right to express and practice your own religious preferences.
13. You have the right to personal privacy.
14. You have the right to humane, safe, and sanitary living, learning, and working environments.
15. You have the right to sexual expression and to have your gender identity respected.

Decision-Making Rights

16. You have the right to a competent guardian who advocates for your goals, needs, and preferences and respects your desires, including medical treatment preferences, cultural practices, and religious beliefs.
17. You have the right to fully participate in all decisions, especially those affecting your care, where you live, your activities, and your social interactions, to the extent you wish to be involved and are able to be.
18. You have the right to receive necessary services and rehabilitation, within available resources, which protect your personal liberty and are provided within the least restrictive conditions.
19. You have a right to have your guardian prudently manage your resources.
20. You have the right to fully participate in decisions about how your property is managed, to the extent you wish to be involved and are able to be.
21. You have the right to keep confidential those matters which you wish to keep confidential unless that information is necessary to obtain services, to prevent abuse, neglect or exploitation, or to modify the guardianship order.

Court may restrict the following personal rights without delegating them to the guardian, but only with due process protections that ensure the decision is consistent with your preferences and values.

1. Apply for or maintain a driver's license
2. Be educated
3. Be employed
4. Communicate and interact with others
5. Change your marital status
6. Maintain your reproductive health and procreation
7. Travel
8. Vote

The court may authorize your guardian to make decisions for the following rights on your behalf but only with due process protections that ensure the decision is consistent with your preferences and values.

1. Acquire the benefits, services and supports you need
2. Consent to or refuse your medical and mental health treatment
3. Determine where you live
4. Determine your social environment and social aspects of your personal life
5. File and defend lawsuits
6. Make contracts
7. Make gifts of your money
8. Manage your money and property

INDIANA
DISABILITY RIGHTS

March 23, 2023

SENT VIA E-MAIL

TO: U.S. Senate Special Committee on Aging,
Chairman Senator Robert Casey, Jr.
Ranking Member Senator Mike Braun

FROM: Indiana Disability Rights, Executive Directo[redacted]

RE: March 30, 2023, Hearing on Guardianship and Alternatives: Protection and Empowerment - Written Statement from Indiana Disability Rights

Honorable Committee Members,

Indiana Disability Rights is the state of Indiana's designated Protection and Advocacy organization. We advocate for the rights of people with disabilities, including around issues addressing guardianship and alternatives. We provide individual representation to people wishing to avoid unnecessary guardianship or to have their rights restored when guardianship is no longer necessary or appropriate. We also work on policies related to guardianship modernization at both the state and national level.

We are grateful that the Senate Special Committee on Aging has taken an interest in this important topic. Indiana Disability Rights client[redacted] previously testified before the Senate Committee on the Judiciary on September 28, 2021, in a hearing addressing Toxic Conservatorships: The Need for Reform and we are glad to see the Senate's continued commitment to this issue.

Guardianship exists to provide court-ordered protection of people and their property when they are unable to do so themselves. The guardianship system in the United States is a patchwork of state and local rules and practices resulting in a process that is inconsistent, often in conflict with our principles of due process, and in much need of modernization.

There are five key areas where the federal government would best be able to affect change in this system:

4701 N Keystone Ave
Suite 222
Indianapolis IN 46205
IndianaDisabilityRights.org

Phone: 317.722.5555
Toll Free: 800.622.4845
Fax: 317.722.5564



1) Create a protection and advocacy program dedicated to addressing issues with guardianship and self-determination.
2) Require federal agencies with oversight of systems involved in the guardianship pipelines to issue guidance supporting the use of supported decision-making or other less restrictive alternatives and to remove obstacles preventing people from accessing decision-making supports.
3) Fund a National Resource Center for Supported Decision-Making to provide technical assistance, education, and best practices around decision-making supports.
4) Expand court improvement projects through programs like the Elder Justice Innovation Grants to allow state courts the flexibility and resources to address state-specific needs.
5) Fund research and data collection initiatives to allow for better understanding of the scope of the problem and to determine best practices for less restrictive alternatives.

1. Fund a Protection and Advocacy program dedicated to addressing issues with guardianship and self-determination.

Guardianship statutes vary widely from state to state. Even where states have robust due process protections, without access to independent competent counsel to hold the system accountable, abuses and rights violations still occur. Of the 18,182 petitions for guardianship filed in Indiana in 2018, 83% did not have legal representation in the process. Considering the tremendous rights impacted by the appointment of a guardian and the tremendous powers a guardian may exercise, people need access to competent legal counsel to ensure their rights are being protected.

For example, in a review of nine guardianship cases involving people over the age of 55, in six of those cases, the person subject to the guardianship was not present at the hearing. In only four of the nine cases reviewed, did the court appoint a guardian ad litem to provide recommendations to the court based on the person's best interests. This means that in the majority of guardianship proceedings, the court is only receiving information from the petitioner.

Equally problematic is the cost and resources needed to defend an unnecessary guardianship petition or restore someone's rights through termination. Even in uncontested cases, there is a great deal of time, effort, and expense required. Often, folks under guardianship do not have the means or access to hire private counsel or pay for experts or evaluations.

Fortunately, Congress has a ready-made program of attorneys ready, willing, and able to do this work. The Protection and Advocacy (P&A) network holds offices in all 50 states and every U.S. territory. The attorneys and staff are specifically mandated to protect and promote the rights of people with disabilities. This would include folks at risk for or under guardianship.

However, the costs associated with representing someone in a guardianship defense or restoration of rights case means that P&A programs are not able to meet the demand. For example, in Indiana, out of 186 requests for representation in a guardianship matter in 2021, we were able to take only six (6) cases. Expanding the P&A programs through the Administration on Community Living would provide additional resources for P&As to respond to these types of cases and provide a back stop to ensure the rights of people at risk for or under guardianship are protected.

2. **Require federal agencies with oversight of systems involved in the guardianship pipelines to issue guidance supporting the use of supported decision-making or other less restrictive alternatives and to remove obstacles preventing people from accessing decision-making supports.**

There are very real pipelines to guardianship. The primary avenues are through the education system as students turn 18 and through the health care system. Requiring the Department of Justice, Department of Education, and the Department of Health and Human Services to support the use of less restrictive alternatives and to issue guidance aimed at disrupting the pipelines would help prevent unnecessary guardianships from happening in the first place.

Furthermore, having these agencies review regulations and policies to remove unintentional barriers to using decision-making supports would help ensure that people are not unnecessarily forced into guardianship for purposes of securing access to services and programs or prevented from restoring their rights due to procedural hurdles. For example, HHS notes that a personal representative stands in the shoes of

the person for purposes of accessing their health records.[1] However, under this rule, a person with a representative does not also have independent access to his or her records without the personal representative's authorization. Amending the rule to clarify that the person using a personal representative also has access to his or her health records without a guardian's signature would allow the person to better prepare for a possible restoration of rights case.

3. **Fund a National Resource Center to provide technical assistance, education, and best practices around decision-making supports.**

A key factor in preventing unnecessary guardianship is education. The Administration on Community Living previously funded a National Resource Center for Supported Decision-Making. However, the funding was not sustained and the project has not continued at a level to ensure its ongoing success. While there are many organizations who have expertise and resources for this work, having a centralized resource available for both national and state-level vetted information will help raise awareness, connect people to resources, and build a repository for determining best practices about the options for decision-making supports.

4. **Expand court improvement projects through programs like the Elder Justice Innovation Grants to allow state courts the flexibility and resources to address state-specific needs.**

Courts are the last step in the chain to prevent unnecessary guardianships. However, simply giving funds to the courts would not address the problems inherent in the system.

Court improvement projects should focus on expanding access to competent representation, procedural due process, standardization and consistency across the state, oversight and accountability, and regular review or monitoring of guardianship cases. [redacted] testimony, and the thousands of stories like his are a powerful indicator of what can happen when there is a lack of basic protections and oversight in the system.

[1] 45 CFR 164.502(g)

5. **Fund research and data collection programs to allow for better understanding of the scope of the problem and to determine best practices for less restrictive alternatives.**

There is a lack of data at both the state and national level relating to even the most basic information about guardianship and the use of less-restrictive alternatives. Supporting research efforts would help advocates and policymakers better understand the scope of the problem as well as build research towards developing evidence-based practices.

It is my hope that the Senate Committee on Aging's hearing on this important issue will serve as a catalyst for change to prevent unnecessary guardianship and to restore rights to thousands of Americans. Thank you again for the opportunity to contribute to this conversation. I look forward to Congress's continued attention to this important issue. Should you have questions or comments about our recommendations, please do not hesitate to contact me [redacted]

Sincerely,

[redacted]
Executive Director
Indiana Disability Rights
Indiana Protection & Advocacy Services Commission

Written Statement of James Cowell
Pittsfield, Massachusetts

For the U.S. Senate Special Committee on Aging

Guardianship, Conservatorships, Protective Arrangements, and Alternatives

March 15, 2023

Hi, my name is [redacted] I live in Pittsfield, MA. I like Supported Decision-Making (SDM) for many reasons. I have been involved in the SDM Pilot Project through Nonotuck and Center for Public Representation since 2018. When Nonotuck approached me about SDM, I thought of my future and how important it is to help me keep my voice. I have used SDM since Oct of 2018 and had my SDM agreement signed after doing a trial period in May 2019. I like SDM because it allows me to chose who I want to help me understand decisions. On my SDM Team, I chose, my mom Marie, my dad Ray and my sister Shannon who is also a person with disabilities.

Since joining Supportive Decision-Making, I have made the decision to start traveling around the country visiting family. I leaned on my SDM Team to give me the big picture of what I would have to do to accomplish my goal. They sat down with me to have a one on one discussion to go over the pros and cons. For this trip I would have to save the majority of the money I make from the Goodwill and spend less. I really wanted to see my relatives in Texas, so I chose to pursue this goal. I saved money for a few months and then I was able to travel to Texas to visit my family.

My SDM Team helped accomplish my greatest goal in life, to see Hulk Hogan at Wrestle Mania. A friend offered me a ticket. However, I needed money for everything else such as travel, hotel, food, and souvenirs. I asked my mom and dad to help me understand what was needed and I went to the bank to take out the money. In this decision, I knew coming back from Wrestlemania things were going to be tight, so I managed for a few weeks and began saving money again.

My SDM Team has helped me so much in achieving my dreams. I love advocating for Supported Decision-Making. I was recently asked to do an interview with Salon, a big time media news source, on how important SDM is. This was such a great opportunity, because they were trying to advocate on different models than Guardianship and Conservatorship in Brittany Spears case. I was happy to advocate for SDM because it helps people with disabilities keep their voice and make the final decisions in things with support from a team if needed.

You can learn more about my story at:
https://supporteddecisions.org/stories-of-supported-decision-making [redacted]

You can read the Salon article here:
https://www.salon.com/2021/06/27/the-supportive-decision-making-model-that-might-have-saved-britney-spears-from-conservatorship/

Submitted Written Statement of
[redacted]
East Bridgewater, Massachusetts

For the U.S. Senate Special Committee on Aging

Hearing on Guardianship, Conservatorships, Protective Arrangements, and Alternatives

Submitted March 17, 2023

My name [redacted] live in East Bridgewater, Massachusetts, with my Mom Nancy, and Dad [redacted] I have a Brother [redacted] who is 22 and lives nearby me. I am a 20 year old Decision Maker, Self Advocate, Home School Graduate, and Cancer Survivor who happens to have Autism. I am a very Proud Council Member of the Massachusetts Developmental Disability Council, I am an official Ambassador for Operation House Call through the Arc of Massachusetts, I am a Flutie Fellow for the Doug Flute Jr. Foundation for Autism, and I am the Co-Chair for Massachusetts Supported Decision-Making Coalition. A few fun facts about me are I like video games, Pro Wrestling, Anime, and helping others. Since the age of 13, my vision has always been to help others in any way I can. I have many different types of support and supporters that help me live my best life.

A lot of people like me have a guardian. I don't. Instead, I use something called Supported Decision-Making. Supported Decision-Making is an alternative to guardianship where the person (me) picks a group of people they trust to help them make decisions. I am the decision maker in my life. I have used Supported Decision-Making in my fight against cancer, my mental health, and in most aspects of my life today.

Let me explain how I got here. When I was 16 and in school, my mother and I were told that I needed full guardianship. This didn't feel right for us. My mom had learned about Supported Decision-Making, and we decided to try it in my life. To me, Supported Decision-Making is another tool and choice that I have in my toolbox of tools. I think schools shouldn't pressure families into guardianship. There are lots of other options people can use.

Supported Decision-Making was a great alternative for me. I started by choosing my supporters. I decided on different people who would help me with different parts of my life. My first Supportive Decision-Making plan only included my Mom, Dad, and Brother. But, as I have grown older, my plan has evolved, and I have added many other supporters to my team and in different areas of my life. Because Supported Decision-Making lets me keep my rights, I can change my own plan as my needs and life change over time. I am the one in control of my life, not a judge or guardian.

In 2021, I was diagnosed with Ewings Sarcoma, which is a very rare form of Cancer. This was during the height of the COVID-19 Pandemic. I was already using Supported Decision-Making in my life, so it gave me some comfort to know I would have support going through this new life journey. However, COVID-19 visitor restrictions made using supported decision-making harder. We had to advocate with the hospital to have my supporters with me at my appointments. A hospital should be required to respect Supported Decision-Making as a way of accommodating people with disabilities. It should be recognized as a right everywhere.

Fighting cancer has been one of the hardest journeys of my life. I have been through a lot of hard journeys already. I am so thankful I was given the freedom to choose how I go about my treatments. Having been able to use Supported Decision-Making during was really lifesaving for me and helped me make my own decisions while battling Cancer.

I would not be the person I am today without Supported Decision-Making. For example, when I was 6 months into chemotherapy and 2 weeks into radiation, I came home one day. and my body and mind were feeling horrible and hopeless. I ended up in my bedroom crying and just really wanting to give up. I told my Mom, "I do not care what happens to me, I just want it to stop even if the tumor causes me to die." My Mom had to take time to process all this herself. But, when she came back into my room, she came back, not as my Mom, but as my support person. She said to me [redacted] don't know what the answer to this all is, but if you can put your faith in me as your support person, I am going to try my hardest to help you figure this out." From there, I gave my Mom the okay to contact my medical team, and together they all came up with a different plan for me to think about. After the meeting, I was able to talk to my supporters about the plan, get my questions answered, and then I agreed to move forward with it. The plan ultimately saved my life, while also taking care of my mental health at the same time thanks to Supported Decision-Making.

Supported Decision-Making truly makes me feel involved with my life. It provided me with choices about when and how I was going to receive my Cancer treatments. Because of Supported Decision-Making, I was able to let my body and voice guide me with the help of my supporters. I did not have many choices when it came to having Cancer, but at least I was able to control when and how I got through it.

Full Guardianship would have been worse than death to me. I would have lost my choice. If I was not able to pick my support people during my Cancer treatments, I would be just a shell of myself now, if I survived. I am the type of person that needs to have full trust in the people that are in my life. If someone else picked those people for me, I would not fully be able to be the person I am today. I need to make choices for my own life. If a guardian had forced me into treatments, I would have been severely depressed, damaged, and not the person I am today.

Supported Decision-Making offers more options in my life. I firmly believe that Supported Decision-Making gives people a choice for freedom and a choice of who supports them. Everyone should have the right to choose the way they want to live, so they can live their best lives to the fullest.

Thank you,

[redacted]

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

March 23, 2023

Chairman Bob Casey
Ranking Member Mike Braun
United States Senate
Special Committee on Aging
Washington, D.C. 20510-6400

Submitted electronically via email: guardianships@aging.senate.gov

RE: Response to Request for Comments on Guardianship

Dear Chairman Casey and Ranking Member Braun:

Justice in Aging appreciates the opportunity to comment on current guardianship practices and provide recommendations for guardianship reform. Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable health care, economic security, elder rights, and the courts for older adults with limited resources. We focus our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency. Since our founding 50 years ago, we have been a key member of the legal services community and an essential partner within the broader aging community.

In addition to our advocacy work, Justice in Aging administers the National Center on Law and Elder Rights (NCLER), under contract with the Administration for Community Living. NCLER is a centralized, one-stop resource center providing training and technical assistance to the legal services and aging and disability network on elder rights issues, including guardianship and its alternatives.

Despite the laudable efforts of policymakers and others, the guardianship system remains in need of significant reform. Our comments focus on issues critical to ensuring equity for all older adults within that system and those reforms.

Recommendations for Collecting Data about Guardianship Cases

We support data collection procedures that include the collection of information on the demographics of older adults who have been subject to or affected by guardianship. These demographics should include race, ethnicity, age, sex, gender identity, sexual orientation, language spoken, income level, and type of disability. This data is essential to determining

whether particular groups of older adults are disproportionately affected by guardianship and whether steps need to be taken to address inequity in the guardianship process and system.

Currently, detailed data on guardianship is almost nonexistent and even basic information is largely unknown. At the macro level, it is unclear even how many adults in the United States are under guardianship.[1] At the micro level, there is no data to illuminate the identity of those adults (race, ethnicity, sex, gender identity, and the like) or the factors that led to guardianship in the first place (e.g., health issues, cognitive impairment, finances, housing and living conditions, etc.).

This absence of data has hindered research and reform efforts across the larger guardianship system. With respect to more targeted research and reform relating specifically to guardianship and marginalized communities (communities of color and the LGBTQ+ community, for example), the lack of data has created a vacuum.

Because no data exists to shed light on *who* is currently under guardianship, let alone *why*, little to nothing is known about guardianship's impact on marginalized communities. What is known, however, is that the systemic inequalities experienced over the life of a marginalized older adult can increase the adult's risk of various harms and negative outcomes associated with aging.[2] Older adults of color, for example, may be at increased risk of disease and diminished physical capacity,[3] cognitive decline,[4] and poverty.[5] LGBTQ+ older adults are similarly more likely to face poverty and homelessness and to have poor physical and mental health.[6] These various harms and negative outcomes may well increase the likelihood that the older adult will come into contact with the guardianship system.

Collecting data on the number of older adults currently subject to guardianship, including detailed demographic data, can help policymakers, courts, service agencies, and others identify and address issues within the guardianship system. Data can, for example, help efforts to allocate funds, advance national standards, develop court improvement programs, and make evidence-based program improvements and policy changes. Data can also inform the examination of court and systems-based practices that may be causing inequity. Without data, reform becomes a "best guess" with no means of measuring success or failure or method for

---

[1] *See, e.g.*, United States Senate Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans* (2018), available at https://www.aging.senate.gov/imo/media/doc/Guardianship_Report_2018_gloss_compress.pdf.

[2] *See, e.g.*, Population Reference Bureau, *Key Factors Underlying Racial Disparities in Health Between Black and White Older Americans* (2021), available at https://www.prb.org/wp-content/uploads/2021/05/tra-41.pdf.

[3] *See id.*; National Institute on Aging, *National Health and Aging Trends Study: Chart Book* [hereinafter *Chart Book*] (2020), available at https://micda.isr.umich.edu/wp-content/uploads/2022/03/NHATS-Companion-Chartbook-to-Trends-Dashboards-2020.pdf.

[4] *See Chart Book*, *supra* note 3.

[5] *See* Administration on Aging, *2020 Profile of African Americans Age 65 and Older* (2020), available at https://acl.gov/sites/default/files/Profile%20of%20OA/AAProfileReport2021.pdf.

[6] *See* SAGE, *Facts on LGBTQ+ Aging* (2021), available at https://www.lgbtagingcenter.org/resources/resource.cfm?r=1046.

determining need for refinement. Gathering detailed data on a large, national scale will help inform future guardianship reform that works for all older adults.

Specific recommendations:

We support Congressional creation and funding of a program for guardianship similar to the successful Child Welfare Court Improvement Program[7] to provide monetary funding directly to participating state courts for, among other things, improvements in case handling and the responsible collection of data in guardianship cases. Under the new program, state courts should be required to standardize data collection and to collect, among other things, data relevant to issues of marginalized older adults, including, with respect to the person facing or subject to guardianship, their age, race, ethnicity, sex, gender identity, sexual orientation, language, income level, type of disability, and factors leading to the guardianship filing.

We also support, as part of this new guardianship improvement program, the federal creation and funding of a national repository to collect and house the data gathered by state courts, which data can then be made available (in at least an aggregate format) to policymakers, courts, advocates, researchers, and other stakeholders within the larger guardianship system.

Recommendations for Promoting Less Restrictive Alternatives to Guardianship

We support the promotion and utilization of less restrictive alternatives to guardianship and, additionally, the development of targeted programs to increase the awareness and use of such guardianship alternatives in communities of color.

The movement toward less restrictive alternatives acknowledges that in many situations a mechanism already exists to help the person allegedly in need and facing guardianship. Mechanisms like powers of attorney, advance healthcare directives, and supported decision-making agreements, among others, each offer slightly different solutions that can be modified to fit the circumstances of the individual needing support. And most are implemented with the involvement and consent of the individual and terminable at their direction, unlike guardianship. Thus, the implementation of those alternatives in lieu of guardianship aligns with the widely embraced goals of increased self-direction and person-centeredness.

Two of the most readily available and easily utilized mechanisms to avoid guardianship are powers of attorney and advance health care directives. Notably, though, those documents are most effective when prepared well in advance of any movement toward guardianship, when the older adult has the requisite legal capacity to sign them and express their wishes.

This highlights the importance of advance estate planning as a guardianship avoidance tool. However, significant disparity exists in the rates of estate planning for some marginalized

[7] More information on the Child Welfare Court Improvement Program can be found on the Child Welfare Information Gateway website at https://www.childwelfare.gov/topics/systemwide/courts/reform/cip/ and on the Children's Bureau website at https://www.acf.hhs.gov/cb/grant-funding/court-improvement-program.

communities. For example, according to one recent nationwide survey, some 82% of Hispanic adults and 77% of Black adults in the U.S. have done no estate planning, compared to 61% of white adults.[8] Black adults are also four times less likely than white adults to have engaged in advance health care planning, including completing an advance directive or durable powers of attorney for health care.[9]

Fortunately, recent scholarship on outreach and education programs in marginalized communities has illuminated how a culturally aware, community-centric approach can increase the likelihood of building successful and sustainable programs. These efforts involve community members in the planning, execution, and sustainability of the programs;[10] they work to build trust by partnering with existing community institutions and trust points (the church, local icons, neighbors);[11] and they "bake in" cultural competency and a community-centered and community-grounded focus and commitment.[12] The strategies utilized in those efforts, and others like them, can and should be adopted and integrated into outreach initiatives to promote guardianship alternatives in marginalized communities in order to ensure that reform efforts benefit all.

Specific Recommendations:

We support Congressional funding or increased funding to demonstration and pilot projects testing programmatic models that promote advance estate planning and less restrictive alternatives to guardianship for older adults in marginalized communities. Community-based organizations and legal assistance programs currently providing services to older adults in marginalized communities should be prioritized for funding. The funded programs should utilize innovative, culturally competent, community-centered, and community grounded strategies tailored to the target community and designed to build trust and partnership. Successful projects should be scaled up and replicated in other marginalized communities where alternatives to guardianship are underutilized. And best practices and successful strategies should be shared widely with other stakeholders.

---

[8] *See* Althea Chang-Cook, Consumer Reports, *Why People of Color are Less Likely to Have a Will* (2022), available at https://www.consumerreports.org/money/estate-planning/why-people-of-color-are-less-likely-to-have-a-will-a6742820557/; Daniel Cobb, *2022 Wills and Estate Planning Study* (2022), available at https://www.caring.com/caregivers/estate-planning/wills-survey/2022-survey/.

[9] *See* Lesli E. Skolarus, et al., *Extending Advance Care Planning to Black Americans in the Community: A Pilot Study of the PREPARE Program* (2021), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8435356/; Jenny McDonnell & Ellen Idler, *Promoting Advance Care Planning in African American Faith Communities: Literature Review and Assessment of Church-Based Programs* (2020), available at https://journals.sagepub.com/doi/10.1177/2632352420975780#:~:text=Advance%20care%20planning%20is%20under,conversations%20may%20take%20place%20safely.

[10] *See* Skolarus, *supra* note 9.

[11] *See* McDonnell & Idler, *supra* note 9.

[12] *See* Patricia Mock, *Effective Outreach to Underserved Communities of Color: An Arduous Sojourn to Cultivate and Attain Trust*, 17 T.M Cooley J. Prac. & Clinical L. 51 (2015).

We also support Congress studying the barriers to utilization of alternatives to guardianship in marginalized communities and implementing and funding programs to overcome those barriers, including the availability of programs and services such as day programs and care centers, in-home service programs, meal and transportation programs; the availability and affordability of banking services to the "unbanked" and the creation of state-level representative payee and bill pay programs; and access to advance directives for older adults with reduced decisional capability, surrogate decision-making statutes, and powers of attorney for adults with dementia.

Recommendations for Promoting Due Process and Access to the Courts

We support the mandatory appointment of a qualified, independent legal counsel in every guardianship case to zealously represent and advocate for the wishes of the individual facing or subject to guardianship, with such representation beginning upon the initial case filing and continuing throughout the guardianship until final termination.

Skilled representation for the person facing or subject to guardianship is essential to ensuring the implementation of less restrictive alternatives whenever possible; the termination of the guardianship whenever warranted and as soon as feasible; the protection of the guardianship estate from unauthorized, unnecessary, or excessive expenditures and fee requests; and the protection of the person's constitutional and statutory rights. Fundamentally, the mandatory appointment of legal counsel for persons facing or subject to guardianship is a due process protection that can reduce unnecessary guardianships.

Additionally, attorneys who are trained in guardianship law and have a defined role can ensure the person facing guardianship is treated in a culturally competent manner and provided the accommodations necessary for full participation and access. They can help inform the court of the availability of less restrictive alternatives to guardianship, limited guardianship options, and emerging case law. The advocacy of counsel in guardianship proceedings will result in the court becoming more familiar with options beyond guardianship and in the improvement of the guardianship system as a whole.

Specific recommendations:

We support Congress funding programs to provide grants to states to help promote the availability of counsel, including increased authorization amounts for demonstration grants to expand or improve the delivery of legal assistance to older individuals with social or economic needs, found in OAA Title IV, Section 420(a)(2), (42 U.S. Code § 3032i(a)(2). Similarly, we support increased funding to Legal Services Corporation specifically for representation of persons facing or subject to guardianship. We also support Congress encouraging and incentivizing states to define the role of counsel in their state guardianship statutes to ensure that counsel is not only available and adequate but also zealously representing the stated or previously expressed desires of the person facing or subject to guardianship.

We appreciate the Senate Special Committee on Aging's interest in current guardianship practices and guardianship reform. Thank you for considering our comments. If any questions arise concerning this submission, please contact [redacted] at [redacted].

Sincerely,

[redacted]

Written Statement of [redacted]
Dalton, Massachusetts

For the U.S. Senate Special Committee on Aging

Guardianship, Conservatorships, Protective Arrangements, and Alternatives

March 15, 2023

Hi, I am Johnathan and I like Supported Decision-Making! I have my family and closest friend help me understand decisions and help me pursue my interests. On my SDM Team I have My Mom, Dad, Sister [redacted] Aunt [redacted] Aunt [redacted] Grandma and my friend [redacted] I have been at Nonotuck for 14 years.

When I need help with decisions I usually look to my mom and dad for support. However, I also speak to my other team members when they are visiting. My SDM Team has helped me out at my job. I work at [redacted] nd my SDM Team helped me get extra hours. I like to work and make money and I needed help getting more hours and so I had my team help me. My friends at [redacted] take care of me at work. I work with my job coach [redacted] and I have worked fo [redacted] for 13 years. I love it there!

My SDM Team helps me grow in my skills such as with my banking, making health decisions at doctors and dentist appointments and buying healthy food choices. My SDM Team is very important to me and I trust them.

Since starting the SDM Pilot Program, I have made many Awesome Decisions in my life with my SDM Team. I have saved money and purchased a SMART TV and have renovated my room. I have traveled with my friends to many places such as California, Tennessee, Las Vegas, Arizona and Florida. I enjoy going on vacations because I get to see some of my favorite friends like my friend [redacted] Florida.

In Closing, Supportive Decision Making is Important to me because I feel I can make my own decisions and get help from my team to reach my goals. I am thankful for CPR, Nonotuck, My Best Friend [redacted] for the SDM Pilot Program. It has changed my life. I am excited to be the Newest leader in SDM!!!

You can learn more about my story at:
https://supporteddecisions.org/stories-of-supported-decision-making [redacted]

My name [redacted] I live in Roswell, Georgia, and I'm honored to submit information for the congressional record as part of the Senate Special Committee on Aging hearings on alternatives to guardianship.

I am a person with a significant disability who requires support 24 hours a day, seven days a week. I was successful in terminating my guardianship in September 2019. I use Supported Decision Making as a process for making my own decisions.

While I make decisions in all areas of my life, sometimes it's difficult to understand what that truly looks like for a person with a disability. I'd like to provide a practical example of how this recently worked for me.

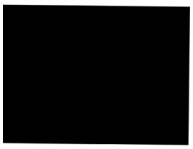
I have been involved in self advocacy for years. My work has included both professional and volunteer elements, including presentations to professional groups, a SARTAC fellowship, published articles, and attending and presenting at conferences, such as the National Guardianship Association and TASH. My volunteer work includes being part of the Uniting for Change leadership collective, working on expanding self-advocacy and voting rights; as well as working with students and youth groups on disability awareness.

I began getting sick during the pandemic lockdown; it seemed that my brain was breaking and my body was losing function. I was unable to perform most tasks. I won't go into all the details but my professional and volunteer work ground to a halt.

My recovery has been very long and slow. The intense treatments are tapering. I'm now able to do and enjoy many of my former activities. An opportunity came up to attend a disability leadership conference in Washington, DC. I had to decide if I was ready to go. I decided to consult with some of my supporters. Not my mom, who I knew thought I wasn't ready. I thought about the context of my uncertainty, it was both professional and medical. The best professional support I have is my partner at the Georgia Advocacy Office, [redacted] We met to discuss my attending the conference, pros and cons. Medically, I rely on a team of doctors. I consulted with the doctors who treat me as well as my two other regular doctors. Everyone got on board with a support plan that I thought could work . With that plan in place, I decided to go. Even though I had reservations at first, my supporters helped me weigh the decision and identify possible pitfalls and then get a support plan worked out.

Had I been under guardianship, I wouldn't have been consulted on the decision. I just would not have gone. With a Supported Decision Making plan in place, I am empowered to make the decisions for myself.

Respectfully,



I am respectfully submitting a brief explanation of the severe challenges caused by many failings regarding Conservatorships in the State of California for youth with developmental disabilities or intellectual limitations as they turn legal age. My son suffered from this and nearly died. There is evidence that many of these young people have lived excellent lives with their families all of their lives, in their least restrictive environments and families have been clear in stating that they want to continue to provide these supports for their adult kids. Typically, these youth and their parents have never been arrested and are law abiding citizens but regretfully as the children become adults they are abducted from their families and most often, families are not allowed to know where they live and have severe contact restrictions. Advocates and Disability Rights agencies have tried to reduce this abusive ineffective situation for decades (https://spectruminstitute.org/2022/05/the-route-to-conservatorship-reform/). The professionals involved in this- court appointed attorneys, the state bar, the Department of Developmental Services (DDS), Alta California Regional Center (ACRC) (the Sacramento versions of the 21 statewide regional centers), their funded managed Care Homes and others have admitted being aware of long-term and continuous abuse and have even admitted that nothing has been done to correct it in decades. The televised video (https://www.abc10.com/article/news/local/abc10-originals/conservatorships-price-of-care-taken-by-the-state/103-1e797c90-e530-4beb-8923-0c75d49f420b) evidences the admittal of this failure by many, including the California State legislature and California Governor. Since these citizens typically don't vote or have election donations, they may not be priorities.

Several years ago, my son [redacted] was taken from a loving family, at great taxpayer expense, on allegations that have been investigated by multiple law enforcement agencies and no evidence has been found. His doctor stated in court that he has never observed any evidence of abuse on [redacted] In talking to other victimized families, I have learned that this is where this typically begins- with unevidenced accusations of abuse of kids that have been protected all their lives by the incredible California State Mandated Reported Laws all of their lives. Non-law enforcement organizations, statewide have been allowed to take these individuals from their families based on undocumented allegations alone. The day before [redacted] as put in DDS custody, he ran a 5K charity race. A year later, under their care, he was on life support 3 months. He survived but now needs a walker to walk. This is the result of 3 months ion the emergency room due to mismanagement of constipation, by the care home. I cannot image the pain he must have endured with constipation so bad that it "impacted his lungs" (as described by one of his nurses), so he needed oxygen for many weeks.

Many federal laws to insure civil rights for individuals with disables have been in place for decades, but they are not enforced.

Per Probate Code Section 1471(e) "The role of legal counsel of a conservatee, proposed conservatee, or a person alleged to lack legal capacity is that of a zealous, independent advocate representing the wishes of their client". My son's lawyer failed to show in court, advocated against [redacted] stated wishes and claimed to "not understand [redacted] - even after he clearly stated that he wants to live with his mother on local television. (https://www.abc10.com/article/news/local/abc10-originals/conservatorships-price-of-care-taken-by-the-state/103-1e797c90-e530-4beb-8923-0c75d49f420bhttps://www.abc10.com/article/news/local/abc10-originals/conservatorships-price-of-care-taken-by-the-state/103-1e797c90-e530-4beb-8923-0c75d49f420b- click the first video at the 25:40 timestamp to hear Garth.

Per CA AB1194 "confirms that the court-appointed counsel's role in representing a conservatee is not akin to that of a guardian ad litem, who is charged with making decisions on behalf of their principal. (https://keystone-law.com/changes-to-california-conservatorship-law) Very concerning is the lack of familiarity and training of all court professionals about individuals with developmental disabilities and their rights. (https://tomcoleman.us/publications/2019-counsel.pdf) (page 36).
Per CA AB937 (2013- clarified **California Welfare and Institutions Code section 15600**) that- Conservatees have the right to visitors, phone calls, and personal mail. [redacted]ad family visits and phone calls ended after family reported physical, emotional and sexual abuse, admitted by the care provider.
Per CA SB1191 (2018- clarified (**California Penal Code 368.5**) that abuse is a crime and law enforcement has "exclusive responsibility for criminal investigations". DDS has been allowed to take my son, against his will, while local law enforcement and Adult Protective Services have reported "no concerns" about [redacted] care in our home.

Based on the above existing laws, agency abuse of [redacted] and many others like him could be ended immediately,
if:

The **State Governor** requires the **Attorney General** to require the State Auditor to require the **State** Legislature to require all participants in this broken system to collaboratively follow all existing laws and support applicable related pending legislation.

The Attorney General could **immediately accept honor by** reversing the current course on their action. As described on the news (https://www.abc10.com/article/news/local/abc10-originals/conservatorships-price-of-care-taken-by-the-state/103-1e797c90-e530-4beb-8923-0c75d49f420b), Episode 3; the Attorney General has a clear conflict of interest. Conflicted is the position of either defending the State of California against lawsuits or ensuring that Civil Rights are protected for citizens with developmental disabilities. The documentary clearly shows that their current course of action is to defend the State against lawsuits rather than get involved in genuinely understand what is happening and come to an agreement with abused individuals and families and protect their Civil Rights. It may be possible correct the States injustices to these individuals, in a non-lawsuit agreement. Documentaries state that people with disabilities are our most vulnerable minority group; least equipped to regain their Civil Rights, when they are challenged. My son and people like him deserve better. Most of us, will in-time, join this minority group.

The Governor could **accept honor in taking action on this and ensure "that every person can achieve a better life, regardless of where they start out"** and continue **"building a California for All", including people with disabilities** (https://www.gov.ca.gov/). Everyone who takes the time to learn Garth's story are dumbfounded and report "shock" about how poorly this system works - that fierce allegations, without evidence, can destroy the quality daily life and nearly take the life of a man with disabilities who has happily and safely lived a life with the least restrictions in his family home.

In respect for your time and work on this essential issue, I have regretfully minimized the specifics that describe the horrible unlawful experiences related to this situation. Another parent who's son was removed from her home has a terminal illness and has stated that all she is requesting is to see her

abducted son before she dies. I can't imagine how this can't be granted. These are law abiding citizens. I want to briefly recognize the individuals in this system who have done everything possible to assist people like [redacted] and their families in regaining their civil rights. None of the families are requesting any type of favoritism. We just want the fairness that "Liberty and Justice for all" describes. .

[redacted]
[redacted]Mom

3-13-2023

My name is [redacted] I am a 2018 House Representative Candidate and a 2022 State Senate Candidate that has become very knowledgeable about the concerns of the People regarding this topic.

I have met/spoken with the Attorney General, the Supreme Court Justices, 2018-2022 Legislators and multiple Commissions (Civil Rights, Judicial Tenure, Attorney Grievance and local County Commissioners) with **two complaints**: (1) The attorneys using the People's Courtroom that slander, lie or mislead during a courtroom proceeding **MUST be sent to Jail for Perjury** and (2) the People **must have access to the video/audio recordings** of their Courtroom hearings in order to remove Judges who become prejudice or bias and/or refuse to look at or **demand evidence** to be produced to stop the perjury that is being put on the record.

The solution is simple.

We need **oversight of attorneys** who use the Probate Court System as a means to make an income. The Attorneys need conflict and want an adversarial process. The People want a fair and just courtroom. The Judiciary has already been created **for these legal professionals to monitor themselves** but instead, the better attorneys - who see the harm being done - will quit and withdraw their legal services to the General Public because of their own self-interest to continue to work in this **unmonitored** court system.

The majority of the Officers of the Court (Lawyers) are not courageous enough to take a stand to promote righteous behavior. These lawyers **must be regulated** by the Legislators and they **must have a clear and concise path for oversight** by the People.

There must be an arrangement for Court Watchers to be protected.

The PEOPLE NEED THEIR COMPLAINTS TO BE INVESTIGATED.

A huge request is to **regulate the amount of money** (per hour) that an attorney can charge when assisting an ordinary person through a probate transaction. Being a real estate professional for 40 years, Probate Court is a place to get "written orders" to sell a piece of property on behalf of an "agent" after the evidence has been presented to the Court that the property was listed property and fairly marketed. **It is not a place to take advantage of grieving and inexperienced people.** The few (predatory) Attorneys are using the court system to control the elderly, vulnerable, or person in a dysfunctional family in order to get the "listing" and control the proceeds of their assets to cover their $250-450 an hour legal fees.

Today, Probate is being used to put people into mental hospitals, nursing homes and/or in jail, all while a probate attorney (in the role of a guardian/conservator) is able to sell their homestead and collect their legal fees off of the free and clear asset that belongs to the family. It is horrible watching the real estate profession being taken advantage of by probate lawyers.

Attorneys can and will use all means to accomplish their goal: if there is a homestead, the attorney will get control of the settler, then take advantage of that setter's equity. It is wrong to sell the estate of a person who is still living and then use the proceeds of their equity to fund their own career choice - to be a probate predator.

The General Public and Legislators **must have access** to the courtroom hearings. The proceedings that are recorded will show the process of how the harm is being done and by who. Currently (as of 2/28/23) there is a man sitting in jail for 90 days and his fiance is in a nursing home. I can prove this couple is being harmed. They are NOW BOTH HOMELESS as a Guardian has lied to the Probate Court and the Probate Judge was willing to hear the inaccurate and fraudulent statements in order to sell the homestead.

This is an egregious pattern of manipulated behavior and it can be proven in our Michigan Probate Court System.

We need our **Law Enforcement Agencies** to help The People put these Probate Predators into jail for perjury. The People must feel safe that they will not be JAILED or HARASSED by a Probate Judge who has the Power to demand evidentiary hearings but won't. The Judges must stop giving out Letters of Authority for "guardianship/conservatorship" like penny candy. The abuse in Probate Court by the Attorneys and the 102 Probate Judges are costing our Michigan families **MILLIONS OF DOLLARS** in attorney fees and **BILLIONS OF DOLLARS** in lost assets.

Thank you, to the Senate Legislators, for hearing the pleadings of the People, AGAIN. The Listening Tour in 2019 brought many stories to light to the Attorney General. Obtaining all those complaints that have been filed will show that the systemic issue is real.

Time is of the essence.

[redacted]

Senator Bob Casey, Chairman
The United States Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510-6050

March 23, 2013

Dear Senator Casey:

Thank you for taking the absolutely necessary time to review what has sadly become a highly corrupt, if not outright criminal, scourge across Pennsylvania and, to our understanding, much of the nation.

While perhaps born of good intention, the system is at best terribly flawed, and at worst -- and this is not hyperbole, given our very traumatic and tragic experience -- a legalized example of organized crime.

Our dementia-stricken mother, [redacted] was seized under the cover of law -- appointed a legal guardian, then whisked away to a filthy facility no child would ever want for his or her parent -- against her will and to her open protests in November 2021.

Why?

Because Montgomery County -- in cahoots with my mother's appointed "counsel" and a judge who rubber stamps these things as part of the cabal of officials who clearly benefit from appointed guardianships rather than caring, compassionate intervention -- deemed, based on a set of superficial circumstances and truly slanderous remarks about my siblings, that she should be wrested from the care of those who love her most.

Because this judge -- sadly lauded at times by certain lazy reporters and state legislators too bothered to fully investigate -- allowed a crooked attorney and a crooked "guardian" to keep greasing the system's self-serving revenue machinery by rubber-stamping the county's petition minus any real research into the family, without any subsurface information, without any human context.

The county attorney "representing" mom has done nothing to get to know mom; has never visited mom; and has billed nearly a matching amount for her "service" as the total of our mom's credit-card debt -- none of which has been paid, in installments or otherwise, by the way, by the estate guardian. The guardian, whom my sisters were told they were fortunate to have, is a one-woman corruption factory who represents 70-some victims such as my mother and does very little except -- you guessed it -- bill my mom and her scores of other lower-income victims.

Why was my mom whisked away?

Because some bad optics and my mother's inability, given her dementia, to set the record straight afforded this cabal the opportunity to take advantage of a vulnerable older woman as her memories and faculties began to fail.

Why was my mom whisked away?

Because the Pennsylvania guardianship system allows it, that's why. It allows victimization of the most vulnerable, and it allows a host of unsavory actors to most exploit those our society should most revere.

The system is indeed a sad commentary on how our state treats its elderly, as well as on its values. In a word, the system is disgusting. Abject shame and shadow should be cast upon all who support it and profit from it.

Thanks for your time.

Sincerely,

[redacted]

Dear Majority Staff of the Senate Special Commitee on Aging

Senator Bob Casey, Chairman,

[redacted] Policy Director

Senate Special Committee on Aging

I am very happy to hear that The Senate Special Committee on Aging will be holding a hearing on guardianship/conservatorships and alternatives and also to know that the committee is very much aware of all the problems that plague guardianships/conservatorships.

Below is a short summary of what my mother went through in guardianship in Florida.

My mother was forced into a guardianship that she did not need nor want. Her advance directives were in order but ignored by probate court.

She never received notice of the hearing to adjudicate her incapacitated. Basically, all her rights were taken away even before the so-called hearing. She was not allowed to hire an attorney with her own money according to the court appointed attorney. She was not even present at the hearing so she could defend herself.

The court appointed attorney went to see my mother unannounced, but my mother did not wish to speak to her that day since she was not feeling well due to finding out about the hearing from my brother and me. The attorney then barged into my mother's house. She said she had to hear it from my mother. She told us that she would come back at a later date, but never did despite my brother and me both calling her numerous times to setup another appointment.

At the hearing that same attorney did nothing to help my mother she actually worked to put my mother into guardianship.

Two of the three evaluators came unannounced to my mother's house my mother of course would not let them in since she did not know them. The first one was a nurse; she called the police when my mother would not let her in. The other doctor was a physician that had an appointment when I was supposed to be there, but he decided to come at another time because he was leaving the country on the day of the appointment. He did not evaluate my mother since she would not let him in. The third was a psychologist that came when I was there, the so-called evaluation took him about 10 minutes.

Of course, they all declared my mother to be incompetent because that is the norm in how the guardianship system works, plus the fact at that time in Florida if the so-called evaluators did not find her incompetent they would not be paid.

Even the one evaluator that did not evaluate her said she was in competent. How would he know since he did not speak with her? In my honest opinion my mother showed competency by not letting strangers in her house and that is exactly what police tell you to do. The doctors and the court appointed attorney in my opinion are the incompetent ones for going to an 82-year-old women's house unannounced and expecting her to let them in.

My mother had very mild dementia, yet all her fundamental rights were removed which opened the door to the abuses that are something seen in horror movies.

My mother had everything taken away from her under guardianship her home, her little dog that she loved so much, her belongings, and every right she was entitled to according to the constitution and God. She could not believe this was happening to her or could happen to her. When we told her about the hearing, she wanted to leave the state, but I told her she would pass the exam since she really had only very mild dementia and only needed help with paying her bills, plus I took her everywhere she needed and wanted to go since she had stopped driving at 80 years old. I was so wrong! And she was so right not to trust them.

The unscrupulous court appointed guardian had my mother baker acted to get her out of her mortgage free house so the guardian and her attorney could steal all her money, and then put her on Medicaid. The guardian refused to keep my mother's very good health insurance, instead putting her on an inadequate health plan.

I asked the guardian if my mother could just live with me, but she said no. Why? With me my mother would have lived the life she wanted with loving family not in some substandard facility. Plus, my mother had intended on living with me when the time came. The guardian then decided to place my mother in a 2 hour round trip drive from me in hopes that I would find it too difficult to visit.

Below is the way my mother lived the last 3 1/2 years of her life at the substandard facility where the unscrupulous guardian warehoused her.

My mother sat all day in a windowless room made to sleep in an upright chair that did not recline even though she had severe osteoporosis and scoliosis. She was denied ocular which turned her dark brown eyes into a hazy whitish color from cataracts that were not removed and made it difficult to see, she was denied dental care which caused her teeth to crumble and fall out one by one. She was denied any and all rehabilitation even glasses to see with. Her court appointed guardian even denied my mother the simple pleasures of life such as toiletries, new clothes, and a TV. She only had those items because I bought them for her. The facility tried to deter me from bringing a TV. Her visits were severely restricted to one day a week, two phone calls a week all which were supervised. She never left the facility for over 3 1/2 years despite wanting to and being ambulatory except for visits to the hospital which were mostly caused by the over-drugging on Zyprexa, Temazepam, Xanax, Lexapro and Ambien. These drugs affecting her memory, caused falls, plus increased bone loss which also led to scoliosis.

On EVERY PHONE CALL to my mother, I would hear her voice quiver as she pleaded with me to get her out of that facility. On EVERY VISIT I WOULD SEE HER EYES WELL UP WITH TEARS THAT WOULD THEN STREAM DOWN HER FACE. WE WOULD HOLD EACH OTHER AS WE CRIED TOGETHER. I WOULD LET HER KNOW WE WERE GOING TO GET HER OUT OF THERE VERY SOON, AND SHE WOULD BE ABLE TO LIVE WITH ME AS SHE WANTED.

HOW COULD THESE PEOPLE DO THIS TO MY MOTHER OR TO ANYONE?

The judges on my mother's case allowed this to happen they allowed delayed after delayed hearings by the guardian and her attorney. They didn't care about the truth.

The substandard facility should be shut down and the owners should be criminally charged for not obeying the law regarding the "Residents Rights." They instead obeyed the guardian and denied my mother all her residents' rights. They placed large signs on the wall in the dining room for everyone to see which said my mother's name stating when she could have visits and her restrictions. They even placed a sign on the front door saying no visits during breakfast, lunch, dinner and visiting hours were over at 6pm.

No one adhered to it because that was placed there for me. I wonder how people working could even visit their loved one.

I was threatened by the guardian, facility and guardian's attorney if I at all tried to visit on a day that was not Okayed by the guardian and threatened for filing complaints, and for speaking out, taking pictures of my mother. I went everywhere for help, but it was to no avail.

I have all the documents of the complaints I filed, plus photos of my mother before guardianship and during. I have photos of her with black eyes, bruises on her arms and many of her over-drugged and drugged so much she could not even hold her head up with her eyes very droopy. I also have threatening emails from the guardian.

My mother always remained hopeful that she would be free from the horror she was living, but right before the hearing to have the guardian removed her body gave out from all the constant abuse by the guardian the facility owners and a court system that refused to investigate or do anything. I wonder if any of the so-called court officials would do anything if it had been their mothers or fathers, possibly not because it seems that power and money is what their very sad life is all about.

Changes that need to happen:

1. What really needs to change is to do away with plenary guardianships. No one should ever have all their rights removed. Even a convicted criminal retains some rights.

2. Supported Decision Making should be implemented in every state. People must retain all their fundamental rights and that is what Supported Decision Making does. Had my mother retained her fundamental rights she would not have lived in a substandard facility where she was tortured. She would have been free to live where she wanted.

3. Advance directives must be honored.

4. Hearing must be set quickly, and delays must not keep happening.

Protecting the rights of people being considered for guardianship or currently in guardianship/conservatorship or other protective arrangements.

1. The petitioner should be checked out before it is even considered because many times it is false allegations, disgruntled family members, etc.

2. The so-vulnerable person must be able to have their own doctor or doctor of their choice not some court appointed doctor.

3. They must be able to hire their own attorney.

4. They must be present at the hearing if it goes that far.

5. If they are adjudicated incompetent, they must retain their fundamental rights and have a guardian of their choice.

6. Absolutely NO ISOLATION or Restricted visits should be allowed. **Isolation of any form is detrimental to anyone's health and well-being; they are by far the worst abuses that happen in guardianship/conservatorship.**

I cannot stress enough that people MUST RETAIN THEIR Fundamental RIGHTS.

My hope and prayers are that the deplorable abuses in guardianship/conservatorship and all alternatives STOPS, because right now no one is protected from the so-called protection industry of guardianship/conservatorship. Thank you for addressing all the problems in guardianship/conservatorship and for your time in reading my letter.

Sincerely,

[redacted] daughter of [redacted] guardianship abuse victim.

CONNECTICUT
LEGAL
RIGHTS
PROJECT, INC.

STATEMENT FOR THE RECORD

TO: Senate Special Committee on Aging

FROM: Kathleen Flaherty, Executive Director

RE: Concerns about Guardianship, Conservatorships and Other Protective Arrangements

DATE: March 2023

Connecticut Legal Rights Project is a statewide nonprofit organization that provides legal services to people who are eligible for mental health services from the State of Connecticut Department of Mental Health and Addiction Services. We are often contacted by people who have concerns about conservatorships, especially those imposed involuntarily. (In Connecticut, guardianship is reserved for people with intellectual and/or developmental disabilities.)

Our state conservatorship statutes underwent a substantial revision in 2007 after a series of news reports about problematic cases. Our probate court system has established an online training for conservators and standards of practice for conservators. Among other things, conservators are supposed to maximize the opportunity for autonomy and self-direction for the conserved person. Any rights/responsibilities that are not specifically assigned to the conservator are retained by the conserved person. A conserved person retains the right to retain a lawyer to, among other things, challenge the continued existence of the conservatorship.

Because conservatorship and guardianship are creatures of state law, significant reform must continue to happen on a state-by-state basis. However, I believe that change can happen at

the federal level in two ways: require the collection and reporting of data regarding conservatorship and guardianship, and supporting the development of best practices.

In order to change things, we first have to measure them. We should require collection and reporting of race, ethnicity, and language data regarding conservatorship, in order to determine whether there are any systemic disparities that reflect unmet community needs.

Providing technical assistance so that states can implement less restrictive alternatives such as supported decision-making is another way in which the federal government can help states better assist people with disabilities. Older adults and younger disabled people should not have to lose their freedom in guardianships and conservatorships in order to live their best lives in the community.

Two Connecticut Supreme Court cases which may be of interest to the committee as they seek to better understand how important it is that people who are subject to conservatorship must have access to the legal system to challenge conservatorship and actions taken by conservators are Phoebe G. v. Solnit, 252 Conn. 68, 743 A.2d 606 (Conn. 1999) and Gross v. Rell, 304 Conn. 234, 40 A.3d 240 (2012).

TO: [redacted]

Disability Policy Director

Senate Special Committee on Aging

This is in response to the request for a statement with respect to adult guardianship.

I had a personal experience in the State of Florida involving the entrapment of my dad, a WWII vet, into an unwanted and unnecessary guardianship that ended up fueling a series of tragic family events including my baby sister's suicide,

Putting this individual story and personal tragedy aside, this is to provide a suggestion of something that might be considered in addressing this disgraceful National problem.

Currently there is too much incentive for an unscrupulous attorney to hoodwink an unsuspecting family into an unnecessary and abusive guardianship of an elderly family member.

There must be something done to remove the financial incentive from initiating these proceedings from the start.

Also, there must be some type of disincentive whereby any member of the legal community who engages in the petitioning of a guardianship for financial gain from the assets of the alleged incapacitated person be punished and held accountable.

A significant change would be to include language that prohibits filing fees, court costs, attorneys fees and any other fees and costs associated with the filing of a petition for guardianship and/or a petition for a finding of incapacity from being taking from the assets of the alleged incapacitated person's estate.

That such fees and costs must be borne by the persons filing the initial petition, regardless of whether the alleged incapacitated person is determined incapacitated or not.

Second, any subsequent fees and costs should be subject to a jury hearing.
Having personally been bamboozled into a guardianship proceeding by an attorney who my dad and I sought assistance from to address other civil and criminal claims, I have witnessed how these proceedings, once initiated, move ahead at lightning speed before one even knows what is happening.

Once the attorney files the petition they simply withhold all evidence of capacity in order to guarantee a finding of incapacity, withdraw from their continued representation and collect payment from the assets of the elderly person's estate whom they just stole their civil and constitutional rights from, and all by order and protection of the court.

There must be provisions in place whereby the initial decision to determine a person incapacitated and placed under a guardianship does not guarantee the award of fees and costs from the alleged incapacitated person's estate to the attorney who initiates the petition. This in and of itself will significantly reduce the number of improper guardianships being ordered by the courts.

Presently, in Florida at least, regardless of what is written in the statutes, according to case law in Thorpe v. Myers. 67 So. 3d 338 (Fla. Dist. Ct. App, 2011), any language in the statute is trumped by the court's interpretation of that language. See also Sanders v Chaplan, 334 So 3d 723 (Fl. Dist. Ct App. 2022).

According to Thorpe v. Myers, 67 So. 3d 338 (Fla. Dist. Ct. App, 2011) and again, recently, in Sanders v Chaplan, 334 So 3d 723 (Fl. Dist. Ct App. 2022), the court found that: "..the attorneys also initiated the proceedings for the determination of the Ward's incapacity and for the appointment of a guardian. As a direct result of these efforts, the Ward was determined to be totally incapacitated and the circuit court appointed plenary guardians of her person and property. Unquestionably, these services benefitted the Ward. It follows that the attorneys for Michael and Joan were entitled to their fees and costs related to those efforts."

Interestingly, the attorney who bamboozled me and my dad into an unwanted and unnecessary guardianship proceeding, (my dad had all his papers and designated DPOA in place), was the same attorney who argued in Thorpe and knew in advance that if he petitioned the court for incapacity and the appointment of a guardian, that as the petitioning attorney, he would be guaranteed the award of his fees from my dad's estate, if my dad was determined totally incapacitated.

