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Testimony of John Pollock
Coordinator, National Coalition for a Civil Right to Counsel
In Support of SB 501 and SB 502
Senate Committee on Judiciary
March 2, 2017

Chair Prozanski and Members of the Committee:

I am writing to express support for Oregon SB 501 and 502, which would require the appointment of counsel in public and private guardianship proceedings. I am a Staff Attorney with the Public Justice Center who serves as the Coordinator of the National Coalition for a Civil Right to Counsel. The NCCRC is comprised of nearly 300 participants in 38 different states who work to advance the right to counsel in civil cases implicating basic human needs. Guardianship proceedings undeniably implicate numerous basic human needs, including physical liberty and bodily integrity, and as such are deserving of procedural due process protection.

As noted in the testimony by Oregon Public Guardian Travis Wall, “In most states, appointment of counsel for respondents is mandatory or assured.” Indeed, at present, 41 states guarantee appointed counsel to respondents in guardianship cases, as indicated on our website’s interactive map displaying the status of the right to counsel in all 50 states (<http://www.civilrighttocounsel.org/map>). This approach is justified for a number of reasons. First, counsel can ensure that any objections of the respondent are fully heard by the court, particularly where such objections relate to the respondent’s family members and as such may be difficult for the respondent herself to air in open court. Second, even where the ward is incapable of effectively communicating with counsel, counsel can still act to protect the ward’s legal interests by: a) ensuring that the prospective guardian has no conflicts of interest; and b) as noted by the ACLU of Oregon, ensuring that the scope of the guardianship is no broader than necessary. Third, the Uniform Probate Code and the Uniform Guardianship and Protective Proceedings Act both call for the appointment of counsel either upon request or in any case where the respondent is unrepresented.

While SB 501 and 502 provide several ways for the right to appointed counsel to be triggered besides a request by the respondent, our experience suggests that in order to effectuate the respondent’s ability to make such a request, the petition served on the respondent should specify that the respondent has the right to: a) object to the petition, and that such objection will trigger a mandatory hearing with appointment of counsel; and b) appointment of counsel upon request, regardless of whether the respondent objects to the petition.

Thank you for the opportunity to provide comment on these important bills.

Sincerely,

John Pollock
Coordinator, National Coalition for a Civil Right to Counsel