

Resolution Urging Alternatives to Guardianship

WHEREAS taking away the rights of a person “in order to protect that person” is not necessarily justice and almost always undermines the person’s rights under the United States Constitution; and

WHEREAS, for a small fee, a guardianship can be established (possibly based on hearsay) that may nullify any or all Constitutional rights of an alleged Incapacitated Person (“IP”) without notice to the IP’s family, partner or companions. (The IP should receive notice (RCW 11.88.030) in no less than 10 point font, but this is sometimes overlooked. There is no provision to ask the AIP if he/she needs help retaining counsel or even getting to court;) and

WHEREAS over 8000 guardianship cases are initiated in Washington every year, a 27% increase over 2000; and

WHEREAS a guardianship can empower a total stranger to make some or all decisions for an IP – e.g., where they live, whom they see, how they live, and how their money is spent – regardless of any pre-existing Durable Power-of-Attorney, Advance Directive, trust or trust fund, pension, or designated bank accounts or CDs set up for the IP’s future wellbeing or heirs, even if the IP is still physically able to clearly communicate his/her wishes; and

WHEREAS being made a ward of the court under guardianship is costly for the state and for the IP, and often unnecessary and humiliating for those who could function with minor assistance or no assistance at all; and

WHEREAS even a person accused of a crime has a right to a jury trial before having his/her rights removed, but an alleged Incapacitated Person is accorded no semblance of such a right when being forced into a guardianship; and

WHEREAS the Constitution guarantees the right to vote and the unalienable rights of Liberty and the Pursuit of Happiness to all in the way of their own choosing, but these rights are often removed under guardianship; and

WHEREAS removal of a person’s Constitutional rights should be a last resort, not the only option; and

WHEREAS currently any elderly or disabled person under disputed care has no other choice but to become a ward of the court under guardianship; and

WHEREAS established family caregivers may be forced to divert care-giving time to trying to learn legal issues to become a guardian, when a simple Power-of-Attorney would have sufficed; and

WHEREAS a professional guardian can hire lawyers at the IPs expense to fight caring family members who try to oppose any excessive fees, abuse by the guardian or the necessity of a guardianship at all; and

WHEREAS RCW 11.92.190 (prohibiting detention of persons in residential placement facilities against their will), and other rights and protections available to persons not under guardianship, are often violated under guardianship;

THEREFORE, BE IT RESOLVED that we urge our Legislators to create alternatives to guardianship, such as: a court-issued Power-of-Attorney for relative/care-givers, Supported Decision-Making programs which are independent from the guardianship system, authorized bill payers, and limited interference protection for the disabled and aged; and

BE IT FURTHER RESOLVED that guardianship and other options that remove the Constitutional rights of an individual because of disability or age be considered only as a last resort, after other reasonable options have been tried and failed, rather than the first or only option, or the norm; and

BE IT FINALLY RESOLVED that this resolution be communicated to the County Democratic Committees and the Washington State Democratic Convention, and to our State Legislators and the Governor’s office.

Already Adopted by: 32nd and 41st District Democrats and KCDCC Executive Board

Submitted by Michael Brunson 32nd, Jennifer Roach 37th and Sonja Rossman of 41st