Thus, the attorney, tricked me and my un suspecting dad, filed the petition, made sure that no evidence was entered that would prevent him from securing his fees and then withdrew as counsel, but not before recommending his professional guardian colleague for the court to appoint as my dad's plenary guardian of both his property and person and who's company the attorney served as member of the Board of Directors.

My dad was stripped of all of his civil and constitutional rights, (that he fought in a war to protect for the rest of us), removed from his home, restricted from being cared for and from seeing his family and turned into a non entity under the total control of a court appointed stranger.

Had there been no guarantee that the attorney would be awarded his fee from my dad's estate, it is highly unlikely that the attorney would have filed the petition.

Thus, it is my opinion that some sort of language that entirely negates or at the least, significantly reduces, the financial incentive from the initiation of a guardianship petition in the statutory provisions.

Also, it might be worth considering the inclusion of some sort of language that defines penalties or sanctions of some sort for the improper motive or for a fraudulent filing against the will of the alleged incapacitated person and that the retention of individual and constitutional rights be retained when there is no disabling mental or psychological illness.

Thank you for your time and consideration

[redacted]

Dear Senators:

Hello and thank you for your attention to this important matter I am a person with a disability. My name is [redacted]

I'm very concerned how easily it is to gain guardianship over a person. Despite the availability and success of less restrictive alternatives, too often local courts along with state services as: AAA and ACL because of perceived risk and not actual competency review.

According to Disability Rights of PA's Guardianship Manual, the duties of any guardian of a person include: (1) assertion of the rights and interests of the incapacitated person; (2) respect for the wishes and preferences of the incapacitated person to the greatest extent possible; (3) participation, where appropriate, in the development of a plan of supportive services to meet the person's needs; and (4) encouragement of the incapacitated person to participate to the maximum extent of his or her abilities in all decisions that affect him or her, to act on his or her behalf when he or she is able to do so, and to develop or regain his or her capacity to manage his or her personal affairs to the maximum extent feasible.

Often these policies are not followed and the legal system takes advantage of those who are not aware of their rights under the Olmstead Act. Many unscrupulous lawyers and service providers gain financial rewards by abusing the system which allows them to be guardians

Thank you for this opportunity. Please choose ethical guidelines for guardianship

Sincerely [redacted]

--

[redacted]
Community advocate/activist
SWPA—Western ADAPT
She/iher
Free Our People
In solidarity
Be a leader not a follower

I needed to add that a national task force is necessary to look and develop policies for a nationwide system where people's rights are observed and respected. Also forced institutionalizations has to stop this system As it is, it has promoted abuse and isolation for those who fall victim--

[redacted]
Community advocate/activist
SWPA—Western ADAPT
She/iher
Free Our People
In solidarity
Be a leader not a follower

March 23, 2023

Re: Elder Abuse / Guardianship

My story begins February 2, 2022, when my dad passed away. Then on May 15, 2022, my brother passed away. This left my mother and I, which of course I was going to take care of my mom. It was always the plan to take care of my parents when the time came.

Although we had just experienced very tragic events, the real nightmare began in June of 2022. My mom moved in with me and my family on June 9, 2022. On June 26, 2022 I took my mom to visit a relative for a couple of days and then I would pick her up and bring her home. The relative was my cousin, that I had not seen or spoken to in 20 years. My parents had not seen or spoken to her in years. My cousin showed up in our lives right after my dad passed away. My cousin led me to believe she was there to help my family. In the beginning my cousin said quite a few times that she was not there for any money, but just wanted to help. I believed her when she told me these things. With no real suspicion regarding my cousin to this point I seen no real reason why my mom could not go visit her.

My mom has not been home since June 26, 2022. A series of unbelievable events took place. My mom's personality and demeanor dramatically changed towards me after her arrival to my cousin's house. My mom would call me (which to this day I have only spoke with my mom a few times) and yell at me that I am trying to take her money and put her in a nursing home. Nothing could be further from the truth.

As the days and weeks went on, one painful event after another happened. My cousin hired an attorney for my mom. My mom did not do this, she did not have a smart phone or does not know how to use a computer, so it is hard for me to believe that my mom, on her own, was able to find an attorney in a town she does not know and not able to look up information on the internet. My mom's attorney sent me a letter at the end of July 2002 demanding I give all my mom's things back to her. Of course, I am perplexed by all this. If the times my mom called me, she was not yelling at me and saying bizarre things, we perhaps could have had a civil conversation about what was going on. Instead, I receive a letter from her attorney. In the middle of August 2022 my Power of Attorney was revoked. On September 2, 2022, I was served with a lawsuit from my mom. I was and still am very shocked and confused by these actions.

There are a lot of reason why I am concerned for my mom's well-being and safety. My mom has been through a lot and is VERY vulnerable. My mom has always depended on someone to do things for her, especially as she got older. My dad did EVERYTHING for the both of them, so with his passing I took care of everything as he would have. My mom will be 79 years old in May. I do not know her current health status because I have not spoken to her and my cousin will not tell me how my mom's doing. Although, I did learn she had a pacemaker put in sometime in October, but I had to learn this at a court hearing. In 1993 my mom was diagnosed with Congestive Heart Failure. She was given 6 months to live, but obviously did better than expected, and I am thankful. Through the years she had her ups and downs regarding her heath. On January 28, 2023, my mom fell down her stairs at her house. My brother was living with my parents at the time (actually he had his whole life). My dad was already in the hospital so he was not home at the time. My mom was taken to the hospital via emergency services. She ended up

with injuries to her hip and leg (cannot recall which leg). She had surgery for these injuries and now has a pin/rod in her leg.

A few days after my mom moved in with me in June 2022, I had to take her to the hospital. She was admitted for a couple of days. The cardiologist there told me her heart was at 20%. Aside from the emotional turmoil my mom had gone through and then her health declining, she also smokes and drinks a lot. I found out my mom was an alcoholic after my dad passed away. My brother told me, before he dies, that him and my dad wanted to put my mom in rehab for her drinking. I knew my mom drank; I just did not know the extent. Once I got her settled into my home I was going to help her get counseling for the losses she experienced and for her drinking. But of course, that did not happen since she was not with me very long.

As mentioned before soon after my mom arrived at my cousin's house (for what I thought was a visit) so many things started happening as well as my mom's attitude towards me. While I was POA for my mom my cousin forwarded her mail (and my mail as well) to her house. My cousin set up a Social Security account online for my mom and changed where her checks were going. My cousin also gained access to my mom's checking account. At this time because I was my mom's POA and I was paying her bills, I was on the bank account too. I was notified that the information on the checking was changed. When I finally was able to log on I could see that my cousin changed the email address associated with the account and she changed the physical address to her home address. I was also notified that a new credit card was ordered for my mom. I had just paid off my mom's credit cards, at her request. My mom had plenty of money to survive on without credit cards.

There were other events that happened, but as if the tragedy of me losing my dad, my brother, and then all this going on with my mom you would think that's enough for a person to deal with. What happens next is just as painful. I turned to the legal system for help, which has been the worst experience ever. Adult Protective Services was contacted. Three reports were filed with them, one from me, one from my aunt (my mom's sister), and one from my mom's credit union that was worried about my mom and her money. The credit union was worried because they told me that my cousin and her husband were aggressively trying to get into my mom's savings account. I filed a report with the police letting them know my cousin had drained my deceased brother's bank account and forged his refund check from the State of Colorado. I filed a report with Chase bank regarding my brother's bank account. I filed a report with the U.S. Postal Inspection Service, since my cousin had forwarded my mail to her house (as well as my mom's) without my knowledge OR permission. I finally hired an attorney to try to help me. Trying to find an attorney is almost impossible it seems like. The first attorney was a waste of time and money. I found another attorney, who talked to me about filing for temporary guardianship for my mom. I decided to go ahead and try that. I lost and did not get guardianship of my mom. The whole legal system I was dealing with was/is very corrupt. From the moment I walked into the hearing for this guardianship I knew I lost. My mom was not even there and the judge never asked where my mom was or to speak to her. I had no idea what to expect from this hearing because my attorney did not meet with me prior to go over this with me. He didn't even show up to Court early to discuss things with me, actually he was late. So, I felt a little blindsided during the hearing. My mom's attorney tried to testify as her witness. I never heard of this and he wanted to testify as to her competency! He did not but it wouldn't have changed the outcome, I believe. During a break the judge and my mom's attorney were chatting like old pals. How am I supposed to feel about the judge being unbiased with actions like this. I decided not to

move forward for filing for permanent guardianship of my mom because I truly believe it would be the same thing. I cannot bear to go through this again.

Now at this point I hired a third and last attorney. This attorney has not represented me and it feels as though he is actually working with my mom's attorney. I agreed, due to his advice to give my mom her things back. The only item left is a check for the house that my mom and I sold. The check is written to me and my mom but I said my mom can have the entire amount, I just do not want any tax consequences. Sounds reasonable to me that my attorney would help me find options regarding that. He has done nothing of the sort but has pressured me to sign this check without given me any reassurance. He has had me in tears telling me I would be in contempt if I did not sign and then told me my mom's attorney would file more motions with the Court and now make me pay his attorney fees. So now I am being pressured to do this and pray that I will not have any consequences down the road. Again, I tried to find another attorney to help with the check issue, but cannot.

Over the past few months, I have met so many people through the U.S. that are going through and or have gone through this, mostly people that have gone through this mess. I have heard nothing but horror stories about the guardianship process, which I experienced. Since I did not get guardianship, I was told by so many people I should be thankful because of the nightmare that would have ensued if I had gotten the guardianship. As I write this statement a family is getting ready to go into this nightmare or it has started. It breaks my heart that families are torn apart because of evil people and a broken system.

I did recently find out my mom had fractured her arm and no one will tell me what happened. Even APS will not tell me. They told me they cannot share that information, but they are aware of the situation.

I guess it does not matter that I love my mom very much and only want to take care of her. I promised my dad before he died that I would take care of my mom. I pray everyday that he knows I tried my hardest to get my mom out of the control of my cousin but everything worked against me.

I have learned that apparently that my cousin draining my brother's bank account (which she was not on the account) and forging his signature on a check is not a crime, but a family matter. That was pretty much the same response from the police, that my issues are a family matter.

Every door I tried has been shut on me. I am left now with the only choice of moving on. My daughters miss their grandmother, but she said she did not want to see them as well. My parents were very close to my children. It was heartbreaking to tell my girls their grandmother does not want to see them. What did my kids do? They did nothing to deserve this just as I did not to deserve this.

I have learned a lot about elder abuse, isolation, and undue influence. It is disgusting to me that these issues are not taken seriously, although you hear that they are. My mom was taken from me, isolated so no one can contact her, and from the undue influence I no longer recognize my mom. I'm not even sure if my mom remembers me.

PLEASE not only take these statements seriously but do something abut it and do it now! So many more families will be torn apart because this mess of a system that was originally (I hope) set up to help families, but from what you see does nothing but tear them apart. Please whoever reads this, put yourself in this situation. I've talked to so many people that said, "Oh, I would never go through that. My family is not like that." Well, I thought the same thing.

I have always put God, family, and country at the top of my priorities. Both my dad and I are veterans, and we joined the military because we thought that's what you do, you do your part to help. I have only wanted what was best for my parents and would never do anything to cause harm to them. I think because I did not really believe in evil, I was hit hard by this situation. I always want to believe the best in people. Now, I have lost my family and will always wonder how my mom is doing. My mom should be here with me and my family. My mom and I needed each other to heal from our losses, instead we have been separated.

All I want is to have my mom back on our lives. This does not seem like a lot to ask for, but that will not happen because the justice system has protected my cousin and her husband in allowing them to keep my mom from us. My cousin and her husband ONLY want my mom's money. If they cared about my parents, like they said, then where were they through the past years, especially when one of them was in the hospital or when my dad was diagnosed with cancer. They show up after my dad passed away. Because my mom is so vulnerable and in her weakness was easily persuaded, she has been turned against me.

I not only think about my situation everyday but I think about all the other families dealing with this. Every part of the justice system set up to help the elderly needs to be changed. From APS, law enforcement, and the court system, everyone of them has failed. There is no oversight for the people that work in these areas. I do not believe there is appropriate training for people to recognize all forms of elder abuse. The one statement that keeps getting thrown out there is if a person is competent or capacitated then they are free to do what they want. It's not always about that, very smart people every day get manipulated by people or systems. So, you take an elderly person, who may have health conditions, including mental/emotional and add undue influence to that person, it's reasonable to believe that the elderly person will be taken advantage of.

I wish I new what to say to have this committee start doing something today, but I do not know what to say for that to happen. Again, I pray no one who reads this goes through anything like this. This has been so painful; I would rather have physical pain than this emotional trauma. So I hope these statements do not fall on deaf ears. This problem will simply not just go away, it will only get worse. Please listen to voices of the families' writing statements to you.

This is not just injustice that happens in one area of the U.S. This is happening everywhere. Every part of the justice system needs to be reviewed, people need to be trained better, and the courts need better oversight with their attorneys and judges.

Thank you for your time. I pray for changes. I know it's too late for me, but don't let too many more families get caught up in this nightmare. Do something now!

Sincerely,

[redacted]

March 22, 2023

To: Senate Special Committee On Aging

Via Email guardianships@aging.senate.gov

Dear Senator Casey:

My name is [redacted]. I write you today to share with you my experiences and the issues that I have faced in attempting to visit and care for my mother at the end of her life. My mother, [redacted], resides in an assisted living facility and has been declared incompetent by her doctor. Prior to being declared incompetent my mother executed a Medical Power of Attorney ("MPOA") naming my brother as the individual who has the power to make medical decisions for her in the event that she becomes incapacitated. My brother and I do not get along with one another and have a strained relationship. I have always maintained a very close and loving relationship with my mother; I visited or called her on a regular basis prior to her being declared incapacitated. Since my mother's incapacitation my brother has used her MPOA to prevent me, and other members of my family, from visiting or communicating with my mother. My brother rarely if ever visits which has resulted in her being left in near total isolation. The assisted living facility, at the direction of my brother, does not provide updates on the status of my mother's health and we are not permitted to inquire.

I have retained legal counsel to assist me in applying for guardianship for my mother, but the process is long and expensive. To date I have spent thousands of dollars in legal expenses with little to no change in the circumstances. My brother has had the phone removed from her room so that she cannot make or receive phone calls; for the last 15 months I have had little to no contact with my mother. My mother has always been a social person who loved being surrounded by her family and friends. I know that my mother desires to have contact with her family and friends and it is cruel for him to isolate my mother in the twilight of her life. My brother's actions are not only abusive to my mother's physical health and mental well being they are abusive to my family as well. His actions are not only abusive they are beyond the scope of the MPOA that my mother signed. I know that it was not her intentions that the MPOA be used to isolate her from her family. The assisted living facility has aided in my brother's abuse by acquiescing to his unreasonable demands and denying me and my family access to my mother or information about her well being.

As your committee considers changes or additions to the law please be mindful of the abuse that the incapacitated may be forced to endure without safeguards in place to protect their rights from those that would seek to abuse the power granted them under a MPOA or guardianship. I would also ask that you are mindful of the rights of the children of incapacitated parent(s) to have access to their parent(s). What my brother, and the assisted living facility, are doing to my mother is unconscionable. While there are currently legal remedies for me to pursue they are both costly and time consuming; and given my mother's declining health it is likely that she will pass before I get

m_ day in court.

Respectfully submitted,

[redacted]







Goodbye Mama and always know we loved you until the end. God has you in his hands. We look forward joining you in that heavenly city. But until then, we will continue to serve others, love well, and continue to tell the world, Jesus Saves

In Christ Love, Your middle daughter, Kerri Jill, Jerry Jr., Joss Floyd, Jacey Joell, Jeston Vantreese, Jonnae Rose, Jaysa Renee, Jade Anne, Javan Cam, Philip, Andrew, Rod, Logan, Gage, Michael, Cason Paul, Baylie Kadash, Cali Marie Anne, Catalina Rose, & Baby Liam

KENTUCKY P&A PROTECTION & ADVOCACY

Protecting and Promoting the Rights of Kentuckians with Disabilities

5 Mill Creek Park
Frankfort, Kentucky 40601

Telephone: (502) 564-2967
Toll Free: (800) 372-2988

Fax: 502-695-6764
www.kypa.net

March 23, 2023

Senate Special Committee on Aging
Submitted by email to guardianships@aging.senate.gov

Re: Senate Aging Committee Seeking Information on Guardianships

Kentucky Protection and Advocacy (P&A) is part of a national system created by Congress to protect and advocate for the rights of individuals with disabilities. In carrying out our federal mandate, one of the things we do is seek to ensure that individuals with disabilities' liberty is not unnecessarily restricted. Guardianship is a significant infringement on a person's personal liberty and autonomy. As such, P&A works to ensure that guardianship is only used when completely necessary. In our work with guardianship, P&A has encountered several issues including, but not limited to, violations of due process when awarding guardianship and guardianships that are unnecessary. Below are a few stories and examples of problems with guardianship in Kentucky.

One problem with guardianship in Kentucky is that it is too easy to place someone under guardianship because in many instances the individual is not afforded constitutional and statutory due process protections. Kentucky's guardianship statute, KRS 387.500 et al., requires that strict procedures be followed to ensure that the individual's constitutional rights are protected and that unnecessary guardianships are not granted. Under the statute, the respondent to the guardianship petition has a right to a hearing, to appointment of counsel, and to present evidence and cross-examine all witnesses. Furthermore, the respondent must be assessed by an interdisciplinary evaluation team, including a physician, a psychologist, and a social worker who must consider less restrictive alternatives.

Unfortunately, these strict procedures are not always followed by district courts in the Commonwealth that hear cases on guardianship. In some instances, the responded is not afforded a proper hearing and in many instances the attorney appointed by the court acts in the "best interest" of the client instead of following the client's express interests.

For example, [redacted] is a 20-year-old man with mild intellectual disabilities. Upon turning 18 [redacted] wished to move out of the family home and into the home of his great-grandfather. [redacted]s great grandfather lives in a duplex with [redacted]s grandmother residing in the apartment on the other side. Upon learning of [redacted]'s wishes, [redacted]s father filed for guardianship, claiming without evidence that [redacted] was unable to take care of his personal and financial affairs. [redacted] was appointed counsel. [redacted]s grandfather and great-grandfather also sought guardianship of [redacted] [redacted]'s great-grandfather did not believe that [redacted] needed to be under guardianship, however he also believed that if the court decided to grant guardianship, it would be better for him to be guardian as [redacted]'s father was allegedly controlling and abusive.

[redacted] was assessed by the interdisciplinary team. The assessments, completed by the medical doctor and psychiatrist, basically stated that [redacted] required a guardian because he had a mild intellectual disability. It did not appear that any less restrictive alternatives were considered by these professionals. The assessment performed by the Cabinet for Health and Family Services social worker stated that [redacted] could not read the time on an analogue clock or address and stamp and envelope and thus needed to be under guardianship.

Prior to the hearing on the matter, the Commonwealth filed a motion to disqualify [redacted]s counsel as a necessary witness in the case (the attorney had allegedly been assaulted by [redacted]s father). The trial court granted the motion and appointed [redacted] a guardian ad litem. At the hearing, [redacted]s "attorney" did not advocate on his behalf. [redacted] stated that he never talked to the attorney prior to the hearing and that he himself was not present in the courtroom during the hearing. He does not believe that the attorney presented any evidence on his behalf or cross-examined any witnesses. At the conclusion of the hearing, [redacted] was placed under the guardianship of both his great-grandfather and his father.

Another example is [redacted] [redacted] is a 45-year-old female diagnosed with a mental illness. She lives with her two children and is working on her undergraduate degree in psychology. In November 2021, [redacted] contacted P&A stating that she had been placed under guardianship against her will and would like P&A's help in terminating the guardianship. After speaking with [redacted] telephonically, P&A arranged a meeting with [redacted].

Upon meeting with [redacted], P&A obtained [redacted]s guardianship file. After examining the file, P&A found the circumstances by which [redacted] was placed under guardianship very questionable. [redacted]s rights were taken away from her through an agreed order signed by both her appointed attorney and the County Attorney. The court did not provide [redacted] her statutorily mandated hearing nor did it give [redacted] the opportunity to cross-examine witnesses against her. The interdisciplinary reports used to justify placing [redacted] under guardianship simply stated that she needed a guardian due to mental illness. There was

no evidence that less restrictive alternatives were considered. Luckily, with P&A providing legal assistance, [redacted]'s guardianship was terminated, and she was restored her full rights as a citizen.

Other problems with guardianship that P&A has observed are associated with the number of individuals under guardianship and the lack of field workers, lack of guardianship training, and the school to guardianship pipeline.

First, the system is underfunded and severely over-burdened. Kentucky public guardianship system currently has 4,563 persons under state guardianship. Field workers caseloads average 53 per worker, according to the Director or Guardianship Services in Kentucky. This results in the guardians not being able to provide the level of service that person under guardianship needs which, in turn, may result in the person under guardianship being unnecessarily placed in some type of residential care.

Second, there is no training for individuals who are appointed guardian. Kentucky courts do not provide people who are appointed guardian the statutes and regulations that provide guidance of what their roles and responsibilities are once appointed. Kentucky P&A often works with public and private guardians about what their roles are and the fact that guardianship is not absolute power. Many individuals under guardianship rights are violated due to the lack of training and knowledge.

Third, many parents of individuals with intellectual disabilities are told by teachers that to continue attending Individual Education Plan meetings after their child has reached the age of majority, they will have to attain guardianship over the child. This leads to many parents unnecessarily petitioning and obtaining guardianship over their adult child, who may be capable of making his or her own decisions with or without supports. Guardianship in Kentucky is very difficult to terminate, even after it is awarded over someone who probably could benefit from less restrictive alternatives.

Kentucky P&A has been partnering with the University of Kentucky's Human Development Institute to promote Supported Decision Making (SDM) as a less restrictive alternative to guardianship that should be considered throughout the state. SDM is appropriate when the person being considered for guardianship can make decisions and has a strong support group willing to give advice and support in making good decisions. We have been successful in getting individual's rights restored using the SDM concept. Below are a few examples.

Soon after [redacted] the individual referenced above, was placed under guardianship, [redacted]'s grandfather and grandmother contacted P&A seeking assistance in getting [redacted]'s rights restored. P&A met with [redacted] who claimed that his father sought guardianship to take control of his finances. He stated that he receives money from SSI and his job but does

not see any of it. He also stated that his father withdrew $9000 from his account but was forced by the court to return it. He also stated that the evaluations that led to his being placed under guardianship were done by individuals in the community that his father knew and were friends with.

After reviewing the prior interdisciplinary assessments, P&A asked for a hearing and that [redacted] be reassessed by his own medical doctor and psychiatrist. Prior to being assessed, his P&A attorney contacted the three assessors and explained to them less restrictive alternatives that may be appropriate. Specifically, counsel explained Supported Decision Making. After considering the available less restrictive alternatives to guardianship, all the assessments concluded that [redacted] did not need a guardian and that less restrictive alternatives were appropriate. [redacted]'s guardianship was subsequently terminated, and he moved in the duplex with his great-grandfather and grandmother.

[redacted] is a 22-year-old woman diagnosed with a mild intellectual disability. Shortly after reaching adulthood, a Kentucky court took away her right to decide where she lived, what she did with her money, and what happened to her body. At the age of 18, [redacted] became a ward of the state. In [redacted] 2017, [redacted] and her support team contacted P&A and requested its help with restoring her rights through using Supported Decision-Making.

There are many adults like [redacted] that could make decisions for themselves with the support of a team. [redacted]'s team consists of both paid caregivers through Kentucky's intellectual and developmental disability Medicaid waiver called Supports for Community Living and friends. She attends day services at an Adult Day Training facility in [redacted], Kentucky. She lives in a home with two housemates and staff who assist her with daily living, as needed.

When P&A became involved in [redacted]'s case, her team had already begun functioning as a SDM team. Her team member and psychologist submitted a psychological report with a petition to modify or terminate guardianship in [redacted] District Court. In this report, her psychologist emphasized all her abilities and the fact that she works with her team when making decisions regarding her medical, personal, and finances. "[redacted] does a wonderful job of seeking out her team and asking for their input on her current life decisions." It was the opinion of the psychologist, that with [redacted] working with her SDM team, she would not need a legal guardian.

In [redacted] of 2017, [redacted] attended her hearing to modify or terminate her guardianship order. Her state guardian was present at this hearing and supported her to have her rights partially restored. The county attorney was not comfortable with the restoration and P&A requested that she have an attorney appointed and have the hearing postponed, the judge agreed.

[redacted]'s appointed attorney worked with P&A and [redacted]'s SDM team to understand how individuals with disabilities can use teams to support them in their ability to make decisions for themselves. [redacted] created a "Dream Board" that demonstrated her dreams for her future and life. It included many of the goals that all of us have for our future and life, including vacations, employment, and more time with family and friends. Most if not all her goals and dreams would have to be approved by a guardian with her defending her desires for these goals and dreams. Implementation of her "Dream Board" would require meetings and hours of discussion. This was one of her motivators to terminate guardianship. On July [redacted] 2017, the judge, with the agreement of the county attorney, fully restored [redacted]'s rights. She is now able to make personal, medical, and financial decisions.

[redacted] is a 31-year-old, man who has a diagnosis of intellectual disability and Schizophrenia. He receives services through a Medicaid waiver. His support team reached out to P&A after filing a petition to modify/terminate guardianship. He filed in the appropriate district court; however, he did not have a hearing in the allotted time according to state law. P&A contacted the district court to address the delay and was successful in getting a hearing scheduled. P&A met with [redacted]'s team and educated them on SDM as an alternative to guardianship. His entire team supported him in pursing the termination of guardianship and agreed to be part of his SDM team. The courts appointed two professionals to complete evaluations for the restoration process. P&A reviewed the reports, which were not favorable for restoration of rights. P&A arranged to have an independent evaluation completed and it was favorable to rights restoration. The evaluation was submitted to his appointed attorney prior to his hearing. At the hearing a P&A advocate testified to the court about SDM as an alternative to guardianship. At the conclusion of the hearing, the judge fully restored all of [redacted]'s rights. Prior to this hearing, the judge was unaware of SDM as an alternative.

These are just a few examples of the many individuals across Kentucky who were unnecessarily placed under guardianship and who could benefit from less restrictive alternatives. To protect the rights of people being considered for or currently covered by guardianships, conservatorships, or other protective arrangements, and as a result lessen the burden on Kentucky's guardianship system, P&A suggests the following:

- Direct Federal funding to state Protection and Advocacy agencies to do guardianship work including, but not limited to:
    - Direct representation in guardianship restoration proceedings.
    - Ensuring that due process is afforded in guardianship cases, including appointment of an "express interest" attorney who will argue for the client's wishes and not what he or she believes is their best interest.

- Requiring interdisciplinary team report to list the alternatives to guardianship that the evaluator considered and that the evaluators be required to explain on the form why alternatives would not be appropriate.
- Educating families and individuals, including those with disabilities, about alternatives to guardianship.
- Educating professionals, including teachers, judges, lawyers, and medical professionals, about alternatives to guardianship.
- Addressing the lack services and resources for individuals with disabilities that are needed to either prevent guardianship or to make guardianship safer and more responsive to the needs of this group.

Thank you for your consideration.

Respectfully,

Kevin Sharkey
Kevin Sharkey
Staff Attorney
Kentucky Protection and Advocacy

Camille Collins
Federal Program Specialist
Kentucky Protection and Advocacy

Dear Senator Casey and the Senate Special Committee on Aging,

My name is [redacted] and I am a 29 year old man that lives in [redacted] Indiana. Because of a difficult delivery and having a lack of oxygen, I had a stroke at birth. I developed cerebral palsy. I was Diagnosed when I Was 4 years old. I did O.T and Physical therapy throughout my childhood with very little long-term results. My life was full of doctor appointments and any other things my parents thought would help. Once in school I started out in special classes that caused a lot of years to be an endless stream of being bullied and picked on. My parents had always had high expectations of me. Without my parents pushing like they did I would not have had learned as much as I have. But with all the pushing sprouted a lot yelling and crying. Because of my brain injury and a lack of ways to express myself, I felt like I was being put in a big bucket with every person who had a disability. Then, I was connected with my first agency/case manager/behavior specialist.

Again. My whole life revolved around some disability that I didn't want or ask for, but it was the hand that was dealt to me. So, I heard it from everyone I ever met. In my experience telling someone would put me into a different place in their minds.

At some points, I felt less than human because of all the ways I have been treated. At 17 years old, my parents were advised by my team who I also didn't pick that they should get a guardianship. At the time I would have agreed to almost anything just to get people to stop talking about how disabled I was.

I never knew that me agreeing to guardianship basically meant I didn't grow up like a normal adult. While all my school mates went to college, I got a team who decided every part of my life. I got to move out of my parents house but wasn't by myself for long. My mom picked a roommate that I had really no say whether I even liked him. I got more staff because he also had a disability, but he needed way more help than me. I didn't get to pick who I hung out with and didn't invite friends to my apartment because I didn't want to be outed or marked as "disabled". People may say they don't treat people with a disability different, but I know that is not the case for most people. My Parents got to hang a chore list up in my home along with cameras in the living room. I couldn't choose to bring home a case of beer after working all day because my guardian and my roommates decided they didn't want it in the house. I had a roommate who stole from me all the time and a team and guardian that would tell me he didn't know any better or he was mistaken. I knew he was playing all of them. All of that caused so much anger and resentment to build between myself and my roommate, but also my parents for putting me in the situation.

It wasn't until the roommate told our neighbors that I was a child predator/abuser because he was mad at me that the living situation ended in an explosion. The roommate moved out, but I was left with neighbors making comments and weird looks. My team and guardians told me to "get over it". They weren't living in the situation that I was. They said I should forgive my roommate because "he has his quirks". I asked to stay because I wanted to keep my staff that I became friends with over 5 years. That was the only time that I could be just me, laugh and relax. It was during that time I started reading about disability rights and guardianship. It was all so familiar, but mostly ALL OF THE THINGS MY GUARDIANS COULD DECIDE FOR ME (Ie... who I lived with, who I dated, when/who/if could ever marry). Had I known everything guardianship meant at the age of 17 I would not have signed away my right. That made me an eternal child, but I can assure you, I am not a child.

I have wanted to be like everyone else my whole life. In my experience, my guardianship kept me from growing. There has to be a way for parents to help their kids when they become adults without taking their voice and freewill away just because they have a disability. During this past year, things have finally started to change. My parents and I have been working with Indiana Disability Rights to end my guardianship and will be filing to do so any day now. I have begun handling most things on my own and am just starting to see what life it like is for everyone else.

I love my parents and am very blessed to have good ones. But their choice to get guardianship before I even became an adult means I haven't had opportunities to grow like others my age. That's what happens when people are stifled their entire life. Now I am taking charge of my life. It isn't easy but it is worth it to finally get to live like an adult. I now have a voice, but many still don't - please reform the law for them and then let disabled people live too.

THANK YOU FOR COMING TO MY TED TALK!

Dear Sir,

Twelve years ago my son [redacted] was conserved with absolutely no due process my daughter and me got notice of hearing two weeks after the fact.
For the last twelve years I have fought vehemently just to get visitation to no avail.
His conservator is his biological Father [redacted] All of [redacted] rights, save his right to vote were granted to his Father and most concerning is the granting of his medical rights because his Father is also his treating physician,
All of this isolation abuse is made possible by [redacted] his public defender who is a friend of the Conservator and his current wife [redacted].
Sadly with so much undue influence my son is very reticent to see me now.
Please help us .
Sincerely [redacted]
Now aged [redacted]
Case [redacted] Santa Maria court
Santa Barbara County

Senate Testimony, [redacted] Lafayette Indiana

In Re: *the Guardianship of* [redacted]

Case Number: [redacted]

Court: *Tippecanoe Circuit Court, Lafayette, IN 47904*

Filed: [redacted]

Notes

Called 8/16/22. 43, on SSI disability ($1,000) survivors pension ($732), Mother removed as guardian in early 2022. [redacted] is his own payee. Mother paid cash for home $70,000 in 2010 with undisclosed money left for [redacted] from his father. She owns the home in an LLC, [redacted] Works and makes about $10,000/year. Has three cars and has lived in the home continuously since 2010.

Mother no longer speaks to or communicates directly with [redacted] has never seen his father's will, the trust, or the LLC operating agreement.

Father died in 2003, was the CFO for [redacted] Products. Made tanks for [redacted] trailers. Had a large stock portfolio and stock in Alloy steel manufacturing company. Mother has referenced an irrevocable trust on recorded audio record. Mother was a Second wife, five kids total. [redacted] has no idea what his father actually left him and disputes the financial management of his estate while under the guardianship. Father had a trust and he believes the mother was the successor trustee. Attorneys have referenced that a trust exists.

[redacted] struggles with transparency and attorneys that will provide him with a forensic accounting.

At one point Judge [redacted] instructed a court appointed attorne[redacted] to not investigate any financial aspects of his case.

Attorneys Involved:

[redacted] guardianship petitioners Att), [redacted] > 2002-current, active

[redacted] 1/21/2021 – 1/31/2021, inactive

[redacted] 08/18/21 – 9/13/2, inactive

[redacted] 9/9/2021 – 2/4/2022, inactive

[redacted] 3/31/22 – 8/18/22, inactive

[redacted] 8/15/22 – 11/14/2022, inactive

[redacted] 2/7/23 – current, active

Summary

08/02/2002 Temporary Guardianship moved from Carroll County [redacted] to Tippecanoe County [redacted]

I had initially been being committed involuntarily by my mother who insisted I have a chemical imbalance. I'm not sure exactly why I was being committed other than having occasional episodes of just freaking out and becoming very agitated and frustrated. My guardian was extremely mentally abusive and controlling.

I was declared mentally ill and would go through involuntary commitments at the request of my mother.

Shortly after the guardianship was established, in 2003 my father passed away due to heart complications surrounding a wrongful death incident resulting from a car crash. My mother was rewarded a wrongful death claim and I am curious if there was any insurance claim I may be beneficiary of resulting in my fathers passing.

So from 2003 to 2009, nothing was done in court as far as accounting or routine annual checkups. NONE. In 2009 it looks like the courts requested that an accounting be filed. Shortly after the court requested an accounting be filed, an accounting was filed but the judge found that it was not adequate.

To this day, there have been no hearings for accounting or wellbeing checkups. I have complete confusion regarding the personal affairs and financial accounting details surrounding my home and life. My first lawyer said that I have an irrevocable trust but [redacted] my mother) did not put it in my name. My second lawyer told me I have an irrevocable trust, but later changed his story and said that I do not have a trust which led to me firing him over the confusion. I have a pending small claims hearing with [redacted] due to his invoices reflecting payments being made greater(appx $4,000) than what I had personally paid him out of pocket.

I have been curious about money left from my father as this did not add up, considering I have been told by several attorneys that I have a trust.

Around 2009, I sort of began trying to become successful and began growing personally with ambitions, working and pursuing jobs.

In 2012 I was entered into a purchase agreement to purchase my house here in Lafayette Indiana. At that time, I was not my own payee.

My mother was receiving my social security checks, as well as a professional payee service, GreenLeaf Custodial services.

I was starting to become very suspicious of my accounting and at the time did not even know that I was in a guardianship situation. I thought that [redacted] had a power of attorney, but because I had not been involved in any annual checkups or accounting hearings I was not aware that there was a permanent guardianship.

I grew suspicious for several reasons and decided that I would use a recording device to capture a discussion about finances.

So in this discussion, my mother and former guardian admitted to lying about finances and referenced and irrevocable trust. She did not tell me what she lied about in the conversation, only that she had lied and felt guilty.

So at this point I am starting to become very frustrated and suspicious. Around 2019 I hired a lawyer to help me figure out my legal situation and get some answers. We were working on my case, and I still had a moderate relationship with my mother at the time. There was an incident at her house where I was working on one of my vehicles to try and use it for a job mounting TV's. We had a verbal argument over finances and I left. She had my truck towed to a junk yard to be crushed.

We were arguing about money and she had still not told me what she was lying about.

So at this point there was a lot of unnecessary fighting and drama taking place due to the murkiness of financials surrounding my guardianship. Shortly there after there was a property dispute with my neighbor who was objecting to me cleaning up the brush on my property. I called my mother who was my guardian at the time to resolve the property disputes but she took no action. Take into consideration that I have no control of my house and property as it is owned by [redacted] a company that my mother established and owns operates.

The neighbor installed cameras surrounding my home and began spying on me non-stop.

So eventually all of the drama surrounding the property ended in the neighbor blocking access to my property for maintenance purposes. There was police involvement regarding the dispute bu[redacted] my guardian at the time was no where to help and answer questions regarding the property.

So I soon began focusing on getting this guardianship removed as it has clearly been working against me as a thorn in my side. This guardianship is not in place to help me in any way. The

gaslighting effect of not knowing what is happening with the finances is playing a huge role in the frustration and humiliation surrounding my life.

So this is when I begin working with my first lawyer who proves to be making a deal without my awareness. He tells me that he is going to get me an accounting, but actually canceled the accounting hearing that I had filed a motion for and had scheduled.

After a while, I decided that he is lying to me and ask him to remove himself from my case, too where he tries to enter a motion of summary judgment(tried to decide the case without my consent) where I had explicitly asked him to remove himself from my case.

So the judge denied his motion of summary judgment and removed him as my attorney.

Now my second attorney seemed to be doing similar to my first attorney. I asked him if I have a trust, and initially he says that I have an irrevocable trust that needs to be reformed but not to worry about that. I asked him questions about the trust and explained that I want to know all aspects of my accounting and guardianship as this is important for exiting my guardianship and being aware. The attorney made comments of having to "read the trust files" and would get back to me. So at this point I asked him for a copy of the trust and he began stonewalling and not returning my emails. Eventually, he said that he had confused me for another client and that there was no trust at all. So this broke down the trust in our relationship and I now have another attorney.

So I have a court hearing this month on the 30th... I am still trying to get answers on accounting. There is a whole bank account that has not been referenced in any of the incomplete accounting that my former guardian (mother) and her attorney have filed. There are no records of house payments in the accounting they have filed. I have records of correspondence from Greenleaf payee custodial services where my guardian, [redacted] had requested house payments to be made to her.. However, I have no access to that account and that bank account was closed for some reason without my involvement having become my own payee.

I still, to this day have no idea how many house payments were made, and because of this and comments made by her lawyer I fear I may lose my house.

So I am just here now, waiting for court so that I can figure out what will happen with my home and if I will ever have the basic financial answers I need.

It looks like there is a trust that [redacted] did not put in my name and has since been not keeping records appropriately.

It does not look like my lawyers were compelled to be transparent with my financial information as they may have been leeching off of the trust without my knowledge as I had been labeled "incapacitated" and by definition not treated as any sort of relevant party in my life. They seemed to ignore and brush off any direct questions about financial information. I have been extricated from the guardianship as of 2/13/2023 but have yet to receive adequate

accounts of monies surrounding my fathers estate in relation to my estate, and even basic accounts of social security and house payments received on my behalf by [redacted] and Greenleaf custodial services are not documented. I am optimistic that working with [redacted] and [redacted] of C.E.A.R. (Center for Estate Administration Reform) https://www.cearjustice.org may provide the witness and credibility I need to receive resources and relief so that I may receive justice and transparency surrounding the fiduciary neglect and malfeasance surrounding my former guardianship and active financial hearings in Tippecanoe county, Lafayette Indiana.

[redacted]

Statement of Lawrence Timothy Reid Jr.
to the
United States Senate Special Committee on Aging

March 23, 2023

Thank you Chairman Casey, Ranking Member Braun, and all of the very distinguished Members of this Honorable Committee, including two from my home state of Florida, Senator Rubio and Senator Scott. It is a great honor and privilege to have been invited to provide this statement to you. Your Committee has done so much for the senior citizens of our country. For the sake of all citizens, most especially seniors, I hope and pray that you have tremendous success in helping to end the nationwide crisis of predatory probate guardianships.

INTRODUCTION

Three years ago this week, on March [redacted] 2020, my Mother, [redacted] died in an assisted living facility, where she had been forced to locate because guardian lawyers wanted to liquidate her home to pay massive attorney fees that should have never been generated in the first place. In fact, those fees had already been thoroughly condemned by the Court's own Inspector General. Even more egregiously, top physicians testified to the guardianship court that forcing her into this facility would exponentially increase the likelihood of her suffering and dying from isolation and disease years earlier than she would otherwise. Their testimonies and the extensive medical literature evidence they provided to the court were unrebutted. Nevertheless, with fatal consequence, the guardianship lawyer relentlessly pushed and prevailed upon the court to remove my Mother from the home and neighborhood she loved, to a facility where she was unable to ever again see her neighbors, attend her church, or socialize in the very active and way she previously had. Worst of all, the guardianship so severely isolated and restricted family visitation my Mother that not one of her five (5) children were permitted to be with her when she died. She died all alone. Mom was also repeatedly molested in this facility.

HISTORY OF GUARDIANSHIP

In May of 2014, my Mother, a widow with five (5) adult children, was forced against her knowledge and will into a guardianship in [redacted], Florida. This came about because an attorney then from [redacted] who specializes in creating involuntary guardianships petitioned that it should be done. Deceitfully and surreptitiously, that attorney falsely claimed that petitioning for a guardianship was an absolutely necessary "last resort". Under Florida law, a guardianship must be a "last resort", but that law was not enforced in my Mother's case, and I have come to learn that it rarely is in any case.

In actuality, there was no need whatsoever for my Mother to be forced into a guardianship. As well known by the future guardian, the matter of my Mother's health and well-being had already been thoroughly investigated only a week earlier by the State of Florida Department of Adult Protective Services, and by her local police department the [redacted] Police Department, both of which independently and very emphatically found and officially reported that my Mother to be in very good health, fully able to manage her own life, and not in any danger, imminent or otherwise. Unconscionably, the guardian lawyer did not reveal those facts to the guardianship court. Indeed, she misled the court to believe just the opposite, which, in turn, misled the court to create a guardianship.

Compounding the tragic consequences of those false claims to the court, the guardian attorney also concealed from the court the fact that my Mother had very recently seen two very highly respected doctors who also both attested to the fact that my Mother was very healthy and fully able to care for herself. These doctors very strongly and unequivocally warned the guardian attorney and the court that the guardianship being petitioned for would not only not help my Mother, it would do grave medical harm to her. The guardian attorney refused to call these key witnesses to testify, as they requested and volunteered to do, and as required by law.

On top of all this, the guardian attorney also misled the court to believe that my Mother did not have an estate plan to protect her well-being and estate. In truth, my Mother had an extremely thorough and comprehensive estate plan, which she designed in conjunction with one of the best and most highly respected estate attorneys in [redacted] County. That plan protected her in every conceivable way, medically and financially. But this, too, was not told to the judge by the guardianship

attorney. Rather, the judge was misinformed that my Mother did not have advance directives sufficient to protect her.

When my sister [redacted] and I, Mom's oldest daughter and son, learned that our Mother had been covertly forced into an "Emergency Temporary Guardianship" we were shocked and horrified that any such thing could happen. We knew that our Mother was healthy, safe and sound, just as the very recent police and Adult Protective Services investigations (only about two weeks prior to the attorney's petition) both confirmed. Even so, we thought, this being America, the court would rapidly recognize this for the sham it was and free our Mother, respecting the police and Adult Protective Services findings, respecting the medical reports of the doctors who had written the court, and respecting the very thorough estate plan of our Mother. But, at the urging of the guardian attorney, the court did just the opposite.

Making matters worse, based entirely on yet more false statements, concealment of facts, and flagrantly false arguments by the guardian attorney, the court refused my sister and I to have interested person rights to object to the guardianship and protect our Mother. Though this was subsequently declared by Fourth District Court of Appeals as outrageous "hocus pocus" abuse by the guardian attorney and judge, that ruling came far too late to protect our Mother. Her life and estate had already been ruined by the guardianship, facts confirmed by multiple physicians and by the Circuit Court's own Inspector General.

To counter the preeminent doctors who testified to protect my Mother – one a very highly esteemed psychiatrist from [redacted] and University [redacted] Medical School, the other the world's leading medical expert on probate guardianships – the court appointed a person who fraudulently claimed to have graduated from the University of [redacted]. The truth was that he never attended the University [redacted] but, rather, had obtained his degree from the most notorious medical degree mill in the history of the hemisphere, CETEC in the [redacted]. This was the court's regular guardianship "expert", who is regarded far and wide by real psychiatrists as "the worst psychiatrist in Florida".

As if that wasn't all bad enough, the court also did not allow my Mother to choose her own attorney. Instead, the court required her to be "represented" by an attorney who, only a few years earlier, had been convicted as part of the largest fraud scheme in the history of [redacted] County prior to Madoff. Prominent victims of this fraud included [redacted] and [redacted].

The horrendous end result of all this abuse is that my Mother's estate was voraciously devoured and bankrupted by the guardianship, she was booted out of her beloved home and isolated from her children and friends in a lock-down assisted living facility, and died all alone, with not one of her children able to be with her when she died because of an abhorrently absurd visitation restriction ordered by the court.

That was three years ago this month, but the rape of her estate continues with the guardianship relentlessly trying to extract even more for conduct that should be deemed criminal not rewarded. Now, the guardian lawyer is despicably engaged in all-out war to drain my Mother's homestead, which, in Florida, is supposed to be sacrosanct and invulnerable. But the guardian lawyer doesn't respect that either.

THE MOST URGENT PROBLEMS

From my very extensive experiences with the probate guardianship system, I have personally observed the following:

- Though statutes, rules, regulations, and policies, unequivocally dictate that guardianships must be a "last resort", they are almost always the first resort. Many guardians, guardianship attorneys, and guardianship judges, completely disregard these this fundamental requirement.
- As a tactic, predatory guardian attorneys deliberately misadvise and conceal from families the often horrendous consequences of a guardianship, both medically and financially.
- As a tactic, predatory guardians and guardian attorneys regularly instigate and exploit family conflict for the ill-purpose of creating and perpetuating guardianships.
- Predatory guardians and guardian lawyers unlawfully conceal information, evidence, and witnesses, from guardianship judges, that would prevent the creation and perpetuation of guardianships.
- Predatory guardians and guardianship attorneys go unpunished even after being caught red handed, with only infinitesimal exceptions. Even those guilty of blatant fraud and murder are not held accountable.

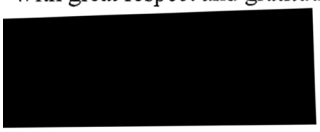
- Seniors subjected to petitions for guardianships are denied basic constitutional due process.
- Guardians and guardianship courts often act to prevent family members opposed to a guardianship from having rights to become "interested persons" so that they can file objections in court.
- Though strictly prohibited by law, guardianship judges often facilitate a guardian's invasion of trusts over which guardianship courts have no rightful jurisdiction.
- Guardianship laws require wards to pay attorneys who oppose their desire to not be forced into a guardianship. Simultaneously, the seniors' attorneys and doctors are not paid by the guardianship petitioner.
- Once in a guardianship, there's virtually no chance of getting out, even after one proves it was wrongfully obtained and completely unnecessary.
- Guardians, guardianship attorneys and courts regularly disrespect and disregard the lawful intents and desires of seniors, even when they are very lawfully and intelligently expressed in well-crafter estate plans prepared by top estate attorneys.
- Guardianship courts often use unqualified parties to determine whether a senior is in need of a guardianship. Simultaneously, they almost always totally disregard very highly qualified physicians who testify that the guardianship is not necessary.
- If a senior's physicians indicates that they do not believe a guardianship is necessary, guardianship judges do not require that a senior's physician testify. Indeed, as in my Mother's case, they often act to block their testimony, using inferior doctors and even lay people with no medical training at all.
- Courts reward physicians who testify in support of imposing a guardianship, and punish physicians who don't.
- Guardians and guardianship courts regularly isolate seniors from their family, friends and from all social activities, causing extreme damage to their health and well-being.
- Guardians and guardianship courts destroy not only the health and estates of seniors, they destroy their families.

- In order to expedite the sale of homes to pay attorney fees, wards are forced out of their homes into facilities where their risks of dying sooner are exponentially increased.
- Guardianship courts refuse to follow state laws.

ACTIONS REQUIRED TO END THE CRISIS

Short of completely abolishing all existing state guardianship systems and universally replacing them with a national system, the only thing that will end this crisis will be to permit victims of guardianships to have their cases reviewed by federal courts and agencies. Preventing these victims from filing legal actions with federal courts and agencies is what has encouraged and empowered predatory guardians and guardian lawyers to create and engage in this greed-driven racket. As all other citizens are, victims should be entitled to seek protection and redress under the Americans with Disabilities Act and EEO Age Discrimination laws, inter alia. Until victims are afforded these rights, this crisis will continue. In fact, it will grow exponentially worse as Baby Boomers age.

With great respect and gratitude,



[redacted]s Story on Alternatives to Guardianship and the Use of Supported Decision-Making

I live in [redacted] Michigan. I had a partial guardian that was my sister for ten years. My sister helped me get out of an abusive relationship.

My sister and I decided that guardianship was no longer needed. My sister was no longer using the powers given to her in the partial guardianship. And I had been using my family, friends, and providers to help me make decisions for years. These people were there to make sure I understood options and guided me as I made my own choices.

I ended up in [redacted] County Probate Court in the October 2022-January 2023 due to a social worker mistakenly petitioning for guardianship. My Provider's CEO, [redacted] hired [redacted] to show the courts how Supported Decision-Making is used and how I do not need a guardian as I use supported decision-making.

Today I have my rights back.

Supported Decision-Making allows people to receive help they need to make choices and keep their rights.

Please watch and listen to my PowerPoint that tells in detail my story about how I use supported decision-making instead of guardianship.

I have included a video in the presentation about how I use supported decision-making.

My sister and I along with our team are lobbying our legislators from Michigan to have a statute like the 23 other states have for Supported-Decision Making!

[redacted]

1. Unseal the courts: There is such an ability to take advantage by the lawyers within this closed or sealed world of Guardianship. For example: the same Guardian of the person appointed to my Parents charged $1200 per person per month and she might have visited them 1-2 times a month if that. She interferes with my Mothers care more than she helped. My son calls her a murderer. So she charges their estate $1200 a month but doesn't submit the bills for 8 months then charges double than what the Judge allowed. At the same time have gotten to know a bunch of her ex clients families or current families and the range per month is all over thr place . My friends Mom was charged $300 per month. So if you unseal the courts this type of corruption will be exposed.

Same with thr attorneys who feed off anyone with money m. How come our case took almost two years and my great friend, my bank tellers Mom took 20 minutes? Money they tested the same.

You are allowing the same abuse as people like me who spent a fortune to protect their assets tried to avoid.

2. Allow stable family members who win the petitions to be Guardians or Co- Guardians. It is complete discrimination when someone wins on a petition to have court appointed attorneys who have purposefully strung out the proceedings to make money to bully and harass the only Adult child who didn't steal or abuse to be isolated from being Guardian or Co Guardian. It's a complete money grab and abusive to the elders who want and love their children to not allow the Safe and Non Criminal Adult Child not to manage the affairs of their parents. Thr best I was able to do is get a conditional guardianship to allow my parents ti stay home which is what they wanted and from day one the Guardian or thr Person plotted against me to immediately remove my parents from their safe and comfortable clean and holistic environment into her favorite kickback place - Shannondale.

3. Prosecute these cases. My siblings and their corrupt team orchestrated a $10,000,000 heist. I recovered $4,000,000 back but we have millions more of a first generation couple who loved their County and State.

My son who is 28 and uncovered the crime at 24 likes to say...Well if Pennsylvania will not prosecute $10,000,000 of elder abuse then what number does it take? Is $15,000,000 enough?

He wonders why the DA wastes tax payer dollars over a $525 credit card fraud case but ignored complaints about abuse of my parents a year before I was forced to file. What case will PA prosecute if not the largest exploitation case, which our is?

4. Put lawyers in jail who abuse the elderly

5. Mandatory Reporting Requirwments for all accountants, lawyers and money managers with large consequences is a must! In our case my siblings literally premeditated and planned this with a new money manager and my sisters best friend who worked at the firm and a lawyer they met at a bar.

My take Justice for Ted and Helen Morgan !

[redacted]

[redacted] 3/22/23

I am praying that someone will do something about the guardianship of my mother, [redacted]. My name is [redacted] I live in Philadelphia.I grew up in Bensalem. And, the Bucks County Department of Aging is the agency that suggested that we (Me and my mother's original POA.) let them appoint someone as a temporary guardian to get the woman, her son, and possibly a couple other of her "friends" that were stealing from my mother away from her.

The pandemic has just hit, and I was being treated for breast cancer. This old coworker took advantage of both to get the will changed.

To my absolute horror. the only thing the guardian did was put the Will back into my name . All I wanted was to be able to see my mother. I made it clear that I didn't care about the money. And, I was so threatened and manipulated by these people that I actually wrote to the guardian at one point that I did not want the will put back into my name, only because I was being mentally tortured by them.

The will was put back into my name, and all I could do was ask to see my mom. The guardian said, ""You should be happy! If your mom dies tomorrow, you get everything! "

Are you kidding me? The woman that stole my inheritance, and tortured me via on line, and in person through other people, split my mother and I apart, and ruined our lives; and now she and her family and friends still all have access to my mother? She does not care for my mother. She is tremendously pissed off that she did not get my mothers money and her home. Why, and how does this woman have access to my mother...and I do not?

My mother was put into guardianship when the pandemic started due to misrepresentation. I wrote the letter that prompted an investigation through the Bucks county department of Aging.

They lied to me, my mother, and my Mom's original POA. I can not help but feel like this was all set up. The woman and her son that literally stole my inheritance (it is proven in the Guardian's report) all of these people still have access to my mother.

The guardian will tell you he has not been keeping her from me, it is simply not the truth. I have not seen her in years. And, she has stated to people that they are highly suggesting that she not have any relationship with me, her only daughter.
Why? I guarantee any response given to other people is a lie, but I do not even get a response.

My mother [redacted] is being highly discouraged from having a relationship with me, her only daughter, because of greed and narcissism. We had no falling out. My mother and I do not need to be reintroduced by the guardian. as he was the one that helped to separate us in the first place, along with [redacted]

I have proof of everything that I am saying. and more. What was done to us, should not ever be done to anyone. My mother has been a victim of the system ever since she was a child. I had a tough go as well, and I have seen so many bad things in my life, I wish that I never knew that this could happen to someone in America. It truly saddens me.

On a positive note, I became a practicing Catholic last year. All of this trauma has brought me to God, and for this I am truly grateful for. God has brought me into other nursing homes to pray the rosaries with patients. And, although it was not my Mom, I enjoyed it immensely. Yet, I miss her so very much.

My mother and I have many people, and churches praying for us. It is my wish to please get this woman and her son, her friends, and her family away from my mother and the nursing home. So that I her only daughter, and her original POA and family friend of over 45 years, are able to visit her unsupervised. I'd like to see her weekly, and take her out to lunch at least once a month. I'd also love sone answers about how all of this could happen to anyone, but I'd settle for just seeing her regularly. I pray that this is possible.

