



Greater Hartford Legal Aid, Inc.

**TESTIMONY BEFORE THE JUDICIARY COMMITTEE IN SUPPORT OF
RAISE BILL NO. 5840; AN ACT CONCERNING CONSERVATORS**

By Attorney Veronica Halpine

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I am an attorney in the elder law unit at Greater Hartford Legal Aid. I respectfully submit this testimony in support of Raised Bill No. 5840. I urge you to pass this important legislation and the rights of the elderly and disabled are being trampled by the current system.

The bill will achieve three important goals. It will require probate judges to listen to the person being conserved and to respect that person's preferences. This language is identical to the language outlining the procedure in child custody cases. The law recognizes that children have varying ability to make meaningful, competent choices should be respected. Most of the people involved in involuntary conservatorship proceedings retain some ability to make meaningful decision and the court should consider their express wishes where possible. This bill brings the law into accord with national guardianship standards.

The bill brings the law into accord with the recent Supreme Court decision in Leznewski v. Redvers, that held that the rights of adult incompetents are analogous to those of children. Children have the right to have termination cases heard by a judge with a law degree, in a system that affords appropriate protections for important rights. Adults fully vested with the legal rights afforded under the constitution of this great state should be given the right to have their cases heard in superior court, by a judge whose credentials have been reviewed by this committee.

The removal language in this bill is the exact language already in the probate statutes authorizing removal to superior court in termination of parental rights cases. No one protests when DCF has to go to superior court before the state may interfere with family integrity. Adult incapables, facing the utter and complete loss of all of their rights, should have at least the same rights to fairness and due process as people trying to preserve a relationship.

We are often involved in these cases because of the deplorable quality of representation, therefore, we know that the many attorneys who make their living in probate practice are unlikely to remove, appeal or in any way offend the presiding probate judge. There is unlikely to be a ground swell of cases being removed for this same reason.

For those in need of an immediate conservator, the statutes continue to authorize the probate court to issue a temporary order if there is the likelihood of immediate and irreparable harm. And, of course, voluntary conservatorships are not subject to removal.

The bill requires probate judges to tailor the conservatorship to the person's needs. Although the law

currently allows probate judges to appoint limited conservators, they happen rarely if ever. Judge Lawlor said that he prefers to appoint plenary conservators so that the conservator does not have to return to court to apply for broader powers as the ward declines. This is a telling admission. He has conceded that his ordinary practice is to impose overly broad conservatorships, taking away rights that the person should continue to enjoy, without sufficient evidence of incapacity. Another probate judge has indicated that he does not recognize limited conservatorships. I have never seen one appointed.

Requiring probate judges to limit the conservator will stem much of the suffering caused by the imposition of plenary conservators. If rent needs to be paid, pay the rent. If a cluttered house needs to be cleaned out, clean the house. If a person has too many cats, take care of the problem. In most contested cases, you don't need to throw the baby out with the bath water.

Finally, this bill corrects a very significant omission in the law. It establishes a procedure for being restored to capacity.

I have attached letters forwarded by Yale Law School Professor John H. Langbein. These are just some of the correspondence he received from people wounded by the probate system. I have also attached a probate decree appointing an involuntary conservator "by agreement", a Hartford Courant editorial about the same case and four reports submitted by attorneys recommending that their clients either be or continue to be conserved, over their objection.

I urge you take these important steps toward respecting the rights of the elderly and disabled by passing raised bill 5840.