



**Testimony of Kimberly McCullough, Policy Director  
In Support of SB 891  
Senate Judiciary Committee  
March 27, 2019**

Chair Prozanski and Members of the Committee:

The American Civil Liberties Union of Oregon<sup>1</sup> SB 891, which will strengthen the civil rights and liberties of people with disabilities in guardianship proceedings.

**SB 891 will help to ensure adequate due process protection against an unwarranted profound governmental intrusion into an adult's life**, by directing the appointment of legal counsel and mandate a hearing when a petition for appointment of a fiduciary is filed by the Oregon Public Guardian and Conservator or a county public guardian and conservator.

**Guardianship is a legal proceeding that strips an individual of multiple or *all* rights recognized as fundamental by the Supreme Court.** People under guardianship cannot make their own choices about: where they live; where they work; what kind of medical care they get – or whether they will get any medical care; what they eat; who they spend time with; and whether they will get married. A full guardianship represents the erasure of the autonomous legal individual, and should not be countenanced without a heightened degree of scrutiny from the courts and adequate due process.

**Even though guardianship has serious, life-long consequences, it is often imposed as a matter of course.** When adults – often seniors – develop a disability, especially one that affects the ability to manage finances or make complex decisions, their spouse or child is often encouraged to become their guardian. In addition, parents are frequently told that they have to get guardianship over a child with a disability turning 18, if they want to continue to help with education plans and medical treatment. This condemns an adult with a disability to a perpetual childhood – first parents make all decisions, and then, when the parents are no longer able to serve, a complete stranger may be appointed to make

---

<sup>1</sup> The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan, nonprofit organization dedicated to preservation and enhancement of civil liberties and civil rights, with more than 45,000 members and supporters statewide.

every choice for the individual. These professional guardians are often making choices for dozens of people, and tend to push their wards into institutions.

**In many circumstances, less restrictive options are available.** Creating a power of attorney for health care or a power of attorney for financial matters is often a better solution. These are contracts between the person with a disability and someone they trust – and choose themselves – to help advise them, or to make decisions if they are unable to. The person with a disability still keeps the right to make decisions in other areas of his or her life.

In another model, known as "supported decision-making," people with disabilities keep their rights and their decision-making capacity. Instead of having a guardian make choices for them, people with disabilities have supporters who help them make their own choices. A person using supported decision-making appoints trusted advisors, such as friends, family, or professionals, to serve as supporters. The supporters help the person with a disability understand, make, and communicate her own choices.

**At the ACLU of Oregon, we believe that we should have more conversations about guardianship that include the voices of those who are most affected by guardianship's grasp.** We need to explore and further develop the best models to support individuals with disabilities in their decision-making. And, we need to be cautious when anyone suggests guardianship for our children, our parents or ourselves. **Most of all, we must recognize that disability should not be an excuse to deprive someone of her basic civil liberties.**

**This bill strengthens the rights of people subject to guardianship proceedings in a significant way.** We believe it would help to move Oregon's guardianship law in the right direction.

For these reasons, the ACLU of Oregon urges you to support SB 891. Please feel free to contact us if you have any questions, comments, or concerns.