How can the people that were involved with this have unsupervised visited, and even take her out of the home? These people stole from my mother, separated her from her loved ones, and tortured me . I don't care what lies they say, or how they are part of part of what happened. They should not be allowed to ever see my mother again, and I should have no trouble or issues with going to see her. There is so much more to say. I have proof, but I'm unwilling to give it all, unless I know there will be help, because I am having trust issues, and also suffer from PTSD due to this fiasco.

I am not giving my hopes up whatsoever. I wasn't even going to submit this because I am afraid of more retaliation. and what they will do to my mother. These

people are beyond angry that the will was changed back. They have been taking it out on my mother and I ever since.

I am hoping that if this email is going to the BAR Association, that this email is not written in vein, that something will actually be done. that many of you wont just get a good laugh, and be excited by it.

I am actually finally scheduled for a 15 minute visit with my mother after asking for about 4 years. It is scheduled for tomorrow at 2:00. I have already been told that she is being pressured not to see me. I hate to say this, but I already believe that this meeting is all for show. That I will be told that my mother does t want to see me, because that is what she is being threatened to do.

But I will continue to pray that someone steps up for my mother [redacted] to do what is truly in her best interest

Sincerely. ,

[redacted]

March 23, 2023

US Senate Aging Committee

Liberty Resources, Inc. Statement on Guardianship Abuse

Liberty Resources Inc., (LRI) is the federally and state funded Center for Independent Living that serves the disabled community throughout the Philadelphia region.

In May 2022, LRI received a referral for an elderly disabled Consumer [redacted]. [redacted] is an 84 year old woman with dementia living in a nursing facility in King of Prussia, PA. Her adult children have collectively been working to gain Legal Guardianship back after it was given to a "professional" Kaplana Doshi (KD) by the court. KD works for a Legal Guardianship organization. [redacted], one of [redacted]'s adult children, stated they were led to believe by the court that the LG would be helpful in overseeing their Mother's affairs since [redacted]'s adult children had busy lives. [redacted] also said that the court told her that [redacted] would be a safety risk if she went back to live independently in the family home that [redacted] owns despite the existence of available homecare services and supports. The court determined she would be "at risk" because she would be living alone with her 56 year old son. The son has a disability and the court determined he would be incapable of caring for [redacted] in an emergency. [redacted] said that is nonsense and her brother would be very capable of caring for his mother [redacted]. [redacted] lived with him before being forced to live in a nursing facility.

[redacted] states that the LG does not want [redacted] to transition and has not cared about the mother at all. She states that the LG has not been paying or tracking any financial information so that now [redacted] is in medical debt and her credit has dropped. The children started to pay the mortgage on her house so that the house was not foreclosed.

[redacted] children suspect the guardian is collaborating closely with the NH (Manor care) to keep [redacted] and the staff silent about the fraud, abuse and isolation they have forced upon [redacted]. The guardian went as far to file a complaint with the Pennsylvania Department of Health and with the US Department of Justice.

LRI has tried to help [redacted] and her family but cannot because of the restrictive power that the guardian has over [redacted]. LRI made a direct referral to a law firm in Norristown and also guided [redacted]'s family on how to file an Office of Civil Rights complaint with the US Dept of Human Services because LRI suspects

that in addition to [redacted]'s assets, that Medicaid funding is being used to isolate [redacted] in the Manor Care nursing facility against her will.

[redacted] and her family were trying to start the Nursing Home Transition process for [redacted] with LRI's NHT team, but without the Guardian's consent it could not proceed. LRI suggested she focusing on just getting guardianship over [redacted] back to prevent further abuse they are seeing with their mother. Once this is accomplished the NHT process can begin.

This is just one example of many in Pennsylvania of unnecessary and often abusive guardianship that people with disabilities are facing on a growing basis. The guardianship system, aging services, adult protective services are too often part of the problem instead of a true sources of protection of adults with disabilities. Conflict of interests and a pipeline from agencies bound to protect people with disabilities, including area agencies on aging and adult protective services to forced placement in nursing facilities must be stopped. This pattern and practice allows guardians to operate with immunity. The system is broken, yet the Administration on Community Living and its Administration on Aging continue to fund and perpetuate this abuse through virtually every state's aging system across the United States. The guardianship system in Pennsylvania continues to violate the Americans with Disabilities Act's mandate to provide services and supports to the disabled in the "most integrated setting" appropriate to each person's individual needs, consistent with the SCOTUS's Olmstead decision. Alternatives to restrictive guardianships, such as supportive decision making, must be mandated "prior" to the last resort of guardianship, ACL, AOA, Congress and the states' aging system must be uniformly overhauled before more lives, families and fundamental rights to live independently are ruined.

March 23, 2023

Statement for the Written Record from [redacted]
Submitted to the Special Committee on Aging, United States Senate

Via Email *guardianships@aging.senate.gov*

Senator Bob Casey, Chairman
Senator Mike Braun, Ranking Member
Senator Kirsten E. Gillibrand
Senator Richard Blumenthal
Senator Elizabeth Warren
Senator Mark Kelly
Senator Raphael G. Warnock
Senator John Fetterman
Senator Tim Scott
Senator Marco Rubio
Senator Rick Scott
Senator J.D. Vance
Senator Pete Ricketts

Special Committee on Aging
United States Senate
G16 Dirksen Senate Office Building
Washington, DC 20510-6050

Dear Distinguished Members of the Senate Special Committee on Aging,

My name is [redacted] I am [redacted] years old and live in Ventura, California.

When my dad was my conservator, I wanted a job, but he said no. I wanted to go to an independent living program, but he said no. I wanted to live in California, where my friends and services are, and he tried to make me move to Michigan. I wanted an advocate to come to my support plan meeting, but he said no. I wanted to learn how to use the public bus system, but he said no. I wanted a lawyer to fight for my rights, but the court appointed lawyer wouldn't. I wished the judge had listened to me and the witnesses for my team, but he didn't.

I finally found friends and lawyers who would fight for me, and a judge who listened to us. They helped me get my dad removed as my conservator. Now I have people who work with me to use supported decision making to make my own decisions with help.

Now I call my team when I need help to budget my money, make medical decisions, or get advice about work or relationships. Now, I live where I want and take the independent living class that my dad wouldn't let me take. I am so happy to be in this program. I am an advocate and I help others like me.

My life feels a lot different now that my dad is no longer my conservator. I live in a house in my independent living program. I pay my own bills, like my grocery bills and my TV bill. I have a gym membership.

I have a lot of stuff to do. I do a lot of advocacy work for people with disabilities. I work to help people with disabilities advocate for themselves and understand how to get out of conservatorships. I also support other people with disabilities to make sure their voices are heard. For example, I have presented at state and national educational programs and conferences for people with disabilities, family members, and professionals. I am an advisory member of the board of the Alternatives to Guardianship Project for the Missouri Developmental Disabilities Council. I spoke in support of AB 1663, a law in California that recognizes Supported Decision-Making. I am featured in a video of the Arc's Project R, a project that increases respect for people with disabilities and tries to stop bullying.

I have a lot of friends. I go out with my friends, like karaoke or to restaurants. We go downtown, to Starbucks and shopping.

I like to be able to do all of these fun and important things.

I am using Supported Decision-Making or "SDM". SDM means having a group of supporters to help you learn and to make choices. Each person can help you if you need help with different kinds of choices, like medical, money, and choices about how to manage relationships with friends. I have a lot of supporters and I reach out for help a lot. But I still make my own choices. Making my own choices is very important for me.

I hope my story lets people know that conservatorship isn't the only choice and isn't always the right one. I hope my story helps people understand that supported decision-making is important.

Thank you.

Sincerely,

[redacted]

* * *

For more information about me and my story and my advocacy work, please see:

[redacted]

Hello Senator Casey,

My name is [redacted] and I live in [redacted] Michigan. My mother is 85 years old, was diagnosed with cognitive impairment in 2017 and late onset Alzheimer's Dementia in 2020. She lives alone in her home.

In 2017, as her PoAF, I noticed Mom was writing large checks to my younger adult brother. She was confused about it and could not answer questions about the purpose. When asked, my brother became defensive. This continued for a couple years. In 2020 I learned of a $170,000. withdrawal from Mom's investment account in the form of a check to my brother done in November of 2019. My sister and I petitioned for Conservatorship and Guardianship in early 2021.

My father is deceased and my mother has four adult children, three girls and a son who is the youngest. When my one sister and I filed the petitions, a line was drawn - with the two of us on one side, and my brother and other sister on the other side.

Undue influence came into play. My brother has replaced the role of my deceased father. As my mother's cognitive abilities continued to decline, she became more and more reliable upon my brother. She even called him by her deceased husband's name from time to time. My brother nurtured that dependency.

At the hearing for Conservatorship and Guardianship, my mother - whose court ordered independent medical examine documented she was easily manipulated, stated she wanted my brother and my sister (I am now estranged from them both) as Conservator and Guardian. The judge ordered us to mediation, and my lawyer told me to sign the Settlement Agreement. I was told the court would protect my mother and that my brother would no longer be able to exploit her.

It was bad advice.

Since June of 2021, my brother the Conservator has written himself and the sister he favors thousands of dollars in gift checks. My mother's spending last year was $90,000. How does an 85 year old women who owns her home, doesn't watch tv, use a computer or drive spend $90,000? The Guardian (who lives 375 miles away in another state) has set up hidden cameras in our mother's home to keep track of her (and me when I visit Mom). The Guardian refuses to communicate with my sister and me. When there was a fire in the home last November, we were not notified (I found out by a neighbor). There are no status updates on my mother's health, no doctor visits, no nothing.

We will return to court next month for two petitions I filed. One is a Petition for Relief (addressing isolation of the Ward, failure to communicate, etc.) and the other is an Objection to the Annual Accounting.

Thank you to your Special Committee. My story is not unique. I am devastated by the lack of care to my mother, and the lack of accountability to those entrusted with her care and finances.

Thank you.

Sincerely,

[redacted]

Dear Mr. [redacted]

I'm responding by request of [redacted] I have previously been in meetings and calls with other staff of Sen. Casey, as well as several other US. Senators on this topic.

Meanwhile, I have presented a thoroughly crafted legislative concept here in Michigan which was taken up for sponsorship in the MI. House last June. We are still in first draft revision of the bill. At this time I know of three MI. Representatives either sponsoring or wishing to co-sponsor it.

My concept was conceived after looking in depth at how guardianship/conservatorship is not working from a practical standpoint. The reality of how it unfolds is very, very different from what it looks like on paper. I addressed that reality from a victim's perspective, with a mind to how it actually works out in our judicial system, and ho it goes wrong. I was able to think outside of the box and come up with a better system. My concept defines cognitive decline/deficiency as being under the purview of the Health Care system rather than the jurisdiction of courts.

The basic premise is that *you cannot protect a person better by removing all of their rights and giving them to a stranger who is able to make money from their appointment.* That transference amounts to a gross and possessory power over that person which incentivises a corrupt end. That should be a no-brainer, but that is exactly what the State Probate laws do. Can the Federal Government affect that? Yes.

A legally minded person might say "Wait, the State Laws include guarantees of rights, and limits, so that's not what happens." In reality, that person would be wrong. It is common for due process to be denied and ignored when putting someone into guardianship. Judges frequently base decisions on mere accusations as if it stands for clear and convincing evidence of need. Proper defense, even representation, is often curtailed or not provided. The judges often do not follow the laws which provide requirements, such as prognosis, or even limiting the appointment to only what is necessary and for a time that is necessary, as per statute. They simply cut corners in "quickie" hearings where the person might not even know they are accused, and then appoint a plenary guardian/conservator. As soon as that happens, it does not matter that the law says the person should be able to contest it later. The guardian controls their money, their access, their communications, their movement, where they live, and who they are allowed to speak with. They are PREVENTED from defense.

When the person cannot object, defend themself, or contest what is happening, the law itself has created an opportunity for full exploitation, and it actually encourages the crimes of abuse, fraud, and exploitation. No State can make laws which supersede the U.S.C., so laws that allow courts to create exploitation without defense are not Constitutional. Violations are under Color of Law.

STATE vs. FEDERAL

The criticism in the past of acting via Federal Legislation has been the question of whether the matter is only up to the States.
I believe it is a matter for the Federal Legislative body because the States can only take away rights if due process is followed (Supremacy Clause). The US Congress can legislate law which mandates protection from rights being taken without due process OR true need, and which protects a person's other rights, such as contact with family and other persons of their choice, and their right to seek legal relief. None of that is codified. They are at best unenumerated constitutional rights, so the FBI won't even look at it.

Loss of rights to life, liberty, and property was supposed to be about the rights of people convicted of crimes. The States have created probate laws which take away the rights of living persons, and I do not contest that power when it is done out of necessity. However, in practice the necessity is often not there, and when Due Process is ignored, then the protections of the 5th, 13th, and 14th U.S.C. Amendments are affronted.

The States seldom, if ever, hold any parties accountable. They are unlikely to do so in the future. Judicial discretion and immunity protect judges who willfully order these harmful acts, and those same judges protect the probate attorneys whom they appoint as guardians/conservators and the professional guardians & conservators. There is a quid pro quo. And it is a perfect crime because of this lack of accountability. Guardianship/conservatorship is being conducted as a profit industry. When that happens without due process, it becomes a criminal act that supersedes even judicial immunity under Federal law.

The Federal government could crack down on this when it is done without due process. IT CANNOT COME FOM THE VICTIM because the victim is so controlled. Even if it did, that won't help most victims because they are often so old that they will die before a case has worked its way through the courts, or they get spent out of their money. Plus, the guardian (especially professionals) puts as much restriction on the victim as possible in order to reduce their own liability and to preserve their power.

When due process is ignored, the Federal government could use law enforcement to go after judges, attorneys and other professional fiduciaries under Title 18, sects. 241 & 242, Human Trafficking, and Racketeering. In practice, it simply ignores such complaints. Making examples of some of these judges under abuse, fraud, human trafficking and RICO would certainly send a powerful message to judges to clean up their act in the meantime.

The Federal government could define a boundary where a person's rights can be affected by State Law and where they cannot.

My legislative solution recognizes the reality that some form of protection is necessary for some people, and that States need to be able to address that with a system that works for persons of all levels of cognitive disability. By taking it out of the courts and preserving Federal Rights, and then addressing mental health care needs within the

health care system, we no longer have crooked judges and attorneys involved. We no longer cloak the fiduciary so they can act opaquely. Abuse, exploitation and fraud are no longer protected by the court. All of the normal protective services, such as police, that any other person enjoys can be used.

What I created was a DEFAULT Supported Decision Making system. Many states have adopted SDM laws, but they are not very effective because they are still under the court and guardianship. My plan takes most people out of guardianship, provides more protection and access to all of the needed care a person should theoretically be getting from a guardian, without costing them their rights and making them vulnerable. It should be viewed as a practical alternative to guardianship, not a replacement.

If the Federal government enacted legislation to define that protective orders for mental incapacity must have a high bar of medical/psychiatric assessment for action to be taken, and legislated that the basic rights of a person cannot otherwise be removed by the court for cognitive reasons (unless voluntarily), and guardians/conservators had to act with respect to those basic rights or be liable for criminal acts, then we would weaken the corrupt aspect of the system so much that the risk would outweigh the gain.

Another solution is to make guardianship fees be paid through the State Health care system where the professional guardian is paid based on the number of wards at an amount reflecting the similar pay of a Social Worker or Accountant, and the person under care would pay on a sliding scale based on income and assets. Persons qualifying for Medicaid would be paying through Medicaid to the State.

Such a plan would eliminate the potential for professional guardianship piracy and looting of estates. It would also make it unattractive for attorneys to be guardians. That is a huge win because right now, the attorneys have quid pro quo going on. They support the judge and the judge supports them. How can a system be honest when attorneys serve as guardians ad litem for the court, having the job to recommend whether a person should be put into the guardianship of another attorney, and then that other attorney serves as a GAL for the first one, so the first one gets wards in return? The conflict of interest incentivises putting people into plenary guardianship without need.

Please feel welcome to reach out to me at any time. I would very much like to participate on the national level again. My hope is that my MI law will be adopted and serve as a model for other States, but if we can get something practical enacted on a Federal level, I would be very willing to contribute.

Sincerely,

[redacted]

(Son of a victim who was wiped out in 2-1/2 years without due process and without statutory evidence of need.)

To Whom it may concern:

From: [redacted]

Florida Victim

I thank in advance the Guardianship Aging Committee, for your concerns and investigation, and it is my experience and opinion, this should never have happened to my late mother, and I and many Victims in the United States of America,

being Cuban Born, and American Citizen, I take our Constitutional Rights to Freedom, very seriously. With all the laws of our rights quoted below, I do not understand how Sons and Daughters go to Court to protect our most vulnerable of our Society

our Elders to ensure the incapacitated parent have proper legal representation and their rights are safeguarded, then, the unimaginable happens.

My name is [redacted] I am Cuban born and an American Citizen, I am a Florida Victim, I feel I was punished for protecting my late Elderly Vulnerable Mother, [redacted] first generation Cuban immigrant and American Citizen. Shattered the American Dream, causing unnecessary pain, suffering and financial exploitation. I can not bring my late mother back, but I will not let my pain and suffering go to waste, in hopes to get Justice, for all of us who have been victimized by the broken Judicial System in America.

It has been my experience, back in June 2011, I filed for Guardianship of my late elderly mother, [redacted] who had been suffering from severe cognitive impairment, Alzheimer's disease, to get her the proper medical mental attention she needed, and was at risk of Exploitation. Thinking becoming her Guardian would offer protection, as my Rights as her only daughter, surviving sibling and next of kin. Mom had chosen and had been living near me and my 3 kids, her grandchildren prior guardianship, and played a big role with my late father [redacted] to help raise my children, their grandkids.

1. June 26, 2011, I [redacted] daughter/next of kin, Filed for Guardianship to protect my late mother, the late [redacted] Vulnerable Elder, first generation immigrant, and USA Citizen at [redacted] Courts Probate Mental Health Division, Judge [redacted]

Attached: Report and Recommendations of the General Magistrate Incapacity

Judge [redacted]

Division Mental Health: [redacted]

Case# 11-1087

Date: 11/21/11

https://drive.google.com/file/d/1iROcuvKiG09XafNh6P5yzzaoCQ3PAM53/view?usp=drivesdk

The Mental Health Probate Division, appointed 3 Examining Committee Members to evaluate my mother. This was a Red Flag to me, in my opinion, it should have been one (1) the Psychiatrist Dr. [redacted] who also spoke Spanish like Mom.

His Mental Evaluation, recommendations, Mom was suffering from Severe Cognitive Impairment and was not to make independent decisions, and warranted a Neurological Evaluation. Court Appointed Attorney, failed to go by Doctors Evaluation, prepared a Durable POA, [redacted] Exhibits. POA, Billing, Complaint to Florida Bar. Rebuttal. Who charged 2 times extraordinary fees. That's when it all went wrong!

https://drive.google.com/file/d/1eBsLC4DGs3RpXlj0l-2J2Drg1qZmXgCU/view?usp=drivesdk

1. [redacted] Courts failed to Incapacitate Mom. Dismissing [redacted] Psychiatrist Report, he also spoke Spanish Speaking.

2. Incapacitation Hearing Judg[redacted] Court Order, daughter had best interest for mother. Guardianship was open.

The Court Appointed attorney questioned the evaluation at the First Magistrate Hearing, Judge [redacted] this was also a Red Flag. Who had been siding with the distant grandchildren who suddenly started appearing, and attended the hearing, and acting as their council instead of my mother, denying Mom due process.

Judg[redacted] eminded the Court appointed attorney, she was to represent my mother, not the distant grandchildren who were present, at this hearing, and to remember she was to represent my mother, I was the daughter and next of kin. What made her think, re evaluating my mother, would dismiss the first reports, specially Dr. [redacted] Psychiatrist, who signed the report under the penalty of perjury. Magistrate [redacted] also reminded the court appointed attorney, the Durable POA, and Health Care Surrogate she prepared for my Mentally Incapacitated Mom, was invalid, because my mother was not to make independent decisions. Well this attorney, dismissed the Judges advice, she took the liberty to charge my mother, 2 times for taking advantage of my mothers guardianship funds, and ignoring the ADA Act. It is my opinion based on my experience, this was done, in order to strike me, the next of Kin, as Guardian. My late mother was not deemed incapacitated, by the Courts, ignoring Dr. [redacted] report, suffering from severe cognitive impairment, and ignoring the ADA Act for incapacitated persons. However, Mom was appointed Limited Co Guardians of the Property, and Health Care Surrogate, because she was not able to run her properties. I believe this was done, in order for the bad players to exploit my mother, sell her home, which was homestead, and pay all attorneys involved. I also tried saving my mothers home from being sold, and the Judge ignored it.

In 2014, mother was trafficked, 2 counties away without a court order, she was removed from her home, and held captive inside a garage for a decade. Multitude of Judges Orders to Enforce visitation, why? Judges refused to provide me a visitation order, with set dates and times, you see, my late mother

was simply not capable of remembering each time we spoke making arrangements for my visits, and her visiting, since in the real world, Mom was simply not capable of remembering, due to her severe cognitive impairment of mental deformities. This was a major red flag, so much time, money from her Guardianship Funds, to pay all these attorneys, who failed to follow the ADA Act, Laws for incapacitated persons, prevention of Iniablerable Rights endowed by our creator, 14th Amendment, and ICCPR laws, Due process, our constitutional rights.

It was not till June 2021, Mom and I were able to visit, peacefully. You see Mom ended up in the Hospital, bed sores, dehydration, diaper rash, unkempt hair, dirty nails, the most sad and painful experience to watch, my own sweet mother, being so badly treated. I went back to court to lift the visitation order, that was intended to get their limited co guardians, from preventing future visits, and who also signed an affidavit to be in compliance, when the Judge then Order, Mandated Supervision at the end of Moms life and she died alone.

In my opinion, this should've never happened, to date I have not been notified by the courts to get my inheritance, and no one held accountable.

*It is my opinion, having 3 evaluating committee members, opens a can of worms for predatory attorneys to find some inconsistency, to prolong the case, to bleed the Estate, and obviously not to the benefit of the person, the elderly, this needs to improve, also not getting the original Doctors medical records, in Moms case Dr. [redacted] who had conducted a mini mental assessment, prior Guardianship warranting Mom to visit a neurologist, and Mom had refused. This is also why I had counseled with Alzheimer's organization, and according to Moms behaviors, memory loss, repeating words, they suggested seeking Guardianship.

It is my opinion based on my horrific experience, we no longer have access to our family, we have been eliminated from our families so they can be trafficked, robbed, and murdered in secret, for exploitation.

FOOTNOTES

-It is my opinion, what is happening in America is a Two-Tier Justice System.

What is happening to our Vulnerable Elders and Disabled in our Probate Equity Courts Guardianship for profit, it is wrong, it is unconstitutional, is a Violation of human rights, it is an abuse of Power, that I call to every single member of congress, to start paying attention to. We need a massive investigation, it's outrageous. The American people, the Elder generation, are being trafficked for profit, I am disgusted, and cannot believe this is happening in our Country, and I think all of us should be appalled.

The complaints I filed to the Florida Bar were ignored, regarding my concerns of re presentations of my Vulnerable Mother, I believe if taken seriously, my late mother, would not have suffered, and I as Victim daughter, would not have suffered, jet they are passing laws, not to protect our most Vulnerable, but appears to protect the legal community, and continue to ignore our rights. This is a threat to our society, our Constitutional Rights, and our Civil Rights. Violating the 8th Amendment of being cruel and unusual punishment. My late mother's room in the garage was plagued with a dirty refrigerator, mold in food, and the smell of gasoline, Mom suffered, over dozed, falls, dehydration, unkempt hair, and these atrocities are being ignored. It was inhospitable, but despite reports to DCF, report attached, and filings to the courts, nothing was done to help Mom, we felt helpless. My mothers only crime, she belonged to a marginalized group of Elders, she had money, and my only crime was to try to protect her, as my rights as her daughter.

links:

Complaint to DCF

https://drive.google.com/file/d/1kUm93Fzo75zQ7DKWI-kxur1SdVip7aN4/view?usp=drives

AFFIDAVITS:

Hillary Hoag

Page 1

https://drive.google.com/file/d/1qg2B7oIlkdv3a-Hs9kY91Lrs1QoaJNAf/view?usp=drivesdk

Page 2

https://drive.google.com/file/d/1CRPn-7YjFcYqL_uRRxnL1xRNJHD8uC3p/view?usp=drivesdk

Page 3

https://drive.google.com/file/d/15a5zD55WxzICZPXrxruOwjlqIXNZ5ZKP/view?usp=drivesdk

Affidavit

https://drive.google.com/file/d/160Pzr24glbclk0uogH4F9UcHQTv0gGuR/view?usp=drivesdk

Adriana Soto, Social Worker

https://drive.google.com/file/d/1Ul0n03JSOy1PkwIIrvDvtSmljWaB5f2a/view?usp=drivesdk

DCF REPORT

https://drive.google.com/file/d/1NY5lQVZehlGEQCMX6MAMjzUuuvFRnbhO/view?usp=drivesdk

ISOLATION

https://drive.google.com/file/d/1ty9q8YRtcnctGjDl9rOushoed1OoWwDP/view?usp=drivesdk

Deprivation of Rights Under Color of Law

https://www.justice.gov/crt/deprivation-rights-under-color-law

- Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state, or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.

The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending upon the circumstances of the crime, and the resulting injury, if any.

TITLE 18, U.S.C., SECTION 242

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

International Covenant on Civil and Political Rights

https://drive.google.com/file/d/1AWT-MxeR6SlvKsvnuhYAZhFH53NZpxL0/view?usp=drivesdk

Written Statement of [redacted]
Western Massachusetts

For the U.S. Senate Special Committee on Aging

Guardianship, Conservatorships, Protective Arrangements, and Alternatives

March 15, 2023

Hi, i my name is [redacted] and I am writing about Supported Decision-Making (SDM) from the standpoint of being a Supporter, and a Care Manager for some of the participants in our SDM Pilot Program in Western Massachusetts through [redacted] nd Center of Public Representation.

I first want to start off with giving a Brief History ab[redacted] was established in 1972. [redacted] s a value based agency. We have been doing Shared Living for over 30 years, and we have placements across the state that has lasted over 25 years. I have been lucky to be a Care Manager for some of those placements, and the relationship is just so meshed from picking clothing together to planning vacations across the country together. The skills and communication with one another are outstanding. Most of all, it's the love and the compassion that is shown and driven by our values at [redacted]

Whe[redacted] as approached about SDM in 2013, we thought it would be the perfect fit with our values and the relationships that have blossomed. The Western Mass Care Managers reviewed their caseloads, and we chose a small sample to start the pilot program. I am very interested and invested in SDM, and 7 of the families that were chosen were from my caseload. The Executive Director did meet with most families from the survey to discuss the pilot program.

Throug[redacted] am currently a Care Manager for our Adult Family Care Program. My position has expanded with SDM because, additionally, there are different responsibilities. My Role as Care Manager is to:

- Provide information to families and supporters about SDM
- Attend SDM family meetings with CPR and Nonotuck Directors
- Help SDM participants understand SDM and SDM Agreements
- Assure the participant's voice is heard and the participant is satisfied
- Review SDM Agreements with person on an ongoing basis; notify CPR-Nonotuck team if anything needs to be changed or updated.
- Collect information on SDM when used and participate in pilot evaluations

My Role as a SDM Care Manager has had its benefits:

- Seven Families have gained an interest in SDM and have gone through the process.

- Families have grown in love with incorporating SDM into their lives.
- Families have grown closer and used SDM as a family planning tool.
- SDM Agreement signing night was very special for all involved.
- The Participants voices are being heard throughout the process and ongoing.

As a SDM Supporter, I play a different role. A Supporter is a person who the participant has chosen to be on their Supported Decision- Making team. The participant chooses what areas of decision-making he or she wants the supporter to help them in. The Supporter's role is to help the person understand the decision that is being asked at their learning level. For each of the participants I help support, I have to brainstorm the best approach to help them understand the decision that is being asked, such as:

- One on One small conversation using Pros and Cons
- Repetition of discussion
- Examples at person learning level
- Informed Consent about what actual decision they are making
- Provide them with info on the risks of their decision
- Physical Demonstration. if needed

For example, I serve a [redacted] supporter. [redacted] as flourished in being a part of the SDM Pilot Project. She has made big decisions in regards to her job, health, financial decisions and getting involved in Taekwondo. [redacted] eans on her SDM Team when needed if she needs more help in understanding a decision. You can learn more about [redacted] SDM Journey by visiting: https://supporteddecisions.org/stories-of-supported-decision-makin[redacted]

Written Statement of [redacted]
Dalton, Massachusetts

For the U.S. Senate Special Committee on Aging

Guardianship, Conservatorships, Protective Arrangements, and Alternatives

March 15, 2023

My name is [redacted], and I am the mother and ex-guardian of my son, [redacted]

[redacted]s on the Autism Spectrum, and, as he approached the age of 18, my husband and I felt that he needed more time to develop his decision-making skills.

- This left us with a dilemma: How do we protect [redacted] in the meantime? Do we ask the court for guardianship and deny him the rights the law would provide him at 18?
- We researched our options and spoke with human service agencies, lawyers, and trusted friends. The options were presented to us in a binary (winery) way -- guardianship or no guardianship. We chose guardianship, with the intention that one day we would ask the court to give [redacted] his rights back.

I thought I knew what Guardianship was all about. but it turned out to involve so much more.

- First off, it cost us thousands of dollars in legal fees.
- In addition, we were required to publish an ad in the local newspaper declaring that we believed our son was incompetent. We didn't think [redacted] was incompetent. He just needed more time to mature!
- Even after the court appointed me as [redacted] guardian and Rogers Monitor, we faced an endless stream of paperwork and court appearances.

Then, in 2012, [redacted] had an acute bout of anxiety and panic attacks. It became necessary to consider hospitalization until we could find the right medication.

- To this day, the memory caused me great pain. I believed I knew what [redacted] wanted when I made <u>that</u> decision as his guardian.
- Only later, did I learn what he <u>really</u> wanted. It was to be <u>asked</u>. I had never asked if he wanted to go to the hospital. I just decided <u>for</u> him.
- It made me realize that my son did not need a guardian, just guidance.

In January 2015, [redacted] joined a pilot program on Supported Decision-Making that was organized by his service provider Nonotuck Resource Associates and the Center for Public Representation.

- [redacted] elected his father, his sister, and me to be his supporters and as such, I do my best to explain to [redacted] what his options are, to educate him about the pros and cons, and to know that, when and if he makes mistakes, it is all part of growing up.
- On November 17, 2015 [redacted] became the first Massachusetts resident to have a court terminate his guardianship in favor of a Supported Decision-Making Agreement.

[redacted] has flourished since he started to use Supported Decision-Making.

- He is currently living in his own apartment, has traveled the country with friends, and is now working full-time.
- Supported Decision-Making has helped our son become the adult **he** wishes to be, and I could not be prouder.

Please support federal legislation, so more people can benefit from Supported Decision-Making. Thank you again for this opportunity to submit this written statement.



Statement of the Massachusetts Association for Mental Health
to the
U.S. Senate Special Committee on Aging
regarding
Guardianships, Conservatorships, Protective Arrangements, and Alternatives

March 23, 2023

To the Honorable Members of the Senate Special Committee:

Since 1913, the Massachusetts Association for Mental Health (MAMH) has worked to improve understanding of mental health conditions and combat disparities in health services access. We envision a day when all individuals and families across the Commonwealth of Massachusetts and the entire United States have the resources and opportunities, they need to promote resilience and protect overall health. Among our many initiatives, MAMH coordinates the work of the statewide Older Adult Behavioral Health Network. The Network's mission is to highlight and elevate the importance of behavioral health in Massachusetts to improve the lives of older adults and support community living.

MAMH has had a longstanding interest in systems and processes that seek to protect adults with mental illness, elders and otherwise, including guardianships, conservatorships, and other protective arrangements. We advocate to ensure that all adults with mental illness who need legal protection receive it in a way that is most respectful of their humanity, their dignity, and their legal rights. Conversely, we seek to

ensure that individuals with mental illness who do not need such protection do not have it imposed on them. In particular, we advocate for the development and use of alternatives to guardianship and similar protective arrangements and for reforms that will encourage and facilitate the termination of guardianships when they are no longer needed.

We are very pleased that the Select Committee is continuing to document the scope of problems related to various forms of protective arrangements, particularly guardianship, and to identify potential solutions.

Please accept these statements as part of the record.

In our common law system, an essential assumption of capacity is fundamental to our liberty and well-being. That is, we are all able to make decisions for ourselves and, except in exceptional and very limited circumstances, our decisions will be respected. This is especially important in matters involving our health, our families, and our finances. Notwithstanding that assumption, our society recognizes that some persons may need support to make decisions and that systems should be in place to provide that support. Our laws reflect that understanding. In the most extreme situations, our laws permit the appointment of another person or entity to make decisions for a person whose decision-making capabilities are determined to be compromised. This substitution of decision-making authority is an extraordinary intervention most commonly incorporated in guardianship and conservatorship laws.

Unfortunately, we know from our experience in assisting persons in Massachusetts who live with mental disabilities that too often guardianship is overused and abused. Congressional, agency, media, and journal reports confirm that

this is a national problem.

Reliable statistics are hard to come by. (The Massachusetts Probate and Family Court is just beginning to collect useful guardianship data with the help of a grant from the Administration for Community Living.) However, we suspect there are likely at least 1.3 million people under guardianship in the country, with probably many billions of dollars under third-party control. In 2010, the Government Accountability Office (GAO) found hundreds of allegations of physical abuse, neglect, and financial exploitation by guardians in 45 states and the District of Columbia.[1] The National Council on Disability has issued two reports on the risks of guardianship to persons with disabilities.[2] The American Bar Association has reported about the difficulties that persons under guardianship face in terminating guardianships.[3]

The problems, therefore, are well known. Indeed, so are the solutions. What is too often missing is the will and the financial support to do what needs to be done. Congress should use whatever methods are available to it to influence reform and provide the financial aid for implementation. Further, Congress should ensure that federally-funded programs prioritize alternatives to guardianship and that investments are made to help states improve access to such alternatives.

We recommend that legislation or other Congressional action be driven by the following principles:

---

[1] https://www.gao.gov/assets/gao-10-1046.pdf.
[2] https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives and https://ncd.gov/newsroom/2019/new-federal-research-examines-guardianships.
[3] Erica Wood et al., Restoration of Rights in Adult Guardianship: Research and Recommendations, https://www.americanbar.org/content/dam/aba/administrative/law_aging/restoration-of-rights-in-adult-guardianship.pdf. See also Jessica Cassidy, *Restoration of Rights in the Termination of Adult Guardianship*, 23 Elder L. J. 83 (2015) https://publish.illinois.edu/elderlawjournal/files/2015/08/Cassidy.pdf.

- Whenever a person's decision-making capacity is questioned, the emphasis should always be on making voluntary supports and services available to the person so that they can continue to make their own decisions.
- States should be under an obligation to fund and assist in the creation of a range of supports and services which would be alternatives to guardianship.
- Among those alternatives, states should encourage the use of supported decision-making (SDM) which allows persons, with supports they select, to retain the right to make informed decisions about their own lives. A person's use of SDM should be considered by courts as evidence of a "less restrictive alternative" to guardianship regardless of their age[4] or disability.
- If a process to remove a person's decision-making ability must be undertaken, it must proceed with the maximum due process protections (including the appointment of counsel) and in a manner that allows for the full participation of the person who is subject to the proceeding.
- The process for full or partial restoration of rights must be fully accessible to the person under guardianship, without interference from the guardian or any agency or entity.

We hope these observations are useful to you as you undertake this important work.

Respectfully submitted,

[redacted]

President and Chief Executive Officer
Massachusetts Association for Mental Health
50 Federal Street, 6th Floor
Boston, Massachusetts 02110
[redacted]

[4] For discussions of SDM and elders, see Morgan K. Whitlatch and Rebekah Diller. *Supported Decision-Making: Potential and Challenges for Older Persons*, Syracuse L. Rev. 72 (2022), http://works.bepress.com/rebekah-diller/36/ and Rebekah Diller, *Legal Capacity for All: Including Older Persons in the Shift from Adult Guardianship to Supported Decision-Making*, 43 Fordham Urban L. J. 495 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4015961.

Senator Bob Casey, Chairman
The United States Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510-6050
guardianships@aging.senate.gov

March 23, 2023

Dear Senator Casey,

I am a constituent and voter living in Pennsylvania writing today to ask for your help.

One of my long-time friends and colleagues (over 20 years), [redacted], has been experiencing a nightmare situation involving the government appointed guardian for her mother, [redacted]. I met [redacted] many times over the years because she often participated in events organized by her daughter. She was vibrant and obviously well-loved by her family. Over the last two years, after being seized by Montgomery County officials for reasons I still don't understand, I have seen her deteriorate into a shell of the person she used to be. I've also witnessed the efforts her family have made to try to help her out of the situation she is currently in – to little or no avail.

Senator Casey, this is just wrong. [redacted] has a loving, caring family who has, without exception, had her best interests at heart. This is not the case for her current guardian, who has hundreds of cases of which [redacted] is just a number. [redacted] never should have been taken from her family and she needs to be treated as an individual worthy of respect – not a case number on a court docket to be disposed of. The guardianship should be terminated and she should be allowed to be reunited with her family.

On a larger scale, this situation terrifies me as I never thought someone with a loving, caring family would or even could be subjected to such a travesty of justice. Why are our taxpayer dollars being wasted on persecuting someone who did nothing to deserve it? I am baffled and hope you will help rectify this situation.

Sincerely,

[redacted]

Massachusetts Developmental Disabilities Council

108 Myrtle Street, Suite 202
Quincy, Massachusetts 02171

MAURA HEALEY
GOVERNOR

KIM DRISCOLL
LIEUTENANT GOVERNOR

REBECCA FILLMORE
ACTING CHAIRPERSON

DANIEL M. SHANNON
EXECUTIVE DIRECTOR

March 8, 2023

U.S. Senate Special Committee on Aging
Chairman Senator Bob Casey
G-16 Dirksen Senate Office Building
Washington, DC 20510

U.S. Senate Special Committee on Aging
Ranking Member Senator Mike Braun
628 Hart Senate Office Building
Washington, DC 20510

Re: Testimony from Massachusetts Developmental Disabilities Council on Guardianship Alternatives

Dear Mr. Chairman, Ranking Member, and Subcommittee Members:

The Massachusetts Developmental Disabilities Council welcomes the interest in guardianship and conservatorship reform from U.S. Senate Special Committee on Aging. We urge you to listen to the voices of those with lived experience with the guardianship and conservatorship system and to focus your efforts on practices that will prevent unnecessary guardianship, a pervasive issue for intellectually and developmentally disabled Americans. Below we offer insights and resources from our advocacy work and share the experience of one of our Council members and her adult son who avoided guardianship and instead use guardianship alternatives including a method called supported decision-making. For meaningful systemic change to our country's flawed guardianship systems, guardianship alternatives must be supported and promoted on both a federal and state level.

Our work at the Massachusetts Developmental Disabilities Council. The Council is mandated by the Developmental Disabilities Assistance and Bill of Rights Act to empower intellectually and developmentally disabled people and their families to help shape policies that impact them. Our work includes advocacy, systems change, and capacity building efforts that promote self-determination, integration, and inclusion. A central aspect of this work is educating policymakers about issues that impact the disability community. For many years, the Council and its Members have been involved in advocacy across Massachusetts to promote guardianship

(617) 770-7676 (Voice)
(617) 770-1987 (Facsimile)
www.mass.gov/mddc

alternatives including supported decision-making. We are active members of various guardianship alternatives coalitions that we lead or co-lead and have funded initiatives to promote guardianship alternatives at organizations including Massachusetts Advocates Standing Strong and the Center for Public Representation.

THE PROBLEM:

Guardianship and conservatorship systems are overused in part because of a lack of focus on guardianship alternatives and inadequate due process protections

When Britney Spears spoke out about her conservatorship, she brought unprecedented national attention to a problem we have long been focused on: fixing our flawed guardianship systems. This year's media coverage of the guardianship and conservatorship systems made many members of the American public aware for the first time about the loss of rights resulting from a guardianship, the problems of guardians who neglect or abuse their authority, the detrimental impact this can have on disabled Americans and older adults, and the difficulty of restoring a person's rights after a guardianship has been imposed. Many Americans did not realize until recently that these procedures existed, or that they were misused. Just as the disability community has long known, many Americans now see the need for guardianship as we know it to change.[1]

In our advocacy, we hear repeatedly from developmentally and intellectually disabled advocates and their family members about the problems and issues with the guardianship system. As the Committee has learned, this complex system of state laws is ripe for misuse, and unfortunately there are far too many cases where guardians either neglect their duties or act beyond the scope of their authority to the detriment of the people under guardianship.[2] In addition to the extreme cases of guardianship abuse that have rightfully been the focus of much media and public attention,[3] the other overwhelming, contributing problem is that **guardianship is overused**.

[1] In July 2021, sixty-nine percent of individuals of likely voters polled said that the guardianship and conservatorship system needs reform. Data for Progress, at 1. https://www.filesforprogress.org/datasets/2021/7/dfp_21_7_conservatorship_toplines.pdf.

[2] See, e.g., National Center on Law and Elder Rights, *When the Guardian is An Abuser* https://ncler.acl.gov/getattachment/Legal-Training/When-the-Guardian-is-an-Abuser-Ch-Summary.pdf.aspx?lang=en-US (citing U.S. Senate Special Committee on Aging, Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans, November 2018, p. 5 ([W]hile data is lacking, "unscrupulous guardians acting with little oversight have used guardianship proceedings to . . . obtain control of vulnerable individuals and . . . to liquidate assets and savings for their own personal benefit"); U.S. Government Accountability Office, Elder Abuse: The Extent of Abuse by Guardians is Unknown, but Some Measures Exist to Help Protect Older Adults, GAO-17-33 (2016) https://www.gao.gov/assets/gao-17-33.pdf).

[3] *See, e.g.*, Heidi Blake & Katie J.M. Baker, *Beyond Britney: Abuse, Exploitation, and Death in America's Guardianship Industry*, Buzzfeed News (Sept. 17, 2021) https://www.buzzfeednews.com/article/heidiblake/conservatorship-investigation-free-britney-spears; New Yorker, How the Elderly Lose Their Rights https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights; KTNV Las Vegas, *Disgraced former Nevada guardian sentenced to serve up to 40 years* (Jan. 04, 2019) https://www.ktnv.com/news/investigations/disgraced-former-nevada-guardian-sentenced-to-serve-up-to-40-years

Like every other state, data in Massachusetts on guardianship is limited and incomplete,[4] but we do know that typically 11,000 guardianships and 3,000 conservatorships are filed every year, for a total of over 43,000 over four years.[5] Though comprehensive data is lacking, our advocacy has shown us that, consistent with national trends, guardianship is often presented as the default choice,[6] resulting in unnecessary guardianship. The consequences are significant. Overuse of the guardianship system with unnecessary guardianships mean fewer resources are available for monitoring and oversight. Further, because family members frequently pursue a guardianship without fully understanding what a guardianship order will do, whether it is truly necessary, or what it will mean for their loved one's legal status, they are often surprised by the breadth and scope of its effect. In fact, a guardianship has a far-reaching, long-lasting impact on people's lives and fundamental rights, often beyond what a well-intentioned petitioner might ever imagine. Research shows that people under guardianship are less likely to live independently, to access preventative health care, or work in a paid job in the community.[7] And research also shows racial disparities: Black people under guardianship less likely to have a family member as a guardian.[8] For these reasons, families can find themselves unknowingly opening the wrong door and then learning too late that the door is hard to walk back through.

Our experience in Massachusetts mirrors that across the country: guardianship is presented to many families with intellectually and developmentally disabled children as the default option as they approach age eighteen. Families report to us feeling pressured to pursue guardianship by schools and other systems with which they interact. This phenomenon is so common and universal in the U.S. that it has been termed the "**school-to-guardianship pipeline**."[9] Families report being told by schools, service providers, health care providers, and others that guardianship is the only way they can continue to participate in Individualized Education Plan meetings, attend medical appointments, or help with managing money. As a result, many families obtain a guardianship without exploring or even considering other alternatives that might meet the needs of their family member. Of course, this does not discount the fact that many families may still choose to petition for guardianship regardless of the

---

[4] National Council on Disability, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities* (June 10, 2019), at 41 https://ncd.gov/sites/default/files/NCD_Turning-Rights-into-Reality_508_0.pdf [hereinafter: Nat'l Council on Disability, *Rights into Reality*]; National Council on Disability, *Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination for People with Disabilities*, 65-70 (Mar. 22, 2018) https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf [hereinafter Nat'l Council Dis., *Beyond Guardianship*]. *See also* Letter from Sen. Elizabeth Warren & Sen. Robert P. Casey, Jr. to Hon. Xavier Becerra, Sec'ty, Dep't of Health & Hum. Serv. & Hon. Merrick Garland, Att'y Gen., Dept. of Just. (July 1, 2021) https://www.warren.senate.gov/imo/media/doc/2021.07.01%20Letter%20to%20DOJ%20and%20HHS%20re%20Conservatorship.pdf (requesting detailed agency data on guardianships to inform policy work).

[5] In Massachusetts Probate and Family courts, 9,317 guardianship petitions were filed in fiscal year 2020. In previous fiscal years there were about 11,000 a year. See *Probate and Family Court Department, Filings By Fiscal Year and Case Type*, https://www.mass.gov/doc/probate-family-court-summary-of-cases-by-fiscal-year/download. Under Massachusetts law, a conservatorship is when someone is appointed by a court to make financial decisions about a person's property and financial matters. MASS. GEN. LAWS ch. 190B, § 5-419.

[6] Nat'l Council on Disability, *Rights into Reality*, at 29.

[7] *See What Do NCI Data Reveal About the Guardianship Status of People With IDD?* at 5 https://www.nationalcoreindicators.org/upload/core-indicators/NCI_GuardianshipBrief_April2019_Final.pdf

[8] *Id.* at 4.

[9] Nat'l Council on Disability, *Rights into Reality*, at 21-36.

information they receive, but every disabled person and their family members deserve to have access to accurate, complete information about their options. Most important, schools and federally funded government agencies including vocational rehabilitation agencies should not be pressuring families to purse a legal option that may not achieve the families' goals, is expensive, is difficult to reverse,[10] and will restrict the disabled person's legal rights for their entire life. This is more troubling when guardianship is presented in a vacuum where the wide range of alternatives that might meet the needs of the disabled young adult are absent.

As an example, in the educational context, voluntary shared decision-making is one way to ensure family members can remain involved in their child's education after the child turns eighteen. The Massachusetts Department of Elementary and Secondary Education has issued an advisory making explicit that an adult student not under guardianship can voluntarily share decision-making authority with an adult or choose to delegate decision-making authority.[11] For many families, shared educational decision-making for education after the child turns eighteen could address one of the major reasons schools encourage families to obtain guardianship.

A lack of due process protections further contributes to the overuse of the guardianship system.[12] From our advocacy work we see a few central issues, which are consistent with national trends: guardianship hearings can be too brief and many times the respondent does not even appear before the court,[13] respondents are not automatically appointed counsel in all guardianship proceedings (and laws vary widely by state),[14] and restoration of rights is rare and difficult to obtain.[15] In Massachusetts, like many states, respondents in a guardianship proceeding are automatically appointed an attorney in some *but not all* circumstances. For instance, with some exceptions, even at the outset of a guardianship proceeding the respondent is not automatically appointed counsel.[16] As a result, unless the court chooses to appoint counsel, the burden is on the respondent to understand the proceedings adequately enough in order to know to request counsel. Frequently the respondent does not have enough information to understand their legal rights, including their right to request counsel in a guardianship proceeding, or information about these options is not presented in a way that is accessible to the respondent.[17]

---

[10] *See* 110-117.
[11] *See* Mass. Dept. Elementary and Secondary Education, Administrative Advisory SPED 2011-1, (Sept. 20, 2010) https://www.doe.mass.edu/sped/advisories/11_1.html.
[12] Nat'l Council Dis., *Beyond Guardianship*, at 85-89
[13] *Id.* at 85-87.
[14] *See generally* American Bar Association, Commission on Law and Aging, *Representation and Investigation in Guardianship Proceedings*, https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartrepresentationandinvestigation.authcheckdam.pdf
[15] *See* American Bar Association, *Restoration of Rights in Adult Guardianship: Research & Recommendations* (2017), https://www.americanbar.org/content/dam/aba/administrative/law_aging/restoration%20report.authcheckdam.pdf. [hereinafter ABA, *Restoration*]
[16] Mass. Gen. Laws Ann. ch. 190B, § 5-106 (West).
[17] This also raises an important point about reasonable accommodations in courts. An innovative international model that has been replicated in Vermont provides disabled people with intermediaries called Communication Support Specialists in court proceedings. Disability Rights Vermont, Vermont Communication Support Project, https://disabilityrightsvt.org/about/vermont-communication-support-project/. The Communication Support Specialists in the Vermont program are independent and appointed by the court to assist the disabled individual with

Finally, we also know that rights restoration cases are rare,[18] and even more rare for young adults.[19] Low rates of rights restoration cases are especially concerning because many young adults are placed under conservatorship before they reach age twenty-six, and widely accepted neuroscience research shows us that the brain is not fully developed until this age.[20] Therefore, adequate due process protections, and in particular a right to counsel and access to zealous representation by lawyers trained to work with the disability community, are essential in restoration cases. While data is again lacking, there is evidence that representation at these hearings may make the guardianship more likely to be terminated.[21] Currently, laws requiring right to counsel in rights restoration proceedings vary by state.[22]

There is an urgent need for thoughtful reforms driven by the experiences of people under guardianship or at risk of guardianship. We believe any reforms to the guardianship systems should focus on promoting use of alternatives to guardianship. There has been a growing national movement to promote the use of a guardianship alternative called **supported decision-making**.[23] Supported decision-making is a way for a disabled person or an adult with a cognitive impairment to make and communicate decisions with assistance from people they trust.[24] With supported decision-making the disabled person, or "decision-maker," choses a group of trusted supporters to assist with helping making decisions about issues like their health care, finances, services, or other matters that are important to the decision-maker. The arrangement is often memorialized in a simple written agreement. Supported decision-making is typically coupled with other guardianship alternatives such as a health care proxy or power of attorney. It is through this combination of supports that the decision-maker can exercise their will and preferences and communicate their decisions.

---

communication. The support is provided as an accommodation to overcome barriers to effective communications. Communication Support Specialist is in addition to legal representation and not a replacement for counsel. In addition, the Fourth National Guardianship summit recommended supported decision-making be considered an accommodation under the Americans with Disabilities Act. Fourth National Guardianship Summit, *Recommendations Adopted by Summit Delegates*, (May 2021) Adopted recommendation 2.4, http://law.syr.edu/uploads/docs/academics/Fourth_National_Guardianship_Summit_-_Adopted_Recommendations_%28May_2021%29.pdf [hereinafter *Guardianship Summit Recommendations*]. Guidance from the U.S. Department of Justice consistent with this recommendation would be a clear directive to courts to allow people to use supported decision-making as an accommodation to understand their legal rights and options in court proceedings, including guardianships.

[18] ABA, *Restoration*, at 21.

[19] The limited available data indicates that rights restoration is uncommon overall, and more common for older adults than for younger adults. ABA, *Restoration*, at 7.

[20] Mariam Arain et al., *Maturation of the adolescent brain*, 9 Neuropsychiatric Disease & Treatment 449, 449 (2013) available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/.

[21] ABA, *Restoration*, at 46-47.

[22] John Pollock & Megan Rusciano, Right to Counsel in Restoration of Rights Cases, 42:4 BiFocal 75 (Mar. 11, 2021) https://www.americanbar.org/content/dam/aba/administrative/law_aging/bifocal-vol42-issue4.pdf. See also American Bar Association, *Restoration*, at 13.

[23] *See generally* Center for Public Representation, Supported Decision-Making, https://supporteddecisions.org/; National Resource Center on Supported Decision-Making, http://www.supporteddecisionmaking.org/.

[24] Nat'l Council on Disability, *Beyond Guardianship*, at 130.

Supported decision-making has been the subject of pilots[25] and is obtaining increased acceptance in courts,[26] in the law,[27] by key organizations and stakeholders, and the federal government.[28] In Massachusetts, as in many other states, there is currently legislation pending that would formally recognize supported decision-making and establish roles, responsibilities, limitations, and safeguards for the practice.[29] More widespread information about guardianship alternatives like supported decision-making is an essential step in avoiding unnecessary guardianship, which the Administration for Community Living has recognized through its funding of a number of national and state-level initiatives focused on supported decision-making and guardianship alternatives.[30]

A STORY FROM MASSACHUSETTS:

How and why supported decision-making and guardianship alternatives work.

We know that supported decision-making and guardianship alternatives work. Massachusetts Developmental Disabilities Council Member [redacted] of Marion, MA and her son [redacted] of Fairhaven, MA have a powerful story of their experience using guardianship alternatives so that Mr. [redacted] could make his own choices with support and avoid guardianship.

---

[25] *See* Cathy Costanzo, Hon. Kris Glen, & Anna Krieger, *Supported Decision-Making: Lessons from Pilot Projects*, 72 Syracuse Law Review 99 (2022) https://lawreview.syr.edu/wp-content/uploads/2022/09/99-163-Costanzo-2.pdf (background paper prepared for the Fourth National Guardianship Summit published in Syracuse Law Review).

[26] Nat'l Council on Disability, *Rights into Reality*, at 27 ("The first reported court decision terminating a guardianship specifically in favor of SDM occurred in 2012 in the state of New York and was followed by other cases in New York (2015, 2016, 2017), Virginia (2013), Massachusetts (2015), the District of Columbia (2016), Florida (2016), Vermont (2017), Kentucky (2017), Nevada (2017), Maine (2018), and Indiana (2018).")

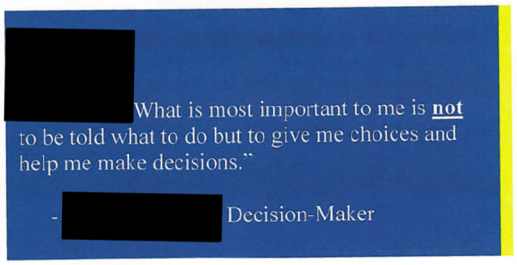
[27] States and jurisdictions passing comprehensive supported decision-making agreement statutes include: Tex. Est. Code Ann. §§ 1357.001 - 1357.102 (West 2019); Wis. Stat. Ann. §§ 52.01-52.32 (West 2018); Alaska Stat. Ann. §§ 13.56.010-13.56.195 (West 2018); Del. Code Ann. tit. 16, §§ 9401A-9410A (West 2016); D.C. Code Ann. §§ 7-2131 – 7-2134 (West 2018); Ind. Code Ann. §§ 29-3-14-1 - 29-3-14-13 (West 2019); N.D. Cent. Code Ann. §§ 30.1-36-01 - 30.1-36-08 (West 2019); 42 R.I. Gen. Laws Ann. §§ 42-66.13-1 - 42-66.13-10 (West 2020); Nev. Rev. Stat. Ann. §§ 162C.010 - 162C.330 (West 2020); Wash. Rev. Code Ann. §§ 11.130.700 et. seq. (West 2020) (effective Jan. 1 2022), 2020 Wash. Legis. Serv. Ch. 312 (S.S.B. 6287) Part VI § 601-612 (West 2020); La. Stat. Ann. § 13:4261.101- 13:4261.302 (West 2020); Sen. Bill No. 75, 73rd Gen. Assembly, 1st Reg. Sess. (Col. 2021); N.H. Rev. Stat. § 464-D:1 (NH 2021); Art. 82 Supported Decision-making, MHY Ch. 27, Tit. E (N.Y. 2022); and Assembly Bill No. 1663, protective proceedings (CA 2022).

