Oregon
Kate Brown, Governor

**Oregon Public Guardian & Conservator**
3855 Wolverine NE, Suite 6
Salem, OR 97305-1251
503.378.6848
Toll Free 1.844.656.6774
FAX 503.373.0852

February 28, 2017

The Honorable Floyd Prozanski
Chairman, Senate Committee on Judiciary
Oregon Senate
Salem, Oregon

**Re: Senate Bill 503**

Dear Chairman Prozanski and members of the Senate Committee on Judiciary:

My name is Travis Wall. I am the Oregon Public Guardian and Conservator. My position was established by the legislature in 2014, and our program has been building the foundation for public guardian and conservator services statewide since early 2015.

ORS 125.683 provides that the Oregon Public Guardian and Conservator "make recommendations to the Legislative Assembly for policy and legislation regarding implementation, improvement and expansion of public guardian and conservator services in this state." Please accept this testimony as a recommendation that Senate Bill (SB) 503, if enacted, will improve public guardian and conservator services in Oregon, including the rights of protected persons subject to protective proceedings.

*SB 503 is needed to ensure that court visitors -- "the eyes and ears of the court in protective proceedings" -- are appropriately screened, qualified and trained to carrying out their responsibilities for independently evaluating guardianship and conservatorship petitions and reporting to the court.*

In addition to requiring the Oregon Judicial Department (OJD) to develop uniform standards for the use of visitors, SB 503 requires visitors have adequate education and knowledge to carry out their functions; specifies that courts alone may select visitors; clarifies that courts may utilize visitors to evaluate the continuing need for protective orders and the conduct and suitability of fiduciaries; and requires the use of visitors in conservatorships.

The need for SB 503 is well documented. The bill's requirements concerning visitors closely follow the 2008 Task Force on Protective Proceedings Report, which at the direction of then Chief Justice Paul DeMuniz studied protective proceeding practices in Oregon. The report was based on the analysis of information gathered from judges, court staff, attorneys, advocates and fiduciaries, as well as on practices in other states. In its report, the Task Force recommended OJD establish uniform policies and practices for the selection, training and use of visitors. It noted that the court visitor "stands as the primary barrier to abuse or other victimization of disabled or elderly persons [who may be subject to guardianship or conservatorship]. The report

went on to state:

> In many areas, court visitors are trained, qualified, and highly respected individuals. In other jurisdictions, courts report that limited resources make it difficult to identify persons to properly perform this function. Some existing practices call into question both the qualifications and neutrality of the visitor.

Unfortunately, economic recession hit Oregon shortly after the report was published and it was shelved for lack of resources to carry it out.

The findings and recommendation of the Task Force are still applicable. Protective proceedings and practices in Oregon remain virtually unchanged. Guardianship and conservatorship are drastic and severe. Their imposition inevitably entails denial of the most fundamental rights of protected persons, often for the remainder of their lives. The loss of the right to choose where you live, whether you can leave your residence, who you can communicate with, what medical treatment you will receive and many other rights are all possible and common in guardianship.

The due process protections afforded proposed protected persons in Oregon are substantially less than those present in most other jurisdictions. Oregon is the only state that does not require a hearing before a judge or administrative magistrate may impose guardianship or conservatorship on a continuing basis. Oregon is one of a limited number of states that do not provide counsel for proposed protected persons. And Oregon is one of a handful states that do not require petitioners to submit medical or expert evidence attesting to the incapacity of the alleged protected person.

Given the significant lack of other due process protections, the role and responsibilities of the visitor are paramount. Often, the visitor is the sole source of neutral and factual information available to the court on the respondent, their circumstances and the suitability of the proposed guardian. It is essential then that court visitors have the education, experience and training necessary to fulfill their responsibilities and that they are fully independent and accountable to no one but the court. However, this is not always the case.

In the 18 months that the Oregon Public Guardian and Conservator has been providing services, we have encountered court and visitor “best practices”. A number of Oregon Circuit Courts have programs, policies or arrangements for screening, appointing and directing visitors; and utilize well-qualified, skilled and highly professional visitors. Many of these visitors are licensed nurses, social workers and psychologists; others have advanced degrees related to their responsibilities and years of clinically related evaluative experience. In a number of circuits, courts maintain lists of qualified visitors, from which the court appoints visitors or the court selects visitors on a rotating basis. The practices of these courts could be used as a model for other courts (and reportedly have in some instances).
However, in a number of cases, we encountered courts where it appears there is little that guides the selection and use of visitors and actual practice appears to undermine the impartiality and integrity of the process.

- In 12 cases where we filed to become guardian, the courts tasked us with directly identifying the visitor to be used; those courts did not have any preapproved visitors to select from. In almost all cases, we have directly paid visitors for their services, leaving the appearance if not reality of a conflict of interest.

- In a number of cases with which we are directly familiar, we have encountered problematic visitor reports.

    - A significant number of our cases involve protected persons previously served by a fiduciary convicted in 2016 of felony exploitation of her clients. This fiduciary was in business from 2007 to 2015. Over this period, she filed over 69 petitions and was appointed as a fiduciary for 55 individuals in 16 counties. All of this notwithstanding, concerns about her conduct and objections by visitors to her appointment occurred early on. While early in her fiduciary career, courts in two counties refused to appoint her after receiving visitor reports containing negative information about her conduct, it appeared she simply moved her practice to other counties, where visitors were either unable to discover that information or did not attempt to research her background.

    - In reviewing some 55 reports prepared by court visitors on the abusive fiduciary over the eight years she was business, we encountered 26 reports with deficiencies, including three where the protected person was not even interviewed, contrary to the requirements of existing law; 16 where the proposed fiduciary was not interviewed, also contrary to current law; and most shockingly another six where the evidence contained in the report should have required a finding that the person was not "incapacitated," yet, nonetheless the visitor concluded the person was lacked capacity.

In our interactions with others knowledgeable with protective proceedings in Oregon, including those responsible for protecting and advocating for vulnerable and at-risk adults, as well as monitoring fiduciaries, we have been provided with credible information that indicates our experiences are not unique or unusual.

For all the reasons outlined above, we urge the upmost consideration be given to SB 503.

Sincerely,

S. Travis Wall
Oregon Public Guardian and Conservator