

CONNECTICUT LEGAL RIGHTS PROJECT, INC.

P.O. Box 351, Silver Street • Middletown, CT 06457

(860) 262-5030 • Fax: (860) 262-5035

JUDICIARY COMMITTEE

Testimony of Thomas Behrendt Regarding Raised Bill No. 5840:

AN ACT CONCERNING CONSERVATORS.

March 24, 2006

Senator McDonald, Representative Lawlor, and members of the Committee:

I am the Legal Director of the Connecticut Legal Rights Project (CLRP), and am here to comment on Raised House Bill No. 5840, An Act Concerning Conservators. CLRP is a statewide non profit agency that provides free legal assistance to low income adults with psychiatric disabilities on matters related to their treatment and civil rights. I am testifying in favor of this bill.

For over 25 years, I have worked with and represented and clients involved in conservatorship and guardianship proceedings. I have served on various committees of the bench and bar, including the New York State Bar Association Committee which studied and ultimately drafted New York's statutory scheme governing guardianship, enacted in 1992.

The statutes in place at present are lacking in adequate standards for the establishment and for the termination of conservatorships. Raised Bill 5840 would bring much needed guidance to probate judges and the attorneys who practice in their courts.

CLRP's staff, and the program's clients, have been involved with conservatorships in well over 30 different probate courts around the state (in some cases under administrations of different judges over the years). Each court and each judge handles various aspects of these matters differently — in effect, there are 131 separate and distinct sets of rules of practice and procedure in Connecticut's probate courts.

While I cannot deny that the informality, accessibility, and user-friendliness of the probate courts can be a real advantage for its users. We must not lose sight of the fact that being placed under conservatorship means being stripped of all of one's rights as an adult – being transformed into an infant in the eyes of the law. To borrow language from the U.S. Supreme Court, conservatorship entails a “massive curtailment of liberty.”

There is a critical need for due process and for uniformity of procedures and standards. Despite the fact that there are many excellent courts and judges, such standards and procedural safeguards are currently lacking in our probate system. These standards and safeguards will help to curb the abuses that you have been hearing about today.

Most of the provisions in the bill are taken either from language already found in the General Statutes or from national model statutes endorsed by groups such as the National Academy of Elder Law Attorneys, the American Bar Association Commission on Law and Aging, the National Guardianship Symposium, and the National College of Probate Judges.

Given conversations we have had with some members of the bar as well as with Judge Lawlor and individual probate judges, it is clear that the most controversial part of the bill concerns the provisions that would allow for transfer of contested matters to the superior court. My response to these criticisms is that this is an important protection; provision allowing transfer mirrors existing provisions allowing for transfer of juvenile matters; and only a small minority of contested matters would be transferred to the superior court. Recent case law lends support to such a provision. In a decision handed down on December 27, 2005, the State Supreme Court unanimously held “there is no difference in the court’s duty to safeguard the interests of a minor and the interests of a conserved person.” *

In the event that the Committee is unable to support the transfer provisions, I would urge you to rule favorably on a substitute bill which preserves the other vitally important provisions of the HB 5840.

Thank you for your attention to this matter and for the opportunity to testify.

Thomas Behrendt, Legal Director
Connecticut Legal Rights Project
P.O. Box 351, Silver Street

* *Lesnewski v. Redvers*, (Conn., No. SC 17377, December 27, 2005), at p. 10.