[28] Among the many entities endorsing supported decision-making are the American Bar Association, National Guardianship Association, and the Administration for Community Living. *See* https://supporteddecisions.org/about-supported-decision-making/organizations-advocating-for-supported-decision-making/

[29] Sen. Bill 1172, 193rd Gen. Court (Ma. 2023), https://malegislature.gov/Bills/193/SD1172; House Bill 2339, 193rd Gen. Court, Reg. Sess. (Ma. 2023), https://malegislature.gov/Bills/193/HD2339.

[30] *See* Administration for Community Living, Supported Decision Making Program https://acl.gov/programs/consumer-control/supported-decision-making-program (describing funding of various national and local supported decision-making initiatives including National Resource Center on SDM); Administration for Community Living, "ACL Awards Alternatives to Guardianship Youth Resource Center," (Sept. 23, 2020) https://acl.gov/news-and-events/announcements/acl-awards-alternatives-guardianship-youth-resource-center.

[redacted] is a 34-year-old man who works, lives on his own, and loves to travel and eat at restaurants. [redacted] has down syndrome and, since birth, his family has been told by system after system and person after person that he is not capable of doing certain things and making certain decisions. [redacted] never saw him this way. Instead, she fought for and alongside [redacted] for him to have every opportunity to make his own decisions and live a life in the community. Though there was no formal term for it at the time [redacted] has used supported decision-making since he was a teenager. He made important decisions about his life with support of trusted people who would help him understand his options and understand how he communicates.



When [redacted] approached eighteen, staff at his school district told [redacted] he should consider placing him under a guardianship. [redacted] and [redacted] knew this was not an option for him. Instead, they continued using his supported decision-making arrangement so that he could make his own choices. When he turned eighteen, [redacted] also executed a health care proxy in case of emergency and a power of attorney for financial matters.

Later, as supported decision-making became more widely recognized as a concept, Mr. [redacted] chose to create a formal supported decision-making agreement as part of a pilot from the Center for Public Representation in partnership with Mass Families.[31] Since that time Mr. [redacted] has continued to use his supported decision-making agreement in all kinds of decisions.

Over the years, [redacted] supported decision-making arrangement and health care proxy have worked even as he dealt with significant health issues related to his disabilities, including multiple surgeries and hospitalizations as the result of getting a tracheotomy. Even during periods when he was hospitalized, [redacted] was able to make and communicate his own decisions with assistance from supporters, including during extended periods where he was not speaking due to his medical condition. For example, when [redacted] had to decide whether to undergo a certain surgery, his supporters explained how he might feel after. His supporters also explained to him how the surgery was intended to benefit him. Sometimes a supporter would repeat the same thing the health care providers had said to [redacted] using different language. At times, [redacted] understands concepts better when he hears them in [redacted] voice and with her natural language with which he is familiar. [redacted] also hard of hearing and sometimes reads lips, which his supporters understand and adapt their communication styles to.

While at times the medical teams questioned how the arrangement worked, [redacted] and his supporters were steadfast in their commitment to supporting [redacted] to make his own

[31] Craig's Story, https://supporteddecisions.org/stories-of-supported-decision-making/craigs-story/.

choices. At times, [redacted] and his supporters would model for his health care providers how he made his decisions. Ultimately, the health care teams he worked with were able to hear Mr. [redacted] voice and honor his decisions.

A[redacted] explains:

> "Today, I am happy to say th[redacted] Supported Decision-Making agreement works! He has chosen four people in his life that are family and caregivers to be his 'supporters' on things that every person should be given the opportunity to decide.
>
> "Fron[redacted] early childhood to today, he is given every opportunity to be a decision-maker. He is proud and respected for being a registered voter, deciding where he lives and with who, how he spends his own earned money from working, who he wants to spend time with and most importantly, he is given the information and respect to understand his own medical needs. As a teenager [redacted] ndured and required life sustaining medical procedures and not one day went by that everyone around him from the doctors to his family did not inform, explain and help him through these difficult years.
>
> "We all learn through our own life experiences and we all rely on others in our lives to help us with decision making, my son is no different."

In her work with other families considering guardianship and guardianship alternatives, [redacted] has seen first-hand how little information many families are provided. Over the years, [redacted] also estimates she has supported at least one hundred families who have decided to petition for guardianship and says, "Ninety-nine percent of the time, the individual with the disability is not even at the court hearing. How can you take a person's rights away without even meeting them?"

[redacted]

"We all learn through our own life experiences and we all rely on others in our lives to help us with decision making, my so[redacted] is no different."

- [redacted] upporter & Massachusetts Developmental Disabilities Council Member

RECOMMENDATIONS:

Guardianship reform efforts will only be effective if they center and address guardianship alternatives. Without a focus on diverting people from unnecessary guardianship, the pipeline to guardianship will continue in schools and elsewhere.

1. **Department of Education guidance or regulations that require all transition aged youth and their families receive accurate information about guardianship alternatives in school and in state vocational rehabilitation transition programs would have a significant impact on the school-to-guardianship pipeline.** Department of Education officials can also issue guidance or regulations that would establish a clear process for an educational representative or joint educational decision-making, consistent with state law.[32]

2. **Federal incentives to states to enact laws that establish robust due process protections in guardianship proceedings will help prevent unnecessary guardianship at the outset, promote restoration of rights, and facilitate meaningful oversight.**[33] Critical due process protections needed include: (1) automatic appointment of counsel in guardianship proceedings, including restoration proceedings; (2) access to zealous representation that is consistent with the disabled person or older adult's expressed interest; and (3) access to resources to explore and consider meaningfully less restrictive alternatives. To ensure the due process protections are meaningful, there must be adequate funding of procedures and programs ensure respondents understand their rights at all stages of a proceeding and a guardianship. Similarly, states must also have adequate funding to ensure appointed counsel understands how to work with and communicate with disabled people.

3. **Federal funding of guardianship alternatives pilots, diversion programs, projects, and initiatives—particularly those led by or co-led by intellectually and developmentally disabled advocates, their families, and other people at risk of guardianship—will promote widespread adoption of guardianship alternatives and supported decision-making.** While the groundwork has been laid with pilots and projects designed to transform systems and demonstrate the viability of guardianship alternatives, widespread adoption of practices will require further investment of federal resources.[34] This should include funding of diversion programs that provide education on guardianship alternatives to key entities including courts, schools, and federally funded state agencies.

4. **Federal funding of initiatives and projects that provide specialized communication accommodations in guardianship proceedings could have a significant impact on court access for people with disability-related communication barriers.**[35] The federal government is well-positioned to support expansion of initiatives like the Vermont Communication Support Project, the only court communication accommodation project of its kind in the United States. Such initiatives have the potential to be transformative in the guardianship context and meaningfully contribute to due process but funding for pilots, research, and other demonstrations is necessary.

---

[32] *See* Nat'l Council on Disability, *Rights into Reality*, at 80; *Guardianship Summit Recommendations*, adopted recommendation 3.3.

[33] Nat'l Council on Disability, *Beyond Guardianship*, at 164-165; *Guardianship Summit Recommendations*, adopted recommendation 1.3.

[34] *Guardianship Summit Recommendations*, adopted recommendations 2.1, 2.2, & 3.3.

[35] Vermont Communication Support Project, "Frequently Asked Questions," http://disabilityrightsvt.org/wp-content/uploads/2021/01/VCSP-FrequentlyAskedQuestions-2020.pdf.

5. **Reliable data on guardianship is sorely lacking and the federal government has an opportunity to require data collection through relevant agencies and state incentives.**[36] Advocates for reform have long protested that the lack of data on guardianship has far-reaching implication for our most basic understanding of how the guardianship and conservatorship systems function in this country, including concerning abuse and neglect by guardians.[37] Further, because we lack foundational information about guardianships and conservatorships, we do not know what disproportionate impacts guardianship has on disabled people who are Black Indigenous and People of Color, LGBTQIA+, and/or come from ethically and culturally diverse communities. Any data collection reforms must apply an intersectional lens so that data collected captures impact of guardianships on populations where there are additional or unique barriers to embracing guardianship alternatives.

We welcome your attention to these issues of pressing importance to the disability community and remain ready to collaborate and contribute to the important efforts of transforming these systems.

[redacted]
Director of Public Policy

[36] *See e.g.*, Nat'l Council on Disability, *Beyond Guardianship*, at 161; Nat'l Council on Disability, *Rights into Reality*, at 79.

[37] Nat'l Council on Disability, *Rights into Reality*, at 83. *Guardianship Summit Recommendations*, adopted recommendation 4.1.

March 21, 2023

Senator Bob Casey
Russell Senate Office Building
393, Washington, DC 20002

Re: Statement on Incidents of Guardianship Abuse

Dear Senator Casey & Committee Staff:

The Pennsylvania Council on Independent Living (PCIL) is a 501(c)(3) non-profit membership association for Centers for Independent Living (CILs) across Pennsylvania. Pennsylvania CILs are disability led and funded by federal and state legislation to advocate for and provide independent living community-based services to the disability community, including the aging population throughout all 67 counties in the Commonwealth. PCIL was established in 1988 and has a long history of providing services, advocacy and supports to the disability community.

PCIL is deeply concerned over the growing number of abusive Guardianship cases involving the unwarranted and often forced institutionalization of people with disabilities. Several people have approached us needing guidance and direction on this difficult, complex issue for their loved ones. We are fielding calls on guardianship issues at a much greater rate than ever before. Just this past year, PCIL filed three, Office of Civil Rights (OCR) complaints with the US Department of Health and Human Services on behalf of some of these individuals. All the cases have their own nuances, but all clearly show violations of IL, ADA and other fundamental civil & human rights. The guardianship system in Pennsylvania is broken and needs significant reform to safeguard more people with disabilities from being forced to live in institutional settings against their will. "Under many Guardianships, the real estate and personal property of the person with disabilities is seized and permanently lost. In the rare instances where the victim escapes the guardianship, they are left in poor financial condition."[1] People under guardianship are denied the fundamental right to self-direct their long-term care services in the community, which is in direct violation of the ADA and the community integration mandate set forth in the SCOTUS Olmstead case.

1007 Mumma Road, Suite 100, Wormleysburg, PA 17043
717-713-3910 www.the pcil.org



In one abuse incident, an adult woman under guardianship, was discriminated against on the basis of her disability. She was living independently in her own home with her partner when neighbors called Adult Protective Services (APS) and the County Office of Senior Services Area Agency on Aging (AAA) that resulted in her being removed from her home and placed in a Rehabilitation Center against her will and placed under guardianship. When her partner passed away, she was not allowed to attend his funeral service.

The individual did not want to reside in a rehabilitation center and with the encouragement and support of her local CIL, she is now living in the community with support from her daughter. This oppressive conduct by APS and the AAA caused her to be isolated without justification and her independence stripped. It should be noted that in Pennsylvania at least 10 AAAs operate conflicting roles as Guardian, APS, Ombudsman and service provider thereby obstructing the Alleged Incapacitated Person (AIP) from any third-party protection.

In another incident of abuse, an individual was placed in a nursing facility, rather than allowing him to live in the most integrated setting appropriate for him; in the community with appropriate supports. The individual was living in his family home while it was being foreclosed upon and he sought help through APS. APS's idea of assistance was to put him into a long-term care facility and placed under guardianship.

The individual did not wish to reside at the long-term care facility. He reportedly has been offered assistance with transitioning to a subsidized apartment by his local CIL. The court appointed guardian would not facilitate the individual's transition back to the community, which had caused him to be isolated without justification.

In yet another guardianship abuse case, the individual was placed in a long-term care nursing facility, rather than allowing him to live in the most integrated setting appropriate for him, in the community with appropriate supports. The person owns a home, has Social Security income, and was enrolled in Medicaid with nursing home benefits. He has expressed in writing that he would like to live in his own home and that he does not want to be institutionalized. The local CIL worked to support him to transition to independent living but has been served with notice by the Pennsylvania Ombudsman to have no further contact with him. It is clear that this action has served to further isolate the individual.

Pennsylvania Council on Independent Living

It should be noted that people have the right to live as independently as possible. We will continue to advocate for people to live in independent settings with supports instead of expensive and unwarranted institutions. The most integrated setting is defined as, "a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." A public entity's obligation under Olmstead is to provide services in the most integrated setting and only excused when the public entity can demonstrate that the relief sought would result in a "fundamental alteration" of the public entity's service system.[2] PCIL and our members implore Congress to act swiftly to safeguard people with disabilities against abusive guardianship use and provide a Bill of Rights for alleged incapacitated people that ensure alternatives to guardianship are used to optimize the most integrated settings for the AIP's services and supports, including supportive decision making. Please stop guardianship abuse in Pennsylvania and across the United States.

Respectfully,

Michael Grier

Michael Grier, MSA
Executive Director
Pennsylvania Council on Independent Living

cc. Misty Dion, President
Pennsylvania Council on Independent Living

1 Uekert et al. "Adult Guardianships: A 'Best Guess' National Estimate and the Momentum for Reform." National Center for State Courts (NCSC), 2016

2 Olmstead, 527 U.S. at 603-604 (1999); see also 28 C.F.R.§ 35.130(b)(7)(i) ("A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.")

1007 Mumma Road, Suite 100, Wormleysburg, PA 17043
717-713-3910 www.the pcil.org



Empowering people with all disabilities by providing: Resources, Options, And Disability related Services needed to obtain individual Freedom in their lives.

www.cilncp.org

Statement for the Written Record

Submitted to
The Special Committee on Aging
United States Senate

Hearing on
Guardianships, Conservatorships, Protective Arrangements, and Alternatives

Submitted on March 23, 2023

On behalf of the Roads to Freedom Center for Independent Living (RTFCIL), we thank the Special Committee on Aging for planning this hearing and for seeking public comment for reform related to the guardianship, conservatorship, interdiction and other protective arrangements (collectively referred to here as "guardianship"). RTFCIL is the federally funded Center for Independent Living (CIL) serving people with disabilities in the North Central Pennsylvania area. Individuals RTFCIL serves are at serious risk of segregation and institutionalization. Pursuant to the Rehabilitation Act of 1973, Section 504, Part C funding; the Workforce Innovation and Opportunity Act (WIOA) of 2014 and the final rule adopted by the Administration on Community Living (ACL); RTFCIL is federally mandated to provide independent living, individual & systems advocacy, community-based core services, including institutional transitions and deinstitutionalization work.

In compliance with these federal laws, RTFCIL has an obligation to uphold the Independent Living (IL) Philosophy, which respects individuals' dignity, responsibility and self-determination. In the United States, guardianship is often based on implicit biases regarding people with disabilities. Guardianship assumes that disabled people cannot make decisions for themselves. Meanwhile, the IL movement reveals that dependence is created by society's failure to accommodate a disability. To the extent that guardianship limits our dignity, personal responsibility, self-determination, participation, or control over our own lives; guardianship is incompatible with the independent living philosophy and the IL mission.

In the past few years, RTFCIL's concern of guardianship abuse has grown significantly with the drastic increase of the number of abusive Guardianship cases involving the unwarranted and often forced institutionalization of people with disabilities. Our advocacy referrals have soared as people request advocacy and assistance on this issue for their self and their loved ones. Likewise, Guardianship abuse, has become increasingly prevalent and recognized by RTFCIL while providing advocacy and transition services to people of all ages and disabilities.

Guardianship is a Disability & Civil Rights Issue

Guardianship is an overused, abused and drastic legal intervention that strips away the fundamental and human rights of people with disabilities. It is an archaic institution that began in the 1930s before access to services for individuals with disabilities existed. Since then, protections have been put in place to safeguard the rights of people with disabilities. Although governed through state law, guardianship systems intersect with constitutional and federal civil rights, including those under the Americans with Disabilities Act (ADA). Nearly every person under, or at risk of, guardianship is perceived to have a disability and held to standards and expectations different from those without disabilities. This implicit bias needs to be recognized and the burden of proof in determining capacity should be heightened.

Incestuous Pipelines to Guardianship

Guardianship has evolved into an incestuous profitable enterprise full of abuse, neglect, and exploitation, often used to isolate, institutionalize, and limit individuals' freedom while those serving as Guardians' benefit. Judges, attorneys and medical experts lack the knowledge of resources and services provided by CILs and home and community-based services (HCBS). In some cases, Local Education Agency (LEA) attorneys and social workers are used to support parent petitions for guardianship. Some states have documents that physicians complete attesting to the individual's capacity of which Judges rely on. Additional pipelines to dependence exist from schools, foster care, medical facilities, adult protective services, and systems designed to "protect" disabled individuals. RTFCIL through its delivery of special education transition services has witnessed school personnel refer youth with disabilities to full guardianship 4 times more than an alternative option.

In too many cases, the Administration on Aging (AOA) through its Adult Protective Services (APS) self refers, petitions for, and becomes the Guardian, then blocks third-party protections through their conflicting role as the Ombudsman. As a matter of fact, APS, hospitals, and nursing facilities use guardianship programs to further exploit our seniors by filing over 70 percent of guardianship petitions without considering less restrictive alternatives.

These institutional pipelines isolate people with disabilities because the profit motives for Guardians and nursing facilities are substantial. Guardians and nursing facilities liquidate assets, draw down resources and use Medicaid funds to admit people in costly institutions.

Services and Alternatives to Prevent the Need for Guardianships

Community services and alternatives to guardianship are key to successfully mitigating the need for guardianship. Unfortunately, too often people under guardianship are denied the fundamental right to self-direct their long-term care services in the community. This is a direct violation of the ADA and the community integration mandate set forth in the SCOTUS Olmstead case. According to the Olmstead mandate, people have the right to receive services and supports in the most integrated setting possible and fully interact with nondisabled people to the maximum extent possible; instead of isolating in costly nursing facilities. Despite our federal mandates, RTFCIL Staff has had visitation and contact with residents blocked by Guardians. For these reasons, it is imperative that CILs have unrestricted access to the Alleged Incapacitate People (AIP) in order to carry out federal advocacy and transition mandates.

Realizing the overuse and misuse of full guardianships, many states have attempted to create some form of requirements to use a "least restrictive alternative" before imposing guardianships or creating an opportunity to tailor limited guardianships to individuals. Despite the proven success of these less restrictive alternatives to guardianship, including obtaining appropriate community services, supported decision making, powers and durable powers of attorney, health care advance directives, representative payees, medical proxies, and revocable, irrevocable, and special needs trusts, are seldom considered by judges.

In many cases RTFCIL has utilized these tools to avoid the need for guardianship altogether. People at risk of guardianship can use these tools to protect their

wishes and rights should a disability affect their decision-making in the future. The National Center on Law and Elder Rights reported that if the alternatives are working, even a person who is comatose should not need a guardian.

Examples of Abusive Guardianship and Unwarranted Forced Institutionalization

RTFCIL has witnessed many abusive guardianship cases involving the unwarranted and often forced institutionalization of people with disabilities. We continue to encounter individuals that are forced to live in an institutional setting by their Guardian. We have seen a number of AIP forcibly removed from their own home or rental, admitted to a a long-term care facility and placed under guardianship. Some who were receiving appropriate HCBS supports in the community and others who were not nursing facility clinically eligible. In many of these cases APS was alerted by a disgruntled neighbor or uneducated "professional" and others who self-referred. In almost all of these cases, isolation was used by the Guardian to further exploit the individual.

RTFCIL Staff received retaliation by the AAA Guardian while working to support the individual's transition to independent living and even served with notice by the State Ombudsman to have no further contact with him. It is clear that this action has served to further isolate the individual.

RTFCIL Recognize and Support Federal, State and Local Law, and Policy Reforms; and Call for Immediate Action to:

- Ensure all Alleged Incapacitated People (AIP) have the right to open and transparent review hearings with legal representation and access to advocacy & transition services offered by Centers for Independent Living.
- Ensure all AIP whose rights have been wrongfully restricted by guardianship, receive full restoration of rights immediately.
- Ensure greater oversight of current guardians and guardianship arrangements to protect against abuse, neglect, and exploitation.
- Develop federal legislation recognizing alternatives to guardianship, such as supported decision-making and establish guardianship as the ultimate last resort.
- Ensure transparency, require data collection and reporting.
- Immediately audit the use of Federal funds supporting state funded guardianship programs that do not adhere to the spirit and letter of the ADA and Olmstead decision.

- Immediately apply penalties to states who violate civil and human rights to self-determination and due process of people with disabilities through abusive guardianship practices.
- Consult with disability-led groups such as Centers for Independent Living throughout the country.
- Put in place protections where peer advocates can monitor guardianship.

In short, guardianship is all too easy to enter but virtually impossible to reverse. Most die trying to restore their rights. RTFCIL, its Board of Directors and the disability community it serves, implore Congress to act swiftly to protect people with disabilities against abusive guardianship use and provide a Bill of Rights for AIP that ensure alternatives to guardianship are used to optimize the most integrated settings for the AIPs' services and supports, including supportive decision making. Please stop guardianship abuse across the United States.

Respectfully,

Chief Executive Officer
Roads to Freedom CIL

cc. RTFCIL Board of Directors

Roads to Freedom Center for Independent Living of North Central PA
24 East 3rd Street - Williamsport, PA 17701

Voice: (570) 327-9070
Toll Free Voice: (800) 984-7492
Video Phone: (570) 279-4229
Fax: (570) 327-8610

IN THE MATTER OF GUARDIANSHIP OF [redacted] AN INCAPACITATED DALLAS, TEXAS

Dear Majority Staff of the Senate
Special Committee on Aging:

Sen. Bob Casey, Chairman
Michael Gamel-McCormick
Disability Policy Director

The guardian's breach of duty have violated criminal laws and warrant investigation and prosecution. In addition to reporting retaliation to family and friends for filing a valid Adult Protective Services, The agency owner [redacted] has been found guilty on past Ward by the Texas JBCC. The isolation tactics practice is inhumane and gross cruelty. Loopholes opened
This abusive power torment must stop immediately its abuse of powers protecting the Provider C3 Academy LLC. found loopholes opened despite Tx denying reopening under another name. Providers do not report employees to the HHS misconduct registry.
Guardianship only set up [redacted] for abuse and neglect for others to profit costing the family thousands of dollars. Not having family Guardians have made it very dangerous. Abolish Guardianship does not work when you have a suitable loving family.
Hospitalized beaten and preventable 8 days in the trauma unit. No accountability broken oversight system and private court system. Isolation kills. The deterioration is just wrong.
Who guards the Guardian? Absolute wrong court model due to oversight. Lengthy court waiting for family due process. My visits were denied due to retaliation and claiming family members are strangers. These are serious human civil rights violations against vulnerable helpless victims. No accountability for serious bodily injury. Thank you for acknowledging the abusive behaviors of Guardians.

Respectfully,

[redacted]

To Chairman Casey and members of Committee on Aging

My name is [redacted] the youngest of 3 children to [redacted] and [redacted] who encountered the worst elements of what probate guardianship has become in our America in the last two decades.

My State Virginia in the County of Fairfax is where my parents and family made their home since 1972. My father a career Naval Officer who served his Country with distinction and gave the ultimate sacrifice when his Country called upon him during his 28 year career in the United States military. While he had many memorable years and accomplishments in the Washington area with family and friends upon retirement he also encountered many struggles suffering a massive stroke in 1998 that left him with considerable right side paralysis and speech impairment. All of the skills and discipline he accumulated as a line officer would serve him well through this most challenging period of his life as a 20 year stroke survivor.

The waning days of his life that should have given him comfort and consolation for the sacrifices he made for his government instead abused by a legal system that took advantage of both he and his family to enrich a "legal" system that sees probate guardianship as a thriving enterprise for profit business in our 21st Century America when it use to be a matter of integrity and duty within the legal system for usually little or no money in caring for those who could no longer care for themselves.

Our father's circumstances through the odyssey of probate guardianship started in earnest in 2015 when our father's second wife took ill and was hospitalized for several months due to advanced COPD. Our father (so we were informed at the time) was near death and had less than 6 months to live in the care of hospice. With no legal directives in place through either my father or his spouse we were forced to seek help and obtained it through the services of a high end law firm in Fairfax County Virginia now [redacted] We sought to obtain co-guardianship as we had done previously several years earlier when his second wife could no longer care for him and required assistance. His in home care alongside hospice even though vetted by Northern Virginia Adult Protective Services that permitted unlicensed care professionals in the home were inadequate to the tasks at hand, especially when they disregarded known health issues related to disorders that had seen him in hospital many times over his later years caused by his stroke that his children were uninformed about.

The law firm representing us acquired important information and details to our case in seeking co-guardianship a second time, only to change direction when they discovered that our father's spouse was making recovery and would be returning home. After nearly 4 months of returning a man who was near death and bedridden that we were informed had just days 4 months earlier, was taken out of hospice within the first 4 weeks of looking after him that saw him ambulatory, and plied with the proper nutrition for his health issues, our attorney now was instructing us to leave our father's home upon his wife's return, and that it would be necessary in order to prepare for court just one month later. Within one week of our father's wife's return in his children(s) absence he has an episode that sent him to hospital where he had to be treated with antibiotics for more than a week and where his journey through probate guardianship begins. We are than informed by our attorneys at [redacted] that even though there were issues related to this episode (that they advised) and that was previously corroborated through subpoena evidence they had accumulated on our father's behalf, the likelihood of our receiving co-guardianship of our father were now remote at best. They argued that Virginia marriage law was archaic, and because we were not a part of any legal directives to his estate, the probability of obtaining it would be a high risk endeavor and that if we chose to move forward we could likely lose in court which under Commonwealth law would carry with it the penalty of paying not only our own attorneys fees which were substantial but also the defendant's. We were than informed that our only best option was to seek a representative from the court in the form of a probate guardian that would be the best mediator between parties and would provide full transparency to his financial account(s) and care, and that we would be entitled to see our father unfettered on a regular basis.

Given the circumstances of what had occurred and in contradiction to everything being previously told to us we had a very strong case for co-guardianship of our father, on this news, we had many misgivings to what we were now being told by our counsel -which we surmised even then was deliberate and purposeful. This was made worse by the fact that they gave us this opinion less than 48 hours before our court appearance for co-guardianship. Within a day a settlement agreement is vetted to both parties in which a custodial account of $64,000 which represented our legal fees on behalf of our father would be made available for his care and health requirements. The Judge Brett Kassabian in the 19th Circuit Court approved it while our father was making his transition and "rehabilitation" in a facility in Merrifield Virginia which was designated as temporary as the guardian was reviewing better long term facilities in the area.

Within the first month of our father's first nursing and rehab facility which was substandard with a poor reputation owned by Genesis healthcare we start noticing acute bruising on his arms that involves a witness. We report it numerous times to our father's guardian [redacted] who instead of investigating the matter in her own ward's protection instead threatens her ward's children by informing them that under no circumstances will she look into the our father's physical abuse, and that if we wish to see our father in the future we need to cease and desist these inquiries or our visitation to his nursing home will be denied. This went on for more a month and saw at least three separate encounters with Fairfax County Police, the last of which saw the arrest of one of [redacted] children for violating the guardian's letter on file with the nursing home administrator that they were not to be permitted visitation until she deemed it appropriate. Mind you there were no prior restraining orders on any of [redacted] children. Ans how could there be when the spouse of another resident in the facility saw firsthand our father's abusers? Just before my father's transfer to a second undisclosed "facility" that remained undocumented and was falsified in the guardian's 6 month report that involved a board certified physician investigating our father's physical abuse and injuries, also ignored by Adult Protect Services more than 60 days later (20 days beyond the 45 days for a mandated response) no less, the second "facility" which was never disclosed by the guardian Ms. [redacted] to [redacted] children as punishment for our contact with Adult Protective Services and the Virginia Department of Health for reporting his abuse and neglect. For two weeks we were not permitted to know our father's location, or to call the facility he was in. During those 2 weeks we contacted a number of local media outlets to ask if they would do a story -none at that time would touch it. Making matter far more reckless, our father's then guardian files a motion with the court seeking all the money in her ward's custodial account to pay for her attorney's fees instead of going to her wards needs in direct contravention to the conditions within the approved settlement agreement just one month earlier. The "Honorable" Judge Brett Kasabian proceeds to violate the settlement agreement he previously approved and in turn awards the proceeds of the custodial account to the guardian [redacted] just one month later. Before the Judge concludes the hearing and renders his decision he is handed a blown up picture of our father's battered arm by our counsellor in which he accepts and acknowledges it without looking at it throwing it aside with a smile on his face.

This story as the vast majority of probate guardianship cases in this Country today are, ends badly from here. Our father faces physical abuse and neglect through 4 substandard nursing facilities in the remaining 3 years and 1 month of his life, the last of which is his worst and among the worst in Northern Virginia Leewood of Grace Healthcare. This is where he meets his fate, through repeated isolation from his children (most ironically), as a form of meted out reprisal by the second guardian [redacted] of Ikor International as well in which [redacted] youngest son is not permitted to see his father for 8 months because of his regular communications with fellow probate guardianship reform advocates, State lawmakers and the local media. WJLA News in Washington did two stories less than 7 minutes combined between the months of May and July 2018 that chronicled his and his family's story and the 19th Circuit Court of Fairfax County Virginia's actions in retaliation to those stories. https://wjla.com/news/local/7-on-your-side-families-divided , https://wjla.com/features/i-team/police-can-seize-heirlooms-in-family-disputes In short. Our father was forced to miss his 88th birthday by only one month and two weeks. And those that know this story well and the information we have obtained know it was deliberately cut short for making a Judge and the legal system look both dishonorable and criminal which it most certainly is.

Details of the criminal case and violations of law that should have seen an investigation by the State of Virginia OSIG, FBI and DOJ leading to the impeachment of the judge(s) involved
- https://judicialpedia.com/listing/the-case-of-matthew-and-elizabeth-skarlatos-vs-fairfax-county/ As well

as criminal charges against the Fairfax County Commonwealth's Attorney at the time [redacted], and ex-police Chief [redacted] that has seen many challenges in his less than honorable career in law enforcement involving several high profile murders of civilians by the FCPD under his leadership. Especially with his recent involvement in a sex trafficking ring of undocumented women in the State of Virginia.
Both the Attorney General Mark Herring and the Governor Ralph Northem of Virginia simply ignored a Letter of Demand to investigate the matter comprehensively when they received it.

Per our closing remarks. It is our sincere hope and demand that we will one day very soon see rogue judges and officers of the court like the ones identified in our case that violate the rights of our most vulnerable citizens will see jail time and seven figure monetary fines for these crimes against humanity that ought to be considered among the worst and at one time most certainly would have been.

Sincerely

[redacted]

[redacted]

Written Testimony
U.S. Senate Special Committee on Aging
Guardianship and Alternatives: Protection and Empowerment
March 30, 2023

My name is [redacted] am a father, husband, friend, and a full-time skilled worker. Up until a few weeks ago and for the past 10 years, I was stuck in an unnecessary guardianship. I want to thank the Committee for the opportunity to tell my story. It is my hope that by sharing my experience I can help to illustrate the need for federal efforts to address the shortcomings of state level guardianship and conservatorship systems in which the legal protections for the most basic civil rights vary widely.

I never imagined that a friend's suggestion to go play video games at his parents' house would alter my life forever at the age of eighteen. As I rode carefree in the passenger seat of my friend's new Camaro, I suddenly felt the car veer sharply and my body go weightless when my seatbelt failed to prevent my head from slamming into the passenger side window. The next thing I knew I was on the ground looking up at a paramedic as they stabilized my neck. Thankfully, it was not broken. The EMTs and doctors claim I never lost consciousness, but I have no recollection of many of the events that followed.

My next memory is waking up on my parents' couch after leaving the hospital. I barely left that couch for weeks. At the time, I remembered almost nothing from before the accident, and it was as though my family members were suddenly strangers. The countless pictures they insisted I look at in an effort to spark my memory did not seem to make a difference. If it were not for the constant headaches and recurring nightmares of the accident in the rare moments I managed to sleep, I probably would have assumed it was all a strange dream.

About a month after the accident, I began my senior year of high school. On the first day, friends who had heard about the accident over the summer approached me in the halls to see how I was doing, but I did not recognize them. When Thanksgiving rolled around and the headaches, memory difficulties, and insomnia continued, my parents got more worried. None of the many physicians or psychologists I saw over the next several months could explain exactly why my symptoms were so severe. All that I knew was that no matter how hard I tried, I couldn't remember the things everyone wanted me to remember.

In the fall of 2012, my parents had decided they were going to sue my friend and his family over the accident. On the rationale that someone might take advantage of me if I were to receive a large sum of money, my parents convinced me they should become my legal guardians. They told me to sign a piece of paper and that it would let them take care of the lawsuit and I could just focus on getting better. There was no discussion about what this meant long-term, what rights would be taken away, what it meant for my life, or whether something less restrictive might have met my needs at the time. I

do not know whether a hearing was even held before the judge signed the order that essentially turned me back into a child in the eyes of the law.

In September of 2014, I was blessed to meet [redacted] the woman who eventually became my wife and the mother of my child. The symptoms from the traumatic brain injury ("TBI") had improved quite a bit by that point, but rather than looking toward a limitless horizon like most twenty-one-year-olds, my vision of the future was clouded by constantly being told what I could not do because of the TBI. Most of my time was spent playing video games on the same couch I woke up on after coming home from the hospital. The closest thing I had to a career plan was a seasonal job picking apples at a family friend's orchard. But when [redacted] looked at me she saw who I could still become and reminded me there was a world beyond my parents' couch. Suddenly, someone was in my corner who made me believe I could achieve whatever I wanted to if I worked hard enough.

Another setback came in the winter of 2015. I experienced a spinal cord injury while playing sled hockey that left me without feeling below my knees for several weeks. The doctors were not sure I would ever walk again, but with [redacted] support I was doing so independently in six months. The personal injury case settled around that time, and the money that was the basis for my parents seeking guardianship over me finally came in. After everyone involved got their pieces of the pie, a special needs trust was established and an annuity was purchased that will pay into it every month for the rest of my life.

On Valentine's Day of 2016 I asked [redacted] to marry me. This was just after the one-year anniversary of my spinal cord injury. I was excited to start a family, but my parents were extremely hesitant to allow me to work, let alone get married. Two months later we found out [redacted] was pregnant. This was unquestionably the best thing that ever happened to me. I am not sure my parents would have ever allowed me to get a job and move out of the house were it not for a baby on the way. By the summer I had moved into the house [redacted] owned, where we still live, and was working full-time as a biotechnician and maintenance man for a nearby ethanol production facility.

In December of 2016 I became a father, but in many ways my parents still treated me like a child. I had no control over the paychecks I earned and had to get permission from my stepfather to buy diapers and formula for my daughter. The trust could have helped pay for some of these expenses, but my parents refused to even provide the contact information for the trustee. I could make medical appointments for my daughter but was not allowed to make them for myself [redacted] nd I were eager to get married but my parents insisted on controlling nearly every aspect of the planning process. When we finally did get married in May of 2018, my stepfather insisted on signing the marriage certificate so that it was clear whose decision it really was. He was upset when the clerk's office told him this was not an option.

Before and after the wedding, I regularly asked my parents about ending the guardianship. They eventually arranged a meeting between me and their attorney, who told me ending the guardianship was impossible. Ironically, my earnings from work were paying her legal fees. The relationship between

my parents and I had become so strained that I barely wanted to speak with them. My stepfather would frequently talk down to me and make remarks about how I was incapable of doing things because of the TBI. [redacted]egan handling most of the communications with my parents about my finances, and it reached the point where we stopped allowing them to spend time with our daughter unsupervised because my stepfather treated [redacted]so disrespectfully. However, we had no choice but to continue dealing with them if we wanted to pay the bills, and they knew they had that power.

After nearly three years at the ethanol production facility, I changed jobs in hopes that if I made enough money my parents would be less controlling about my finances. I briefly worked for an excavation company operating heavy machinery and then as a welder for a manufacturer of utility trailers. Although my earnings were more than sufficient to live off in a small town in northeast Indiana, my stepfather's approach became even more heavy handed. We would get questioned about buying things like doughnuts or a magazine with the weekly groceries. Unless my stepfather approved of an expense and we accounted for every last cent, it was not getting reimbursed.

[redacted]nd I eventually became suspicious. Despite the level of control my stepfather exercised over my finances, we would occasionally receive past-due notices for bills my parents were supposed to be paying, and we would notice purchases they would make for themselves that appeared beyond their means. Although we did not have proof, we made a report of suspected financial exploitation to Adult Protective Services ("APS"). To my knowledge the APS investigation was not able to confirm our suspicions, but it did lead to a referral to Indiana Disability Rights ("IDR"), our state's protection and advocacy organization.

Before we even had a chance to contact IDR, my stepfather sent an e-mail t[redacted]nd I about the APS investigation. He let us know he suspected us of making the report, and that funds from my guardianship account were used to pay their legal fees related to the investigation and that this was the reasoning for his "recent tightening of control" over my finances. However, it was an insinuation in the e-mail that he might seek to break up my family by forcing me to move back in with them if we were not sufficiently cooperative, that ultimately led us to contact IDR.

At the time we reached out to IDR in the Spring of 2020 I did not know what to expect. I was never able to speak to an attorney other than my parents' lawyer. Without having any control over my finances, I had no way to hire one on my own and Indiana guardianship laws do not provide a right to a lawyer for folks under or at risk of guardianship. Indiana guardianship laws do not even require that the continued need for guardianship ever be reviewed by the court after one is established. If IDR had not accepted my case and offered to represent me free of charge, I am not sure I ever would have had a path out.

My attorney [redacted]as the first person to explain to me that restoring my rights was an actual possibility. We talked through several different options other than guardianship that would allow me to choose people I trusted to provide assistance in different areas if I needed or desired it. At the very beginning [redacted]as hopeful we could work with my parents and their lawyer to seek

termination of the guardianship in favor of one or more less-restrictive options. However, by the time he and his support staff finished their review of my case, we agreed that an uncontested termination was not a realistic option. Even whe[redacted]s ready to file a petition to terminate the guardianship, I was so nervous that my stepfather might try to break up my family when he found out that I requested we wait to file until after the holidays. Thankfully, [redacted]nderstood my concerns and we waited until January of 2021 to file the petition.

After the petition was filed, I was finally comfortable with Justin attempting to work with my parents' lawyer to cooperatively end the guardianship. However, they refused to even consider the possibility until I first underwent a neuro-psychological evaluation. Due to the unpredictable nature of contested guardianship efforts – particularly in Indiana where our laws do not provide a straightforward means to terminate a guardianship – we agreed to continue the hearing so that an evaluation could be arranged. [redacted] confidence that my abilities would come through in an evaluation eased my nerves somewhat.

After several weeks of haggling over who would do the evaluation, what the scope would be, and who would pay for it, we finally agreed to an evaluation of my adaptive functioning capabilities with a clinical psychologist my parents suggested, with the cost shared between my parents and the special needs trust. While these negotiations were ongoing, I accepted a job as a warehouse forklift operator that included another substantial raise in pay. Predictably, neither the termination effort or the new job changed how my parents treated [redacted]nd I. The only major difference was that most of these communications were between [redacted]and their lawyer.

The day of the evaluation fell on June 3. [redacted]nd I had driven the two hours to Indianapolis the day before and used money we had saved from her earnings to stay in a hotel so that I would be well rested on the morning of the evaluation. After the evaluation, I felt like things had gone well, but it was hard to know what to expect. The report was delayed somewhat because my parents insisted they meet with the psychologist in person, which did not occur until nearly a month later.

The report was finally released in mid-July. The clinical psychologist who my parents suggested perform the evaluation determined that I have no need for a legal guardian, and that the excessive control my parents exercised over my finances was actually hampering the development of my financial management skills over the long-term. And yet, my parents were still not ready to cooperate with a termination effort. It was not until over five weeks later – less than seventy-two hours before the final hearing was set to begin– that my parents allowed their attorney to sign an agreement consenting to the termination of the guardianship. The court accepted the agreement and issued the order granting the petition to terminate on August 24, 2021.

After everything I have been through, I am incredibly lucky to be in my current position. I have a wife who is my best friend and biggest supporter, a healthy child who is the light of my life, close friends and family, and a successful career. If it was this difficult for someone in my position to be released from an unnecessary guardianship, I cannot imagine what it is like for those who are not as privileged. If my

guardianship had been established in a state that provides more robust due process protections for those at risk of and under guardianship, my rights might have been restored several years ago. In a country that prides itself on the individual liberties that our citizens enjoy compared to elsewhere in the world, this is not acceptable. We need better protections to keep this from happening, and we need more attorneys like [redacted] and Indiana Disability Rights to enforce those protections.

Thank you to Senator Casey, Senator Braun, and the rest of the members of the Committee for the opportunity to tell my story.

** END OF WRITTEN TESTIMONY **

To: The Majority Staff of the Senate Special Committee on Aging

Re: Drawbacks to Guardianships and The Need to Consider Alternatives to Guardianships for People with Disabilities

From: [redacted], [redacted], The Arc of Greater [redacted], Pittsburgh, PA 15203, [redacted]

Guardianship is about decision making and a guardianship usurps the decision-making rights of an individual. A Guardian of the Person makes personal, residential, and medical decisions for an incapacitated individual. A Guardian of the Estate is appointed to make and implement financial decisions for a person deemed incapacitated. In a Plenary Guardianship, the guardian has the authority to make all decisions necessary for the personal wellbeing of the incapacitated person. And in a Limited Guardianship, a court specifies the areas over which the guardian has authority and the areas over which the incapacitated person retains authority.

A guardianship takes away decision making rights of a person and deems a person to be incapacitated, which must never be taken lightly. That said, there are times, when a guardianship may be necessary but they are the exceptions. Unfortunately, for many families of adults with intellectual disabilities (ID), professionals still recommend they obtain a guardianship when their family member turns 18, just because they have ID.

Families often start down the road of obtaining a guardianship and later learn about the drawbacks. One drawback is the cost of court and attorney fees that can easily run thousands of dollars. Another drawback is the required annual record keeping that must be completed by the guardian. A third drawback is the necessity of naming a successor guardian, such as a sibling, to be the legal guardian upon the death of the primary guardian(s). A fourth drawback is the tension and conflict often experienced by families when there is a divorce or when there are disagreements about whether a guardianship is necessary and who the guardian(s) should be.

For the vast majority of families of people with ID, they are concerned with assisting a family member with medical and financial decisions to ensure they

are receiving the health care they need and protecting their finances These decisions can be accomplished with the use of alternatives to guardianships that are often referred to as decision making supports. Decision-making supports refers to actual forms or formal agreements to help someone with decision-making.

Health care decision making supports include (1) advance directives or living wills, (2) powers of attorney in which a person designates a health care agent for physical and/or mental health care, and (3) health care representatives.

Financial decision making supports include (1) financial powers of attorney, (2) representative payees, (3) ABLE accounts and (4) special need trusts.

In order to protect the rights of people being considered for or currently covered by guardianships, adults with ID and families need to be informed about alternatives to guardianships and supported by professionals (teachers, transition coordinators, support/service coordinators, physicians and members of the clergy) to consider all alternatives prior to seeking a guardianship.

Families need to understand that adults, including adults with disabilities, have the right and are presumed to have the capacity to make their own decisions and that the freedom to make decisions is fundamental to personal autonomy and self-determination.

Capacity is not based solely on IQ or a diagnosis, it can be learned and developed. Capacity involves the ability to understand benefits, risks and choices, to make a decision and to communicate that decision. Communication of a decision may come in different forms including verbal, written, sign language and with the use of assisted technology.

Families need to understand that sometimes people with disabilities may need supports to help them understand and make decisions, and there are a wide range of supports available, including supported decision making.

Supported decision making involves understanding and exploring options, understanding the risks and benefits of those options, getting information and guidance from trusted people, making and communicating a choice and carrying out that decision with help as needed.

People with ID should be encouraged and supported to exercise their rights and responsibilities, advocate for themselves, learn about their disability and health care, receive financial education and consider joining a self-advocacy group to share experiences and information with other people with disabilities.

Teachers, transition counselors, support/service coordinators, physicians and members of the clergy need to understand that guardianships are not necessary and to refrain from recommending them. Teachers and families need to teach decision making skills and allow children, at an early age, to make decisions. Children who are allowed to make decisions about what to wear or which TV show to watch will be learning skills that will enable them to make more complex decisions later in life. Families need to learn about, plan and use alternatives to guardianships before seeking one. And, adults with ID need to be supported to make decisions (to the extent they are able) to experience and learn from making a bad decision, and to exercise their rights and responsibilities.

Advocord

advocord.com

[redacted]

March 16, 2023

The United States Senate Special Committee on Aging
Democratic/Majority Office
G16 Dirksen Senate Office Building
Washington, DC 20510

The United States Senate Special Committee on Aging
Republican/Minority Office
628 Hart Senate Office Building
Washington, DC 20510

Dear Members of the Senate Special Committee on Aging,

You should be commended for seeking input from the public with respect to guardianships, conservatorships, and alternatives thereto. There are many opportunities to improve the lives of those who need these arrangements.

My perspective on these matters has been informed by my 28-year legal career, as well as my most recent efforts to create a software company working to give fiduciaries for vulnerable adults the education and tools to do the job well.

Therefore, I appreciate this opportunity to share a few stories and some suggestions for where I think improvements need to be made.

Many years ago, I was an assistant District Attorney in Franklin County, Pennsylvania. During that time, I certainly had the unfortunate experience of seeing vulnerable citizens defrauded by those who were entrusted to care for them. I am sure you will receive many stories detailing this all-too-frequent crime. Thankfully, many states, including Pennsylvania, have enacted criminal statutes with enhanced penalties addressing this situation.

After entering private practice, I focused my legal career on estates, trusts and fiduciary law. This gave me a completely different perspective. Although I occasionally ran across bad actors intent on defrauding others, in most instances I encountered very well-meaning family members or friends who simply did not have skills as a fiduciary. Their mistakes were borne out of ignorance of the law.

As the recent AARP study found, the value of unpaid caregiving by family and friends is a staggering number - $600 billion annually. A substantial portion of those caregiving hours are provided by family and friends legally responsible for

Advocord

advocord.com

[redacted]

maintaining finances and arranging medical care. These are typical duties of guardians, conservators, representative payees, and agents under powers of attorney.

It would be fiscally catastrophic if these family members and friends suddenly stopped taking on these roles and passed the responsibility to state-funded public guardians or if professional guardians had to be hired. Therefore, family members and friends should be empowered to take on a fiduciary role - but also educated and held accountable.

Some of my clients included parents of now-adult-children who were born with intellectual disabilities, parents of adult children who suffered a traumatic brain injury, and adult children of elderly parents in the throes of cognitive decline. Every situation is different. However, there is one commonality in each of those scenarios. The moment the judge appointed them as guardians, they all turned to me and said some version of "Now what do I do?".

The answer to that question can be overwhelming. Unless you are a professional fiduciary, nothing really prepares you for the level of responsibility that is involved in a guardianship or conservatorship. When I explain to clients that every transaction has to be recorded, that a log of everything they do on the other person's behalf needs to be maintained, that they will need ongoing court approval for many transactions, and that they will have to report all of these things at least annually, they are frequently panic-stricken.

Education for non-professional fiduciaries is sorely lacking. When a person is appointed as a guardian or conservator, each state usually provides a handbook. However, these can frequently have hundreds of pages and are given to people who are usually already under tremendous time constraints. One thing we have done at Advocord is to create a series of on-demand "best practices" videos that are no more than 2 minutes long. They are a plain language resource designed to encourage better decision-making. Better decision-making leads to better outcomes and preservation of resources for the incapacitated person.

In addition to panic at being thrown into a position with significant duties and not much guidance, I have occasionally heard a family fiduciary express resentment that there is continual oversight and accounting requirements. "Why is it anyone's business what I do for my family member?" is usually the question.

I think this comes from a fundamental misunderstanding of the significance of what it means to be authorized to make decisions for a vulnerable adult. Very few people appreciate the gravity of a person having his or her autonomy taken away by a court or legal document due to cognitive impairment.

Advocord

advocord.com

[redacted]

Historically, the secrecy that surrounded guardianship proceedings was a significant factor in fostering this lack of appreciation. It simply wasn't talked about. Even state-mandated reports were filed with the court and never looked at by anyone ever again. Fraud and neglect flourish in secrecy.

Lack of transparency around guardianships, conservatorships and alternative arrangements serves no one's interests – least of all the incapacitated person. Therefore, transparency and accountability should be non-negotiable for anyone making decisions for someone else.

In my career, I have been involved in litigation between family members at odds over decisions made by one family member on behalf of another. Most, if not all, of those cases could have been avoided had there been transparency and sharing of information among the stakeholders in the incapacitated person's care. Almost every grievance began because someone felt like he or she was "out of the loop" when it came to an elderly parent. In every case, the elderly parent's assets were diminished by litigation costs, and the family dynamic permanently damaged.

While there are privacy concerns about certain types of information, the reality is that a decision-maker is far less likely to engage in self-dealing or even negligent decision-making if he or she knows that someone else is watching what they are doing.

Moreover, courts are frequently faced with choosing one sibling over another to be the guardian for a parent for various reasons. In one case I was involved in, it was a matter of geographic proximity. In another, it was because one sibling had a minor child with special needs, so the reasoning was that she would have less time to devote to the parent with Alzheimer's. In those cases, requiring the chosen guardian to keep the other sibling apprised of all information related to the parent would reduce the opportunity for conflict and reduce the likelihood of self-dealing.

Because I have seen the benefits of transparency and sharing of information, and the damage that can be done to a vulnerable person when a decision-maker is allowed to operate without accountability, it was very important to me that any software solution I designed would include a read-only function so that courts could assign another set of eyes to keep track of the incapacitated person and the care that he or she was receiving on a regular basis.

Therefore, I suggest that initiatives to increase education, transparency and accountability for family and friend decision-makers, regardless of the type of protective arrangement, should be of utmost importance.

Advocord

advocord.com
[redacted]

Those are by no means the only protections that should be explored. Due process, including representation of the vulnerable person by counsel, should be guaranteed. However, protective arrangements cannot be undertaken on a mass scale by public or professional guardians alone. There must be efforts to empower, educate, support, and hold accountable family and friends who are willing and able to undertake a very important decision-making role for our most vulnerable individuals. Such efforts should include partnering with companies at the forefront of building solutions designed to better protect those who are unable to make decisions for themselves.

In summary, efforts should focus on:

- Increasing the number of available guardians/conservators by empowering individuals through increased education and tools;
- Enabling the growth of alternatives to guardianship;
- Adoption and enforcement of transparency and information sharing in all protective arrangements; and
- Leveraging public/private partnerships to drive innovation.

Thank you for your consideration.

Very truly yours,

[redacted]

NASGA

Protect, Reform, Restore

Dear Senate Special Committee on Aging: March 20, 2023

Thank you for encouraging the public to address the Guardianship System. I am a Director of the National Association to Stop Guardian Abuse ("NASGA"). As one of 75 voting delegates at the Fourth National Guardianship Summit, I also helped draft a document of 22 recommendations for improvement. First and foremost, we recommended that states be encouraged to adopt the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

The Act strives to improve quality of life for those who need assistance. The Act forbids placing people into guardianships if other alternative protective arrangements would be sufficient. This is very important because a tailored plan for an individual is far better than a one size fits all approach. A petitioner would be asked what alternatives have been tried and worked, and which ones failed. Those alternatives may include powers of attorney, supported decision-making agreements, and single orders from the court to perform single tasks.

The Act would make several other important changes to the system.

1. Offers full due process and 14-day notice.
2. Gives a person under petition the right to hire an attorney of choice, or to have one appointed by the court. The lawyer's role is to defend the person's rights, not to decide what is best for that person. This means your lawyer defends you against having your rights removed instead of trying to determine what is in "your best interest."
3. Hearsay is replaced by "clear and convincing evidence."
4. In addition to the person under consideration, a list of family members, step-family members, and others closest to the person must be notified of the petition. In addition, the process the person is about to undergo is described in detail, along with the person's rights, including details about restoration of rights. This same list will also receive records throughout the guardianship.
5. The attorney who represents the person under consideration for protection may cross-examine the petitioner and witnesses in the court, including the evaluator and anyone else involved in the case.
6. If a guardianship is put in place, the guardian must submit a detailed plan of care that includes proposed fees for various tasks. The family can object to the plan, in which case it will be revised. If the guardian starts deviating from the original plan, that's a red flag that can be pointed out to the court. Instead of being shut out of the process, close associates and/or families can serve as additional ears and eyes for the court. This will make monitoring less onerous.
7. A guardian or conservator can be removed for "just cause." Many have languished in guardianship, unable to prove malfeasance. This new phrasing gives the court more flexibility to change guardians or perhaps even substitute a supported-decision making agreement for the guardianship.

PO Box 886; Mt. Prospect, IL 60056
www.StopGuardianAbuse.org
Info@StopGuardianAbuse.org

8. An easy complaint process that the judge must address unless the same complaint was made less than six months ago. Complaints are kept on permanent file.
9. Power of Attorney ('PoA") is not automatically trumped by guardianship. The PoA may stay in place, with the guardian cooperating with the PoA agent.
10. Freedom of association: A guardian cannot restrict visitations from a family member for more than seven days unless that person was put on a list at the start. Then, the guardian has to go to court. The guardian can't restrict visits from friends not on the list for more than 60 days. Then the guardian takes it to court. Our organization passed visitation laws in 11 states, but now the Act has included similar provisions.
11. The court visitor has a much larger role before decisions are made. The visitor talks to the person's physician, family members, and others to get a thorough idea of what the person wants and what his or her long-term wishes are. The visitor gets to know the environment and social life of the person under consideration. It's important for the person not to be plucked out of his or her life, losing social contacts and cultural activities. Science is now showing this kind of isolation increases the chances of mortality as much as years of smoking.
12. The Act makes it clear that guardians and conservators are fiduciaries bound by fiduciary laws. Guardians can be prosecuted for theft and other abuses of finances more readily.

All of these changes and more would slow down the steps to guardianship, creating more uniformity in a step-by step-process that can determine a person's quality of life. Guidance would be much clearer to the courts. At present, many courts place people in guardianship quickly to get the job done. As a result, there are many unneeded guardianships. Courts complain about the caseload volume.

The 22 recommendations are a follow-up of the Act. The beauty of the Act is that it is a living document that can be updated easily. Here are the areas in which the Federal Government can provide the most help:

1. The number one concern is data and tracking of cases. Without tracking of cases there is no continuity. Also, no one participating in the court process follows up on what happened to the person in guardianship. They may be languishing without connection to the environment they lived in.
2. Every state should have a guardianship diversion program tasked with facilitating alternatives to guardianship, reducing the likelihood that guardianships will be granted where not necessary. Funding could be provided for these programs.
3. Another great concern is training for judges. In order for courts to modernize attitudes and outcomes, we believe that the Federal Government should fund a court improvement program in a manner similar to the Child Welfare Court Improvement Program established in the 1990's. Funds could be given to the highest state and tribal courts for distribution of funds, ensuring that the dollars go toward the intended purpose.
4. NASGA would like to see data gathered on guardianships that handle social security payments. This would enable sharing of data with various states when it comes to documenting how many guardianships there are in the US. Also, an examination of how many guardians handle Veterans' benefits might be of great use to a general database. This information could also provide investigators with information if malfeasance is suspected.

In general, national reformers feel strongly that people should not be placed into plenary guardianships and that more tailored solutions should replace loss of rights whenever possible. We believe that increased involvement by family and others close to the person will offer more complete social environments that elders and others need to live fulfilling lives. We also believe that a more

inclusive attitude should be taken by the courts now that years of research have proven that isolation and social disconnection are a danger to the health of citizens.

Thank you again.

Respectfully,

Marcia Southwick
Director
National Association to Stop Guardian Abuse.

NCCRC
National Coalition for a Civil Right to Counsel

To: U.S. Senate Special Committee on Aging
Re: Input on Guardianships, Conservatorships, and Other Protective Arrangements
Date: March 22, 2023

On behalf of The National Coalition for a Civil Right to Counsel (NCCRC), I write to provide input on a necessary protection to provide in guardianships and conservatorships. Specifically, the right to counsel is essential to ensure there is due process to protect the fundamental rights of protected persons in these proceedings. We therefore urge the Committee to support the automatic appointment of client-directed counsel for protected persons unless the protected person indicates they have or will be retaining their own private counsel.

The NCCRC, organized and funded in part by the Public Justice Center, is an association of individuals and organizations committed to ensuring meaningful access to the courts for all. Founded in 2003, our mission is to encourage, support, and coordinate advocacy to expand recognition and implementation of a right to counsel for low-income people in civil cases that involve basic human needs, such as mental and physical health. At present, the NCCRC has over 600 participants and partners in 45 states. We have worked to help establish and improve the right to counsel both legislatively and in litigation in numerous states around the country.

Guardianship proceedings are among the most serious types of civil proceedings in terms of impact on an individual's right. Not only is the person's physical liberty at stake, but also their right to associate, their bodily integrity, and numerous other rights held dear. Even where there is evidence that a guardianship is needed, appointing an attorney for the protected person is critical to ensure that a) the court hears evidence about any potential conflict of interest of the proposed guardian; and b) the guardianship granted is no broader than is necessary to protect the person. Moreover, in our experience, courts in some jurisdictions grant plenary guardianships against unrepresented protected persons even in some situations where the petitioner only seeks a limited guardianship, due to a plenary guardianship being simpler and quicker for the court to impose. And in some jurisdictions courts do not even hold hearings before granting a guardianship, and other states do not even require personal service of the guardianship action. Mandatory appointment of an attorney is necessary to safeguard against these problems.

Having the appointment of counsel be automatic is critical to the effectiveness of the right to counsel. Requiring the protected person to make a request for counsel is flawed because the alleged disability requiring a guardianship may very well preclude the protected person from understanding the need for counsel. Moreover, a primary reason to automatically appoint legal counsel is precisely to help the respondent determine whether to object to or contest the petition in some way by providing a confidential attorney-client relationship with a lawyer who can explain the full legal ramifications of the proceedings.

Moreover, the appointed attorney must adhere to the client's wishes and not substitute the attorney's judgment, as the protected person deserves to have an advocate who argues for their expressed wishes. Should the protected person object to the guardianship, the petitioner will provide the counterarguments

such that the court will have both sides from which to reach a decision. Without a confidential relationship between the attorney and protected person (one that is not provided by the guardian ad litem role), there is a risk that protected persons will fear to disclose their reasons for objecting to the potential guardian, particularly in situations where it involves a family member.

The right to the automatic appointment of client-directed counsel in guardianship cases is widely provided by the states, and is recommended by key policy groups. As shown on our website, more than 20 states currently take this approach, including Minnesota, Iowa, South Carolina, and Missouri, while another dozen states provide a right to counsel for most circumstances and an additional 8 states provide the right to an attorney ad litem. Recently, the California Legislature passed AB 1194, which requires courts to appoint counsel in any conservatorship where the proposed conservatee "has not retained legal counsel and does not plan to retain legal counsel, whether or not that person lacks or appears to lack legal capacity." Additionally, while the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act contemplates two potentially different schemes to govern the right to counsel (with one being automatic appointment in all cases as we are suggesting), it comments that even in jurisdictions opting for appointment only where requested or recommended,

> courts should err on the side of protecting the respondent's rights by finding, absent a compelling reason otherwise, that the respondent needs representation. A guardianship proceeding can involve complex legal issues and can strip the adult of many of the most basic rights. It should be the rare case in which the court does not find that an unrepresented respondent is in need of representation ... In light of these concerns and in the interest of providing full due process to respondents, states may wish instead to adopt Alternative B, which provides for mandatory appointment of counsel. Mandatory appointment has been strongly urged by the A.B.A. Commission on Law and Aging (formerly known as the A.B.A. Commission on Legal Problems of the Elderly) and helps ensure that the respondent's rights are fully represented and protected in the proceeding.

We appreciate that the Senate is taking a close look at its guardianship code in order to protect the rights of particularly vulnerable adults, and are happy to answer questions about our recommendation if any arise. Thank you for your attention to this matter.

Sincerely,

[redacted]
Coordinator, NCCRC



Protecting the Rights of Individuals Covered by Guardianships, Conservatorships, and Protective Arrangements

Submitted to the Special Committee on Aging
United States Senate

National Center for State Courts

March 23, 2023

For further information contact:

[redacted]

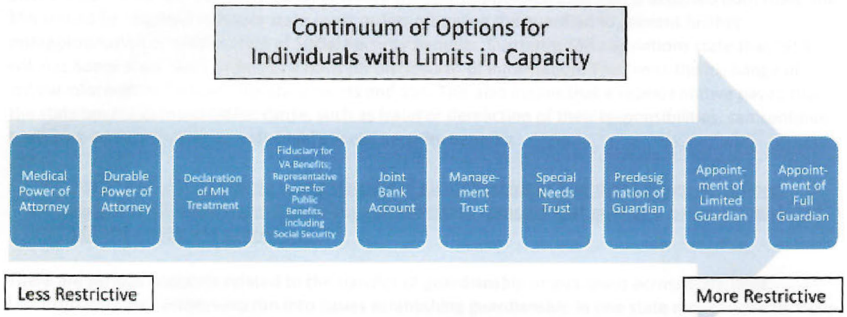
National Center for State Courts
111 2nd Street, NE
Washington, DC 20002

[redacted]

NCSC appreciates the leadership of the Senate Special Committee on Aging to better protect the rights of people being considered for, or currently covered by, guardianships and conservatorships.

The National Center for State Courts (NCSC), the Conference of Chief Justices, and Conference of State Court Administrators ("the Conferences") have made guardianship and conservatorship reform a national priority and have undertaken initiatives to strengthen court monitoring of guardianship and conservatorship cases. Along with the Conferences, NCSC stands ready to work with the Senate Aging Committee to further protect adults who lack the ability to meet their own physical health, safety, or self-care needs and who are or will be subjected to guardianship and conservatorship.

Guardianship or conservatorship occurs when a court appoints an individual (the guardian) to make decisions and oversee the affairs of an individual (sometimes referred to as a ward). This happens after a judge determines that such an individual lacks the mental capacity to make decisions independently. Rights removed from an individual may include: deciding where to live, whether and how to access medical care, signing contracts, driving, marrying, spending money, and voting. Guardianship laws vary from state to state and can facilitate treatment and protect individuals from harm.



While guardianship can be an important means for protecting individuals, sometimes this does not happen. For example, an individual can be placed in a facility and rarely visited due to restrictions imposed by the guardian. At times, the individual's home can be sold, preventing the person from ever leaving a facility, or a person can regain capacity but remain subjected to guardianship for years. In some cases, guardians have stolen from an individual's estate or charged exorbitant fees. When guardians are removed for cause, they sometimes remain as a representative payee for the Social Security Administration (SSA) or as a fiduciary for the U.S. Department of Veterans' Affairs (VA). These far-too-common cases raise serious concerns for NCSC and reveal troubling gaps in the U.S. legal system that must be addressed.

NCSC wishes to continue our work at the state and federal levels, especially with the Senate Aging Committee, to protect the rights and well-being of people currently or likely to be covered by guardianship or conservatorship. As such, we offer three recommendations to the Committee for how the federal government could assist states and state courts in their responsibility to oversee the guardianship and conservatorship systems.

Recommendations:

1. **Require the Social Security Administration to recognize state court determinations in guardianship cases.**

Most adults in the guardianship system are Social Security recipients who have representative payees assigned by SSA to administer benefits. In some cases, the representative payee is not the same person as the court-appointed guardian. What often happens in these circumstances is that the state court is responsible for monitoring the activities of only one person who is managing a portion of the individual's estate or well-being. When the oversight of the ward's estate is bifurcated, the court will only have control over a portion of the estate, meaning that the person charged with managing Social Security benefits (appointed separately by the SSA) is not directly answerable to the court.

NCSC offers two recommendations to address this issue. First, there should be a system implemented for situations where the management of the estate is bifurcated. In this system, SSA should be required to immediately alert the court of concerns regarding the fiduciary's management, and the court should alert the SSA of similar concerns. Second, where the court-appointed guardian is assigned both roles, the SSA should be required to honor state court orders removing the guardian to prevent further misappropriation or misdirection of Social Security benefits. Currently, SSA regulations state that "SSA will not honor state court orders as a basis for disclosure" of information. This limits the exchange of critical information between the state courts and SSA. This also means that a representative payee that the state court has removed for cause, such as fraud or dereliction of their responsibilities, can continue to receive and administer an individual's Social Security benefits.

2. **Assist with issues related to the transfer of guardianships or guardians across state lines, including allowing states to establish an interstate compact that creates a national registry of guardianships and procedures.**

There are serious concerns related to the transfer of guardianship or guardians across state lines. Unfortunately, bad actors who run into issues establishing guardianship in one state may choose to move the individual and seek guardianship in another state. Or an individual in one state found by that state court to have abused or exploited a person in guardianship may move the practice to another state, only to be court-appointed again without knowledge of the issues in the other state. NCSC could help Congress identify various interstate compacts to serve as guidance for an interstate compact specific to a national registry of guardianships and procedures to address this problem. One compact model Congress could look to is the Interstate Agreement on Detainers (IAD), which is used by both the states and federal government to lodge detainers against individuals about to be released from incarceration, so that they can be transferred to another jurisdiction to deal with unresolved criminal charges. IAD could serve as a conceptual model because it may be one of a few compact agreements where the federal government is a full member.

3. **Establish an Adult Guardianship Court Improvement Program modeled on the successful Child Welfare Court Improvement Program, and provide funding directly to the highest court in each participating state to enhance the rights and well-being of adults subject to guardianship.**

In 2021, the Conference of Chief Justices and Conference of State Court Administrators endorsed a resolution in support of an Adult Guardianship Court Improvement Program.[1] This resolution recognizes the collective importance and need among state Chief Justices and State Court Administrators across the country for an Adult Guardianship Court Improvement Program. The Conferences have had a long history of supporting the State Court Improvement Program for Child Welfare, which could serve as a model for establishing an Adult Guardianship Court Improvement Program.

The resolution also recognizes the need for a national approach to improve data collection and analysis, evaluation, and strategic planning, as well as develop best practices and training for guardianships. Currently, no firm data exists that can accurately calculate the number of guardianships in the United States. Further, there is no government agency that captures data (e.g., guardians abuse) that can further protect individuals subjected to guardianship.

NCSC's Center for Elders and the Courts (CEC) has been working with five states to map guardianship data to the National Open Court Data Standards, which are business and technical court data standards to support the creation, sharing, and integration of court data. The Data Standards, established by the Conferences and NCSC, also ensure a clear understanding of what court data represent and how court data can be shared in a user-friendly format. NCSC is working with Maryland, Massachusetts, Minnesota, Nevada, and Virginia on this project, which is supported by the Elder Justice Innovation Grants administered by the Administration for Community Living under the U.S. Department of Health and Human Services. This grant program could also serve as a model for the Adult Guardianship Court Improvement Program in addressing data-related issues.

An Adult Guardianship Court Improvement Program would address such needs and do the following:

- Effectuate consistent and meaningful data collection
- Improve oversight and accountability
- Avoid unnecessary or overbroad guardianship
- Enhance collaboration and education among courts, agencies, and organizations that have an impact on adults subject to, or potentially subject to, guardianship

In addition, an Adult Guardianship Court Improvement Program would offer states the opportunity to identify state-specific needs and implement plans to meet those needs. State courts also would have the opportunity to consult with national experts, and share successes, as has been the experience with the Child Welfare Court Improvement Program.

About NCSC

The National Center for State Courts works closely with state courts to improve the administration of justice. Through research, consulting, and education, NCSC seeks to support courts as they work to resolve disputes effectively and efficiently. While we work with many courts and types of courts, our primary focus is the state courts, which serve as our nation's general jurisdiction courts handling 97% of all cases filed in the United States, including cases presenting important federal claims.

[1] Resolution 4 In Support of an Adult Guardianship Court Improvement Program available at https://ccj.ncsc.org/__data/assets/pdf_file/0018/67014/Resolution-4_Adult-Guardianship.pdf.

NCSC is home to the Center for Elders and the Courts, which serves as the primary resource for the judiciary and court management on issues related to aging. CEC strives to increase judicial awareness of issues related to aging, provide training tools and resources to improve court responses to elder abuse and adult guardianships, and develop a collaborative community of judges, court staff, and aging experts. Throughout the years, CEC has been supported by the Bureau of Justice Assistance and the Office for Victims of Crimes under the U.S. Department of Justice.

As the only organization that enjoys collaborative relationships with the Conference of Chief Justices, Conference of State Court Administrators, and other associations of judicial leaders, NCSC has unique insight into the most pressing challenges and opportunities facing courts and the people they serve.

Improving guardianships and conservatorships to better protect individuals covered or under consideration is a high priority for state judicial leaders. Examples of NCSC's most recent and ongoing work include:

- **Guardianship Review Protocol: Guardianship Well-Being Protocol Tool.**[2] In February, NCSC and the Office of Victims of Crime under the U.S. Department of Justice released this tool to improve how courts monitor the welfare of individuals under guardianship. The court's duties do not end once an individual is placed into a guardianship or conservatorship. Courts give guardians and conservators enormous responsibility, and well-being protocols can inform how courts provide ongoing oversight. As part of the release, NCSC hosted a webinar on Reviewing Guardianship and Conservatorship Reports - A Guide for Courts[3] to talk through the protocol process for court staff.

- **Guardianship Review Protocol: Accounting Protocol Tool.**[4] NCSC and the Office of Victims of Crime released this tool for court and clerk staff to use as a screening documents template to assist reviewers in flagging reports that need further action. The report highlights the **Pennsylvania Guardianship Tracking System**[5] as a model system for such monitoring.

- **NCSC's Conservatorship Accountability Project (CAP).**[6] Since 2015, CAP has sought to modernize conservatorship accounting and tracking processes and build safeguards to protect vulnerable adults from financial exploitation. More recently, CAP has released reports that focus on modernizing the conservatorship and monitoring process.

    - **Guardianship/Conservatorship Monitoring Recommended Data Elements.** In 2020, NCSC and the State Justice Institute (a federal independent agency) released this report as

---

[2] Guardianship Review Protocol: Well-Being Tool Protocol available at https://www.eldersandcourts.org/__data/assets/pdf_file/0028/87184/Well-being-Protocol.pdf.
[3] Reviewing Guardianship and Conservatorship Reports - A Guide for Courts Webinar available at https://vimeo.com/793338195.
[4] Guardianship Review Protocol: Accounting Protocol available at https://www.eldersandcourts.org/__data/assets/pdf_file/0033/87189/Accounting-Protocol.pdf.
[5] Pennsylvania Guardianship Tracking System available at https://ujsportal.pacourts.us/Guardianship/Overview.
[6] Guardianship/Conservatorship Monitoring Recommended Data Elements: Basic Strategies and Technology Enhancements available at https://www.eldersandcourts.org/__data/assets/pdf_file/0020/54614/modernizing-conservatorship-guide-final_May2021.pdf.

guidance to court employees on what data they should collect and how to define and use it to monitor guardianship and conservatorship cases.

- **Implementation Guide for Modernizing Conservatorship Monitoring.**[7] In 2019, NCSC released this report to inform state courts of the best strategies and technology enhancements underway in light of problems posed by conservatorships.

- **Guardianship and Conservatorship Resources for the Courts.**[8] NCSC also has curated and housed a repository of guardianship and conservatorship resources for courts to address topics, including: (1) Alternatives to Guardianship and Conservatorship; (2) Establishing Guardianship and Conservatorship; (3) Proactively Managing Guardianship and Conservatorship; (4) Monitoring Guardianships; (5) Monitoring Conservatorships; and (6) Responses to Allegations of Wrongdoing. Further, NCSC operates a listserv for judicial officials and court staff to share information on resources and practices that can help courts improve the guardianship process.

Again, NCSC thanks the Committee for your leadership and attention to this important issue. We look forward to working with you and serving as a resource.

[7] Implementation Guide for Modernizing Conservatorship Monitoring available at https://www.eldersandcourts.org/__data/assets/pdf_file/0020/54614/modernizing-conservatorship-guide-final_May2021.pdf.

[8] Guardianship and Conservatorship Resources for the Courts available at https://www.eldersandcourts.org/guardianship_conservatorship/resources-for-courts.

Statement of the National Disability Rights Network For the Senate Aging Committee's Request for Information On Guardianships March 23, 2023

On behalf of the nationwide Network of Protection and Advocacy (P&A) agencies who advocate in every state and territory for the rights of people with disabilities, the National Disability Rights Network (NDRN) thanks you for the opportunity to submit this information on guardianship for your consideration.

Every year, the Program Performance Reports (PPR) submitted by the P&As to document their work are full of examples, like the following two, showing the difficulties encountered by people with disabilities around guardianship:

> 1. K.B. is a 20-year-old woman whose mother obtained guardianship over her when she turned 18. However, K.B. has a driver's license, and is taking college classes at the local community college where she makes excellent grades. K.B. attends her doctor's appointments independently and oversees ensuring her medications are timely refilled. K.B. and her mother learned about Supported Decision-Making, and K.B. said she does not want a guardian. K.B.'s mother is supportive of guardianship removal and filed a petition for rights restoration in the Probate Court. During the hearing, the Judge postponed the proceedings because the Court failed to appoint K.B. an attorney or guardian ad litem, and because another evaluation needed to be done due to errors in the court-appointed evaluation. K.B. then retained the P&A to represent her, and K.B.'s mother dismissed her petition so that K.B. could proceed with the P&A as K.B.'s attorney.
>
> However, the Probate Court issued an order saying K.B.'s mother was in contempt of court for failure to contact [the] guardian ad litem. The order also said that the mother's petition for rights restoration was dismissed on the merits and K.B. could not bring another petition for rights restoration for two years. A P&A advocate filed a motion for reconsideration of the Probate Court's Order, which the Probate Court denied. The P&A then filed an appeal in the Superior Court of the Probate Court's order. The Probate Court then held the mother in contempt of court for allowing K.B. to write her own checks and spend more than $500 (on her car insurance

and tuition). The P&A also appealed that decision to the Superior Court. The Superior Court eventually overturned the probate judge's determination. K.B. then filed her Petition for Rights Restoration, and the Probate Court granted K.B.'s Petition without a hearing. K.B.'s rights are now fully restored.

2. A.M. contacted the P&A for assistance in restoring her competency (state's term for ending guardianship). After A.M.'s first guardian passed away, her aunt was appointed as her new guardian. A.M.'s aunt/guardian was physically and emotionally abusive. A.M. escaped and began a new life with her mother in a different state. The P&A negotiated with A.M.'s guardian to resign as guardian and representative payee and filed a petition to restore A.M.'s competency. The court did not grant A.M.'s request for restoration and instead appointed her mother to be her guardian. The court indicated it needed to hear from A.M.'s doctor that she could make medical decisions before it would restore her competency. A.M.'s doctor wrote a letter in support of A.M.'s medical decision-making abilities, which gave the P&A a basis to renew the motion to restore A.M.'s competency. Following a hearing almost three years after A,M.'s first contact with the P&A, A.M.'s competency was restored, and she became her own guardian again

As stated above, these are not unique examples of the problems and issues encountered by the P&As every year around guardianship. For the purposes of this document, we use the phrase guardianship to encompass any state system in which a court appoints a person or entity to make decisions for another person for whom the court has deemed lacks legal capacity.

Guardianship, at its most basic level, is taking away the rights and decision-making authority of an individual because they have been deemed by the state judicial system to lack the "legal capacity" to make decisions about their lives. A court may narrowly tailor a guardianship to specific areas of concern (finances, health care, etc.) or, as is so often the case, order a complete "plenary" guardianship in which the guardian makes all the decisions for the individual. In fact, a recent proposal in Arizona would mandate automatic guardianship at eighteen for anyone receiving Developmental Disability services in the state, no evaluation, no choice, unless they opt out. These are the kind of stigmatizing proposals, and thoughts about people with disabilities, that exist all around the country.

While the public may associate guardianships with aging, that is not always the case. In fact, the sheer act of aging is not enough for a guardianship, there needs to be some underlying concern of the ability of a person to make sound

decisions. A court decision about the legal competency for a person to make reasoned decisions will always be associated with some disability (such as dementia, Alzheimer's, or other cognitive or mental health disabilities), regardless of age. This makes guardianship a significant disability issue, and legislative solutions need to be developed through a disability policy lens to properly address all problems which exist in the nation's guardianship system.

In recent years, advocates for the disability community, joined by aging advocates and those seeking guardianship reform and improvement have made a concerted effort to move away from guardianship and toward other paradigms of decision making. One such paradigm is the use of supported decision-making (SDM). The use of SDM gives the individual the ability to retain the power, as enjoyed by most Americans, with the assistance of one or more trusted individuals, to make both routine and important decisions in their life, as opposed to handing over decision-making authority to someone else. The use of SDM has flourished in some states, like Texas, that have spent the time and effort to work with all stakeholders, including people with disabilities, to create a new structure to support people with disabilities without having to resort to guardianships.

In 2021, NDRN was one of the leading organizations to convene the Fourth National Summit on guardianship reform working within the National Guardianship Network. This summit brought together a wide variety of stakeholders, judges, lawyers, individuals with disabilities, guardians, and disability advocates (including from five P&A agencies) to discuss guardianship and make recommendations on how to reform the system. The wide spectrum of participants reached consensus on 22 recommendations that the Congress and states should consider in order to reform the guardianship system. Enacting these recommendations will go a long way towards addressing the problems in the guardianship system and ensure that people with disabilities have input into the important decisions of their lives.

Highlights of the summit's 22 recommendations include the enactment of a Bill of Rights for individuals subject to guardianship, the elimination of plenary guardianship, the establishment of a court improvement program, and the availability of counsel in guardianship cases. NDRN supports any efforts to advance these recommendations.

NDRN believes that federal support is necessary to divert persons with disabilities away from guardianship and conservatorship through expanded use of alternatives including SDM. These alternatives are necessary to stop the flow of guardianship petitions and offer other options for persons with disabilities, their family, friends, and advocates. Federal support is also necessary to help reform overall state court guardianship / conservatorship systems to ensure due process

protections which can prevent overbroad and unnecessary guardianships, and to allow for the termination of guardianships already imposed.

Guardianship always involves the decision of a court. As was made abundantly clear in the Britney Spears case and the examples above, the absence of an attorney who is focused on representing the wishes of the individual who is at risk of being placed, or is already under a guardianship, puts such person at the mercy of the judge and those seeking to impose the guardianship. The nation's adversarial court system is not designed to operate in such a manner.

If legal counsel is not independent (financially and otherwise) of the individual seeking to impose a guardianship on another, such counsel can never be considered to have the best interests of the individual at heart. While it is critical to have knowledgeable case workers to help individuals establish necessary services and supports, because the guardianship system is court based, a legal advocate to fight for the wishes of the individual is also absolutely critical.

Two of the summit recommendations suggest involving the nationwide network of P&A agencies, among other entities, to help address fiduciary conflicts and abuse by guardians. NDRN believes further that the P&As should be funded to provide individual and systemic advocacy to individuals with disabilities around guardianship matters.

P&A agencies are the best organizations for this work for several reasons. First, they have for over forty years provided legally based advocacy for people with disabilities no matter the age of the individual or type of disability. As discussed above, disability is the underlying factor in the imposition of a guardianship and it can occur no matter the age of the individual. The decades of experience the P&As would bring to protect the rights of persons with disabilities at risk or already subject to guardianship is unmatched by any other entity in existence.

Second, there is a P&A agency in every single state, the District of Columbia, U.S. territory, and there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. So, no matter where an individual is located in need of representation to avoid a guardianship and advocate for alternatives, there is a P&A agency to provide such advocacy. There is no other legal advocacy organization with the knowledge of disability issues (no matter the disability) that can say the same thing.

Third, Congress established the P&A agencies as independent entities that solely exist to serve the needs of the individual with a disability. Thus, they are independent advocates working for the individual with a disability to achieve the

outcome they desire, not for other interested parties, and avoid the problems and complications encountered by Britney Spears in her attempts to get out of her father's guardianship.

Fourth, P&A agencies have decades of experience investigating allegations of abuse, neglect and financial exploitation. The P&As know the facts to be looking for in these cases and how to properly investigate and document them so that the individual can be safe and free from the abuse, neglect and financial exploitation.

Fifth, P&As are already handling hundreds of individual guardianship cases and performing systemic advocacy on guardianship that benefits thousands of persons regardless of age or disability every year. Dedicated funding and using this already existing structure and knowledge base means that the P&As can step right in to help many more individuals every year.

Finally, while also having the legal acumen to advocate for people with disabilities in guardianship issues, the P&As also have an in-depth knowledge of the disability services and support systems within their state and territory. This knowledge would allow those individuals that want to transition out of, or avoid being placed in a guardianship, to have the services and supports necessary to be independent and in the community.

Again, NDRN appreciates the opportunity to offer information on this critical topic and looks forward to working with Congress to address the many issues that currently exist around the guardianship system in our country. With dedicated funding, the nationwide network of P&A agencies stands ready to help ensure that people with disabilities are not unnecessarily put into guardianship, and those who are capable of making their own decisions can be free of a guardianship and restrictions on their rights.

If you have any questions or if we can be of any assistance, please do not hesitate to reach out to [redacted] Director for Public Policy, a[redacted]or[redacted]

NATIONAL DOWN SYNDROME CONGRESS

NATIONAL CENTER
30 Mansell Court, Suite 108
Roswell, GA 30076
phone: 770-604-9500
fax: 770-604-9898
email: info@ndsccenter.org
www.ndsccenter.org

Chair Casey
Senate Special Committee on Aging
Washington, DC 20510

Dear Chair Casey,

We write today in response to your request for input on guardianships, conservatorships, protective arrangements, and alternatives. Thank you for your attention to this important issue. The National Down Syndrome Congress (NDSC) is the country's oldest national organization for people with Down syndrome, their families, and the professionals who work with them. We provide information, advocacy, and support concerning all aspects of life for individuals with Down syndrome and work to create a national climate in which all people will recognize and embrace the value and dignity of people with Down syndrome.

In response to this request, NDSC conducted a survey of members of our National Down Syndrome Advocacy Coalition (NDAC). NDAC is a grassroots advocacy service that is designed to educate individuals with Down syndrome, their family members, and other allies about policy issues and give them the advocacy tools and techniques they need to effectively engage with their legislators to advocate for change. Currently, we have about 700 members in NDAC and at least one member in all 50 states. In our survey we asked, **"In the space below, please address any or all of the three questions posed by the Committee 1.) Stories and examples of problems with guardianships, 2.) Stories and examples of alternatives to guardianships, 3.) Suggestions for protecting the rights of people being considered for or currently covered by guardianships, conservatorships, or other protective arrangements** and gave respondents the option to respond in paragraph form. The survey was open for about one week. We make no claims that this survey is in any way scientific or based on any official qualitive research methodology. With that being said, we do believe many of the anecdotes provided in response to the survey could be informative to the committee and thus we have provided the most relevant responses below without identifiable information about the respondent. Please find below:

- "My daughter is approaching her 18th birthday, and we have been doing our own research about guardianship and alternatives and have decided to pursue supported decision-making and not seek guardianship at this point. We had to do this research on our own because our school system in MD does not provide parents of transition aged children with adequate information about SDM or alternatives, leading most parents to believe that seeking guardianship is the natural progression to adulthood. The school system did not explain the detrimental legal consequences of guardianship, and many parents are unaware that other options exist. Maryland passed an SDM law last year - but this information is still not getting down to the district level. This is analogous to when parents were not told about options to sheltered workshops and pushed their kids

into these placements not realizing that there were other options for competitive integrated employment available. Passing good laws and policy is only the first step - it needs to get down to the district and school level so that it can be communicated to families during transition in order to be truly effective. This communication needs to be done in an accessible, culturally sensitive way so that ALL families get the same information."

Respondent: Parent/Family Member of an individual with Down syndrome in Maryland

- "The lack of explaining options to families on alternatives to guardianship, such as supported decision making. The assumption that a person with Down syndrome must have a guardian and pushing parents into this restricted area."

  Respondent: Parent/Family Member of an individual with Down syndrome in Colorado

- "In PA guardianship is an all or nothing option. We either take away all the persons rights leaving them open to having someone else make their decisions for them or trusting others to help them and listen to their needs and desires. I wish we had a more blended model like some places with supportive decision making. Letting a person select people they trust to support them in the decision making process. Doing the process with them."

  Respondent: Parent/Family Member of an individual with Down syndrome in Pennsylvania

- "We have chosen Power of attorney options for our family, both medical and financial. This has been a good option for us, but more information is needed for families to understand options. As an educationally and economically privileged family that is English speaking we knew our options. Equity is an issue here."

  Respondent: Parent/Family Member of an individual with Down syndrome in Washington

- "When our daughter approached 18, our school provided us with information about obtaining guardianship, our area intermediary school district hosted a presentation on guardianship and the attorney we visited, upon learning our daughter has Down syndrome assumed we had come seeking a plan for guardianship. There is little awareness or resources to plan for alternatives to guardianship outside the community of disability rights advocates. When my daughter turned 18, it took time to find the resources we needed to put together an alternative plan, but she now has a plan that includes a power of attorney, trust and other supports that ensure she maintains her rights while getting the support she desires."

  Respondent: Parent/Family Member of an individual with Down syndrome in Michigan

- "My daughter with Down Syndrome is 22. When she was approaching 18, we discussed and explained supported decision making as an alternative to guardianship. She made an informed choice to use supported decision making in place of guardianship. She has her own attorney who helped prepare her legal documents. The legal documents have been in place for almost 5 years. She shares the documents as needed with social service providers, IEP team and medical providers. She has not had any difficulty with the documents being accepted and her plans recognized/respected. In 2020, she helped advocate to update the Minnesota guardianship laws to include supported decision making. Just last week, she testified again in support of proposed Minnesota legislation that would increase access to supported decision making information and services across the state. She has co-presented about supported decision making with the WINGS organization and is scheduled to co-present at a University of Minnesota class."

  Respondent: Parent/Family Member of an individual with Down syndrome in Minnesota

- "1. In addition to being a parent of a school-age child with Down syndrome, I also work in the disability field. In that role, I have heard more stories than I can count of people with disabilities being funneled directly into conservatorships (our state's term for guardianship) with no awareness or consideration of less restrictive options. Parents most often get the "you must get conservatorship" message in two places: 1) in schools during IEP/transition planning meetings or 2) from doctors or other medical providers. These well meaning professionals often do not understand the full ramifications of what they are recommending and often have no awareness of other options. The professionals scare parents into believing they will be locked out of education or medical involvement for their adult child if they don't have a conservatorship in place. Doctors tell us they will sign whatever medical form the family requests to indicate the need for conservatorship, and judges have told us they will not question the medical opinion indicated by the "decision-making capacity" documentation families provide. We find that misinformation and faulty assumptions about capacity are pervasive and often result in the nearly total removal of legal decision-making rights for people with I/DD. In one story, the mother of a young man who was blind (and had no other disability) was told she needed to obtain conservatorship for her son.

  2. Tennessee has established a statewide Center for Decision Making Support that is successfully providing education, training, and resources to help professionals and families better understand their options and use supported decision-making as an approach, even within other legal arrangements (even within conservatorship). This Center is helping provide accurate and balanced information with a person-centered lens that emphasizes the rights of people with disabilities to get support to make as many decisions as possible about their own lives. Penny Johnson with the Arc TN is the key contact for the Center. I can make a direct introduction, if there is interest. She would be an exceptional source of information for this Committee.

Ultimately, change on the issue of guardianship requires a change in mindset. Professionals and families have to believe a loved one is capable of making their own decisions. We must begin teaching them to make those decisions as early as possible - just as we would do with any child. That may involve more practice and time and different types of tools and supports, but it is possible for many people with I/DD to use informal supports or other tools to help them take the lead in their own lives. One mom I know has a 30-year-old son with Down syndrome. As he was preparing to turn 18, the parents had conservatorship papers drawn up, but chose to see how things went before filing them. They have never needed to file those papers. The son works and lives independently with support. He asks for the help he needs navigating medical appointments and other big decisions. Ultimately, we parents have to learn that making our children dependent does not actually make them safer. Instead, explicitly teaching our children how to make decisions - and giving them space to learn from their mistakes - is how we help them to protect themselves. The research about what that sense of agency does for life outcomes is unequivocal."

Respondent: Parent/Family Member of an individual with Down syndrome in Tennessee

- "We are currently exploring guardianship with our daughter. The need for factual information prior to our children becoming adults would be hugely appreciated. We've had to muddle through legal ramifications because there are not enough accessible resources for families. Especially families that don't have resources (money). Those with financial resources have access to so much while those with less are usually ignored."

Respondent: Parent/Family Member of an individual with Down syndrome in Florida

- "Our family is one of the very rare families that currently has the financial resources to partially pay for some of the necessary care my 19 yr. old daughter with Down syndrome will need in the very near future. She has four older siblings, two who could financially assist when needed, but not without making significant personal and family sacrifices to do so. We recently went through the guardianship maze and agreed to the POA for medical, financial and education for her. We also refused to stand her before a judge and talk about how many things she cannot do or probably won't be able to do throughout her life as full guardianship requires in our area. From the moment our daughter entered the world, we insisted the physicians, therapists and teachers focus on her current abilities, how to strengthen and expand upon those skills, and never to focus on her inabilities. Believe me, parents already know what their children cannot do! The simple change in focus is what has helped her to achieve more goals than anyone ever thought. We have always chosen to concentrate on what she can do and what areas she will need ongoing supports to reach and maintain her goals. I am thankful none of us have ever had someone talk openly and in such demeaning ways about our own shortcomings or areas where we still might need support in our

supposedly "fully functional and independent lives." We feel she can, and should, have a say in her care, and caregivers need to respect her opinions and concerns, too. The guardianship process is complicated and expensive. The vast majority of those who need to set up guardianship cannot financially do so, and therefore their adult child with Down syndrome is left to the courts and outside authorities to decide where they live, the medical care they deem appropriate, etc. Many families I know have no idea the options available to full guardianship, nor are their lawyers or social service agencies educating them on their options. Why does it have to be so expensive and out of reach for the average individual?"

Respondent: Parent/Family Member of an individual with Down syndrome in Illinois

- "For individuals with significant cognitive disabilities, there is usually an automatic default for a full guardianship with no thought or intent to consider the least intrusive approach to assistance with decision-making. Our state has a statute for supported decision-making, but usually this is not a consideration for individuals with Down syndrome. Schools are usually in a position of introducing the need for decision-making support to families and rarely have the necessary information/tools to help families think these decisions through. We need specific transition coordinators in our local school districts to support families. Usually families are left on their own to figure this out."

  Respondent: Parent/Family Member of an individual with Down syndrome in North Dakota

Additionally, NDSC issued a recent position statement on Guardianship for Individuals with Down syndrome. Again, we thank you for the request for this important information. Should you have any questions or wish to discuss further, please contac[redacted]

I want to bring to your attention the egregious financial abuse of my father, [redacted] in Ventura County CA. Lester was a US Navy Veteran, serving 1946-1951, and a longtime Thousand Oaks resident, moving there in June 1967. I am his only child. My Mother passed away in 2001. My parents had a Family Trust drawn up in 1993, clearly stating their wishes and naming me as successor Trustee.

My Father's life plan was to retire in Arkansas, his birthplace, and where he owned 600 hundred acres since 1956. He has done ranching on that property with his brothers for decades. I was very close to my parents.

[redacted] was declared incompetent in January 2010 by his 2 family physicians due to dementia. I became Successor Trustee at that time to ensure that his wishes were honored.

Later that year, in the Fall, I became aware that accounts were being liquidated. This was 9 months AFTER [redacted] was declared incapacitated. I further learned that an acquaintance of my Dad, [redacted] who he had met at a Grief Support Group, and had taken a $700 check from him 3 weeks after meeting him, had hired an attorney, [redacted] to change the Moore Family Trust. [redacted] placed himself as the Successor Trustee and as my Dad's personal attorney. My Dad's personal CPA was involved as well as investment brokers. They were all aware of his substantial assets and property. As a child of the Great Depression, my Father was a Frugal man and was determined to never be poor again.

Unfortunately an attorney, [redacted] advised me that I had to put in for conservatorship over my Dad. In retrospect I see that this introduced the situation to the Probate Court, and was the worst possible move I could have made.

Judge [redacted] ignored the Moore Family Trust, which clearly expressed my parents' wishes. After enduring the fraudulent abuse of the new "Trustee" [redacted] and [redacted] for 18 months, while they emptied accounts and took extravagant trips at my Father's expense, Judge [redacted] placed a private conservator [redacted] over my Father, This happened in May 2010 in the Ventura County Probate Court.

It is my understanding of CA Probate Code 15660.5 that "an outside conservator shall not be appointed as Trustee unless the Court has held a reasonable inquiry and no other qualified person is willing to act as Trustee." I was more than willing to act as Trustee and care for my Father. Why was this allowed to take place, against my parents' wishes as stated in the [redacted] Family Trust?

I can send you documentation of this. [redacted] plans for retirement in his beloved Arkansas were thwarted by the Conservatorship. He was forced to stay in CA the last decade of his life, isolated from his entire family. [redacted] died alone, which was my greatest fear, on February 2, 2021, caused by the negligent care in a Group Home resulting in Fecal Impaction, Bowel Obstruction and Septic Shock, all preventable. This is on his death certificate. I was notified of my Dad's death by an email from the conservator.

[redacted] the Court Appointed Conservator, ignored the CA Rules of Court as evidenced by:
1. Standards of Conduct for the Conservator of the estate. Avoidance of actual and apparent conflicts of interest with the conservatee. "The Conservator must be independent from all service providers." [redacted] hired her husband [redacted] (an attorney) to provide "services" for my Father.

2. Conservatorship estate management. Provide competent management of the conservatee's property with the care of a prudent person dealing with someone else's property.
[redacted] sold all of my Dad's real property in Arkansas, 565 plus acres and 4 homes, AND his home in Thousand Oaks CA. This is property that was intended to stay in our family. The land in AR was purchased in 1956. My Dad had over a million dollars in investment accounts, savings accounts and stocks/bonds.
There is no legible accounting for the 9 years of Conservatorship that spent millions of dollars of assets.

3. Keep accurate records of all transactions. Professional fiduciaries must maintain prudent accounting systems.
The only accounting I saw from Angelique was sloppy and illegible. I can provide this for your review. Also the Conservator kept no inventory of all the property that was disposed of in the homes she sold. The property in AR had expensive ranching equipment on it, antique vehicles, family mementoes, collectable weapons.

There is something seriously wrong with what has happened under the Ventura County Superior Court and the numerous "professionals" involved. It has allowed the trafficking of my parents' assets and the redistribution of my inheritance into the hands of the probate court cronies. This is both elder financial exploitation of my Father and also elder financial exploitation of me, as an elder myself.

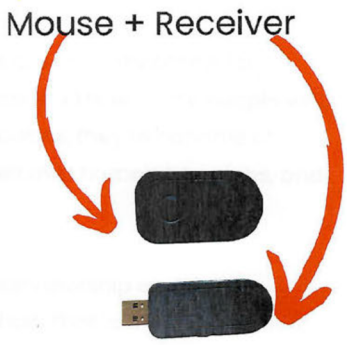
I need help looking into this financial abuse that my Father and his family have endured. Exploiting an older and vulnerable person should not be ignored just because it is done by white collar people that wield clout in the community. Crimes are also carried out by the elite class and somehow it makes it even more revolting.

Thank you.

[redacted]

Submitted Testimony of [redacted]
[redacted] California
for the Senate Special Committee on Aging Hearing
on Alternatives to Guardianship
March 2023





Hello! My name is [redacted] I'm [redacted]ears old and live in [redacted] California. I am a clinical trial contributor at the University of California, San Francisco. I am also a Board member of the national organization CommunicationFIRST.

I am a paralyzed individual, and unable to speak; I have had to live in a skilled nursing facility since 2007. I must have support for most of my daily activities because of my lack of movement. I use a head mouse to type on the computer and to communicate with my family and friends. I use a letter board with a laser pointer, as well.

I advocate for myself since I became a disabled person. I can make my own decisions, am in charge of my own money, and can freely control my life. Since my accident, I have been able to go to college and earn a degree in general education, and a web development certificate.

I think if I was under conservatorship, nothing would be possible. I can understand that any family wants their loved ones to be safe and sound; so they choose to put them under conservatorship because they believe this is the best and only option.

However, I **strongly** disagree. Conservatorships are only limitations for disabled individuals and can lead to abuse instead. I know many people who have disabilities, like me. Even if they have difficulties, they're capable of making their own decisions. They can live in their own homes, have jobs, and live happily.

I think it's very sad when a person is under conservatorship and the conservator can make decisions on his/her behalf. That is a terrible choice, and can only lead to harmful decisions and, in some cases, abuse.

I believe there are better, more productive, and beneficial options. For instance, with a Power of Attorney, they can get someone they trust to help them with financial things, like manage money, write checks, make payments, go shopping, and so on. Regarding medical health, they could do exactly the same thing. They can sign a consent form in advance, granting permission to the people they trust, so they can access medical stuff. By doing it this way, they have control of their own lives, and could end the Power of Attorney whenever they wish.

Thank you for the opportunity to submit this statement.

Senate of Pennsylvania

March 23, 2023

The Honorable Robert P. Casey Jr.
United States Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, D.C. 20510-6050

Dear Chairman Casey:

Thank you for the opportunity to submit this letter to the U.S. Senate Special Committee on Aging in preparation for its hearing on guardianships, conservatorships, protective arrangements, and alternatives. The purpose of this letter is to inform you of ongoing efforts in the Pennsylvania Senate to address some of the most pressing issues related to guardianship.

When an adult of any age is deemed incapacitated by a court, a professional or family guardian may be appointed who is responsible for making certain decisions on their behalf, either fully, or in a limited capacity. The nature of these decisions can include financial, medical, and personal matters the individual has been determined unable to make for themself.

Currently, there are over 19,000 active guardianships in Pennsylvania. While many are helpful, others result in devastating abuse and exploitation. Trends show that guardianships are being sought and implemented with greater frequency.

Although there are circumstances when the appointment of a guardian is unavoidable, there are a variety of alternatives available. Many individuals seek the help of family or friends to manage money or serve as a health care representative. Habilitation programs are also an option. Public benefits can be managed through the appointment of a representative payee. And advance planning by families can usually avoid the need for a guardian to manage inheritances or other assets.

Unfortunately, cases where guardians have stolen or misused money belonging to their wards are not uncommon. Instances of fraud and deception are on the rise across the country. In October 2019, three court-appointed guardians embezzled more than $1 million from 108 victims. Senator Haywood has a personal connection to this case, as one of his neighbors, Mr. Frisby, was victimized by Gloria Byars, one of the court-appointed guardians.

As news of this case and others has spread throughout the country, several states have passed legislation to improve the guardianship process. During the 2021-22 legislative session, we introduced SB 1333, guardianship legislation aimed to help prevent fraud, abuse, and exploitation, and increase representation by:

1. Appointing counsel for alleged incapacitated persons when none has already been retained.
2. Certifying professional guardians.
3. Ensuring the courts first explore alternatives to guardianship.
4. Requiring that petitions for guardianship demonstrate that less restrictive alternatives were considered and why they are insufficient.

SB 1333 unanimously passed the Senate Judiciary Committee in the fall of 2022. This session, we are proud to reintroduce our guardianship legislation as SB 506. SB 506 was most recently discussed during a March 2023 joint public hearing of the Senate Committees on Judiciary and Aging and Youth, focused on strengthening guardianship laws and preventing elder abuse. During this hearing, committee members received testimony from the Montgomery County Court of Common Pleas, the Pennsylvania Bar Association, the Pennsylvania Association of Elder Law Attorneys, the Huntingdon-Bedford-Fulton Area Agency on Aging, AARP Pennsylvania, Disability Rights PA, and the Dauphin County District Attorney's Office.

The testimony presented to the committees made clear that, while guardianship can be an appropriate tool to support some individuals who cannot make decisions themselves, issues within Pennsylvania's guardianship system continue to disadvantage individuals and their caretakers. Testifiers indicated that passage of SB 506 would be a positive step forward in addressing those issues.

Thank you for your consideration of this information. We look forward to continuing our efforts to protect the rights of individuals under guardianship in Pennsylvania. Please do not hesitate to contact either of our offices with any questions, concerns, or suggestions.

Sincerely,

Lisa Baker

Senator Lisa Baker
20th Senatorial District

Senator Art Haywood
4th Senatorial District



TO: Members of the United States Senate Special Committee on Aging

FROM: Disability Rights Pennsylvania, Pennsylvania Developmental Disabilities Council, and the Institute on Disabilities at Temple University

DATE: March 21, 2023

RE: **Suggestions from the Pennsylvania DD Network to Reduce Guardianship and Promote Decision Making for People with Disabilities**

The Developmental Disabilities Assistance and Bill of Rights Act (DD Act) authorizes programs to empower individuals with developmental disabilities and their families to help shape policies that impact them. DD Act programs conduct important research and test innovative new service delivery models. They work to bring the latest knowledge and resources to those who can put it to the best use, including self-advocates, families, service providers, and policymakers. DD Act programs also investigate cases of abuse and serve as advocates for individuals with developmental disabilities and their families. The three organizations that compromise the DD Network in Pennsylvania are, Disability Rights Pennsylvania, Pennsylvania Developmental Disabilities Council, and the Institute on Disabilities at Temple University.

We write to highlight the needs of individuals with intellectual and developmental disabilities as policy discussions are being debated on guardianship reform.

Background:

There are several types of guardianship and the different types of guardianship address different needs. Guardianship is about decision making and a guardianship usurps the decision-making rights of an individual. A Guardian of the Person makes personal, residential, and medical decisions for an individual. A Guardian of the Estate is appointed to make and implement financial decisions and manage income and property. A guardian can be appointed as either

Guardian of the Person, Guardian of the Estate or both. In a Plenary Guardianship, the guardian has the authority to make all decisions necessary for the personal wellbeing of the incapacitated person. In a Limited Guardianship, the court specifies the areas over which the guardian has authority and the areas over which the incapacitated person retains authority.

As of November 12, 2021, there were 19,263 active guardianship cases in Pennsylvania's Guardianship Tracking System.[1] There are 968 cases filed in the Guardianship Tracking System awaiting adjudication, and 18,295 adjudications of incapacity. Among these cases, the courts are currently supervising $1,760,461,129 in assets. Nearly all guardianships granted are plenary guardianships.

In November 2014, the Pennsylvania Supreme Court's Elder Law Task Force issued a report with a series of recommendations for improvements to the guardianship process. Among these recommendations was the appointment of counsel in all guardianship cases where counsel was not retained.[2] The report also recommended the implementation of a certification program for professional guardians.[3] Advocates across the Commonwealth have been working on variety of proposals to implement guardianship reform in the years since that report was issued.

Disability History and Autonomy:

Over the past forty years, the United States has moved away from institutionalization and segregation of people with disabilities. Today, people with disabilities are integrated in and participate in their communities. Integration and independence strengthen decision making skills. Integration provides more opportunity for trusting relationships which can offer support and guidance in decision making- like it does for all people. All people with disabilities, regardless of where they live and are being supported are capable of making decisions and building these support networks.

However, for far too many adults with disabilities do not retain decision making authority due to misconceptions and concerns about their ability to manage financial resources or meet their own health and safety needs. According to a 2019 report from the National Council on Disability, 58% of people with

[1] The Guardianship Tracking System allows guardians to submit inventory and annual person and estate reports online.
[2] https://www.pacourts.us/Storage/media/pdfs/20210516/222807-eltf-report.pdf at page 48 and 49.
[3] *Id.* at 40.

intellectual and developmental disabilities between ages 18 and 22 are under guardianship.[4] Parents of young adults with disabilities are often misinformed by schools, health care providers, or disability service providers that guardianship is necessary when their child turns 18. Once a guardianship has been awarded, they remain under it for decades.

Adults with disabilities have the right to the dignity of risk. Losing the authority to make decisions about your own life has profound consequences and runs counter to the principles of the disability rights movement. Too often, guardians- whether a family member or professional guardian make decisions without consulting or discussing with the person with a disability. People have no recourse to correct or overrule the decision of a guardian. A guardian should always amplify the voice of the person with a disability, never substitute it.

Alternatives to Guardianship:

Pennsylvania law recognizes that people may need help in decision making and can use these tools to avoid guardianship. These tools allow people to continue to make their own choices about where to live, how and who to spend their time with and what supports they may need. These alternatives to guardianship render guardianship unnecessary in most cases. Current proposed legislation in Pennsylvania would ensure that less restrictive alternatives are tried and why they failed is part of the evidentiary record before a guardianship can be awarded.

In order for to ensure that any initiatives to reduce guardianship are successful, training for both the disability community, families and professionals must be included. People with disabilities should be encouraged and supported to self-advocate, and learn to advocate for their healthcare, financial and other personal needs. People with disabilities need opportunities to build peer support and learning throughout their school careers and early adulthood to build circles of trust and implement informal supports such as Supported Decision Making.

Training for professionals is essential to reducing guardianships and the pipelines and that funnel individuals into guardianships. Teachers, service providers, medical professionals and attorneys need training and support to learn about alternatives to guardianship. Teachers and families need to teach decision making skills that promote children and young adults to make decisions.

---

[4] https://ncd.gov/sites/default/files/NCD_Turning-Rights-into-Reality_508_0.pdf at page 31.

Training and education to individuals and families to understand how to promote informed choice and supported decision making skills, starting during childhood and continuing through adulthood will also reduce unnecessary guardianships. Funding for this training is important to ensure that states have resources to implement training and share best practices.

Data Collection and Tracking:

We also note that in order to truly understand who is under guardianship across the country, a unified reporting system or common data collection is important. This will help policy makers identify who is under guardianship, identify disparities and how different communities might be impacted and it will help to inform future policy and legislative updates. It will also allow for more uniform tracking of individuals serving as guardians who might be engaging in predatory practices and to track any potential abuses.

We thank you for the opportunity to provide input and feedback into guardianship and recommendations for improvements.

Sincerely,

Peri Jude Radecic
Chief Executive Officer
Disability Rights Pennsylvania

Sally Gould-Taylor, PhD
Executive Director
Institute on Disabilities at Temple University

Lisa Tesler
Executive Director
Pennsylvania Developmental Disabilities Council

Quality Trust for Individuals with Disabilities
4301 CONNECTICUT AVENUE NW | SUITE 310 | WASHINGTON DC 20008
(202) 448-1450 | (202) 448-1451 FAX | WWW.DCQUALITYTRUST.ORG

Statement for the Written Record
from

Quality Trust for Individuals with Disabilities (Quality Trust)

Submitted to
The Special Committee on Aging
United States Senate

Hearing on
Guardianships, Conservatorships, Protective Arrangements, and Alternatives

Submitted on March 23, 2023

On behalf of Quality Trust for Individuals with Disabilities (Quality Trust), I thank the Special Committee on Aging for planning this hearing and seeking input from advocates for the rights of people with disabilities. Although Quality Trust has also signed on to a letter on this topic from the Consortium for Constituents with Disabilities (CCD), I write separately to discuss Quality Trust's specific experiences serving people under guardianship and at risk of guardianship.

Quality Trust is an independent nonprofit advocacy and monitoring organization based in the District of Columbia. Our mission is to help people with developmental disabilities in the District of Columbia solve problems, achieve personal goals, and meaningfully contribute within their community. We operate the Jenny Hatch Justice Project (JHJP), which provides free legal services to people who want to avoid or exit guardianship. We also received a grant from the Administration on Community Living (ACL) to establish a National Resource Center on Supported Decision-Making (NRC-SDM). NRC-SDM provides state by state information on guardianship and supported decision-making laws, as well as resources for researchers, advocates, people with disabilities, and family members.

Through our experience representing people with disabilities and advocating for alternatives to guardianship both locally and nationally, we are acutely aware of the need for reforms that truly protect people's rights. Guardianship strips people with disabilities of the right to make even the most basic decisions about their own lives, including where they live, who they visit, and what health care they receive – even the ability to freely exercise their religion.

Yet it remains seen by many as the "default" option to support people with disabilities who may need help with decision-making. Youth with developmental disabilities are frequently funneled into guardianship immediately upon reaching the age of majority and remain under guardianship for life, depriving them of the chance to ever make decisions as an adult.

Our experience also has shown that alternatives, such as supported decision-making, work. People with disabilities do well when they are able to receive support and advice from the people they trust, while retaining the right to make their own ultimate choices. Supported decision-making increases access to full participation in the community, including employment, education, and a fulfilling social and family life.

People With Disabilities Need Change in the Guardianship System

We appreciate that your office recognizes the need to address overuse and abuse of guardianship. As the National Council on Disability recognized in its 2018 and 2019 reports, state-level guardianship laws can affect people's constitutional rights, including both procedural and substantive due process rights. These laws can also affect people's rights under the Americans with Disabilities Act (ADA).

While state laws may nominally protect the right to counsel, due process, and alternatives to guardianship, these safeguards often fail in practice. Judges often lack understanding of alternatives and believe that it is best to err on the side of guardianship. Court-appointed attorneys for people facing guardianship frequently also serve as guardians and guardians ad litem in other cases, which makes them reluctant to zealously represent the expressed interests of a person who does not want a guardian. People with disabilities do not have a right to counsel on appeal, and there is limited transparency in probate courts: trial-court decisions are rarely published or available online, and courts collect little or no data on the number of people under guardianship, the length or type of active guardianships, or demographic information of people who have been placed under guardianship.

As a result, countless people with disabilities, including older adults and people with intellectual and developmental disabilities, are placed under guardianship. Each decision about their lives is made by a guardian – often a stranger who may rarely or never meets with them in person. Families may become caught up in litigation over how best to support their loved ones and may be cut off from their loved ones altogether. People may lose the homes in which they have lived for their entire life, especially if the court-appointed guardian does not take the time to get to know them or decides that they are "safer" and easier to manage in a group home, nursing home, or other institutional setting. Moreover, once a guardian has been appointed, it becomes prohibitively difficult to challenge these kinds of decisions.

Legislation Must Address Alternatives to Guardianship

Procedural safeguards will not help people avoid guardianship unless families, service providers, and courts are well educated on meaningful alternatives to guardianship. Many people under guardianship, or at risk of placement under guardianship, have significant disabilities and genuinely need support in order to make important decisions about health care, housing, and finances. However, people who need support nevertheless have a right to exercise autonomy, including the autonomy to choose who supports them.

Consider, for example, [redacted][1] [redacted] has intellectual and developmental disabilities. She inherited a house from her parents, where she lives. Although [redacted]'s brother was supposed to help her manage her finances, he failed to ensure that her property tax was paid. As a result, there is a large tax lien on [redacted]'s property and she is at risk of losing her house. [redacted] gets in-home supports and services from a Medicaid waiver, but she still isn't able to independently recognize when she needs to go to the doctor and she needs help to remember what medication to take. [redacted]'s doctor is concerned about liability if she provides treatment without authorization by a substituted decision-maker. [redacted]'s

[1] To preserve client privacy, this is a composite example including details from multiple cases that we have encountered, with some additional changes in details altered.

brother is frequently out of town for work and unable to accompany her to the doctor. Because of these concerns, Adult Protective Services becomes involved and petitions for a guardian.

Although [redacted] argues that she does not need a guardian, her court-appointed lawyer is not aware of available alternatives. The lawyer personally believes that [redacted] would be better off with a guardian and that fighting the petition would not be successful. As a result, Mary's lawyer files a perfunctory answer merely stating that [redacted] opposes guardianship. A court appoints a guardian.

Soon after appointment, [redacted]'s guardian decides that [redacted] cannot afford to keep her house. She sells [redacted]'s lifelong home and places [redacted] in a group home against her will. Because she must now fit all her possessions into a single room, she also loses most of her personal property. The proceeds from [redacted]'s house are placed in a special needs trust, but [redacted] cannot directly access any of her money.

We regularly encounter people who, like [redacted] are placed under guardianship because of real support needs – such as difficulty managing finances or medical care – that genuinely need to be met. But these support needs do not need to be met *through guardianship*. With individualized supports and reasonable accommodations, such as prompting, [redacted] could pay her own bills and take her medication. A legal aid lawyer could help [redacted] work out a repayment plan for her property taxes. [redacted] could also choose an additional supporter to help her understand her medical care when her brother is unavailable. With legislation recognizing Supported Decision-Making, her doctor could confidently rely on decisions made with the aid of a supporter. The result: [redacted] can stay in her own community and maintain her autonomy.

States Need Federal Support for Data Collection and Less Restrictive Alternatives.

Although we know that less restrictive alternatives work, states often lack infrastructure to identify and promote those alternatives. For example, while states may have a system in place to appoint guardians for people who lack adequate family supports, they may not have any such system to help connect people with less restrictive supports, or to help people build natural supports. Building this infrastructure requires extensive training, oversight, and efforts to identify and address any existing policy barriers.

In addition, states lack the infrastructure even to collect relevant data about guardianship. Probate and family courts may lack up-to-date record-keeping systems that can facilitate gathering aggregate data about guardianships and petitions for guardianship.

It is therefore critical that federal legislation to address guardianship include 1) grants and other financial incentives to promote alternatives to guardianship, 2) funding for a long-term technical assistance center to promote alternatives to guardianship and help states successfully implement those alternatives, and 3) funding to help states collect adequate data on guardianships, including the funding necessary to invest in the necessary digital infrastructure to do so. Quality Trust endorses the detailed proposal set forth in the Consortium for Constituents with Disabilities.

Thank you for the opportunity to provide the Committee with input on the problems we have seen in the existing guardianship system. Legislation to address these problems is urgently needed.

I am happy to answer any questions you may have. Please do not hesitate to reach out to me at scrane@dcqualitytrust.org.

Sincerely,



Sam Crane
Legal Director, Quality Trust for Individuals with Disabilities

Good Day:

[redacted] referred me to this Committee regarding my Three(3) separate personal family horror stories brazenly intentionally committed against my New York born family members by criminal serially racketeering Florida Guardians and accomplices.

My name is [redacted] am a New York, Florida and Washington DC transactional attorney/MBA in good standing. I previously clerked for several excellent Florida federal judges, previously worked for US SEC Enforcement and previously served on the Georgetown University Business School Board. Based upon my substantial kno wledge and experience of the growing number of these brazen criminal cases and as strongly indicated by the Florida Guardian [redacted] case, the State of Florida protects these criminal Guardians. The State of Florida does not protect the public from these criminal Guardians and serial accomplices.

On or about February 27, 2023, my beloved formerly functional mother [redacted] died as the result of the egregious actions of the most recent Florida Guardianship enterprise corruption. Upon their January 2023 Broward County court appointment as "Emergency Temporary Guardian", the "Temporary" Guardian intentionally isolated my previously functional Mom, viciously deprived my Mom of nonnegotiable necessary lifesaving medical care and immediately looted her/my home, assets, bank accounts, jewelry, fine art and antiques and stole all US mail, including my US mail. The "Temporary" Guardian also stole my Mom's new car.

As standard in these Guardianship systemic criminal cases, the Guardian directly threatened me with arrest by law enforcement and repeatedly threatened me with criminal prosecution by the same judge who appointed the "Temporary" Guardian. This was in response to my requests that my Mom's medical necessities were met and that she continued to receive her long term excellent health care/treatment at Cleveland Clinic Hospital in Florida – which physicians solely treated Mom for more than Ten Years.

The Florida Guardians' Playbook engineered to 'dispose of' the Target/Ward while immediately stealing all assets directly resulted in the Florida Guardians' premeditated murder of my New York born and raised mother [redacted] in Broward County Florida; similarly victimized and destroyed my New York born and raised multimillionaire uncle [redacted] in Palm Beach County Florida and previously victimized my only child – in Orlando, Florida. The sole survivor of these systemic criminal Florida Guardian rackets is my only child, now grown.

Each of these Florida/New York cases follows a documented Florida federal court filed Playbook written and filed by a retired New York Organized Crimes Prosecutor and me, a former federal judicial law clerk- trained in criminal law. These series of Florida Kafkaesque events would be unbelievable, except for the fact that these systemic criminal cases extensively are documented.

Based upon my years of personal knowledge and experience of these systemic criminal Guardian cases, out of state "snow birds" considering Florida retirement should never even visit Florida, never buy Florida property nor relocate any assets to Florida which they aren't prepared to have stolen. Several Broward County Sheriff's Officers confirmed the same based upon their respective independent experience.

While former Palm Beach Florida Judge [redacted] and his Guardianship 'Manager' accomplice/wife [redacted] who cherry picked and ordered my multimillionaire uncle [redacted] guardianship/disposal to facilitate the looting of his entire fortune were removed from office, notwithstanding countless similar Palm Beach cases of brazen criminal corruption, the Palm Beach State Attorneys' Office refused to criminally prosecute Judge [redacted] or his wife. Please see:
https://www.palmbeachpost.com/story/news/2018/09/09/report-savitt-involved-with-corruption-collusion-of-judges/6766634007/

Having previously and repeatedly reported these serial systemic Florida crimes and while never working as a litigator, I presently am Targeted and Persecuted by the Florida Probate Judge who reportedly cherry picked my Mom's Broward Guardianship case and reportedly intentionally assigned this particular serially investigated but never prosecuted Guardian.

In further Florida retaliation, I am also separately Targeted and Persecuted by a New York Federal Judge who reportedly assigned herself to a multimillion dollar unrelated New York breach of contract case. In a sealed transcript, the New York Federal Judge indicated she is persecuting me in a breach of contract case for reporting fully unrelated Florida criminal issues to authorities.

Accordingly, while I would welcome the opportunity to provide testimony and documents, I will only do so if granted state and federal immunity. Thank you for your consideration.

Respectfully,

[redacted]

Office: [redacted]

March 13, 2023

Statement for the Record-Senate Aging Committee Hearing on Conservatorships

I am an autistic self-advocate with no functional speech. I require assistance with all basic activities of daily living due to severe dyspraxia (inability to control movement). I communicate by pointing to letters on a letterboard held by a trained supporter.

My Person Centered Plan uses Supported Decisionmaking principles. For the most part, with support, I am able to manage my doctorś appointments, educational support, and other instrumental activities of daily living. However, there are times when my supporter needs legal standing to provide support. I have my own Power of Attorney for healthcare, finances, general and digital assets.I have an authorized representative for insurance and a Representative Payee for Social Security Income. I was able to make my mark on my document with witnesses in front of a notary. This works with support.

I asked questions of my lawyer when drafting my documents, but before my appointment. I got a general education about estate planning documents by watching videos my mom found on the internet. The documents have been fine for medical, education, IEP, and general life.

A conservatorship isn't necessary. I can update my documents as needed with a notary. The judicial system has no relevant experience with my communication system and would likely presume that I can communicate or manage my services and supports. They would no doubt plac me in a group home and day program. But I want college and a job. My opportunities would be limited by conservatorship. I would have no recourse. My trust would be stolen like Brittneyś was by a greedy conservator who could do so legally.

--

[redacted]
Self-Advocate
[redacted]
San Francisco, CA 94112

[redacted]

From: [redacted]
Sent: Wednesday, March 22, 2023 3:30 PM
To: Guardianships (Aging)
Cc: [redacted]
Subject: Ida Guardianship Association in Fact Enterprise Abuse & Exploitation
Attachments: Letter-To-State-Agencies-on-Elder-Exploitation-Matters.pdf

Dear Senate Aging Committee,

Thank you for this opportunity to alert the Senate on matters that affect the elderly and vulnerable.

Our citizens group of concerned family members, journalists, private investigators and many other professionals have been actively engaged in compiling abusive guardianship and conservatorship evidence in our area for the past 20 years. The District Attorneys and police consistently state these alleged crimes are civil and they cannot assist, he professionals benefiting from exploitation also know this. Therefor the repeating statute violations have become status que.

We have evidence of the following

1) Estate planning attorneys exploiting seniors via what the IRS describe as "Abusive Trust Tax Evasion Schemes",
2) Association in Fact enterprises of professionals n in geriatric service fields coordinating referrals from the Hospital, and elder rehabilitation facilities and covering up matters of abuse, negligence and exploitation (matters in violation of Mandatory reporting [redacted]tes,
3) Primary Care Physicians (PCP), Guardian Ad Litems (GaL) and Court Visitor Social Service businesses, large professional Conservatorship & Trustee services businesses operating in multiple states and smaller professional Guardianship agencies some whose side businesses while also working at the hospital gaining clients from the Hospital while cross-referring elderly clients within their network of professionals (Associations of fact) and omitting evidence by other professionals in Court reports to the probate Judge(s) best described as fraud by omission,
3) Fraud by omission in Court Discovery concerning financial matters such as fraudulent wire transfers from the victims bank accounts and illicit property deed transfers.

There are at least a dozen cases were the same professionals and illicit practices involved. FINRA was notified in one case and I case Id was issued, additional reports were filed with the Dept. of Justice Elder Fraud Hotline in several cases.

Professionals in legal services, healthcare and social services are operating in concert and exploiting the elders via the counties major Hospital and omitting facts in reports to the Probate Court. This has caused several elderly women and two younger handicapped women to be exploited and contributed to an early demised. Death even occurred via overdose of sedative medication at the Hospital and unnecessary injury at elder care facilities.

Attached is a letter our group ***Citizens Public Safety Network*** (CPSN) sent to area legislative reps on April 18, 2021 describing some of the violations of Idaho state Statutes. All of which can be confirmed with supporting matter of fact, records and law evidence.

Suggest to improve the matter could include:

1) Law Enforcement have greater authority to investigate and warn the professionals, hospital Risk management departments and State Bars what is occurring when that is supported by facts.
2) Allowing matters to go to investigations or trial as opposed to Magistrates insisting only on mediation,
3) greater due process for families or friends trying to help elder and vulnerable victims who can't help themselves due to being in danger by their primary caretakers in home settings or legal counsel drafting dubious estate transferring documents, initiating and threating litigation,
4) Ability for families to remove elder law or estate planning attorneys, guardian/conservator or Primary Care Physician when there is evidence they are exploiting their client.,
5) potentially preemptive insurance to assist families with litigation and legally binding forms required before elderly or vulnerable person is subjected to the control of power of attorneys, trustees, attorneys and caretakers and
6) Online reporting systems were family and friends of vulnerable the person whom are being subjected to abuse, negligence and exploitation can submit verifiable evidence of statutory violations that place the victim at risk for independent review.

Thank You

Rob McKenna
Idaho Representative
Citizens Public Safety Network
[redacted]

CitizensPublicSafetyNetwork.com
research@CitizensPublicSafetyNetwork.com

Dear Senate Aging Committee,

My mother was forced into an illegal guardianship in violation of her due process rights, violating her Constitutional Rights in order to strip of her Civil Rights. Judge [redacted] Guardians [redacted] attorney [redacted] and many others drugged my mother up on Seroquel, robbed our entire estate and when my mother was no longer needed, they overdosed my mother with Seroquel and murdered her.

In 1987 Congressman Claude Pepper wrote Guardianship of the Elderly and Infirm: A National Disgrace. You have had 36 and you have all did nothing to protect my mother and the fraud that is rampant in our Courts. Your judges are committing crimes of Racketeering, Extortion, Fraud, Murder, Human Trafficking, Kidnapping, Constitutional Rights Violations, Civil Rights Violations, Due Process Violations and many other crimes I am sure you are aware of.

I am not the only one, I know thousands of victims throughout this country that their lives have been destroyed due to this corruption. They are stealing between 1 to 3 Trillion dollars per year from our American Families. My life has also been destroyed. The Supreme Court, Not the American People gave judges immunity, THIS IMMUNITY BREEDS CORRUPTION and we believe that the judges do not have immunity for committing these crimes. However, just like in the [redacted]se in Nevada, the US Attorneys refuse to prosecute these dirty judges and lawyers because he is dirty himself, to protect these judges, so they can do the same over and over again is a crime.

I am 61 years old and the judges killed my mother robbed me of our home of 40 years, stole my own home and destroyed our lives. You have had 36 years to fix this problem and you have done nothing as result my mother was brutalized, Isolated and Murdered. We know you are protecting these dirty judges.

As Senator Richard Blumenthal said: "This probate judges are beyond any oversight, they have their own private kingdoms, their own fiefdoms and making(stealing) a ton of money."

[redacted]

Stories and examples of problems with guardianships:

PROBLEM 1

The probate system operates in an all-or-nothing manner regarding the capacity of an elder, allowing very little creativity or leeway, but treating every unique situation in a one-size-fits-all fashion. This disdain for doing a careful, comprehensive evaluation of each person's individual situation results in travesties of justice: Fundamental due process rights of vulnerable, elderly people in our probate system—including the basic right to challenge a purported claim of incapacitation—are routinely violated by overzealous judges and court-appointed attorneys, with the latter often incentivized to provoke litigation amongst family members and drain the estate for their own pecuniary benefit. Court-appointed attorneys, who *should* be advocating on behalf of the elder, have been known to write deliberately false and misleading reports to the Court about their interactions and observations of the elder, with the goal of stripping him/her of everything the elder owns, before seeking an Order to "warehouse" the person they have effectively dispossessed. This sometimes results in the death of the elder, alone, unseen, and unheard.

My own experience:

At the time my father was seeking to have my mother institutionalized, it was well documented that my father was a man of questionable character, who had: verbally and physically abused my mother; routinely visited married "dating" sites (subjecting my mother to disease risk, in addition to mental anguish); had substantial debts and legal judgments entered against him; and owed the government nine years of back taxes. To this day, it is inexplicable to me—especially in light of my father's increasing coldness and bad behavior toward my mother—that my father was nevertheless deemed a suitable party to be the sole conservator and guardian of my mother by the court-appointed attorneys in the State of Hawaii. In my opinion, these attorneys engaged in outright fraud by assisting my father and his attorney in filing frivolous pleadings, working diligently to suppress any and all evidence I provided to support my mother's credible allegations of: 1) my father's marital infidelity and 2) his serious, ongoing financial problems. Instead, my mother was flatly denied by the Court her right to have an attorney of her own—this, despite repeatedly telling the court-appointed attorneys that she *did not want* my father in control of her care or her finances; and that she wanted a divorce. Far from acting in my mother's interests, the Hawaii-appointed attorneys simply ignored her, having already decided on pursuing the claim that my mother was "incapacitated."

PROBLEM 2

Court-appointed attorneys routinely suppress evidence counter to their claims (of, for example, incapacitation) and threaten with sanctions anyone who, like myself, openly challenges their claims and assertions. How is this allowed in a probate system in which the physical and financial well-being of the elder is supposedly the paramount consideration? The only explanation is that the elder's well-being is *not* the paramount consideration. Instead, the lawyers "take their own side" as they pit family members against one another in order to drive up litigation costs, so that they (the court-appointed attorneys) can line their pockets and drain the estate. Once there is no money left in the estate, the attorneys withdraw and leave all the family members, on both sides, in emotional and financial ruin. This is unconscionable.

PROBLEM 3

Lawyers who genuinely advocate on behalf of the vulnerable, elderly victims of financially-motivated conservator/guardianship proceedings are routinely blocked by unscrupulous or uncaring judges from representing their clients in Court. More often than not, the Probate Court inclines toward a blanket designation of incapacitation designed to facilitate the total seizure of all assets, regardless of whether doing so violates the due process property rights of the elder and other interested parties. Probate judges, like any jurists, should be impartial—yet they seem predisposed to thwart any efforts by anyone outside "the system" to mount legal challenges to the "in-system" guardians and conservators and their Counsel. Thus, elderly people are robbed of their right even to assert their legal interest in their own property.

My own experience:

Once the court-appointed lawyers in Hawaii had obtained a rushed judgment of my mother's incapacity (one in which I was never given a fair chance to assist in my mother's oppositional efforts), these same

lawyers immediately began a concerted effort to legally seize: 1) my residence (my [redacted] and 2) my car (a [redacted], claiming that both were "marital" property, i.e., the property of my mother and father. My counsel in Hawaii repeatedly asked to have the issue of ownership of my condo and car designated as contested matters on the trial calendar, which would necessitate an evidentiary hearing. The judge refused to do so, despite his legal obligations under Hawaii probate law and my legal right to such a hearing. My counsel made multiple requests to the Court, asserting my right to such an evidentiary hearing; the judge chose to ignore these requests. These matters are still in litigation.

PROBLEM 4

Parties in conservator/guardianship proceedings, whose property is being removed from their ownership and control by the Court (sometimes arbitrarily seized, without any evidentiary hearing regarding legitimate ownership), are sometimes statutorily prohibited from providing documentation or evidence in support of their own lawful property interests. Even in jurisdictions/states where law allows the introduction of such evidence, judges in the probate system routinely violate state law by simply ignoring repeated requests for hearings—requests made by lawful interested parties, who are then forced to spend a significant amount of time and money respectfully pleading with the Court to follow its own state probate laws and designate the property interests as contested matters. And *still*, courts will fail to schedule such hearings, because placing the matter on the trial calendar would: 1) be an admission that, yes, this contested matter is indeed a contested matter! and 2) would allow the introduction of new evidence, thus potentially upsetting the apple cart of the normal probate "rush to justice."

My own experience:

When a party such as my father wishes to remarry and start another family, the traditional legal route is through normal divorce proceedings. However, when conservator/guardianship proceedings turn into legal steamrollers, unwelcoming of any evidence in opposition to the "This elder is incapacitated" narrative, probate courts become ready substitutes for divorce proceedings. Indeed, for the party initiating the proceedings, probate court becomes the quick-and-easy (and cheap!) route to rid oneself of an undesired life partner. With the help of greedy and unscrupulous lawyers, my father sought to take total control of my mother and her assets in a proceeding where my mother was unable (through her own efforts or those of her lawyer) to challenge the process that designated her as "incapacitated." That process is so deeply flawed that anyone contemplating divorce (or fearing their spouse is about to do so) would, if familiar with the probate courts, be strongly tempted to "launch a first strike", as it were, in terms of a conservatorship—particularly if one covets the assets of one's spouse.

PROBLEM 5

We treat animals with care, love and respect. Should we not do at least as much for those we judge incapacitated? If we take the attitude "Don't try to calm her down or explain, she can't understand anyway," is it surprising that we "warehouse" people in morally unacceptable conditions? Whenever financially possible, the elderly should be able to age in-home. The fact that so many are not allowed to do so is a sad testament to the profitability of driving a wedge into already overburdened families.

My own experience:

This is hard to write but was harder to witness. My mother was tricked into leaving her home by being told by the smooth-talking special conservator that she would be "visiting a spa" and would then return home. My mother said goodbye to her favorite dog [redacted] promising to return home soon to play with her. She willingly left her home with the special conservator, but instead of the spa outing she had been promised, she was placed in a locked facility against her will. When my mother complained to the staff, telling them she wanted to go home and would call the police to assist her, the staff administered to her a powerful antipsychotic drug called Seroquel (generic: Quetiapine). This drug is given to psychotics and schizophrenics displaying violent, physically resistive behavior. My mother was neither psychotic nor schizophrenic, and the extent of her "resistance" was to tell staff that if she wasn't allowed to return home, she'd call the cops. My mother's lawyer filed many motions in an attempt to have her released back to the home she had been tricked into leaving, but to no avail. Meanwhile, the staff's repeated administration of powerful, and medically inappropriate, drugs to my mother likely contributed substantially to her death within months of her confinement.

PROBLEM 6
Everyone knows in-home care is expensive. But the cost becomes orders of magnitude more expensive when there are lawyers supposedly "advocating for" the person under care. And when the "conserved" person is moved out of her home, against her will, should we even be surprised that the cost becomes stratospheric and insupportable?

My own experience:
I agreed to transfer over $300,000 of my jointly held stock with my mother on the condition that this money would be solely used to pay for her in-home care. I did so in the confident expectation that my mother would be able to stay in her home until she passed away. Instead, once the money was transferred to the "Conservatorship", the court-appointed attorneys, in concert with my father's counsel, committed fraud on the Court by brazenly using these funds to pay for unnecessary extravagances, such as tiling of the swimming pool at the family home. Further, they demanded that these stock funds be used to pay for their supposed legal advocacy/services on behalf of my mother—services they contended totaled *over* $300,000. At the same time, these court-appointed attorneys actively assisted my father and his counsel in filing frivolous motions, filled with false and misleading information about my mother's mental state and the condition of the family home. These actions were aimed at ensuring that my mother never returned home and that my father would inherit the marital estate.

The court-appointed attorneys used the law to effectively maneuver my mother into a situation where she could not even make phone calls, while being billed over $12,000 a month for "care" that included being strapped to a bed and given anti-psychotic drugs against her will. Meanwhile, the conservator, [redacted] demanded that I transfer my [redacted] and my condo in [redacted] the latter worth over $400,000 at one time) to the Conservatorship, falsely claiming that there was not enough money to pay for my mother's care. [redacted] had the nerve to claim that if I executed such transfer of my property, it would show that I truly cared about my mother and then *maybe* they would consider returning my mother back to her home. There are no words sufficient to express my disgust and contempt at the behavior of this pernicious corporation and at the despicably dishonest claim that it was representing my mother's best interests.

PROBLEM 7
As matters stand, judges, Adult Protective Services (APS) agencies, probate attorneys, care facilities, and care agencies are all woefully under-monitored (or not monitored at all) for favoritism towards one or more specific fiduciaries or fiduciary firms. In addition, in a properly run system, the fiduciaries themselves would be closely monitored, regularly audited, and required to take yearly quality assurance testing exams or courses; and caseloads would be monitored as well.

My own experience:
The probate judge who handled my mother's case regularly appoints a firm called [redacted] as the conservator and guardian in all proceedings. It is common knowledge that many attorneys and judges in Hawaii serve on the Board of [redacted] and (it has been credibly alleged) that they routinely traffic in legal and political favors. The designated Special Conservator worked in the same office as my father's lawyer. The probate judge routinely appoints the same investigator [redacted] in guardianship cases, because of his and [redacted]'s longstanding friendship, going back more than fifteen years (This continues even though there are formal complaints filed with the Hawaii State Bar against [redacted] alleging unethical behavior). It is also documented that my father's lawyer has an ongoing personal and professional relationship with [redacted] extending over twenty years. My father's lawyer always demands the appointment of [redacted] in guardianship cases, as many of [redacted]'s attorneys work extensively with her law office. It is well known in the Hawaiian probate-law profession that my father's lawyer comes from an "old boys' network" that views the guardianship process less as an avenue for the care of elderly and vulnerable people than as an endless series of lucrative business opportunities.

The court-appointed attorneys in my mother's case refused to discuss on the record what training, if any, they had undergone or even what training requirements existed in the State of Hawaii. One of my mother's experts asked questions focused on this specific issue when preparing a report to the Court.

Once this report was submitted on the record, the probate judge refused to allow this expert to give oral testimony or discuss her findings in the courtroom. My mother's lawyer repeatedly asked that this expert be allowed to testify and to ask questions about the background, testing, and qualifications of the fiduciaries, to no avail. The terrible irony is that Hawaii is a loving place, a beautiful state that embraces "ohana", family or loved ones. It is a cruel irony that Hawaii uses the word "Konaka" for Elder Care. The Hawaii system appears to have no requirements for training or certification, yet these court-appointed attorneys are empowered to seize the assets of the elderly under the guise of providing for their care.

PROBLEM 8

Courts often fail to sanction lawyers who strategically and unethically disclose parties' confidential financial information. When this unnecessary and unethical disclosure involves the elder in a conservator/guardianship proceeding, it is a serious form of elder abuse. Any fraudulent use of any form of identification, financial instrument, or legal document by any party in court proceedings or elder-care arrangements should draw sanctions by the court. No actions of this nature should be overlooked, excused, or ignored.

My own experience:

It became obvious that my father and his lawyer intended to harass and cause economic harm to my mother and me when they (my father and his attorney) openly disclosed my mother's Medicare information, along with my Social Security information, over the internet in unsealed pleadings, in clear violation of Hawaii law. When politely asked—several times—by my counsel to correct this violation, my father and his counsel repeatedly refused to do so. Only upon threat of a Rule 11 sanction motion did they finally, reluctantly, comply. Were they sanctioned? No. The probate judge declined to even criticize my father or his attorney in court for this egregious violation of Hawaii law.

In December 2019, while my mother was still alive, my half-sister and father entered my mother's home office, without my mother's permission, and started going through my mother's documents. My half-sister discovered my missing Social Security card in my mother's wallet and sent an email to the Special Conservator, advising her of this matter. My half-sister, now in possession of my Social Security Number, did not hesitate to reveal my SSN to the Special Conservator, over the internet. Neither my half-sister nor the Special Conservator advised me or my counsel of their knowledge of the whereabouts of my missing Social Security card. They should have been required by law to do so, or face sanctions. Instead, my half-sister executed a sworn affidavit fraudulently disavowing her knowledge or use of my Social Security card. In January 2020, my mother was somehow admitted to a facility before any funds were made available to pay for her care (since my mother only had Medicare Part A and not Medicare Part B). I strongly suspect that my improperly obtained Social Security information was used in order to facilitate my mother's admission into this facility (that is, that I was unwittingly drafted into the role of "backup creditor" in case my mother suddenly passed away before her care could be funded). My mother supposedly "applied" for Medicare Part B in March 2020, despite my mother's repeatedly expressed desire to leave the facility and the fact that she was often drugged or strapped to a bed.

PROBLEM 9

Court-appointed attorneys in probate proceedings are sometimes given free rein by "system-friendly" judges to improperly liquidate or otherwise dispose of major assets for the purpose of paying legal fees or recouping litigation expenses. If a major asset, such as a home, is to be sold, great care must be taken to avoid "sweetheart deals" such as those associated with large-scale, rushed, financially questionable reverse-mortgage companies. The fact that homes are quickly rushed into these reverse mortgages, sometimes involving companies with shady reputations, argues that the true motive is less to pay for legitimate legal expenses than to simply offer up the property in a closed real estate foreclosure action, whereupon the attorneys can divide up the proceeds from the sale amongst themselves.

My own experience:

Upon my mother's passing, my father's lawyer and the court-appointed attorneys demanded that my father enter into an ill-advised and possibly fraudulent reverse mortgage transaction with [redacted] for $2.2 million dollars—an amount more than the family home was appraised for. [redacted] has been cited by the Justice Department in March 2020 for fraudulent reverse

mortgage lending practices in violation of the False Claims Act. Finance of America LLC was required to pay $2.47 million dollars for deliberately underwriting loans that violated HUD requirements.

Examples of alternatives to guardianships:

1) In home care, full or part-time.
2) Medical Power of Attorney (as opposed to a full guardianship).

While neither of these alternatives would be perfect, perfection is not to be had in this world. The salient fact, as my above experiences attest, and as I believe you will find if you talk to others who have dealt with "the system", is that either of these alternatives would be far, far superior to what we now have. Far too many elderly people have been forced from their homes, had their lives lost or destroyed, their last years on this earth ruined, and their loved ones' hearts broken, all by a system that seems to positively prioritize inter-family conflict, tears, and accusations—a system where the true drivers seem to be greed and lack of conscience. Can we truly say that the legal actors in this system have ethics and integrity? That those making a living off our current conservator/guardianship system care about those whose well-being is nominally at the center of these proceedings? Can we say they care about anything other than money? I submit that we cannot. It is time to try a different approach.

Suggestions for protecting the rights of people being considered for, or currently covered by, guardianships, conservatorships, or other protective arrangements:

1) Hear their voices! All too often judges, APS, probate attorneys, fiduciaries, geriatricians, psychologists, etc. are quick to make a judgement of the elderly being incapacitated. If you have never witnessed the psychological assessment, and/or the geriatrician assessments, you need to. If you have never observed probate hearings aimed at deciding whether the elder in question lacks capacity, you need to. You don't need to prepare extensively or change your appearance à la "Undercover Boss." Just go and see.

2) When an elder must go to a senior care community, we need to ensure that the care centers, especially the Medicaid facilities, operate under better and higher standards than they are currently held to. I have witnessed filthy, disgusting senior care communities that were not fit for the habitation of animals, much less human beings; yet somehow, these facilities were able to pass the health department standards. If you have never been to a Medicaid senior care facility, you need to go and see one. Again, you cannot comprehend the situation without witnessing the problems.

3) Judges are not gods and if the system allows them to act in such a role, then the system needs reform. When my mother dared to stand up in Court and challenge the judge's decision to declare her incapacitated, calling the proceeding "ridiculous", the probate judge had my mother removed from the courtroom. There is absolutely no way this committee can comprehend how you should act on these issues unless you have witnessed such a thing, and even then, it's unbelievable. I can tell you firsthand, having your mother removed from her home and placed with total strangers is heartbreaking. Having your mother call you daily, crying to go home, is devastating. Being unable to visit or speak with your mother because the facility wants to hide the fact that she is being placed in restraints and drugged is unimaginable. Our seniors deserve better; America and the probate court system have failed them; families have failed them.

My father and half-sister were with my mother in the facility the day she died. Because I had dared to challenge the issue of my mother's supposed incapacitation, my father and half-sister, out of bitterness and spite, refused to put my mother on the phone with me before she died so that we could say our last goodbyes. That is what can happen when a profit-motivated law firm drives a wedge into a family as deep as it will go. To this day, I do not know where my mother's remains are. The conservator, [redacted] advised my late mother's lawyer that they do know the whereabouts of my mother's remains. I am her son and have a right to know what has become of my mother, so that I can organize a fitting memorial to honor her life and legacy. My mother was an absolutely amazing woman, whom I feel was my greatest advocate and mentor. What was done to her by the probate court was beyond reprehensible—it was unconscionable. This Committee must enact reforms to safeguard the due process

rights of elderly and vulnerable people from unscrupulous lawyers, conscience-less law firms, and cold-hearted family members. There can be no higher priority or greater legacy.

I can be reached by phone at [redacted] or by email at [redacted] to answer any questions or provide any additional information you may require.

Best regards,

[redacted]

advocacy

NO RIGHTS IN A FREE COUNTRY

Guardianship, protective placement, ward of the state. The authors of these state laws had to know the abuse that was possible, the fortunes that would be taken, the torment they'd bring on families. It's easy, never-ending income for anyone with the savvy to enter this world. Entire life's savings are depleted, as are the family's reserves trying to get rulings reversed. These statutes are written to ensnare and hold. And behind closed doors, rights aren't observed. In anything, you remember at all times your loved one is a vulnerable hostage.

The ward has no say in the proceedings or post-conviction. They're just pawns on a "to die" list. Their assets are spent with no transparency or accountability. Family input is subdued by repeated findings of "no standing." Family means nothing and they are treated like garbage by everyone. I met with one of these attorneys who helped write the current laws. He told me the average life of a ward is 2 years....as I paid his fee. They know what they are doing.

This is an ugly and never-ending nightmare. Our mother was legally kidnapped over a year ago. She committed no crime; in fact, she did most things right. She was always only a houswife and did her best raising her family. Divorced after 25 years of marriage, she took the small settlement and invested wisely. Over the next 4 decades, she saved enough to comfortably provide for her last years and even have an inheritance for her children. She was so happy 5 years ago when she met that goal. She would live on her IRA distributions, dividend checks, and social security. About three years ago she started feeling watched. I discounted it and regret it so. I thought it was baseless; to her it wasn't. Given what's happened, was she right?

There is conspiracy and collusion by officials in government positions to target vulnerable people with assets. And they are utterly heartless. These lawyers, judges, guardians, social workers, and assisted living operators work hand-in-hand to keep wards a prisoner for life, and to exercise their sick control over them and their family for seeming sport. We are always told this was legal. Today they called and said our mother was in a bad way, don't visit. I dropped off her daily newspaper; she was fine.

She was held on a chapter 51 when she wanted to be taken to a shelter or hotel; she had money on her and was dressed appropriately for the weather. I don't know the specifics but it didn't seem warranted. They've become very efficient. She went from a free citizen to a state prisoner in 23 short days--breakneck speed for our legal system.

The social worker pulled this whole case together. My mother couldn't have been in that police station on March 15 for long before her call to me stating: your mother is in such a deplorable state; we're going to make her a ward of of the state, and as her heirs you'll have to sign off on her assets. She seemed a little bizarre; our mother wasn't incompetent or indigent. I should have taken this more seriously, but who is aware this can be done so easily? We'd soon find out. She said that my mother and her were already at Winnebago Hospital. She was quite delighted to get all of our phone numbers as requested. Was the Ch 51 her idea in the first place? She has access to bank accounts.

Our mother didn't get to Winnebago for another one or two days. Per protocol a medical clearance is done first. Wherever she was, she relates a horrible hallucinogenic ordeal (reaction to a medication?) and of even seeing a female chaplain. She was transferred after dark, and her accounts don't describe Winnebago Hospital at all. Our calls never got through but one, with the social worker's assist. She was housed in a smaller building, and always had a guard outside her bedroom. She never saw a psychiatrist until the tranfer to Mendota. I believe my mother; she has a good memory.

Only 3 days later the social worker filed a petition for guardianship and protective placement. The disabling dementia diagnosis she wrote down is one my mother has never been diagnosed with before, and it's seen in people who are quite dysfunctional. She claimed my mother didn't take care of her health, yet found a heart diagnosis for her petition from a hospital she had gone to only months earlier (for heart palpitations). And they used her handicap of being nearly deaf to call her "confused".

When she was transferred to Mendota Mental Institute in Madison, the social worker called it an emergency, so an outside service was used and Winnebago personnel bypassed. Why was she taken so far from Milwaukee? She was locked up and guarded since her detainment, and we weren't allowed to see her until after the final hearing.

We got our notices 9 days before the final hearing. That day, the guardian of estate was at my mother's house with his locksmith. He also forwarded all the mail. He was angry at my videotaping of him. Two days later the court gave him the authority to sell both houses. They already knew the outcome of that upcoming hearing. So did we. We were just given a show.

The courtroom hearing was a Twilight Zone. Our mother was barred from appearing by her GAL. We learned why. The social worker was so deceptive in describing our mother, how she couldn't walk, couldn't talk, couldn't care for herself at all, needed all kinds of therapy and 24-hr supervision. They couldn't have our mother in court to ruin

all that testimony. The social worker has immunity, but the fraud she perpetrated on this court was reprehensible. My mother had already been barred from 2 other hearings. Her inherent right to be present was violated several times, and it was done unabashedly again at her annual review.

In court my mother's GAL scolded me with contempt, told me the guardian that day had every right to be at the house and I had no right to even question him. The judge added that houses are locked up so nothing gets up and walks away. He asked if I was learning how this works. The transcript of that hearing had missing parts, including this. My sister was locked out of the other house she co-owned with our mother and has had no access to her belongings for almost a year. Do Americans really have property rights?

In that hearing, this court-appointed expert was allowed to testify on a glitchy zoom call, even though he's local. His sources were the court documents and notes given to him from a nurse. He never even accessed a medical record; does it exist? He admitted to not knowing who made that diagnosis, where, or when. In what court is this acceptable? He had interviewed my mother on a faulty zoom call as well when she was at "Winnebago" and without her hearing aids. My mother was disadvantaged so often it's sad just to recount this. He's a licensed psychologist, a PhD, not an MD, but the prosecuting attorney wanted him to shore up this medical diagnosis. My mother's life was destroyed by his damning assessment of her on just that one brief compromised interview and the judge's willingness to accept it.

In court, the County prosecutor and GAL made baseless accusations repeatedly without evidence. In the context of testimony like the social worker's, it's easy to malign the family and exclude them as possible caretakers. As an experienced retired nurse without even a traffic ticket to my name, I was not qualified to care for my mother.

The social worker and guardian transferred her to a nearby assisted living facility in mid-April. We called Ellen's to bring over some of her clothes. A short time later, her guardian called us, furious that we had not gone through her and were bothering Ellen's staff. We were punished with a no-contact family ban until she decided otherwise and she didn't know when that would be. I wrote many, many letters of complaint to everyone. Finally, after 6 weeks and after Mother's Day, we could visit. Those many complaints earned this director's undying enmity.

Our calls had all been hung up on. Our mother's mail and gift boxes were always opened--they still are to this day, and there is mail she doesn't get. She's not allowed a phone.

Every day we visit, we know it may be our last. We do it to support her, she needs that. Our silence guarantees this visitation. I haven't been silent but nothing has moved the needle, and they still feel safe. I detest this place. The 'warden' there is openly hostile. She wants us to back off, to let Ellen's become her family now.

She received physical therapy for a few weeks, then it was discontinued. She hasn't received any other therapy at all. She walks unassisted and does her own laundry here. My mother talks intelligently of finances, world news, politics. She gets 4 pills a day and only sometimes her blood pressure gets taken. She hasn't seen a doctor in many months, never had an EKG for her heart, is never seen for her shortness of breath. Not the skilled care facility they promised--they knew she never needed it anyway.

She is held here against her will for only custodial care, a violation of her Constitutional right to liberty. That right was upheld in a Supreme Court decision:

O'Connor v. Donaldson, 422 U.S. 563, 576 (1975)
1. A State cannot constitutionally confine, without more, a nondangerous individual who is capable of surviving safely in freedom by

himself or with the help of willing and responsible family members or friends, and since the jury found, upon ample evidence, that petitioner did so confine respondent, it properly concluded that petitioner had violated respondent's right to liberty. Pp. 422 U. S. 573-576.

Why is this inhumane treatment of her allowed to go on?

Her guardian, for over a year now, has not even seen our mother once. She pays herself from my mother's assets and for that only submits negative reports to the court on all of us. She is punitive, patronizing, and drunk with power over all the wards she owns and the families she can control. She has said no matter what, the judge will always believe her. That's the only time she's told the truth. The same people who put our mother here in the first place wrote the yearly review to keep her here. The blatant disregard for wards is atrocious, and many of these people involved in this belong in prison.

To end this travesty to our vulnerable/elderly:
Psychiatric evaluations for incompetency to span at least a 6-month period--not 1 day.
Make open court mandatory; this would be the most reformative.
Abolish all "no standing" laws for family.
All guardianships should be 'in family', if they are interested.
All accounting of assets be open book.
Remove guardian ad litems--they are an arm of the court used to violate a person's rights and not there for the individual's best interests.

Nursing homes and mental institutions are also employed as prisons in this country. I've witnessed a third-world trial and it's scary. My mother doesn't belong there, but with her family. She is there because of greed. I know now that no one's health, liberty, and property rights are assured.
Fix this, or the rest of us are only a crop waiting to be harvested.

The truth as I see it

[redacted]

https://advocacymonitor.com/special-committee-on-aging-guardianships-conservatorships-and-other-protective-arrangements/

Senate Special Committee on Aging

On December 16, 2012 my mother, [redacted] suffered a hemorrhagic stroke while reading late in the evening at her home. Taken to nearby Taylor Hospital in Ridley Park, PA she was diagnosed with a urinary tract infection (UTI), which she did have, however, the hemorrhagic stroke was not diagnosed. The hospital was going to send her home at 4:00 am. I was able to persuade the doctor to keep her overnight for observation. When I returned the following morning her head had swollen to almost the size of a soccer ball. At this time I was advised that she had suffered a brain bleed aka hemorrhagic stroke. If her brain had bled more she would have died. After intense effort during rehab she was able to return home where she remained well cared for until October 20, 2015.

On October 20, 2015 [redacted] was illegally seized from our home and my care without court order or exigent circumstance by Delaware County County Offices of Services for the Aging (COSA) based upon a fraudulent emergency medical order. [redacted] was taken to Taylor Hospital and remained there for three days under observation. After three days Taylor declared there was no reason for her to be there. COSA then transferred her to Wallingford Nursing Home where she remained until her death by euthanasia on November 11, 2017. [redacted] became 100 years old on November 2, 2017. While at Taylor Hospital I learned, from a nurse, that a guardianship hearing had been scheduled. I was never served with proper Notice of the hearing. I held full durable power of attorney. [redacted] was served with a defective Service of Process at Wallingford Nursing Home. [redacted] was denied Due Process. A preliminary hearing was held on November 9, 2015 before Judge Chad F. Kenney in violation of the 20 day rule. [redacted] was served defective Notice on October 27, 2015. On November 23, 2015 a full evidentiary hearing was held. [redacted] was adjudicated incapacitated on November 25, 2017 and confined to Wallingford Nursing Home until her death based upon fabricated and false testimony.

[redacted] had a Trust which provided advance directives. All officers of the court, including my own attorney, [redacted] the GAL [redacted] and co-guardians [redacted] and [redacted] withheld the Trust from the Court. The Trust was never nullified or voided. It was just ignored. In the eyes of the officers of the Court it did not exist. GAL/co-guardian [redacted] chose to ignore and not follow the trust document. [redacted] was just along for the ride to make the guardianship appear warranted and proper. [redacted] s estate was in excess of $2,000,000.

The Matter of [redacted] was all about the money. No one, not one officer of the court, cared about [redacted] she was just another number, just more dollars in their pocket.. After the adjudication the feeding frenzy began. Real estate was sold for far below fair market value. One property "the lumberyard property" was sold to one [redacted] who operates a auto repair business and illegal impound yard which use, as such, was vacated by the Commonwealth Court of Pennsylvania and continues to operate to this day in violation of the Commonwealth Court and allowed by Ridley Park solicitor [redacted] of the politically connected firm of Raffaele & Puppio. Solicitor [redacted] father, [redacted] is a Common Pleas Court judge of Delaware County. They are part of a corrupt political cabel which considers themselves to be above the law.

For the Record, the Opinion written by Judge Chad F. Kenney and law clerk Dan Coleman is replete with falsities. It poisons anyone that reads it. It was most injurious to all appeals brought before the Superior Court and actions brought before the Federal District Court. The trial court is the finder of fact and its' findings are deemed above question. In this matter this is egregious error. Judge Chad F. Kenney is now a sitting District Judge who was endorsed by Senator Robert Casey. I will be filing a complaint against Judge Chad F. Kenney and Dan Coleman for Fraud upon the Court and violation of USC 18 Section 241, 242. I will also be filing a complaint against [redacted]

The Matter of [redacted] is nothing less than an atrocity brought by officers of the court who are sheer evil. From the illegal seizure to the destruction of the estate to the euthanasia of Helen Harper all violations of fundamental rights protected by the U.S. Constitution executed by officers of the court who in Delaware County are criminal thugs. If the Special Committee has any questions I welcome the opportunity to respond and appear. Respectfully submitted, [redacted]

To the committee:

In 1998, working as an investigative producer at the Indianapolis NBC station, I helped expose the guardianship abuse of Ruth Lilly, one of the richest women in the world. She was the sole surviving great-granddaughter of pharmaceutical founder Col. Eli Lilly. She was in her 80s, severely mentally ill, feeble and wheelchair bound. Ruth Lilly was also under a court-ordered guardianship her only brother placed her on years earlier, hoping to protect her should he die before her, which he did.

Yet our video and records showed her caregivers, doctors, lawyers, nurses and their families - numbering as many as 80 at times - taking Ruth Lilly on trips around the world. The trips costing hundreds of thousands of dollars came out of the bank account of Ruth Lilly. Each night of the three-part series, ratings grew as more people tuned in to see the exploitation of Ruth Lilly by the very people assigned to protect her. And it wasn't just the trips. She gave thousands of dollars to local, state and federal politicians even though she hadn't voted in years and had no clue about these lawmakers. But the candidates took her money anyway. Stacks of boxes marked Ruth Lilly were housed in the probate course listing the thousands of dollars spent by her guardians, ostensibly for her care.

On the last night of our investigative series, I was in the grocery store and overheard two women talking about the series. I asked them what was it about Ruth Lilly's story that made them watch. They both said if this abuse could happen to a billionaire - someone as rich as Ruth Lilly with every financial means available to her - then what would prevent it from happening to their families.

That was 22 years ago. Two years ago it starting happening to my family. It has been our nightmare ever since because a court-ordered guardianship led to our youngest brother's death.

Our brother [redacted] as we called him - was a Navy veteran who suffered from paranoid schizophrenia. He became physically disabled after working in an airplane plant in California. He was raised in [redacted] just a mile or so off Lake Michigan. Jimmy came home after he became physically disabled but the cold was more than he could tolerate so he moved to Florida for the water and the warmth. As his mental disease progressed, Jimmy began receiving services from the Clearwater Florida Assertive Community Treatment, commonly called the Clearwater FACT team. It is a state-funded mental health group.

The FACT team found housing for [redacted] in group homes, delivered his meds daily and made sure he had groceries and rides to his doctor appointments. They also had a psychiatrist on duty who regularly met with [redacted]

For 11 years, that is how [redacted] lived, cared for by the FACT team and regularly visited by his mother and his siblings (our father died in 1992). In her 90s, our mother would still fly to Florida to spend time with her youngest son. He was loved, and he was cared for by the FACT team. He was not violent or suicidal but, like others with this mental disease, he had delusions and could hear voices. But he knew everyone - his caregivers and family-and could carry on a conversation with you. He even started swimming daily at the home where he was staying that the FACT team had placed him.

In January 2020 we received a call from the FACT team, [redacted] was very ill and in Morton Plant Hospital, a medical hospital owned by the BayCare Hospital system. My youngest sister and I immediately flew from [redacted] area (where we live) to Clearwater and went straight to the hospital. [redacted] was suffering from severe esophageal ulcers and needed multiple transfusions. In the presence of the nurse manager and the social worker, [redacted] signed health surrogacy paperwork designating me as the person to make his medical decisions and my sister the alternate if I could not perform the duties. It was Feb. [redacted] 2020, [redacted] birthday.

[redacted] also talked to the palliative care doctor and made it very clear that he did not want a DNR. Instead, he told the doctor he wanted everything done. [redacted] chose life. During this time, which included a stay in the intensive care unit, we learned [redacted] had a positive biopsy for multiple myeloma, a blood cancer. Doctors called it smoldering myeloma, telling us he needed a PET scan to determine if it was full-blown blood cancer. But they said he needed to be out of the hospital for two weeks. [redacted] never got that opportunity.

While he was getting treatment for his severe medical ailments, two of the psychiatrists were feverishly working to have [redacted] committed and sent to the state hospital, hundreds of miles away. They claimed he could not care for himself. But [redacted] had caregivers through the Clearwater FACT team and [redacted] called them every day begging them to move him to the least restrictive environment. What's more, when another sister called the state hospital to see if it could even care for [redacted] s illnesses, the answer was no. If he bled internally - as he was doing regularly - the hospital could not treat him on site. Instead, they told our sister they would have to transport him to another hospital more than an hour away. In other words, he could bleed out before he could get a life-saving transfusion.

The judge threw the case out since a time requirement had lapsed and the psychiatrists' bid to place [redacted] under a six-month Baker Act failed. But it was a temporary victory. Over the next several weeks, [redacted] was in and out of Morton Plant's sister hospitals for treatment of his physical ailments. He was never out of the hospital for more than two days before he would start bleeding internally. By April 2020, [redacted] was back in Morton Plant and was never released until he died March 23, 2021 - just shy of a year. It was the early weeks of covid and we were not allowed to see him but he called us nearly every day when he was well enough physically to talk on the phone.

Under the cover of covid, with me on a long-distance phone line barely able to hear the proceedings, the psychiatrists were back at court asking the judge to Baker Act Jimmy and send him to the state hospital. Most notably, the hospital hid from the judge the health surrogacy paperwork designating me as the person [redacted] wanted to decide his healthcare treatment. When I told the judge that the state hospital said they could not care for [redacted] 's serious ailment, the psychiatrist responded that he had sent pregnant women there. Clearly, that was one condition [redacted] would never experience. It was a joke but what happened next was out of a horror movie.

The judge appointed a 75-year-old professional guardian to be in charge of [redacted]. The guardian, paid by the hospital, ordered the nurses not to let the family know anything about our brother's care. Furthermore, the guardian said only I - not our other three siblings - could talk to [redacted]. We were stunned. During the six months [redacted] was under the guardianship, we only knew of [redacted] s health from his phone calls. We knew he wasn't being treated for his cancer and I begged social workers and hospitalists regularly for them to give him a PET scan. I was ignored.

[redacted] meanwhile, was transferred back and forth between medical floors and the psych unit. Covid had closed the state hospital to new patients so [redacted] was warehoused at Morton Plant at the expense of taxpayers. We later learned that doctors would write on his discharge papers that [redacted] was released to home when in reality he was transferred back to the psych unit. But to Medicare, which was paying [redacted]'s bills, it looked like he left the hospital. No one checked despite our repeated cries for help. We had no legal standing.

By the time [redacted] left the hospital for the morgue on March 23, 2021, Morton Plant had billed taxpayers about $1.2 million just for his facility charge (room and board essentially). We don't know the total charged by the doctors but the bills have to be in the hundreds of thousands of dollars. In the limited records we have, dozens of doctors, many seeing [redacted] over and over for consults, billed Medicare for his care. He was given every expensive test you can imagine except the one needed to perhaps save his life-the PET scan to determine if he had multiple myeloma.

During the nearly eight months [redacted] was under this guardianship, the hospital called me only once for a telephone conference (they didn't even bother with Zoom). It was September 2020 when they told me they wanted to discuss his placement. I was excited because his family had been working with the FACT team and found several suitable places for [redacted] to live. On the call was one of the psychiatrists, a palliative care doctor, a hospitalist, the ethicist and several social workers. They said [redacted] was stable but they wanted a DNR. I was dumbfounded. Five months since [redacted] was under the guardianship and all they wanted me to do was sign off on a DNR. I refused. They never discussed housing with me. It was a ruse to get me on the phone and agree to a DNR.

We later learned that Florida had changed the law requiring a guardian to go to court to get a DNR unless family signed off. The change happened because of tragic deaths in other Florida guardianship cases. Notably, [redacted]'s paid guardian was not on this call and in fact never called or came to see [redacted] during his tenure. He talked to [redacted] only once because [redacted] called him. I again begged them to do a PET scan on [redacted] but they refused. In fact, they said even if he had cancer, they had decided [redacted] wouldn't be able to follow the treatment plans because he was mentally ill.

We couldn't believe this was happening in American, denying cancer treatment because a man was mentally ill. What's more, after [redacted] died, we learned from limited medical records that the month before (August 2020), an oncologist had decided [redacted]'s smoldering myeloma was now full-blown cancer. But Morton Plant would not offer [redacted] treatment. They were essentially judge, jury and executioner. Two of my siblings have battled cancer (Stage 3 breast cancer for one sister; Stage 4 prostate cancer for our other brother). They are still alive because they have been afforded treatment, something [redacted] was denied merely because he was mentally ill. It astonishes us to this day.

After that September call, the hospital informed me it was going to court to place [redacted] in a permanent plenary guardianship. Their choice was a woman in another county who was apparently on the hospital's payroll. On her website, she bragged that she had no medical knowledge and always deferred to the doctors. How that helps a ward is beyond me.

While our parents were always adamant that [redacted] not be placed in a guardianship because it strips one of all rights such as marrying and voting, my brother and sisters decided I should become his guardian so we could get him out of this hospital and to a cancer treatment center. [redacted] agreed I

should become his guardian and on Zoom at the hearing told the judge. He could not have been clearer on his wishes.

In Florida, you can't seek guardianship without a lawyer, providing an additional financial burden for families. Still, we hired a lawyer and on Dec. 7, 2020, we ended up before the same judge who had Baker Acted [redacted] in December. Our lawyer presented the judge the health surrogacy paperwork signed by [redacted] on Feb. 4, 2020 - the same paperwork the hospital hid from the judge during the April Baker Act proceedings. She said, "What is this?' and "This is the first time I am seeing this." Our lawyer said she appeared clearly miffed and indicated that now she knew what the hospital had done.

She awarded me the guardianship but it didn't change anything. Even though by law, I was now [redacted] when it came to making decisions, Morton Plant would not allow me access to the patient portal or give me his medical records. We were still in the dark. I fired the psychiatrist but even that they fought me on until our lawyer intervened again. We later learned that he was still seeing our brother even though we were adamant he be removed from the case.

I was the guardian but in name only. We filed for an emergency court hearing to get [redacted] out as the hospital was insisting he still be transferred to the state hospital or a locked memory care unit, even though he had no dementia. We all agreed to a January hearing and my sister and I traveled to Clearwater to see [redacted] and hopefully get him out of Morton Plant. The hospital agreed to a visit but limited it to 30 minutes. We flew all that way and that is all the time we were given. We weren't allowed to bring him anything nor could we bring in a phone to show him family pictures. We were crammed in a small room with three staff members watching us. [redacted] was upset that he couldn't talk freely and said as much.

Prisoners have more rights than [redacted] had even though he committed no crime. It made us sick.

But even worse was [redacted]'s appearance. He was so frail and had lost at least 50 pounds off his 6-foot frame since we had seen him nearly a year earlier. He was dirty and disheveled and looked like he had been living on the streets not in a medical hospital for nearly a year. He also had a rash and complained of back and neck pain. It was heartbreaking.

Still he shared stories of our childhood and was interested in various family members. The psychiatrists had argued over and over that [redacted] needed to be locked away for the rest of his life because he could not care for himself. But here he was locked away for almost a year and he looked like this. It was devastating. So was the next move by the judge who said he didn't want any if his rulings overturned so he was postponing the hearing! The hospital, with the psychiatrist telling me he had won, let us see [redacted] one more time - again for 30 minutes and again with staff hovering close by. [redacted] hugged us as we readied to leave, blew us kisses and said they would never let him out. "I am going to die here," he said.

He was right. In the week before he died, [redacted] was moved back and forth from psych to medical. One doctor accused him of faking his illness because she saw him making himself throw up. We told her he was trying to get the blood off his stomach so he would feel better. She sent him back to psych anyway. That weekend another patient threw a cup of hot coffee in [redacted]'s face. He did not retaliate. I insisted on a police report but the staff said Jimmy did not want to press charges. I said, "Isn't it interesting that when it is your liability [redacted] is competent but in every other case he is not."

The day before he died he called me early in the morning, saying he needed a pain pill. I told him I couldn't get that for him but was concerned as he never asked me for a narcotic. My sister tried to call him back but another patient answered. She heard [redacted] say as he was gasping for breath, "Tell my sisters I can't breathe." It was the last time we would hear his voice. He was transferred to medical and then to ICU. He coded right after they intubated him the next day. The nurse later told me: "We didn't think he was that sick."

[redacted] died March 23, 2021 - three days before the rescheduled emergency hearing to get him out. The hospital didn't even call me to tell me how to retrieve his body. It also claimed he had no belongings even though he always carried a Bible and had a wallet with our parents' funeral mass cards inside.

My family decided to do a private independent autopsy and toxicology report as we were convinced he died of multiple myeloma. The funeral home referred us to a doctor who had done autopsies for more than 30 years. The toxicology report was prepared by a nationally known Pennsylvania firm that the county's own coroner uses.

Ten weeks later we were called with the findings: [redacted] died of toxic levels of psychotropic drugs. The Clozaril was 20 times the appropriate medical amount; the Haldol was 50 times. He did have multiple myeloma, but it was the drugs this hospital administered that killed him. We were stunned and still are reeling over the fact that [redacted] was killed in a place that should have protected him.

We have been trying to get justice for [redacted] ever since. We filed a subpoena for the medical records which I should have had access to when he was alive. We still do not have them. Morton Plant wants more than $24,000 for the 24,000 plus records regardless of whether we get it electronically or by the page. At the second hearing the judge ordered the hospital to give us 1,300 pages of doctors' abstracts. Using the records, we have pieced together [redacted]'s life in that hospital although there are large areas we don't know what happened because we don't have the records.

What we do know is that during the nearly eight months that a professional, hospital-paid guardian was supposedly watching out for [redacted]'s interest, the hospital was using him as a cash cow and a guinea pig. Medicare was charged over and over as the paperwork would say "released to home" but he was merely moved from one unit to another. The bills are staggering -$1.2 million for room and board alone. Countless doctors consulted on his case and others saw him daily - or claimed to have seen him daily - all at a cost to taxpayers. In these documents, one of the psychiatrists admitted they were simply keeping [redacted] there waiting for the state hospital to open even though the law says a ward should be placed in the least restrictive environment.

More disturbing is the actions of another psychiatrist who in July notes said [redacted] would be the perfect candidate for Clozaril except for the fact he had a blood disorder which would make the drug too dangerous. And even though a palliative care doctor, referring to an oncologist note that [redacted] now had full blown multiple myeloma, the psychiatrist gave him the drug anyway at escalating amounts. They knew this drug could kill him and gave it to him anyway!

And for what? Schizophrenia is a progressive disease. They were never going to cure [redacted] He could be re-directed when his symptoms got worst but he would never be cured. If a family member had been [redacted]'s guardian at the time, we would have stopped them from giving this drug. But a professional

guardian has no medical knowledge or family history so defers to the doctors. That is wrong and in [redacted]'s case it was deadly.

We have been seeking justice for [redacted] ever since we learned how he died but every state health and police agency has ignored us or decided [redacted]'s death was normal. There is nothing normal about [redacted]'s death.

And for those who think we are just in this for the money, nothing could be further from the truth. Florida's "Free Kill law' as it is dubbed precludes us from suing for malpractice because [redacted] had no children under 23 or a surviving spouse. But the irony is that under a guardianship, a ward is not allowed to marry, or vote, or drive and on and on goes the list of things stripped from a person under a guardianship. And Brittany Spears case showed the guardian can even prevent a ward from having children.

If you take the money - making opportunities out of the guardianship programs, I believe the system would reform itself. The guardian should not be paid by the hospital or nursing home. The guardian should not get rich off a ward as is often the case. Guardians should work for the county at county wages.

The guardian should not be allowed to put a DNR on wards. Accounts of wards should be flagged as such so that Medicare and Medicaid are watching for any egregious charges as there were in [redacted]'s case. We know of at least three flu shots the hospital billed Medicare for [redacted]. In fact, the last charge to Medicare on the day he died was for a flu shot. Does anyone really believe the doctor trying to save his life ordered compressions to be stopped so a nurse could give [redacted] a flu shot? It's ludicrous but shows the extreme this hospital went to in billing Medicare.

Stop making it too expensive for families to become guardians. I had to hire a lawyer, for instance because the state requires it and pay for an online course run in part by the lawyer for the hospital of all people!

If the guardian is not family, let a designated family member review medical records. They can provide invaluable medical history. We found out that in October 2020 - while [redacted] was under the professional guardianship - that the doctor went back before the judge and got another six-month Baker Act commitment on [redacted]. What's more, this doctor who was seeking the Baker Act waived [redacted]'s right to be present. That's not America. We need to make sure as a country that we do not deny those in guardianships their civil rights.

[redacted]'s rights were violated regularly. He was denied the right to live in the least restrictive environment. He was denied access to his family. He was denied his wishes that he set forth in health surrogacy paperwork. He was denied treatment for his cancer - or even the opportunity to decide if he wanted treatment. Finally, he was denied the right to live by this hospital giving him lethal dose of psychotropic drugs.

It haunts us to know [redacted] suffered a painful death, begging me for a pain pill, struggling to breathe. That is his final days the doctors didn't even believe him when he said he was sick.

But we are also haunted by the knowledge that our little brother who cherished his freedom spent the last year of his life locked up unable to breathe fresh air or walk on grass or the beach he so loved.

I have spent more than 30 years as an investigative journalist at CNN, CBS and in print helping many people along the way. But I could not save my own brother from this corrupt system. My siblings and I are determined to get justice for [redacted] in the hope that we can help other [redacted]s living under this ruthless and deadly guardianship system.

Don't think this will ever happen to you?

It happened to Brittany Spears. It happened to Ruth Lilly. It happened to [redacted] and it can happen to your family next if this system is not fixed. Please let's reform this system now before it happens to anyone else.

Thank you for your time. My siblings and I are willing to come to D.C. and testify.

[redacted]

Written Statement for the Record of
Protection & Advocacy System, Inc., Cheyenne, Wyoming
to the Senate Special Committee on Aging

Chair Casey, Ranking Member Braun, and other members of the special committee, thank you for the opportunity to provide this statement for the record regarding guardianships, conservatorships, protective arrangements, and alternatives.

Wyoming has an antiquated and inadequate guardianship code[1] and as-applied practices that undermine the few remaining protections for putative wards. In Wyoming, it is possible to obtain plenary guardianship of a person without service of process, without the person having legal representation, without testimony, without the right to cross-examine witnesses, and without a court hearing, based on a mere preponderance of the evidence standard. Once the plenary guardianship is in place, court supervision is minimal, varies significantly by county, and the ward has little meaningful recourse to challenge the fitness of the guardian or continuing necessity of the guardianship. Wyoming's guardianship process is a mockery of due process and a portal for fraud, abuse, and exploitation.

Following are examples of guardianship issues encountered in Wyoming by Protection & Advocacy System, Inc.:

- A Wyoming citizen with a disability learned from the group home where he resided that he had a guardian. On investigation, the group home hired the attorney who petitioned for the guardianship. The court file showed that the attorney for the proposed guardian "waived" the individual's right to service of process, "waived" the individual's right to a court hearing and obtained the plenary guardianship order.
- A Wyoming citizen with a disability was civilly committed to an in-patient psychiatric facility. Civil commitments restrict many, but not all, of a person's civil rights, and constitutionally require proof of danger to self or others by clear and convincing evidence. As a condition of discharge from that facility, the institution required the individual to have a guardian. A guardianship was imposed by a mere preponderance of the evidence, effectively abrogating all of the individual's civil rights as a condition for the individual gaining freedom from the institution.
- The mother of an adult Wyoming citizen with a disability forged the individual's signature on a state tax refund check, negotiated the check, and used the proceeds for her own benefit. After doing this, the mother petitioned for guardianship, alleging that the individual needed a guardian because (1) the individual used public transportation to go to and from work and (2) did not know how to cook using a microwave. The parent sought plenary guardianship, which would have allowed her access to the individual's Social Security benefits and earned income. The court set a zero-minute "ghost hearing" and was prepared to sign the plenary guardianship order. Protection & Advocacy was contacted, intervened, and challenged and prevented the guardianship.
- The out-of-state estranged father of a Wyoming citizen with a disability filed a guardianship petition in a county that routinely sets "ghost hearings" in lieu of actual

[1] Wyoming uses "guardianship" to refer to substituted decision-making regarding a person and "conservatorship" to refer to substituted decision-making concerning property.

guardianship hearings. The individual over whom guardianship was sought is an effective self-advocate, works, is active in disability rights organizations, and has an extensive network of advisors who can provide for informed decision-making. The court set a zero-minute "ghost hearing" and was prepared to sign the plenary guardianship order. Protection & Advocacy was contacted, intervened, and challenged and prevented the guardianship.

- Protection & Advocacy discovered an adult with a disability who was civilly committed to an in-patient psychiatric facility. The individual had been in the facility for decades and was subject to a plenary Wyoming guardianship. The facility had no current contact information for the guardian, and had not received communication from the guardian in many years. An extensive search for the guardian was unsuccessful. It is believed that the guardian had died many years earlier, leaving the individual with full deprivation of civil rights and no person to exercise those civil rights. The county in which the guardianship was created does not monitor filing or content of guardianship reports.
- Protection & Advocacy System, Inc. discovered another adult with a disability who was civilly committed to an in-patient psychiatric facility. The individual had a plenary guardian appointed in Wyoming. After searching for the guardian, Protection & Advocacy discovered that the guardian was in an Alzheimer's unit of a nursing home, and had been in that facility "for years."
- Protection & Advocacy System, Inc. represented a Wyoming citizen with a disability who had been forced to allow imposition of guardianship as a condition of discharge from a facility. The guardian was related to the individual. During the course of representation, Protection & Advocacy discovered that this guardian had been removed "for cause" but then altered the date on a court order and continued to hold herself out as a guardian. Multiple agencies continued to treat her as guardian, based on the forged order and false representation.
- An elderly Wyoming citizen who was served in a group home was invited out for lunch and ice cream by a "friend" of the group home owner. During the lunch, the "friend" asked the elderly individual to sign "some papers." The "papers" were a purportedly voluntary petition for guardianship. The individual was subjected to a guardianship without any representation or any inquiry by the court.
- Multiple residents in a state institution were subjected to guardianships where the state Attorney General's Office represented both the institution and the putative guardian. Most of these guardianships were created without service of process. Despite the guardianship code's requirements that guardians advocate for the "least restrictive" and "most appropriate placement" of wards, several of the new guardians were current or former employees of the institution.
- Protection & Advocacy System, Inc. represented an adult Wyoming citizen whose out-of-state brother repeatedly threatens to obtain guardianship. Although Protection & Advocacy has successfully prevented guardianship on two occasions, the brother continues to suggest a desire to obtain guardianship, and the prospect exists that the out-of-state relative could obtain a Wyoming guardianship at any time, without notice or opportunity to prevent the action.
- During representation of one individual with a disability seeking to avoid an unwanted guardianship, Protection & Advocacy System, Inc. learned of another instance in which an individual's guardian had a guardian.

The design of Wyoming's guardianship process causes many of these problems. First, the standard of proof for adult guardianship in Wyoming is preponderance of the evidence. Almost all states require at least clear and convincing evidence for adult guardianships; New Hampshire requires proof beyond a reasonable doubt. Courts addressing constitutional standards for guardianships draw analogies to civil commitment proceedings, which require clear and convincing evidence. See, e.g., *In re Guardianship of Hedin*, 528 N.W.2d 567 (Iowa 1995), *In re Boyer*, 636 P.2d 1085 (Utah 1981), *Sabrosky v. Denver Dept. Social Svcs.*, 781 P.2d 106 (Colo. App. 1989) and *In re Guardianship of Reyes*, 152 Ariz. 235, 731 P.2d 130 (Ariz. App. 1986).

Recommendation: at least a clear and convincing evidence for adult guardianships is needed to protect the constitutional interest.

Wyoming does not mandate appointment of counsel to represent the desires of the proposed ward. Wyoming has a process to appoint guardians ad litem to represent "the best interests of the wards." In practice, guardians ad litem have been selected or nominated by the putative guardian or are currently selected from lists of guardians ad litem. The method does not alter the result. Protection & Advocacy System, Inc. cannot identify a single situation in Wyoming where any guardian ad litem recommended against imposition of a guardian on a proposed ward. In contrast, other states mandate appointment of an attorney who will represent the ward's desires. In civil commitment proceedings, juvenile adjudication cases, and termination of parental rights cases, attorneys are required constitutionally, and represent the express desires of the individuals.

Recommendation: appointment at public expense of an attorney representing the ward's expressed desires is needed to protect the constitutional interest.

By requiring that the state rules of civil procedure be followed after the guardianship petition is filed, Wyoming appears to require service of process on the proposed ward. In practice, this frequently does not occur. A different section of the state law allows "notice" to the proposed ward. Without the formality of service of process, persons with disabilities may not understand the implications of a "notice."

Recommendation: the formality of personal service of process is necessary to protect the constitutional interest.

Many Wyoming courts schedule zero-minute "ghost hearings" for guardianship cases, and do not hold actual hearings unless the proposed ward, acting pro se, or a private attorney acting for the proposed ward enters an appearance and demands a hearing. Jury demands are rare, and most proposed wards are not aware of a right to trial by jury.

Recommendation: to protect the constitutional interests, no waiver of a right to trial by jury should be effective unless knowingly and voluntarily made by the proposed ward on the record, and no guardianship order should be permitted in the absence of a trial on the merits, with specific findings of fact and conclusions of law. Further, waiver of the right to a jury or to trial should not occur by entry of a default judgment in any proceeding in which constitutional rights

attach, such as termination of parental rights, juvenile adjudications, civil commitments, or adult guardianships.

Wyoming only allows wards to challenge existing guardianships by filing notarized statements of objections. No counsel are appointed for wards, no jury trial rights attach, and no trials on the merits occur if wards successfully object. The burden of proof is placed on the ward, by an unspecified standard of proof, to show why the guardian or guardianship should be terminated. Other states, such as Iowa, place the burden on the guardian to show why the guardianship should be continued, appoint counsel to represent the ward, and apply constitutional safeguards.

Recommendation: to protect the constitutional interest, the burden of proof should always be on the guardian to show by at least clear and convincing evidence why the guardianship should be continued, courts should always appoint counsel to represent the ward, and courts should always apply constitutional safeguards.

Many courts lack awareness of alternatives to guardianship, and consider guardianship as the first option, rather than the last. Several states have adopted laws requiring consideration of supported decision making as the first option, and requiring specific findings of fact why such approaches cannot work before considering guardianship. See, e.g., the Texas Supported Decision-Making Agreement Act, codified at Texas Estates Code §§1357.001 et seq.

Many attorneys in private practice are unaware of the serious deprivations of rights involved in guardianships, of alternatives to guardianships, or of resources to address fraud, abuse, or exploitation risks in guardianship matters. It would be helpful if the knowledge and experience of the protection and advocacy agencies could be brought to bear in guardianship matters. This would help protect individual putative wards, advance the constitutional interest, and educate courts and others on alternatives to guardianship. The nation's network of protection and advocacy agencies is uniquely prepared to address these needs, and with appropriate funding could do so.

Our family's horror story started in September of 2009. My step-daughter [redacted] had two brain aneurysms September 9, 2009. My husband [redacted] was her MPOA and also a trustee on her trusts. He gave the Dr.'s at [redacted] Hospital in Newport Beach, California permission to do everything they wanted to do to try to save her life. She was on life support. He begged them to save her life.

On September 11, 2009, we were told that [redacted] probably would not make it through the weekend and if she did, her father should think about taking her off life support. Bill told the Dr.'s to do everything possible to save [redacted]'s life.

Two of the other trustees, [redacted] and [redacted] who were at the hospital went directly out and got attorneys to file lies about my husband [redacted] claiming that he was going to "pull the plug on [redacted]. They made several false claims about our family and asked the court to remove my husband's MPOA. Their vexatious actions were due the fact that if [redacted] were to die, her twin brother [redacted] would inherit her trusts worth 100's of millions and [redacted] and [redacted] knew that [redacted] would never allow them to manage his assets or be trustees. There was tension between [redacted] our family and these two trustees.

October 21, 2009, a petition was filed in the Arizona Probate Court for a guardianship and conservatorship o[redacted] by two of his distant half sisters and his aunt who did not even know where he lived. This was instigated by [redacted] and [redacted], the trustees in an attempt to get control of all of the trusts assets. In this petition, false and horrific claims were made against my husband [redacted] myself and our two daughters.

Not having been exposed to the probate court before, we thought that all we would have to do was to ask for evidence of the claims, prove they were false and vexatious and the case would be over. That was when the horror started.

October 26, 2009, Bob Wilson and [redacted] filed to remove my husband as a trustee making false claims against him that we later proved were false. They paid his legal fees.

The AZ Commissioner [redacted] would not follow the Rules of Court or the laws. She would not order the petitioners to show their evidence. She treated our son, who is very competent, like he wasn't there and did not have any rights. Whatever the petitioners attorneys wanted, she ordered without giving [redacted] due process or asking him what he wanted. She appointed a GAL to ask [redacted] if he had hired his own attorney and stated that if [redacted] had hired his own attorney, the GAL could ask the court to be terminated. This was not only a violation of [redacted] rights, it was just running up the legal fees and prolonging the case.

We went through 8 years of terrorist attacks from the attorneys and threats from the judges for fighting for our rights and for our son's rights. The judges appointed 3 Dr.'s to evaluate [redacted] all of them found him competent. This was humiliating and extremely stressful and embarrassing for him and for our family. The petitioners attorneys filed [redacted] medical records in the court filings. We objected and the judges did nothing. The petitioners subpoenaed our financial records and the court allowed it. We had to prove ourselves innocent but they didn't have to provide any evidence. This was abuse of power and a violation of our privacy.

After six years of being attacked, abused by the court and the court now following the laws or upholding our rights, there was a trial for 10 days. Judge [redacted] found [redacted] competent and we were

vindicated of any wrong doing. The judge also stated that he knew what the petitioners and the trustees were doing and that the case should never have lasted over 6 weeks at the most. The petitioners appealed and lost with the appeals court stating that the petitioners never had a case. The appealed to the Arizona Supreme Court and the Supreme Court would not take the case.

2010 [redacted] filed a petition in the LA Superior Court, Probate division, to remove the trustees for violating their fiduciary duties to him and for not giving him his distributions as required by the trust. There was another petition for their removal filed in 2014. The judges stayed the case for years allowing the trustees attorneys to drain the trust for legal fees for 10's of millions. [redacted] attorneys motioned the court several times to remove the trustees to prevent them from wasting the trust assets. The judges refused to protect [redacted] or his assets.

We have endured over 13 years of court abuse and violations of the laws and [redacted] rights as well as ours. Our family has been damaged beyond repair.

The two trustees took [redacted] from rehab in late October, took her to her home and put 6 bodyguards on her to keep us away from her. We were a very close family. They lied to her and secluded her from her friends. She has brain damage and other health issues and the Dr.'s said she needed to be with family for her recovery. The trustees would not allow us to see her. She has told the court that she was told lies about us and that she loves her family. We filed a petition in California for a conservator of her estate to get these trustees off her private estate management. Judge [redacted] said that even if [redacted] is being unduly influenced, she has a lot of money. She also stated that she knows the attorneys [redacted] has and she thinks they are good attorneys. [redacted] had bodyguards for 2 ½ years and now has a handler living with her. She can't go anywhere alone and we cannot see her or talk to her. This is criminal, kidnapping and seclusion.

The violations committed by the court are a pattern and practice of abuse.

Not listening to the person directly.

Disrespect and hostile treatment by the judges.

No evidence is required to be filed when filing a petition.

The person is not given due process to a trial by jury when their freedom and their assets/property is at stake.

The directives of the person are not followed when they have appointed who they would want as their guardian and conservator if one is needed.

Several Dr.'s are appointed in an attempt to find one that will state that the person is incapacitated. There is a goal to take the assets of the person.

Due process is not given.

Laws are not followed by the judges, attorneys or fiduciaries.

The court condones abuse, false charges, theft, lies by the attorneys and destroying families.

When the judges, attorneys, fiduciaries, guardians, conservators abuse their power, do not follow the laws and violate the rights of the person and their families, we have a totally broken system.

The judges are protecting the attorneys, fiduciaries, guardians and conservators crimes.

This is NOT American.

Courts should not be allowed to oversee themselves, this breeds corruption. The public has no where to go to get help.

People are allowed to die without being able to have their loved ones with them. Estates are stolen by attorneys, fiduciaries, guardians and conservators with absolutely no accountability.

The fiduciary boards are doing nothing about all the complaints being filed by family members.

The laws are not protecting people.

Abolish absolute immunity for judges and qualified immunity for everyone else. Hold them highly accountable when they violate the laws or violate anyone's rights. This is the only way to stop the corruption and abuse.

[redacted]

[redacted]

From: [redacted]
Sent: Tuesday, March 21, 2023 11:07 AM
To: Guardianships (Aging)
Subject: Guardianship concerns

Hello,

I am sending this on behalf of my mother [redacted] who has been a victim of Idaho state guardianship and conservatorship for the past 3 years. I feel like we were kind of 'forced' to put our elderly mother in a facility. She was having issues with paranoia and without proper diagnosis from any doctor she was sent to [redacted] Hospital in [redacted] ID for 'mental issues.' We as the family had no say in what could happen with our mother. She had a guardian that took all her rights, and wouldn't let her own family call by changing the password several times so we could not check in. After that she was sent to an assisted living facility while still owning her own home and not being able to go back. So the money and bills started adding up due to this.

The worst came when we tried to move her back home and [redacted], another Idaho guardian decided to remove her from her home 2 days before Christmas and put her in a new facility where they were drugging her against her will and she was also forced to take injections of Astrada which has awful side effects. She had no doctor diagnosis that said she needed these meds or injections. She has permanent damage from it now. Our mother loved talking to us and when her cell phone got 'broken' we became concerned and we had to call the facility and everytime we did there was an excuse of she's 'sleeping or doesn't want to talk' all the time or we would even get hung up on. After alot of court hearings we were finally able to move her up closer to my sister and I but that is not the end of it. They sold her house and gave away all her belongings without her being able to see any of it, which is sad.

[redacted] was doing a lot better once she was close to her family and not isolated. She was happy and smiling again and not angry or depressed. She had this for about a year and now it seems like this is all happening again. [redacted] is stuck in a room in a facility, not being able to visit my sister, nephew, and brother in law who used to visit her weekly due to the current guardian. There are lots of fees that no one can attest for, especially on the attorney side. She has said several times she doesn't want 3 attorneys and has fired one several times but they keep billing her. It is an ongoing situation. The only victim here in the end is my mother being isolated and drained of her funds and bored in her room all day. I am the only one that is able to visit and a few of her friends can call her here and there. We are just sick of the state guardianship and how they seem to cash in on victims. I have more examples but this is what I wanted to say in a nutshell and can share more if needed. Thank you for your time.

Sincerely,

[redacted]

[redacted]

From: [redacted]
Sent: Sunday, March 19, 2023 6:22 PM
To: Guardianships (Aging)
Subject: Fwd: Senate Committe on Aging

On Sun, Mar 19, 2023, 9:54 AM [redacted] wrote:
Dear Senate Committee on Aging,

I am a friend of someone whom I've witnessed cruel treatment with regards to her mother ([redacted]) in the aging system including being diagnosed as mental and sent to a facility falsely. [redacted] was medicated and restricted from family, her house was sold and all its assets and belongings were transferred to the guardian system and conservatorship.. Lawyers were put in place and [redacted] nor the family had any rights. It happened so fast that no one would have had any time to question it. Linda even had a will that was disregarded. She was not incapacitated as they stated, she definitely needed a little help but was of sound mind to make decisions. Finally, my friend was able to get someone to listen to [redacted] her request was to go live near her daughter. All was good for about 6 months. My friend fought long and hard to get her mom moved to a location closer to her in hopes to help manage her care. My friend asked questions about her mom and her care logs as any family member might do to understand the protocol. [redacted] was then appointed a guardian to move her, the guardian also relocated herself as a package deal, all at the mother's expense of lawyers and professional staff requesting this or that. It appears that once there is a hook onto a client all the people involved with that client stay connected. Upon arrival it was clear this guardian did not like the client's daughter and made many false accusations including a removal from the facility and blocking her from seeing her mom. She was forbidden to text, call or visit her mom in this new facility. I've seen visual recordings of my friend in a conference call between the guardian and the mom, daughter, and her husband all present in a conference room.The guardian requested and had authorities escort her off the grounds with no explanation as to why. Currently, there are no laws to prevent this. [redacted] was coherent and wanted answers also. An unlawful protection order was filed with no evidence to state and prove wrongdoing from the daughter or her family. Children and grandkids don't want to visit for fear this would happen to them. [redacted] has not had any family visits since October. In Idaho at least, the guardians have unlimited and complete power over another human being and you can't challenge them. [redacted] did not investigate this situation and would not return my friend's calls.

A guardian should have more investigation upon being appointed to our elderly, a 30 minute class should not merit such control. They are not Doctors or nurses and should not have the authority to suggest drugs for any behavior or sickness. Elderly get bladder infections regularly and one of the first signs is confusion and irritability. In [redacted]s case this is what got her sent back to the psych ward.
I was shocked that a guardian has the right to transport a client in their own personal vehicle with no questions asked. This guardian took Linda to another state for a family wedding all at [redacted]'s expense!
My friend could not transport her mom and attend this wedding for fear she would be charged. Our elderly are precious, fragile and depend on someone to ensure they age out peacefully including family and friends for comfort as much as possible. If there is a problem with a guardian, the family should be able to request another member immediately. The system is supposed to protect all parties involved, not alienate the family from each other. This was not granted in my friend's case either. My friend has to wait until September when the protection expires without seeing, talking or having any correspondence with her mom. This guardian is a bully!

Prior to this incident I had visited [redacted] while her daughter was dropping off some supplies. [redacted] wanted to go outside in the visitors area to visit, she was told no she could not go outdoors, there was no reason, it was a nice day. She was very happy to see her daughter and just wanted to visit. I have seen many photos of [redacted] in the facility prior to the guardians' accusations and was puzzled that she was always wearing the same set of clothing that her daughter had bought her, each time becoming more and more stained, her nails dirty and unclipped and hair was not groomed. My friend prior to the ban had always kept her mom very well groomed as this was important to [redacted].

I attended the protection order hearing in reference to the accusation of my friend made by the guardian. First, they only let me stay because if they asked me to leave then they would have had to have the guardian's mom leave also (this was apparent to me when they questioned who I was and who she was). The guardian finally presented that she feared for her life. The witnesses called on behalf of the guardian were non committal and vague, neither of them had investigated the situation but took the guardian's word. When asked if they returned my friend's calls they said," no.' I was appalled at the lies and inconsistencies the guardian made under oath, and that's an understatement!!! She said things in that conference call that were completely contradictory to what she told the court, including accusing my friend of elder abuse! My friend was not permitted to even state her side of the story, she had pages and pages of documentation to state her case. The judge threw it out and it remained that my friend could not step foot near the premises without having a legal charge against her.
My friend kept telling me all this stuff about her mom and the situation she was in, I honestly thought she was losing her mind and that this could not be true. After all, we have laws in order to protect this very thing. I reached out to lawyer friends and questioned the process, they said, this can't happen, there are laws. I am here to tell you the pain and suffering this guardian has put this poor family through is outrageous and needs to be examined expedentially. The system is broken, the laws protect lawyers, judges, guardians, conservators, everyone except the elderly and their families. It's downright sneaky and pitiful. If I had not seen this with my own eyes, I would have never believed it.

There are movies about this type of thing happening in every state. These movies are very accurate as to what happened to my friend. There are facebook groups with people all over the states suffering from this exact situation. I suggest this process be thoroughly investigated looking for loopholes in the system. Furthermore, reach out to the families that this is happening to, their pain and suffering is heartbreaking.

As I age into the next years of my life I pray that my family and I will not fall into one of these traps. Having recently gone through overseeing one of my own family members in a home situation, I witnessed some very lonely elderly due to no family support. They become depressed, sad and sometimes combative. Who wouldn't if you were locked up in a room with no outlet?

Thank you for acknowledging that this system needs to be looked into.

[redacted]

Written Statement of [redacted]
Pittsfield Massachusetts

For the U.S. Senate Special Committee on Aging

Guardianship, Conservatorships, Protective Arrangements, and Alternatives

March 15, 2023

Hi, my name [redacted] I am from Pittsfield Massachusetts. I am writing in regard to my support for Supported Decision-Making (SDM).

In 2009, I was delighted to have the opportunity to meet a young woman named [redacted] who needed a place to stay on Thanksgiving Eve, so I opened my home to her, and our relationship blossomed from the get-go. [redacted] was supported b[redacted] At this time, I was a single mother raising two beautiful children, [redacted] and God had a plan for [redacted] arrival to our family. She fit right in with the family activities and enjoyed going to church, parties and having family dinners together. As time went by, [redacted] eeded help finding out where she was going to live. Using her own SDM Model at the time, [redacted] reached to her friend [redacted] and confided in her and had a one-to-one discussion about her options. [redacted] as very happy with my family and our friends, and she decided to stay.

Being asked to b[redacted] Caregiver was TRULY the Best Decision I have ever made in my life. [redacted] has opened my eyes and my children's too so much. She helped my children learn more on how to respect and help people with disabilities. She is the core of our family. Our relationship blossomed so much that I asked her to be a Bridesmaid in my wedding.

In 2014, when [redacted] was asked about SDM, I thought of her future. This would be the Best Model for [redacted] to choose, because it would secure her rights and choices. [redacted] nows who is in her life and who she trusts. She is also capable of making decisions. However, [redacted] tends to need moral support from her SDM Team, one-on-one discussions, conversations going over the pros and cons. and getting info on the big picture of the decision. When [redacted] met with [redacted] and CPR about SDM, I was happy she chose to join the pilot, because she made an awesome choice for her future and a decision to secure her skills.

Since [redacted] signed her SDM Agreement, she has flourished in trying to achieve her big dreams and work on her independence. She has consulted with her SDM Team on some major decisions, such as her banking, relationships, health, and best of all living her dreams to travel. [redacted] has joined Karate and traveled the world to London, Paris, and Rome with a friend and across the U.S. Over the course of the last couple years, she has had to make serious life decisions, and the SDM model really helped her keep her own voice. She leaned on her SDM Team when she needed support and she was able to receive more education around the decisions that needed to be made. At the end of the day, [redacted] ice is always being heard, and we are very thankful for Supported Decision-Making.

Dear Senators and the Senate Special Committee on Aging,

I have been affected by the guardianship and probate process when a loved one was placed in the care of the courts. I witnessed the destruction it caused to our family. There are thousands of stories of individuals who have been wronged by guardianship or conservatorship. Only a few of their stories will ever be told.

The numbers and statistics regarding guardianships are difficult to locate. There is not a consistent ratio of number of judges to the population. The laws differ between states. In fact, the terms guardianship and conservatorship have very different meanings in different states.

In Texas, guardianship is a legal tool, which allows a person to make decisions for another person. According to the Texas Estates Code, "the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person, including by presuming that the incapacitated person retains capacity to make personal decisions regarding the person's residence."

Guardianships, by design, discourage development and increases reliance on others. The rights of the ward are often totally stripped away. Except, ironically, the right to vote. A person who is deemed capacitated in Texas may retain the right to vote but loses the right to make a decision regarding their own well-being.

I live in Harris County, the third largest county by population in the United States. I studied the dockets between 1980-2023. According to my calculation, there are approximately 6,279 guardianship cases that are open in Harris County. This does not account for guardianships filed prior to 1980 or those filed in 2023. These guardianships are overseen by only four probate judges.

For comparison, Los Angeles County, CA and Cook County, IL have ten probate judges. Maricopa County (link here) oversees more than 9,000 active guardianship cases, over $500 million in conservatorship assets and 3,000 active orders for treatments.

South Carolina's Probate Courts have recently been under intense scrutiny due to the hightly publicized Murdaugh murder trial. The State of South Carolina has one probate judge per county for a total of 47 judges state-wide for a population of 5.191 million people.

Former Harris County Probate Judge Mike Wood testified in front of the Texas Senate Committee on Jurisprudence in 2006. At that time, he said on the record:

"I had the staff total the assets and inventories that were filed for my approval in one quarter and then they did it again five years later. Both times it was about three-quarters of a billion dollars. That's just the assets and the inventories, not necessarily the estates I was really supervising, most of those are independent estates. But my court, Court 1, is probably among the busiest probate courts in the nation."

For perspective, that is the number of assets (including those in wills and guardianships) filed in **ONE** of four courts in Harris County. Based on the assumption that Judge Wood receives 30 percent of all cases (as he indicated in this hearing), that would mean that Harris County Probate Courts oversee $2.5 billion dollars in assets and inventories per year.

Disability and Abuse Project
Disability and Guardianship Project

1717 E. Vista Chino A7-667, Palm Springs, CA 92262
(818) 230-5156 • www.spectruminstitute.org

March 27, 2023

United States Senate
Special Committee on Aging

Re: Hearing on Guardianship and Alternatives: Recommendations

Dear Committee Members and Staff:

We commend the committee for holding a hearing focused on ways to improve state guardianship systems by encouraging the use of less restrictive alternatives when they are feasible. When guardianships are necessary, Congress should encourage states to adopt monitoring mechanisms to eliminate or reduce financial exploitation and violations of personal rights.

To this end, we are offering a few concrete recommendations on what Congress can do to accomplish these goals.

We reaffirm several proposals that we submitted to the Senate Judiciary Committee's Subcommittee on the Constitution two years ago.
https://disabilityandguardianship.org/judiciary-committee-proposals.pdf

> Funding positions for lawyers in the Disability Rights Section at Department of Justice (DOJ) who will focus exclusively on violations of the Americans with Disabilities Act by judges and attorneys in state guardianship and conservatorship proceedings. Right now, the lawyers in this section are sitting on complaints for years without taking action, probably due to under-funding.
>
> Funding lawyers in the criminal division of the DOJ and investigators in the FBI who will focus on guardians and conservators who are violating federal criminal laws and thus making seniors and people with disabilities victims of federal crimes. Presently, federal prosecutors and investigators are ignoring these cases, probably due to under-funding.
>
> Require that a certain percent of federal funds that are allocated to protection and advocacy agencies (like Disability Rights California) must be used to protect the rights of people with disabilities who are entangled in guardianship and conservatorship proceedings. Despite receiving tens of millions of federal

dollars to protect the rights of people with disabilities, these agencies have been doing almost nothing for this particular population.

Require that any state or local courts that receive federal funds for any purpose must require attorneys who are appointed by the court to represent protected persons in guardianship or conservatorship proceedings to attend periodic training programs on the application of the Americans With Disabilities Act and section 504 of the rehabilitation act to guardianship and conservatorship proceedings. Right now, the courts (and appointed attorneys) act as though the ADA does not apply to these proceeding, which is not true.

More than six years ago, Congress passed S.178 which was intended to protect elders from abuse and to stimulate improvements in state guardianship proceedings. Section 505 of the bill directed the Department of Justice to "publish best practices for improving guardianship proceedings." On November 1, 2017, we wrote to Acting Assistant Attorney General John Gore to encourage the DOJ to issue a guidance memo that encourages state judicial proceedings to comply with the Americans with Disabilities Act as an essential component of "best practices." https://disabilityandguardianship.org/john-gore-letter.pdf To date, the DOJ has never complied with this directive of S. 178. A DOJ guidance memo on guardianship best practices has never been issued. Congress should inquire into why the DOJ has ignored this congressional directive.

Finally, we urge the committee to propose legislation that will provide funding to the states for demonstration projects that encourage supported decision-making (SDM) as a less restrictive alternative to guardianships and conservatorships. For example, California could use federal funding for counseling on supported decision-making at the self-help centers in superior courts throughout the state as mandated by recently enacted AB 1663. Federal funding could also assist other states to emulate a pilot project in New York that helps adults with mental disabilities and their families develop safe and effective SDM arrangements.

We applaud the committee for holding this hearing, however, at the same time we wonder how long it will take for Congress to take steps not only to adopt additional remedial legislation but to ensure that reforms already adopted are in fact implemented.

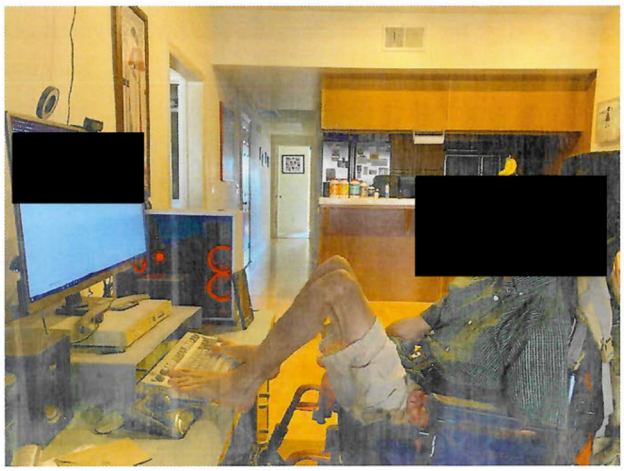
Respectfully submitted:

[redacted]
Legal Director
[redacted]

[redacted]
Chairperson
[redacted]

623

Submitted Testimony of [redacted]
Orange County, California
for the Senate Special Committee on Aging Hearing
on Alternatives to Guardianship
March 2023



Hi. My name is [redacted] and I live in [redacted] California. I'm a Korean American man who has cerebral palsy. I am using a communication device at the base of my wheelchair, by typing with my toes.

I am [redacted]. My family never thought about conserving me. Just because I'm disabled, it doesn't mean that I can't function on my own. My parents don't have power of attorney on anything, surely not my bank account. I'm going through the process of setting up a Durable Health Care Power of Attorney with my brothers, letting them know my wishes.

My parents gave me free will and I learned from my mistakes.

I understand that guardianship is something that most families have to face because who doesn't want your adult child to be safe.

When a person is being conserved, they have fewer rights than somebody that is in prison.

I've been living on my own with the assistance from my staff for over 20 years. No one has control over me.

I know many people who are in a similar situation, but they get help from others in their circle to live their lives how they want to and they don't need guardianship whatsoever.

Guardianship is not the answer. There are so many different options to maintain the safety of your loved ones.

Thank you for allowing me to speak to you today.

[redacted] *n be reached* [redacted]

Statement to U.S. Senate Special Committee on Aging – March 23, 2023

My name is [redacted] and I am founder of [redacted]. I knew nothing about guardianships until my aunt was entrapped for eight years. Her case lays out the anatomy of a predatory guardianship, underscoring the playbook of practices that are becoming more common in exploiting seniors.

The Case of Dr [redacted]

Growing up in North Carolina, [redacted] achieved the American Dream, marrying her college sweetheart and earning a doctorate, becoming Supervisor of Instruction for public schools in Montgomery County, Maryland – one of the early Black leaders in that role. She retired to Palm Coast, Florida with her husband. They saved and invested well, amassing a nearly $5 million estate. He died in 2003, and in 2006 she created a Revocable Living Trust, which named her son as contingent beneficiary along with her estranged granddaughter.

A: Instigation *(someone instigates the guardianship innocently or with bad intent)*
In January 2012, at [redacted] was independently living – shopping, cooking and driving her sports Mercedes, a gift from her late husband. She had just celebrated Christmas with her younger sister [redacted] and her family who had come in from New York. [redacted] appeared happy and had full mental capacity. Weeks later, a family friend invited her to visit in Winter Garden, Florida. Before leaving, [redacted] got her blood pressure medicine, and the friend covertly received a two-line note from the doctor stating that [redacted] was "mentally incompetent." The doctor, who had been accused of being "a pill pusher," also gave him the name of a guardianship attorney.

B: Isolation *(senior is isolated and often medicated in a home or facility)*
The friend took [redacted] phone and changed her mailing address. In May 2012, when [redacted] only son died, the friend filed for guardianship stating he was a "nephew." He failed to name [redacted] as next of kin. It came out later in court that [redacted] was medicated. Evaluators examined her under those conditions. He also found the granddaughter, who had just filed bankruptcy. She joined forces with him after realizing she was named in the Trust. One day [redacted] was left alone and called 911. She had been captive for eight months. The officer, who spent four hours with her, saw she was of sound mind. That night, [redacted] handwrote her wishes which included removing the granddaughter from her Trust, hiring an attorney, and getting an independent psychiatric evaluation. The next day, her niece [redacted] flew in, and [redacted] got the document notarized. Then, [redacted] flew in.

C. Predation *(guardian, attorneys and/or legal insiders engage in calculated scheme to take over assets)*
On October 4, 2012, the judge saw no need for guardianship and rejected the petitions by the friend and granddaughter. The granddaughter testified that she "didn't really know her grandmother." The family thought the ordeal was over. [redacted] went back to New York. In Palm Coast, [redacted] discovered that the granddaughter changed the signature cards on her bank accounts using the doctor's note and a letter from her attorneys ("the Firm"). On October 11, 2012, the Firm sent [redacted] attorney a letter stating that the granddaughter had "accepted appointment as Successor Trustee…. Our client does not want to see the trust property or contents at risk. Considering Ms. [redacted] condition, we are concerned about loss or damage to her individual assets." That act was predatory. [redacted] had not relinquished the Trust nor had been declared incapacitated by the court.

D. Faulty Evaluation *(court evaluators support a predetermined outcome to strip all rights)*
In December 2012, [redacted] sought an independent psychiatric evaluation which concluded that she had no paranoid delusions. She then re-wrote her Revocable Trust removing the granddaughter. She added her sister and niece as beneficiaries. The Firm claimed [redacted] did not properly fund the Trust. The granddaughter was still controlling the Trust assets. The Firm kept filing documents stating that [redacted] was "paranoid" and needed a guardianship for "protection." In May 2013, three new examiners from the court list saw [redacted] together for 25 minutes. They indicated that [redacted] had "paranoia" because she believed that someone was trying to steal her money. One examiner was concerned that [redacted] did not know her mortgage amount which was on autopay. They also indicated "incontrovertible evidence of memory loss" when [redacted] couldn't recall the parties of World War II. Each of the examiners showed no discernment why they stripped away specific rights.

E. Biased Adjudication *(judge makes determination based on flawed evaluations and bias toward guardianship)*
The flawed evaluation led to [redacted] limited guardianship that stripped away twelve of her fourteen rights. On June 30, 2013, the court named [redacted] limited guardian per [redacted] request. The judge said, "I think it's in Ms. [redacted] best interest to have someone who lives with her or who is near her or who's in a position to help her with decisions that she needs to make. I don't find that [the granddaughter] can do that." In the September 18,

2013 hearing, [redacted] gave very clear testimony. The judge stated, "I do not claim to make any decisions about whether or not she's incompetent or not. But in terms of today's hearing, she has been very articulate. And I counted three instances where she helped witnesses in this case recall details. And to me, that suggests that she ought to be able to say, at this point, who can help with her finances." When [redacted] was asked if she would like the court to remove the granddaughter as successor trustee, she replied, "Without a doubt… She just filed bankruptcy in March, and if she could get her hands on my assets, I would have to go to the poorhouse, because she'd spend them immediately." The judge named [redacted] s successor trustee.

F. Vexatious Litigation *(attorneys make false claims and then litigate them to increase billings)*
The Firm began to claim there was a "family dispute," object to anything filed, and defame [redacted] and [redacted] They claimed that their client had a "long loving relationship" with her grandmother. The granddaughter filed petitions for visitation and communication even after [redacted] estified she did not want to see her. The court denied the petitions. Her attorney sought a second psychiatric evaluation and the doctor determined that she possessed testamentary capacity as before. On April 17, 2014, her attorney corrected the 2012 Trust keeping [redacted] wishes intact. That became the 2014 Trust. The Firm accused [redacted] f changing it. [redacted] attorney reiterated that [redacted] was not in Florida and did not change it. The granddaughter appealed the court's ruling on replacing her as trustee and lost. While she controlled the Trust, the Firm was improperly paid $40,000. The rest of their fees were billed against the estate later. During the case, there were over 1,000 filings.

G. Constant Victimization *(senior is subjugated and subjected to legal harassment and abuse)*
[redacted] was forced to defend herself in proceedings. In the 01/25/15 Affidavit, [redacted] said, "[My granddaughter] soon learned what she had to gain by getting me declared incapacitated and, since then, she has shown me no mercy... I am a victim in this situation, and I want it to stop… When my son was very ill and needed a kidney transplant, I decided I would help her by putting her in my Trust in 2006 as Successor Trustee… That was one of the biggest mistakes I ever made because I really did not know what kind of adult she had grown up to be." In June 2015, there was another doctor's report that concluded Lillie had capacity to determine her estate plan. Despite the stress of the guardianship, [redacted] ved a normal existence in her home with her family – having dinner, watching movies, etc. However, in 2015, after [redacted] iled to regain her rights and the case was moved from Orange County (the jurisdiction of the friend's home) to Flagler County (where [redacted] home was located), everything changed drastically. There were shocking discrepancies between the two counties.

H. Due Process Violations *(judge ignores due process and appoints court insiders paid from assets)*
The Flagler judge "put aside" the Orange County rulings, suspended [redacted] as limited guardian and trustee with no hearing or evidence of wrongdoing and appointed three unnecessary court agents paid out of [redacted] assets. The guardian ad litem, recommended by the Firm, was adversarial to [redacted] and [redacted] and prevented [redacted] om hiring the attorney of her choice which led to the appointment of the attorney ad litem. She was adversarial to both [redacted] and [redacted] and recommended stripping away more of [redacted] rights. The Firm was allowed to re-litigate issues that were already resolved by the Orange County court and Court of Appeals. They made up claims that [redacted] misappropriated funds. Despite a court-ordered audit and CPA report that refuted the claim, the judge appointed a special fiduciary who was then appointed emergency temporary guardian (ETG).

I. Deception *(court-appointed agents lie to the court to entrap the senior and defame the family/supporters)*
On July 1, 2016, the ETG (on her first day) and attorney ad litem made false "missing person" and "abandoned house" claims to the Sheriff's Office and accused [redacted] of "doing something" to her sister. Yet, the officer wrote: "I observed the home to be clean and orderly. At the time of my visit, White was not incapacitated… I did not suspect abuse or neglect." The ETG stated she would be "making living arrangements" for [redacted] even though she had not met her yet or been in the home. At the August 19, 2016 hearing, the ETG and attorney ad litem took [redacted] a room to be examined for further incapacity and forced her to meet with reps from an assisted living facility despite her desire to "age-in-place." The ETG then sent [redacted] nd [redacted] letter stating that they did not have permission to live with [redacted] even though a court-appointed doctor wrote that [redacted] care situation was good. [redacted] ttorney filed to enjoin the ETG from changing [redacted] living arrangements and to reach agreement on a "qualified, disinterested geriatric care manager" to make an assessment. The ETG ignored it, then hastily sent someone to [redacted] house and referred to the visit as a "care manager's report."

J. Deprivation *(guardian neglects senior while billing high rates against the estate)*
The ETG failed to pay [redacted] bills or give [redacted] ny of her own money for food and living expenses, yet she was billing $375 an hour. Her first month's bill was $17,000. [redacted] went three weeks without hot water, and at

various times the water, electricity and TV were turned off. [redacted] and [redacted] paid [redacted] basic expenses out-of-pocket with no reimbursement. [redacted] niece [redacted] led a complaint against the ETG for neglect.

K. Abduction *(court agents abduct senior and refuse to disclose her location)*
At 12:03 p.m. on August 30, 2016, [redacted] attorney filed an objection to the guardianship plan. By 1:00 p.m., [redacted] was gone, never to return home. The ETG and attorney ad litem seized her from a doctor's appointment while Sheila was filling out paperwork in the other room. There was no notice, no danger, no emergency and no justification. They refused to disclose [redacted] location. They took her before there could be a hearing on the injunction motion and while she still retained the right to choose with whom to socialize. This action was endorsed by the Firm and guardian ad litem in subsequent documents. The judge ignored emergency motions.

L. Medical Obstruction *(senior is medicated to mimic/enhance dementia and force compliance)*
On September 12, 2016, an examining report indicated that [redacted] had: "major neurocognitive disorder due to Alzheimer's Disease with severely impaired cognitive functioning. She was confused and severely disoriented... She cannot live independently and cannot manage her affairs. She is at risk for... exploitation, or undue influence." Before [redacted] was taken, she did not exhibit signs of Alzheimer's. [redacted] husband had Alzheimer's Disease and she took care of him for eight years. To the family, such sudden decline meant that either the doctor lied or [redacted] had been "chemically restrained" before the evaluation. The family's baseline is the hours of video footage from the week of July 25, 2016 which demonstrates [redacted] clear mental capacity.

M. Legal Obstruction *(court agents block family from hearings and "speak" for senior)*
On September 23, 2016, [redacted] last two rights were stripped away – her right to vote and right to choose with whom to socialize. [redacted] was not at her own hearing, nor were her sister or nieces. The attorney ad litem requested that the hearing be closed and put forth that [redacted] did not have standing to participate because she was not a lineal descendant and thus not "next of kin," and was not an "interested party." The judge deemed [redacted] not necessary" and blocked [redacted] and [redacted] from testifying as well. The attorney ad litem waived [redacted] appearance. Only the granddaughter, the Firm and attorney ad litem were present. [redacted] counsel could not be present. The judge bifurcated the docket so [redacted] could not see certain filings, particularly related to finances. The result was to hamper [redacted] ability to object to their actions, appeal decisions or sue them.

N. "Legalized" Isolation *(court agents isolate senior from family/supporters and/or greatly restrict access)*
[redacted] and [redacted] tried to file a missing person claim and were told they could not because [redacted] was not "missing;" the guardian knew her location. The family found out later that [redacted] had escaped during Hurricane Matthew, just weeks after she was taken. She called a neighbor, and he got her. When she made it home, [redacted] had already evacuated. The ETG and attorney ad litem seized [redacted] again. The judge denied visitation based on the guardian's claims that [redacted] and her family were "agitating [redacted] there was no evidence provided. Yet [redacted] submitted police reports indicating that the guardian had lied to law enforcement and the court about why she took [redacted] (e.g. house was "in disrepair"). In November 2018, private investigators found [redacted] in a locked memory care facility an hour away in Volusia County. [redacted] and [redacted] flew to Florida. It was a joyous reunion. [redacted] had no idea that she was being hidden. On camera [redacted] said she wanted her sister, wanted to speak to the judge and go to New York. [redacted] led the details with the court, but the judge would not hear it since she had taken away her "interested party" status. After that, they needed a "passcode" to speak with her which no one gave them. [redacted] was isolated for 1,585 days – 4 years and 4 months.

O. Psychological Manipulation *(guardian is unnecessarily cruel to senior to break spirit and increase dependency)*
While blocking [redacted] the guardian "force-fed" the estranged granddaughter or [redacted] owing her to visit despite [redacted] testimony that she felt the granddaughter was victimizing her. In the facility, there was only one picture, the granddaughter. The team blocked a family of 50 people and wiped them out of [redacted] nvironment.

P. No Assistance *(no official helps to save the senior or intervene in any meaningful way)*
In September 2016, [redacted] wrote "Is Elder Guardianship a New Form of Human Trafficking?" for *The Huffington Post* and published clips of [redacted] videos o[redacted] fter that, she received a flood of emails/calls from advocates and victims. Only then did the family realize this victimization was a common pattern and practice. [redacted] reached out to multiple entities for help from Adult Protective Services, the state Ombudsman and the Chief Judge, to the Palm Coast mayor, media, local representatives, Florida Attorney General and Governor. She attended senate hearings in D.C. and spoke with the Department of Justice and FBI. [redacted] led complaints with Florida's Office of Public and Professional Guardians and the Judicial Qualifications Commission. Since there was a judge involved in signing off on the actions, everyone seemed

to be on stand down. [redacted] hired a half dozen attorneys who were either working with the other side or did not want to "upset" the judge. She filed multiple appeals, but they were based on the false lower court records.

Q. Intimidation / Elimination *(attorneys and court agents weaponize law to intimidate and eliminate family)*
In June 2016, [redacted] had been suspended as guardian and trustee with no valid justification. In the December 12, 2016 hearing, the judge removed her due to "illness" even though her cardiologist confirmed that her blood pressure spikes were not a permanent condition. Despite violations of Florida Statutes, the ETG was made permanent guardian and trustee. After that, there were actions to further control [redacted] and get rid of [redacted]. The judge issued an order to strike [redacted] pleadings for failure to appear at a deposition even though she had not agreed to the date and had filed to show good cause. Her brother-in-law was very ill and subsequently died. Then, the judge issued orders prohibiting [redacted] and her family from being given a copy of any transcripts and prohibiting everyone involved from ever sharing the contents. Also, [redacted] was hit with almost a half million dollars in unwarranted sanctions based on frivolous and made-up claims by the Firm and court agents. Even though the case was in Florida, she is still fearful that she will lose her New York home of 50 years.

R. Liquidation *(attorneys/court agents drain the estate through excessive billing, selling assets and other actions)*
The attorneys liquidated [redacted] assets to pay their fees even though she had a sizable pension. They evicted [redacted] and [redacted] from the home and sold the house and contents. [redacted] submitted evidence of double billing and undervaluing of assets, but the judge did nothing. [redacted] spoke to the Flagler Clerk but he said he did not have the power to initiate an audit. The judge granted the guardian's petition to void [redacted] 2014 Trust and authorized her "to reestablish the Ward's 2006 estate plan" which named the granddaughter and her children as beneficiaries based on the guardian's opinion that this was in [redacted] "best interest." Despite being trustee and beneficiary in the 2014 Trust, [redacted] was not served with the petition or noticed for the hearing.

S. Cloak of Secrecy *(court insiders hide information through closed hearings, sealed dockets and other means)*
It was easy to access filings in Orange County. However, filings in Flagler were often hidden. In September 2018, the granddaughter was named trustee. In November 2018, after the court-appointed guardian resigned suddenly, the granddaughter was named guardian. Both appointments happened behind closed doors. [redacted] happened to find out in an Appeals filing. The judge knew that [redacted] had filed to regain guardianship yet gave her no opportunity to object or appeal. The granddaughter did not qualify to be trustee or guardian. She had filed bankruptcy and the Orange County court had removed her as trustee per [redacted] testimony. [redacted] had testified that she felt that the granddaughter was victimizing her. She clearly did not want her to be guardian.

T. Cremation *(the senior is cremated when the money runs out or the senior dies)*
On December 31, 2020, [redacted] died alone of COVID-19. [redacted] was cremated before [redacted] knew her sister had died. [redacted] had been pleading with the Firm via email to speak with her sister because she had a "feeling" something was wrong. [redacted] had called for a welfare check and the officer said [redacted] was not there. [redacted] found out her aunt died two weeks later after a fellow advocate searched court records. Based on filings, it was clear that the Firm had known [redacted] was dying yet they did not let [redacted] speak with her one last time.

U. Lack of Prosecution *(no one prosecutes the guardian or attorneys even with evidence of wrongdoing)*
Actions taken by the attorneys should have been considered constructive fraud. They initiated a calculated scheme and lied repeatedly to the court to take over the estate of an innocent woman using guardianship laws as a weapon. The Flagler Court brazenly violated due process. On March 2, 2021, the Palm Beach County Division of Inspector General (IG) issued an investigation report on the court-appointed guardian based on the 2016 complaint. Although the 55-page report was highly redacted, it was clear that the guardian financially exploited [redacted]. For example, she hired her ex-husband and sister with [redacted] money, paid herself high fees without prior notice to the court, undervalued assets, and failed to obtain court approval to "represent" [redacted] an attorney in seven appellate cases. The Clerk's IG had "a reasonable suspicion" that multiple criminal statutes may have been violated. [redacted] followed up with OPPG and law enforcement, but nothing happened.

V. Rigged Probate Hearing *(guardian and attorneys are allowed to drain the rest of the estate in probate)*
In probate, the Volusia County judge (who had been Chief Judge in Flagler) appointed the granddaughter as personal representative even though she did not qualify. This meant that [redacted] did not have standing to see the final accounting or sue. Even though the guardian who sought to void [redacted] Will had a substantiated pattern of lying to the court, the judge did not consider the information from the IG's report. The granddaughter and attorneys took what was left of [redacted] estate. They collectively appropriated millions of dollars. [redacted] and [redacted] who were in [redacted] Will, received nothing. [redacted] wishes were ignored and there was no justice.

A Path to Reform: From Oppressive to Supportive

The adult guardianship system at its best is oppressive, restricting freedom and self-determination and leaving a person with fewer rights than a convicted felon simply to "protect" them. At its worst, the system serves as a form of slavery, subjugating and exploiting a person for financial gain. In many instances, it has devolved into "people smuggling." There are many forms of trafficking, but one consistent aspect is the abuse of the inherent vulnerability of the victim. Unfortunately, seniors and the developmentally disabled are perfect targets,

The exploitation is not just affecting the rich. Low to middle class people who have finally achieved the American Dream of homeownership are having that key asset stolen from them. It interrupts wealth formation and wealth transfer and inflicts emotional trauma for generations to come. Predatory guardianships seem to disproportionately affect women and the crime seems to be rising in communities of color and with those traditionally marginalized, including Holocaust survivors. Like slavery, this is *systemic injustice*.

The boldest legislative reform is to dismantle private adult guardianships. If a person has no money and no family, then a social system to humanely support them is important. However, if a person has assets to pay for support and family willing to help, the government should have NO role in the family's affairs. It is time to modernize the system transitioning from an oppressive, intrusive and expensive institution to a model that is transparent, person-centered and community supported with no court intervention. Understanding there may be strong opposition to abolishing the system all at once, here are three transition strategies:

FIRST, slow the flow of people into private adult guardianships. A less restrictive alternative to guardianship is the legislative intent but it is rarely followed. Therefore, *mandate* that the court exhaust *all* lesser restrictive options *before* a guardian is appointed, with penalties for noncompliance. In addition, recognize supported decision-making agreements for seniors who age into disability through cognitive decline.

SECOND, enhance transparency, accountability, and speed of intervention for current cases. The adult guardianship system is opaque and cloaked with secrecy which facilitates exploitation. Therefore, mandate:

- Transparent court proceedings, including video recordings of all hearings, open electronic records appropriately redacted, and mandated collection of data – all digitally available to the public.
- Requirement of evidence, including no restriction on family interaction unless there is a confirmed case of abuse, and penalties for violations and false statements to the court – even by guardians and attorneys.
- Third party accountability, including an independent citizen oversight committee (i.e., jury), to hear contested guardianships, and a statewide auditing and investigative unit for all guardianship accounts.
- Dedicated statewide law enforcement with subpoena power to review cases for constructive fraud, theft, exploitation, and other potential wrongdoing particularly by guardians and attorneys.
- Enhanced training for key stakeholders, such as judges, clerks, and law enforcement.

THIRD, reframe and professionalize the support model. The system itself is *enabling* exploitation through an open-ended compensation and job assignment structure. After a workshop on legal responsibilities, attorneys and others can become guardians and evaluators with no required training in healthcare or financial management. They also can pay themselves "reasonable compensation" which often ends up being $200 to $600 an hour. The structure is misguided and not person-centered. Instead, align the roles with the actual job duties, required competencies and standard compensation in the following way for paid non-family appointees:

- Personal needs guardian is responsible for the care of an incapacitated person and support for their basic decision-making. Therefore, the benchmark for the required training and compensation for that position is a licensed clinical social worker preferably with a specialty in psychiatry and/or gerontology.
- Guardian of property is charged with helping to manage the property and financial affairs. Therefore, the benchmark for that position is an entry-level to mid-level licensed financial advisor.

This structure is in line with the legislative intent of asset preservation. It provides pay equity bringing the range between $40 to $60 an hour based on industry standards and would weed out predators who are seeking these roles simply for high billing hours. It also provides opportunities for a new group of experts who have relevant training for the specific jobs, follow a code of ethics related to the roles, and must take frequent exams to keep their licensing. With this three-point strategy, we will be better positioned to phase out private adult guardianships and transition to a community supported, person-centered model with no court intervention.

My mother, [redacted] lived in Gainesville, FL at the time she was drugged and brought to be evaluated. She had an attorney who told the 1st judge she didn't need a guardian.

My mom had 3 different guardians, went through 3 judges, moved from her home to a local AL in the lock down section. She was assaulted several times, but because she couldn't file a police report, nothing was done. I often found her bruised, cut and distressed. If I complained, I was restricted from visiting her for weeks.

She was moved to another lock down facility in Marion County. This facility was under probation and had no license for the last 9 months of my mom's life. The person running this facility (Memory Lane) was a convicted felon and a close friend of my mom's 3rd, and last, guardian. They embezzled money from multiple elders at facilities in Ocala.

My mother was put under a chemical restraint under her 1st guardian, although she was never diagnosed as a threat to herself and others. This chemical restraint is illegal in Florida. My mother was so heavily drugged (at least 3 anti depressants at once) that she developed a condition called tardive dyskinesia.

I was put in contact with your office in 2012 by Sen [redacted] nd spoke at length with his legal staff. Unfortunately, nothing was resolved.

I never cared about the money. I wanted my mom. You can't put a price on another human being. They murdered her, abused her, starved her.

My mom was not allowed to go to church and practice her religion. She was not allowed to eat meals outside the facility. They told me to speak only English. My mom was Cuban.

As for me and my children, we were harassed, followed, stalked, slandered, and threatened on a weekly basis.

My mother died after gasping for air for almost 3 hours. They let her suffocate to death.

I have 4 years of medical and court records.

My cell phon [redacted] Or I can be contacted via email.

Sincerely,

[redacted]

Hi my name is [redacted] the daughter of [redacted] was captured and murdered in Guardianship in the state of Florida.

It was a long 2 1/2 years in this nightmare. Guardianship is a Racket, same players, same outcome that is happening right now. Judges, guardians, lawyers, bankers...etc all involved.

Kidnapped, isolated, tortured, and murdered all for money and greed. They stole $1 million from my mom's estate for their benefit while our inheritance was stolen. My parents worked extremely hard for their money. Investigating all through their lives. It was all stolen.

She was abused by the 2 nursing homes she was in. I was blocked from getting her records from both nursing homes.

I was fraudulently accused of doing all kinds of things. The judge froze my personal monies, striped me of my DPOA and took me off a revocable trust even though not one penny was touched by me.

Hospital records did prove my mom was malnutrition, was septic, had a repeated UTI when entering into the ER on her final days. She died all alone. My mom never wanted to be in a nursing home or ever wanted to be alone.

There is so much more to our story include abuse, neglect, deprived of her loved ones. This nightmare needs to be exposed.

The lawyers are all in this with the other parties. My lawyer cost over $320,000 in a 9 month period and I lost every motion....this was more than I can bare. My husband and son and I suffered from PTSD and other health issues since this court date stated.

I was threatened so many times with jail time not only prison but the federal penitentiary for up to 30 years all for trying to help my mom.

Thank you for listening to just a very little part of our story.

We do have a story on ABC actions news

[redacted]

TASH

Equity, Opportunity, and Inclusion for People with Disabilities since 1975

TASH POSITION STATEMENT WITH POLICY RECOMMENDATIONS ON GUARDIANSHIP AND ALTERNATIVES, INCLUDING SUPPORTED DECISION-MAKING

STATEMENT OF PURPOSE

TASH affirms the rights of people with disabilities, including individuals with the most significant support needs, to make decisions, to receive the decision-making supports they prefer, and to have opportunities to build their decision-making skills with trusted supporters of their choice. Too often, people with disabilities' access to decision-making supports and opportunities is restricted through informal and formal mechanisms, including guardianship.

Guardianship (known in some jurisdictions as "conservatorship") is the legal process that transfers important rights from one adult to another. Through guardianship proceedings, courts can restrict the rights of people with disabilities to make life decisions. Too often, those seeking guardianship are unaware of not only the limits of court supervision but also the many ways these restrictions affect persons with disabilities' human rights. People with disabilities under guardianship are too frequently denied these rights, including the rights to visit family and friends, to communicate with people they choose, to attend religious activities, to have privacy, and many others.

Also, many people seeking guardianship are unaware of other, less restrictive ways that persons with disabilities can access decision-making supports. In fact, there are many ways both to protect and to support individuals that are less restrictive than guardianship, even for people with significant support needs. Some people with disabilities who have guardians may be unaware of alternatives that give them greater control over their lives and allow them to receive support to do so.

TASH seeks to build on its 2003 Resolution on Alternatives to Guardianship and its 2021 Resolution In Opposition to Conservatorship / Guardianship to underscore the critical role of decision-making supports in ensuring the basic human right of all people with disabilities, including those with significant support needs, to full and equal participation in all aspects of life. This includes access to individualized and quality decision-making supports that further enable a person with disability to make informed choices as well as to systems that enable persons with disabilities to maximize their autonomy and self-determination. All persons with disabilities are entitled to the presumption of competence, access to the full range of assistive technology and devices, opportunities to develop their self-sufficiency and independence, as well as the pursuit and enjoyment of personal freedom, a range of relationships, the dignity of risk, and decision-making autonomy.

RATIONALE

The United Nations Convention on the Rights of Persons with Disabilities recognizes the basic human right of all people with disabilities to make their own decisions and to access the decision-making supports they prefer. Many U.S. laws, including the Individuals with Disabilities Education Act, the Americans with Disabilities Act, the Rehabilitation Act, the Developmental Disabilities Assistance and Bill of Rights Act, the Medicaid Home and Community-Based Services "Settings Rule" and "Person-Centered Planning Rule," contain provisions that help to protect this right.

People with disabilities should receive supports that strengthen their autonomy and inclusion. Just as most adults seek decision-making support from doctors, tax advisors, financial advisors, and others, people with disabilities should be given access to chosen, trusted supporters. Support can come in many forms and may include accommodations, such as assistive technology, augmentative alternative communication systems with chosen trained communication partners, customized visuals, and hands-on supports, including opportunities to explore options in order to make an "informed choice".

Also, decision-making support arrangements made outside of court systems are generally more flexible and empowering, as well as less intrusive, than guardianship. Tools for providing decision-making support without court involvement include powers of attorney for health care, financial, education or other areas, advanced healthcare directives, representative payee arrangements, authorized representative designations, supported decision-making agreements, and more.

Another alternative to guardianship is supported decision-making (SDM). SDM arrangements can be formal or informal and help a person with disabilities to choose trusted supporters to help them explore and understand their choices, make decisions, communicate, implement, and/or act on their own informed choices without loss of rights and dignity, and without court intervention. Informal SDM arrangements may include bringing a friend or relative along to a doctor visit or getting advice on a purchase. Formal SDM arrangements might be set out in a written SDM Agreement (SDMA). A growing number of state laws recognize both informal and formal SDM arrangements.

These alternatives contrast sharply with the guardianship laws and practices in many U.S. states. For example, the National Council on Disability has documented adverse impacts of guardianship including abuse and isolation and described the guardianship system as "broken".[1] Professionals asked to assess the capacity of adults with disabilities may use traditional clinical assessments that do not account for any supports, including assistive technology devices or support relationships, in their

[1] National Council on Disability, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities* (Washington, D.C., June 10, 2019), https://ncd.gov/publications/2019/turning-rights-into-reality (accessed March 23, 2023).

assessments. Despite requirements that "least restrictive alternatives" be considered as the primary means to support adults with disabilities, some guardianship hearings last only a few minutes. Furthermore, public guardians, who may not have known the person with disability before the proceeding, may be unfamiliar with the person's needs, strengths, preferences, and abilities, rarely meet with them, or place them in isolated, congregate settings. Some public guardians are appointed by courts after parents die, even when other family members are identified as successors. When families object to mistreatment or exploitation by public guardians, courts may deny them standing, file restraining orders, and allow the fiduciaries and their attorneys to bill the families for hours they wish to spend opposing the families.

POLICY RECOMMENDATIONS

TASH calls upon government, agencies, and organizations, including protection and advocacy agencies, to protect and defend the rights of adults with disabilities, incentivize and ensure access to supports that make guardianship broadly unnecessary, maximize autonomy for persons with disabilities and to support the principles of self-determination. The purported need for guardianship is more likely evidence of inadequate supports. TASH urges policymakers to:

Improve Data Collection

TASH encourages the federal government and state governments to implement comprehensive and uniform data collection and reporting on guardianship including, but not limited to the type and duration of guardianship, information on guardians and persons under guardianship including their relationship and the primary disability, information on how persons under guardianship receive visitors, and information on how transfer-of-rights policies are implemented.

Increase Awareness and Engagement of School Systems

School systems should implement policies and practices to inform educators, families, and students with disabilities about less restrictive alternatives such as voluntary and individualized supports that may eliminate the perceived need for guardianship.

In states where educational decision-making rights may transfer at the age of majority, school systems should recognize transfer of rights as an opportunity to develop transition plans and to practice youth decision-making skills, including how self-determination, person-centered planning and supported decision-making practices as well as the use of chosen supporters and areas of need can be included in Individualized Education programs (IEPs).

School systems should provide access to plain language information for transition-age students – including those with intellectual and developmental disabilities and/or who are limited or non-speakers and who use augmentative alternative communication.

Strengthen Safeguards in Guardianship Proceedings

Governments should enforce current provisions of the law to promote restoration of rights through the termination of guardianship and also ensure that persons with disabilities under guardianship have the right to accessible, plain language information on court and guardianship processes, including on their rights to due process and equal protection of law, accessible communication and supports, visitation, choice of guardian, as well as how to report abuse, how to contact a court investigator, how to find advocacy and other support services, and how to exit a guardianship.

Courts should eliminate the requirement for evidentiary hearings where the restoration of rights is uncontested and supported by both the guardian and the person under guardianship and increase the frequency and enforcement of periodic review of guardianships. Background checks of proposed guardians should be mandatory, and guardians should be required to consult with and make decisions aligned with the person's expressed or previously expressed preferences, choices and wishes.

Provide Person-Centered Supports and Accommodations

TASH has identified guidelines and definitions of decision-making supports in the TASH Position Statement with Policy Recommendations on Community Living that lay the foundation for this Guardianship and Supported Decision-Making Position Statement. The Position Statement on Community Living also clearly outlines accommodations as well as key recommendations to endorse and fund person-centered planning, self-direction, and self-determination and to fund demonstration grants for promoting SDM. Self-advocates, representing persons with disabilities, should have a primary role in the design and implementation of laws, policies and programs related to guardianship and SDM, including efforts to provide and/or lead related training and education.

If an adult with a disability chooses to enter into an SDMA, they should have the choice of one or more trusted supporters. Support may include, but is not limited to, helping the adult with a disability obtain and understand information related to life decisions, communicate decisions to others, and assisting the individual to ensure their preferences and decisions are honored. SDMAs should not preclude an adult with a disability from acting independently of the SDMA and the SDMA should not be used by courts or other entities as evidence of incapacity or incompetency.

Increase Federal Support for Supported Decision-Making (SDM)

As TASH states in its Position Statement on Community Living, the federal government has put few resources into SDM. The federal government should fund initiatives to promote SDM and to embed SDM into the Medicaid HCBS system and its person-centered planning rules. We request federal investments in a national demonstration grants initiative of SDM with enough funding to ensure that all interested states receive a baseline of resources to support this work. We also call for the establishment of a

federally-funded Technical Assistance Center to support the provision of requested technical assistance to ensure the implementation of SDM with fidelity at the state level.

TASH stands with other federal and state disability rights advocacy coalitions and organizations in a call to action for guardianship and supported decision-making reforms that strengthen and expand the restoration of rights and the use of flexible, protective, empowering, and voluntary supports that honor the individuality, autonomy, informed choice and preferences, interests and strengths of all persons with disabilities.

The Arc
For people with intellectual and developmental disabilities

Statement for the Written Record

Submitted to
The Special Committee on Aging
United States Senate

Hearing on
Guardianships, Conservatorships, Protective Arrangements, and Alternatives

Submitted on March 20, 2023

The Arc of the United States appreciates the opportunity to submit testimony on the critical issue of the overuse of guardianship and the promise of alternatives to it. The Arc is the largest national community-based organization advocating for people with intellectual and developmental disabilities (IDD) and their families, with 600 state and local chapters nationwide. We have worked alongside people with IDD over the past 70 years to advance their civil and human rights and ensure their full inclusion in the community. Safeguarding people with IDD's right to make their own decisions and be the authors of their own lives is foundational to experiencing full inclusion in the community.

While guardianship may be appropriate in certain circumstances, it is inherently restrictive as it strips a person of the ability to chart the course of their own life and make the fundamental decisions that define who they are—like where they live, who they associate with, what medical services or treatment they receive, whether they can vote, and where they work. It places these vital decisions in the hands of another person. While guardianship should be used as a last resort, too often it is presented as the only option for people with IDD. The presumption that people with IDD are unable to have autonomy and legal personhood has its roots in attitudes that once justified policies institutionalized and segregated people with IDD from the community and our schools, and stripped them of they ability to make decisions about their bodies and their futures.

As The Arc's position statement on Self-Determination notes:

> Historically, many individuals with IDD have been denied their right to self-determination. They have not had the opportunity or the supports to make choices and decisions about important aspects of their lives. Instead, they have often been overprotected and involuntarily segregated with others making decisions about key elements of their lives.

In light of this legacy, The Arc believes that all people with IDD can participate in making their own decisions with supports, assistance, and guidance from others they know and trust. Less restrictive alternatives, like supported decision-making must be considered before guardianship is imposed. As our position statement on Autonomy, Decision-Making Supports, and Guardianship states in part:

> Individuals with IDD must be presumed competent; they must also be assisted to develop as decision-makers through education, supports, and life experience. Communication challenges should not be misinterpreted as lack of competency to make decisions.
>
> If the use of guardianship becomes necessary, it should be limited to the fewest restrictions necessary for the shortest amount of time and tailored the individual's specific capacities and needs…Regardless of their guardianship status, all individuals with IDD should be afforded opportunities to participate to the maximum extent possible in making and executing decisions about themselves.

This testimony highlights the stories of people with IDD, including those who have been subject to guardianship and have had their rights restored by accessing alternatives to guardianship like supported decision-making. It also makes recommendations for how we can ensure that people with IDD's right to self-determination and autonomy is robustly protected.

Stories

The Arc celebrates stories, like that of [redacted] a man with IDD who in 2017 had his rights restored after 15 years under guardianship. [redacted] is a man in his 30s who was placed under the guardianship of his parents when he turned 18. [redacted] family, like many others across the country, were told they had to become his guardians so that he could access services and were not told about less restrictive alternatives that could have been more appropriate. During the years he was under guardianship, [redacted] worked at [redacted] a major grocery store chain [redacted] and was able to manage his own day-to-day needs, including paying his bills on time and managing his own budget with support from his family. When [redacted] parents asked the court to remove them as guardians, including that [redacted] did not need or want to be under guardianship, they faced opposition from a court-appointed attorney for [redacted] and ultimately the court refused.[1]

Later, with legal assistance from Quality Trust for Individuals with Disabilities and the Burton Blatt Institute, [redacted] was able to terminate his guardianship. Judge [redacted] of the Superior Court of the District of Columbia, [redacted] ruled that using supported decision-making [redacted] was able to independently "receive and evaluate information effectively" and

[1] See generally, Amanda Morris, "Britney Spears's Case Calls Attention to Wider Questions on Guardianship" New York Times, July 10, 2021, available at: https://www.nytimes.com/2021/07/10/us/britney-spears-conservatorships-guardianships.html. Perula Dvoark, "Why A man with intellectual disabilities has fewer rights than a convicted felon", Washington Post, September 21, 2015, available at: https://www.washingtonpost.com/local/why-a-man-with-intellectual-disabilities-has-fewer-rights-than-a-convicted-felon/2015/09/21/2281f5c0-605e-11e5-b38e-06883aacba64_story.html?utm_term=.ff28834ebd8f. See also Quality Trust for Individuals with Disabilities and Burton Blatt Institute, Press Release, Freedom for Ryan King, December 12, 2016, available at https://supporteddecisionmaking.org/wp-content/uploads/2023/01/ryan-king-press-release-2016.pdf

"communicate decisions." The court terminated the guardianship over [redacted] In re: [redacted] 2003 INT 249 (D.C. Super. Ct. October 6, 2016) (unpublished order). Speaking of the importance of not making assumption about him based on his disability, [redacted] states, "First you gotta get to know me before you get to judge me".[2]

Supported decision-making is an alternative to guardianship that recognizes that just as people without disabilities rely on the advice and insight of people that they know and trust to help them make, communicate, and put into action their own decisions, so too do people with disabilities. Nonetheless, for people with disabilities simply recognizing that relationship of support can prevent or limit the need for a guardianship. Indeed, [redacted] stories is similar to [redacted] tory. [redacted] is a woman with IDD who was placed under guardianship when she was 19 years old after her parents passed away. Despite working and living independently, she remained under guardianship for eight years before having her guardianship terminated in favor of a supported decision-making agreement with the assistance of Indiana Disability Rights.[3] [redacted] speaks about how she felt being unable to make her own decisions, being forced into a nursing facility and how important is was to have her guardianship terminated in a short documentary available here.[4]

[redacted] stories are not anomalies. They highlight the ease with which people with IDD are placed under guardianship, often based on an assumption about their capabilities because of their diagnoses. They also underscore the barriers to terminating their guardianships even when they could show that they can work and live independently. Lastly, their stories also underscore the value and promise of alternatives to guardianship like supported decision-making, which can lead to the termination or limitation of a guardianship. Various pilot projects[5] have shown how supported decision-making can be used by people with IDD to increase their self-determination. One pilot project by The Arc Northern Virginia and Burton Blatt Institute evaluated how a group of people with IDD, including some who were subject guardianships, could use and benefit from supported decision-making. The pilot final report underscored that supported decision-making leads to increased self-determination and benefits for people both with and without guardians. One participant indicated that through using supported decision-making they have "learned that I have a voice in my future".[6] Another added, that he feels "emancipated" being to able to make decisions about his life.[7]

---

[2] See Jenny Hatch Justice Project, Video "Ryan on Pre-Judging Him" available at, https://supporteddecisionmaking.org/stories/ryan-king-updated/

[3] Carter Barrett, "Britney Spears left her guardianship, but others who want independence remain stuck" NPR, January 9, 2022, available at, https://www.npr.org/sections/health-shots/2022/01/09/1065301762/britney-spears-left-her-guardianship-but-others-who-want-independence-remain-stu

[4] Indiana Disability Rights, Free to Be, video, available at: https://www.youtube.com/watch?v=JfbD4MwmK5I

[5] Include cite to SDMNY, CPR, and others

[6] Summary, Findings, and Recommendations of The Virginia Supported Decision-Making Pilot Project, pg. 25, available at: https://thearcofnova.org/wp-content/uploads/sites/6/2021/02/SDM-Pilot-Project-Final-Report-2.2.21.pdf

[7] See The Arc Northern Virginia, "Supported Decision-Making: Ben" Video, available at: https://thearcofnova.org/programs-services/sdm-resource-library/#report

Recommendations

There are critical ways we can ensure that people with IDD who are at risk of guardianship or under guardianship have their rights protected:

- **Ensure people with IDD have access to effective communication.** The Americans with Disabilities Act (ADA) requires that people with disabilities have equal access to services and programs as those without disabilities. In so, they are entitled to effective communication, meaning that whatever is written or spoken must be as clear and understandable to people with disabilities, as it is for people without disabilities.[8] People with IDD should be provided the support they need so that they can understand and communicate their own decisions. Providing this support is critical to ensuring due process. Communication challenges cannot and should not be misinterpreted a lack of capacity to make a decision.
- **Recognize supported decision-making as a reasonable accommodation under the ADA:** As seen in the stories above, supported decision-making holds promise as an alternative to guardianship. The National Guardianship Summit recommended that the Department of Justice and other federal and state agencies "should recognize that supported decision-making can be a reasonable accommodation under the Americans with Disabilities Act of 1990, as amended, in supporting an individual in making their own decisions and retaining their right to do so."[9] Since not every state has recognized supported decision-making or has robust protections of it, this recognition would provide for broader support and enforcement of people with IDD's right to self-determination.
- **Provide training for people with disabilities, families, professionals, and court staff about alternatives to guardianship.** Guardianship is often presented as the only option for people with IDD. Families, professionals, and court staff must be educated about the implications of guardianship and alternatives to it.
- **Ensure that less restrictive alternatives to guardianship are considered before imposing guardianship and that guardianship is used as a last resort.** State laws should be reformed to:
    - **Safeguard due process in guardianship proceedings:** Guardianship is an extreme measure and all efforts should be taken to ensure that a person is provided with due process before guardianship can be imposed. This may include providing reasonable accommodations so that a person can effectively participate in the process, and ensuring legal representation by an attorney who is a zealous advocate, both at the initial hearing, and any proceeding to review or terminate the guardianship. Indeed, like others, Britney Spears's story of the barriers that she faced to restoration of her rights, including lack of access to an attorney who

[8] See generally, Department of Justice, ADA Tool Kit: Chapter 3, General Effective Communication Requirements Under Title II of the ADA.

[9] See generally, National Guardianship Summit Recommendations 2021, available at: 2021 Guardianship Summit Recommendations (americanbar.org)

was a zealous advocate for her rights, underscores the critical need to ensure due process in these proceedings.[10]

- **Promote the use of limited guardianship, when appropriate.** Too often people with IDD end up under plenary guardianship, where their rights to make decisions about their person and property are both taken away. Appointment of a guardian should be made only to the extent necessary for the legal protection and welfare of the person and not for the convenience or preferences of the family, service system, or others. If guardianship is necessary, it should be limited to the fewest restrictions necessary for the shortest amount of time and tailored to the person's specific capacities and needs.
- **Ensure more robust monitoring of guardianships:** Too often guardianships continue even though a person is able to make their own decisions. The appointment of a guardian should be time-limited to provide regular and periodic review of the person's abilities and functioning and whether use of a less restrictive alternative is now more appropriate.
- **Guardians should provide support and opportunities so that the person subject to guardianship has opportunities learn and practice the skills needed to be autonomous and make their own decisions.** Even when guardianship is appropriate, a person should be afforded opportunities to participate to the maximum extent possible in making their own decisions and should be provided with opportunities to learn and grow their decision-making capacity. This is in line with recommendations for guardianship from the National Guardianship Association Standards.[11]

Conclusion

The Arc believes that people with IDD must be presumed competent to make their own decisions. While guardianship may be appropriate in limited circumstances, the stories of people who have been subject to it, underscore that we must limit its use and ensure that people with IDD's voices are respected and heard.

[10] The Arc United States, July 13, 2021, In re Britney Jean Spears, available at, https://thearc.org/resource/in-re-britney-jean-spears/

[11] National Guardianship Association, Standards of Practice, Revised 2022, available at https://www.guardianship.org/wp-content/uploads/NGA-Standards-2022.pdf

March 13, 2023

Senator Bob Casey, Chairman
The United States Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510-6050
guardianships@aging.senate.gov

Dear Senator Casey-

As your constituent and voter in the State of Pennsylvania, I am writing to express my deep concerns with the current guardianship practices that exist in our country. I will direct my letter specifically to the extremely unethical and horrific practices occurring in Montgomery County, Pennsylvania. Unfortunately, however, this is not an isolated county or state.

To frame my letter with perspective, I have been involved with the Montgomery County Orphan's Court (Pennsylvania) since the beginning of 2015. As I write to you, our situation is unresolved. I urge you vehemently to take action against those perpetuating guardianship abuse that is occurring all over this nation, but specifically in your home state of Pennsylvania.

Our Story:
In January of 2015, my 68 year old mother had a major hemorrhagic stroke which rendered her incapacitated. My brother and I petitioned the courts to declare my mother incapacitated and were given emergency guardianship roles. The judge ordered a second evaluation by a Court Appointed Psychologist, as well as the placement of a Court Appointed Attorney (CAA). The CAA ordered yet another psychological evaluation to determine incapacitation, despite two licensed professionals already agreeing to her cognitive abilities. The designation of incapacitation was made by all three professionals, however these additional unnecessary examinations contributed to a bill in excess of **$8,000** ($75 for the first evaluation - her copay; $1,200 for the Court Appointed psychologist; and $6,750 for the CAA recommended psychologist) to my mother.

In August of 2015, the Inventory of the Estate was filed, which valued my mother's estate at over $2 million in assets, including the business which she owned and operated. Despite myself and my brother completing all guardianship duties in an accurate and timely manner, the CAA suggested a third party plenary guardian. We feel that this was largely due to the size of my mother's estate, which was considered "large" in the state of Pennsylvania. The judge concurred with the CAA and designated this suggested person as the Court Appointed Guardian (CAG) who admittedly had no experience working with a large estate, with persons who owned businesses, or with persons who had family involved.

From this point, everything spiraled downward. Though in the beginning of the CAG appointment, it was hard to decipher what was happening, over the next eight years, it became more than obvious that my mother's assets were not being managed prudently or in her best interest.

The CAG, an attorney who charged $325/hour, also hired a business accountant (despite my mother having a trusted accountant who was willing to continue his job) and a coordinator for medical appointments and transportation (despite my brother and I continuing to attend medical appointments). Another example of the CAG's questionable actions is the checks written to her own law firm from my

Abbreviations
CAA - Court Appointed Attorney | CAG - Court Appointed Guardian | GoE - Guardian of the Estate
GoP - Guardian of the Person | IP - Incapacitated Person

mother's personal account without a court order. These charges were directed to my mother's business, and should have come from her business, however since the CAG had access and power, she elected to pay her firm however she could,

In 2018, my brother and I discovered that our mother's assisted living facility had not been paid in months. Due to the negligence of the CAG, our mother was in arrears for close to $100,000 to the facility and her care aides. The facility had already taken legal action on this debt. Additionally, the CAG failed to pay property taxes on our mother's home which resulted in the potential loss of a major asset. It was later discovered that the CAG had accrued **$11,072.15** in real estate interest and penalties, as well as late fees from the assisted living facility. In addition, there was a judgment against my mother and her single family home and we later learned by speaking directly to county officials that the home would be sold at auction in a matter of months if back taxes were not paid.

We approached the CAA to request the removal of the CGA, however the CAA did not assist us on this issue, choosing instead to encourage the CAG to get the bills paid. After this, the CAG resigned as Guardian of the Person (GoP), allowing myself to manage my mother's medical care. However, she refused to relinquish her role as Guardian of the Estate (GoE).

In 2022, the CAG decided that my mother's business would be sold to one of the employees. The CAG arbitrarily created what she entitled a 'loan', stating that the weekly owner's draw my mother had been taking since her stroke would be classified as payments on a 'loan'. The CAG determined that it was in my mother's best interest to sell her business and to cease her weekly income of $1,100. Despite the fact that the CAG and the CAA are both attorneys, neither created any legal documentation for a loan. It was the opinion of the CAG and CAA that the sale of the business and resulting loss of income which was necessary for my mother's living expenses was in her best interest.

As a result of the petition to the court to sell our mother's business, my brother and I decided to stand up and let our voices be heard. This was simply getting ridiculous. We petitioned the court to remove the CAG for failure to perform her fiduciary duties.

In court, the CAA stated that the CAG would resign and my brother would be reinstated as GoE, if, and only if, we agreed not to discuss or present any wrongdoing of the CAG to the judge. This was very strategic in nature. At that moment, we were relieved she would be resigning, however we felt no justice for my mother due to the fact that the negligence and incompetence would not be disclosed and no repercussions would be instituted. The CAG agreed to deduct the $11,072.15 from her final bill, however there would be no official record of the rationale behind this deduction.

As the CAG resigned her role, she reported my mother as deceased in the guardianship tracking system, stating there was no other way to transfer the guardian role. It took a lot of effort on my brother's part to have our mom reinstated as living.

When the final CAG's bill arrived, we immediately noticed that she failed to deduct the approximate $11k previously agreed upon in court. Additionally, my mother was charged for the attorney hired to represent the CAG at the court hearing, as well as time spent reporting my mother as deceased. When we questioned the bill, and went to court, the judge penalized my mother stating since my brother and I asked questions about the CAG's bill, we were 'uncooperative' and that the discount no longer applied. The CAG would not need to reduce her bill.

The CAA's continued support of the CAG despite all the documented evidence of negligence was very concerning. We requested that the CAA be removed from my mother's case. The CAA agreed to resign

Abbreviations

CAA - Court Appointed Attorney
CAG - Court Appointed Guardian
GoE - Guardian of the Estate
GoP - Guardian of the Person
IP - Incapacitated Person

under the premise that her final bill be paid, that we agree not to disparage the CAA or hold the CAA accountable or responsible for any wrongdoings associated with the CAG or our case. We found this to be fair. However, when the agreement arrived, it was not so straightforward. It was a gag order. The CAA made the agreement read that we would not be permitted to speak to anyone about her horrific behavior which included our family or friends and doing so would result in a monetary fine and be considered contempt of court. We refused to sign. The CAA then filed a petition to compel us to sign. We still refused. At the time of my letter to you, the CAA has petitioned the judge to compel or force us to sign the gag order and the judge has granted a hearing to do so. This is completely absurd, however commonplace in the Montgomery County Oprhan's Court, PA. As of today, the CAA remains the CAA on my mother's case and has not presented a bill in 7 years.

Over the course of the CAG serving in that role, the CAG paid my mom's skilled nursing facility late 58% of the time and my mothers aides late 45% of the time. The CAG paid real estate taxes late 83% of the time. The CAG submitted late guardianship reports 83% of the time and failed to file an estate inventory for over a year and a half. The CAG intentionally sold my mother's largest asset and income source (her business) and failed to protect her second largest asset (her home). To put this into perspective, my mother was tedious about her bills and never paid a single bill late in her life. The CAG has created more charges and late fees than our family has ever seen - and the judge refused to hold the CAG accountable.

Over the course of the CAA serving in that role, the CAA had continued to charge my mom for the CAA time, though it is evident, the CAA is interested in one thing - making money. The CAA wants everything to 'go to court'. Then the CAA bills for her time in court. The CAA makes visits to my mother, then charges my mother for the visits saying that the CAA needs to 'check in' with my mother, despite the fact that my mother cannot communicate

Over the time since my mother's stroke, the involvement of the Montgomery County Oprhan's Court, Pennsylvania has cost my mother, an Incapacitated Person, **$116,318.12** for all of the varied Court Appointed people and services. That **$116,318.12** could have been spent on her care, instead it was spent on unnecessary people. I am deeply dissatisfied with the injustice that is occurring in the Montgomery County Oprhan's Court, Pennsylvania. There is no justice when judges, CAA, and CAG just continue to not be held accountable for their actions.This is abuse of the guardianship system and continues each and every day. Unfortunately, until there is a large-scale investigation, it will continue.

The incapacitated adults (mostly elderly) cannot speak for themselves. These horrid 'players' which I speak about in my next section, are absolutely the worst type of individuals, seeking power and money and taking it from the incapacitated and elderly - a vulnerable, marginalized group. It's frankly sick.

Connections:

The ridiculousness of what was and is happening to our mother is unfortunately not isolated. There was no reason that my mom was being targeted and other people were not, so I started spending time researching the docket and finding that if the Incapacitated Person had a large estate (over $50,000 according to PA), it was more common than not to see the judge appoint a CAA and a CAG, regardless of willing family members to serve in those roles. The additional common theme emerging from my data collection, indicated that the same select series of 'players' were involved in many of these cases.

Though I understand networking and referrals, it appeared through my research, that these 'players' were oftentimes the individuals that are causing harm to multiple families. In the age of the internet, people write and post about their appalling experiences and these 'players' names come up again and again. It is not uncommon to find multiple 'players' involved in the higher estate cases. For example,

Abbreviations

CAA - Court Appointed Attorney
CAG - Court Appointed Guardian
GoE - Guardian of the Estate
GoP - Guardian of the Person
IP - Incapacitated Person

there have been 5 'players' involved in my mother's case - making it extremely difficult to get justice. Each supports each other through their roles and involvement. It has become evident very quickly that there is corruption within the Montgomery County Orphan's Court of Pennsylvania. Though for the purpose of this letter, you are seeking to glean general information, if in the future you elect to have this looked into further by law enforcement, I will gladly supply you with any and all documentation needed to support my research findings.

Suggestions for Solutions:
Though I understand that everyone has an opinion, my suggestions are to look at the injustices in the system. Further, I suggest these actionable items.

1. **CAG & CAA should be required to submit monthly charges:**
   It is not uncommon in Montgomery County, PA for CAG and CAA to let years pass by before submitting an invoice for their fees. This tactic often leaves the family struggling to question the bills because so much time has passed. If a medical doctor were to bill Medicare years after the service, Medicare would not pay. As with any provider of any kind, monthly billing should be implemented and required to continue serving in these roles of CAG and/or CAA.

2. **CAG & CAA should be regulated & limited in charges**
   Though CAGs have various professional roles, some CAG are lawyers, therefore charging upwards of $350 per hour to complete tasks. This should be regulated. The CAA should be limited on billable hours. Some CAA are charging $350 an hour to their Incapacitated, non-communicative clients.

3. **CAG should be limited on IPs they serve.**
   According to my research, in Montgomery County Pennsylvania some CAG are serving nearly 70 cases at one time. CAG should be limited in their assignments to serve in this role.

4. **Judges should be held accountable.**
   The judge is supposed to hold the CAA and CAG accountable. Who holds the judge accountable? There should be a check and balance system that identifies corrupt judges.

5. **Orphan's Court Judges should have set terms:**
   Judges should be re-elected by the constituents every few years. In Montgomery County, PA, there are two judges in this division that will serve until they retire. Unfortunately, they are relatively young, therefore they will outlive and have already outlived many of the elderly that they have negatively affected.

Thank you for the work you are doing to protect the rights of our seniors under guardianship care.

Sincerely-

[redacted]

[redacted]

Abbreviations
CAA - Court Appointed Attorney
CAG - Court Appointed Guardian
GoE - Guardian of the Estate
GoP - Guardian of the Person
IP - Incapacitated Person

I received several notifications that a senate committee was asking for personal guardianship stories. Here is mine.

My name is [redacted] & I had to make my way through the corrupt Missouri courts to get to the Missouri Supreme Court. That's were the honorable [redacted] ruled in my favor that my Nana, [redacted] belonged in guardianship with me.

But that was the ending of our corrupt guardianship ordeal. The beginning started in 1968 when my grandpa [redacted] died. My nana, [redacted] gave my dad, not her oldest son [redacted] but my dad, their life savings of almost 44 years of marriage. It amounted to almost $10,000. My dad took it and invested it.

In 1997 my dad, [redacted] died. The account he had invested my nana's life savings for her retirement was just in his name and my nana's name. My Uncle's wife did not want his name on the account for fear he would have to pay taxes on it. Furthermore, my nana's sister's son had taken Aunt [redacted]'s name off her retirement account so the family would not have to use that money for a nursing home and the state would pay for it. My uncle suggested my dad do the same. My dad refused bc he said that's what nana's retirement fund was for. He further said that if nana's was without assets, she would be relegated into the most inferior facility. My uncle said it would be better for the state to pay for it. My dad counter with, " who do u think pays the state with their taxes? Our kids and us!" Again My dad refused.

My dad passed on March [redacted] 1997 & by June [redacted] 1997 my uncle's sons & his wife had obtained my dad's death certificate from my mom, & transferred the entire amount of my nana's retirement into my uncle's second's sons name [redacted] It was not placed in my uncle's name bc he had a series of strokes after my dad died & according to his con artist sons, he was incapacitated.

Since the retirement fund was in my nana's name, there was a waiting period before she could be placed in a facility and the state would pay for it. At that time it was 3 years. My uncle's family had all her money but refused to give her any money. So when we went to the store we paid for it. SHe was very frugal though. The thieving sons arranged for meals on wheels . So they said she didn't need to go to the store. Meals on wheels in her urbane neighborhood were awful & she didn't like them. She was still cooking her Italian meals for herself and us. If anything needed to be repaired we paid for it. We paid for anything that needed to be done at her house. Her house was almost 100 years at that time fell in disrepair no matter how much work we had done.

The bank called her to inform her that her social security checks were going into an account without her name in it. It was in [redacted]'s & his mother's name. My nana was informed that this was illegal. My nana told the bank vice president to call me. Upon talking to this bank officer, I asked what I should do. He said we had to come in & open an account with her name on it. So we did. My nana wanted my name on it also. The bank official thought this was a good idea. I knew it would cause problems with my uncle's thieving sons. But I did it anyway. The bank president suggested I get a POA done to protect my nana from this potentially happening again.

I did not want to incur the thieving sons wrath, so I asked my brother [redacted] to become the POA. And he did. As soon as the thieving sons found out about the POA they filed for guardianship in the corrupt [redacted] courts of [redacted] Missouri. When we were sent the documents about filing, we

decided we were not going to file for guardianship. Although we were not on good terms with the thieving sons, we were on good terms with my Uncle. We loved him And knew he loved my nana & would not put her in a facility or hurt her in any way.

Because we did not file for guardianship I was contacted by the guardian ad [redacted] before the expiration for the time to file. Little did I know that He was formerly the public administrator. He was fired from that position & then given the position of guardian ad Litem. Not knowing anything about the corruption in the probate court, this did not scream red flags to me. During the meeting with [redacted] was adamant about not filing bc I didn't want to go against my uncle. [redacted] kept saying my uncle did not file, his son did. But my uncle would not like us to fight his sons. Murphy said he had interviewed my nana 3 times and that although she loved my uncle she did not want to have anything to do with his sons because they stole from her. And that she wanted me. He advised me that he found my nana not only to be lucid but to be sharp. And he would testify to that in court. He guided me to an attorney, and I was in the dark that it was an attorney that routinely worked with the public administrator. I was clueless that they were in collusion with each other. I asked [redacted] how much it would cost and he said $3000. In the end We received a bill for $15,000. Which my husband negotiated down to $12,000.

So at [redacted]'s guidance we retained [redacted] & [redacted] was assigned to us. They prepared us for a big hearing. We had 16 witnesses, most from my nana's church, who knew of the abuse she had suffered from the thieving sons of my uncles. They knew the sons wouldn't give her money for food. That they had stolen her social security. That they didn't pay for repairs on her house. And most of all that they stole her retirement funds. The day we went to court no one from my uncles family was there. That's bc they were informed ahead of time of what we were informed the day of the hearing. That there is a policy not a law that the probate courts practice , that when two factions of a family are feuding then the loved one automatically goes to the public administrator. So no hearing. Had I been informed this, we would have with drawn our petition. Or we would have never filed a petition and save the attorney fees. [redacted] talked me into filing. So we were intentionally not informed this. And that's why it was so important for [redacted] to convince me to file in those 3 hours in his office.

So there was no trial. All of us sat there dumbfounded. My nana was outraged and told one of the attorney minions in the public administrators office that was in court that day that no one was the boss of her. To which that devil [redacted] replied that he begged to differ with her.
It is significant to know that the corrupt PA and probate courts prohibit our elected officials to help their constituents when family members are kidnapped and their estates are stolen. But my nana representative at the time, [redacted] did help us. He knew the policy not to help constituents, but he was dying of cancer and was not running for re-election. So he did what he could which is more than constituents will get from their Reps.

So the public administrator can not just take a person directly out of their home and place them into a nursing home. They are required to go from The hospital to a nursing home. So the public administrator conspired with my uncles evil wife to get my nana into the hospital so she would have to go onto a facility. My uncle had not been driving for a few years due to his strokes. So he depended on his wife to take him to visit my nana. The wife called my nana & said she wasn't taking my uncle to visit her anymore. This set my nana into a tail spin. She was a drama queen & carried on like one. She told my uncle's wife that she was making her sick by not taking my uncle to see her. The evil wife asked if my nana needed a doctor or go to the hospital. And nana said yes. And that was it. The ambulance picked her up and she never returned home in her lifetime.

At the hospital one of the public administrator's paid Doctors stated in documents that my nana was incapacitated. It was completely disregarded that my nana had the same PCP for over 20 years, and this was the doctor that should have been consulted to examine her. But this is the standard procedure to kidnap the elderly and special needs people and steal their estates.

So my nana went from the hospital to an inferior facility as my dad predicted. The meals were horrific and she was drugged every day. She was drugged so badly that she went from 95 lbs to 72 lbs. and when I called the state, the colluding social worker said my nana was 81 lbs and that I was a liar. We had to go to court to stop the nursing home from drugging her. The judge told the social worker and everyone in court that whether my nana was 81 or 72 lbs that was too much for a 98 year old to lose from 95 lbs in two months. And he ruled she no longer could be drugged.

After the drugs finally wore off, Nana was running around the facility screaming she wanted to go home. She ran out of the facility too. There was a hole in the roof of the facility. When it rained there was a puddle of water [redacted] next to my nana's bed. One day she jumped out of bed and slipped and fell in that water. She hurt her hip but was never given physical therapy and never walked again. Which was a relief to the nursing home bc she could no longer run.

Other antics the facility engaged in to routinely have me banned from the nursing home were many. But I will give just one example, but every time I was banned I had to go in front of a judge to get a judgement to get back in. And every time I went in front of a judge, he ruled that I got back my visitation.

The staff and PA regularly tried to poison my nana's mind that I wasn't coming to visit her anymore bc I didn't care about her. No matter how hard they drilled her into believing lies she stayed steadfast in knowing I loved her. She would tell them I was like a daughter to her and she loved me. They finally gave up and said we should be separated bc we fed off each other.

Every day I visited my nana I gave her the same vitamins my dad had given her for years. He was a pharmacist and we all took the vitamins he advocated. After 3 months of giving her vitamins, on this certain day the staff orchestrated a plot to get me banned again. When I gave nana the vitamins the staff started screaming I was trying to poison & kill her. Staff retrieved the vitamins out of her mouth and sent it to a lab. Which was found by the lab to be vitamins. Not drugs from my passed away dad's closed drugstore as they claimed. I had my arm around nana, & the DON twisted my arm around my back and said no public display of affection. When I pulled my arm away from her she acted like I pushed her into the wall and started screaming to call the police. One LPN came in and restrained me and a Secretary punched me in the jaw. I have pics of my jaw. My 11 year son tried to help me when the DON threw him against the wall and cracked his wrist cast. The police were called and the DA informed. I went to the DA office a couple days later with an attorney. The DA said they interviewed several staff members at the nursing home. He said there were so many different stories that he believed the incident was orchestrated and there would be no changes. But of course I was banned and had to again go to court to get back my visitation. These antics went on until I won my nana in the Supreme Court of Missouri.

That facility my nana was in had several law suits and the court required fines & new ownership. But the cunning owner had someone in his family take ownership. So he continued to reap the financial

benefits. It came out in the civil proceedings that residents had Bed sores to the bone with maggots. So the owner lost every civil law suit

It took 6.5 years to wind through the corrupt court system until I got to the Supreme Court. If it had not been for Judge [redacted] giving me the summary judgement, I could not have proceeded. The public administrator and her counsel were so outraged that [redacted] admonished them that they filed that he should be recused . But in a panel judgement it was decided that [redacted] had an impeccable reputation and that his judgement stood. [redacted] also ruled that the public administrator had to pay our attorney fees. Which at that time was over $100,000. As procedure the PA had to go to the Missouri legislature, to get our fees paid. This is where [redacted] a corrupt politician who was caught at his machinations, said the legislature could only afford to pay $20,000. But yet a couple months later, the public administrator's counsel, [redacted] sued the PA office for sexual harassment & [redacted] allowed $400,000 to be paid by the Legislature to her.

Before we got to the Missouri supreme court , the public administrator investigated my nana's retirement funds and found out the thieving sons had stolen it in June of 1997. So there was nothing for the PA to steal. . Except my nana house my grandparents had bought in 1933. And everything in it. The PA had changed the locks the very next morning after the farce of the non hearing we did not receive. So all of my nana's pictures, furniture, clothes all of our family history and keepsakes that meant nothing to them and everything to us went to the public administrator and auctioned off. That PA was so evil that even though I said we would buy everything, she didn't even call me. So everything was lost to our family.

During our Missouri Supreme court hearing, [redacted] said that I wanted my nana and she wanted to be with me, and that there was no money in the estate. And he ruled in my favor. The PA was so angry and outraged that she held me up in court on a technicality for another 13 months. But I finally got her.

And when I got her she was 103 years old and in the worst physical health. She had bed sores from the top of her back to the back of her knees. She was impacted and had double pneumonia. She had feces under her finger nails and sat on the facility's wheelchair dripping urine from the cushion. And it wasn't her urine. She had a UTI and a black eye, bruises on her face and body. The social worker at Menorah called the state of Missouri and reported the facility. And the facility was fined.

In the end the public administrator was fired. And she barely exists in private practice today. [redacted] the first law firm that represented us, was sued by a family bc they did not disclose that corrupt policy of if different factions of families are fueling them the lives one goes to the PA. Just like they didn't disclose this to us. The system is so corrupt in [redacted] county that no attorneys would take this family's case. This family had to hire an attorney from [redacted] Missouri about an hour away from [redacted]. The PA would have never thought this small town attorney would win the case. But he did to the tune of $3.6 million. [redacted] only had insurance for $1 million and he paid the rest. His practice was relegated to a small one attorney office. If God is merciful, he's retired now sparing other clients of his intentionally corrupt incompetent representation.

And my nana? Well she always said she wasn't going to die in a facility without her family. And she didn't. By the time she died my kids were in college and on spring break, & we all happen to be there together, but not knowing shecwsscgoingvtobdircthatcdayb . I was giving her a breathing treatment when she looked at me with those beautiful blue grey eyes and died in my arms. Although she endured

the nastiest dirtiest of facilities and more abuse that I can record, she spend 2 years being spoiled by us. We had her 104th and 105th birthdays at [redacted] attended by hoardes of family, friends and church members. She died just short of her 106th birthday.

[redacted]



Whole Life Services, Inc.

[redacted]

[redacted]

I am putting these issues in simple format for brevity. Guardianship issues we have faced at Whole Life:

Guardianships are often used to control and restrict individuals based on the values, fears, and needs of the Guardian. This may be a parent who treats their adult child with an Intellectual or Developmental Disability (ID/DD) as if they are still a minor after age 21. At our agency we have experienced this is also often the case when a parent(s) passes away and guardianship goes to another family member. Sometimes a sibling may not have lived with the person with an intellectual disability for years, but they assume they "know" them, and do not believe that their sibling could grow and evolve. They come into the situation with the point of view that this adult may be treated like a child.

*They want to restrict what they can eat and drink. They want to hold the person to a health standard they do not follow themselves.

*The opposite may happen in that they do not want them to receive some medical care. We have heard "its not worth putting them through this test or procedure", when the test/procedure may save their life. Sometimes there is a financial motivation related to an inheritance that affects the guardians' decisions.

*They do not want them to have romantic or even close relationships. If they disagree with what a provider may say to educate them, they get angry and may force the individual with ID/DD to move, as they say it is "best" for them. In fact, they can strip the person away from everyone who knows them best, and who they love. We have witnessed the guardian disallowing relationships with other family members out of spite.

*Some guardians do not admit when they are not equipped to care for the person. They may rely on the person's SSI, so they do not want them to leave their household.

Guardians often do not understand, agree with, or follow the limitations of Guardianships, thinking they can control something as simple as letting this adult purchase a T-shirt or buy soda pop every day.

Our Mission: "Whole Life Services provides people with support to create a meaningful and purposeful life, by making informed choices, and their own decisions."

As far as what may help this:

1. It should ne be easy to attain guardianship. The judge should seek multiple opinions from people who know the person based on time spent around them, or based on how well they know how the person communicates.
2. Judges should enforce the limits of guardianship. When questions are raised, there should be more use of guardian ad litem. Judges need to truly apply the rules of limitations of guardianships.
3. Family should not be believed simply because they are family. Providers should not be believed because they are "professionals". A well rounded, very intentional and

Administrative, Unlicensed, & Residential Program Offices: 1565 E State St. Hermitage, PA 16148
Community Participation Support @ Linden Pointe: 3199 Innovation Way Hermitage, PA 16148
724.347.5595 | wholelifepa.org | communications@wholelifepa.org



Whole Life Services, Inc.

deep evaluation of the circumstances people involved, and motivations must be determined before assigning guardianships, and when considering changing guardians.

Administrative, Unlicensed, & Residential Program Offices: 1565 E State St. Hermitage, PA 16148
Community Participation Support @ Linden Pointe: 3199 Innovation Way Hermitage, PA 16148
724.347.5595 | wholelifepa.org | communications@wholelifepa.org

○