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To: Chair Prozanski, Vice-Chair Thatcher, and Members of the Senate Committee on Judiciary

Submitter: Rebecca S. Kueny

Re: SB528

Dear Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee,

I am a managing partner and attorney with Kueny Law LLC. We are a small elder law and estate planning firm in Salem. Our office handles primarily protective proceedings, special needs planning, estate planning, disability, and government benefits cases. Additionally, I serve as one of a handful attorneys in Salem that act as guardian and professional fiduciary. I am certified by the National Guardianship Association, I chair the Marion County Indigent Guardianship Committee, I am the President of the Marion County Bar Association, and I am the Chair of the Oregon State Bar Elder Law Section Continuing Legal Education Committee. I am *only* testifying on behalf of myself today.

I oppose SB528 for the following reasons:

FINANCIAL IMPACT. This bill would have a substantial impact on our community. It would impact:

COURTS. The courts are already struggling with protective proceeding caseloads. Increasing the number of pleadings, hearings, and requirements is going to create a heavier burden on an already burdened institution. I would highly encourage the legislature to do a financial impact study on what is happening now with the courts in protective proceedings and how this bill would financially impact our state courts.

PROTECTED PERSON. Pursuant to ORS 125.095, the “fees, costs, and disbursements to any visitor, attorney, physician, fiduciary or temporary fiduciary related to the protective proceeding or for services provided on behalf of a fiduciary, respondent, petitioner, cross-petitioner, objector or protected person” may be paid from the protected person’s funds with court approval. This means that the financial impact of more filing fees, court visitor fees, attorney fees, and fiduciary fees will be burdening our vulnerable populations. These are the populations that we are trying to protect.

GUARDIAN. If the fees are not approved by the court or if the protected person does not have assets, then the burden of paying this expense is placed on the guardian. The guardian is often a family member who is already doing their best to help a loved one, including taking time off work, providing care, and dealing with the emotional stress of the protective proceeding. If there is no family able or willing to step up, then sometimes the guardian is a friend or professional fiduciary. The financial burden and implications of this bill will have a chilling effect on using friends and/or professional fiduciaries for guardianships, as often those parties cannot afford to carry the costs of these proceedings.

INDIGENT GUARDIANSHIPS. There is already a critical issue with indigent guardianships in Oregon. I ask this committee to talk to our community partners about the issues our state is facing with trying to find guardians for people who are homeless, on government benefits, and/or in marginalized communities. There are not enough guardians taking cases right now. This bill, if it becomes law, will stop guardians from taking on cases due to the financial and legal burdens.

COURT VISITORS. There is already a need for more court visitors. While this provides more work for court visitors, there are not enough to take on these cases. Additionally, there must be funds to pay for a court visitor. Many guardianships do not move forward in the legal system due to lack of funding abilities, even with the court's waiver programs.

LEGAL AID. Oregon legal aid does not handle protective proceedings. This is not an option for low-income Oregonians to utilize.

ILLUSTRATIVE STORY. I was recently appointed as guardian for an elderly woman due to her dementia diagnosis. Her case was brought to my office's attention because a medical emergency in Salem Hospital. Upon my appointment as her guardian, I discovered that her adult grandchild, who has developmental disabilities, lived with her and was under her care. In fact, she was his legal guardian. It was apparent that he was not able to live independently and requires assistance with his activities of daily living. Thus, I petitioned to be his guardian as well. I petitioned knowing that he had no financial resources and receives SSI benefits.

I took on his case because I knew that he would need assistance applying for and maintaining his public benefits, to continue to receive the supportive resources, and would require an advocate for his care for the rest of his life. This protected person is 38 years old; I will be his guardian indefinitely for possibly decades.

In the last six months, my office has written off over \$8,000 in administrative court costs and our fees for this case. We personally paid for his court costs. We know that we may never be compensated for taking on his case. I have chosen to do so because I knew it was what I should do in the situation. I believed at the time that while the initial costs my office may write off may be substantial on the offset, the case would settle down after the guardianship was established. If SB528 passes, I will not be able take on these cases in the future. There was no one that was able to take on this person's guardianship if I had not stepped into the role.

ACCESS TO JUSTICE. I support wholeheartedly representation for protected persons. I have represented many protected persons and fought zealously for their rights. If we are going to require representation on all protective proceedings, then there needs to be funding to pay these attorneys.

Currently, attorneys are often getting phone calls from judges and being appointed to do pro bono representation on protected persons.

MONITORING PROGRAMS AND SYSTEMS. I request this committee look at the current monitoring systems in place. There are substantial systems in place right now for protective proceedings. However, there is not funding for these systems. It is a funding issue; this is not a process issues. A protected person at any time can request a hearing or representation. There is no statute of limitations on this fundamental right. There is just a funding issue allowing the right to be asserts appropriately.

SUPPORTED DECISION MAKING. Across the country there is a push for supported decision making. While this is great in theory, the work that needs to be done to create appropriate systems requires time and dedication. There is no system in place in Oregon to allow for this to be effective or meaningful. Currently, guardians are making supported decision making when possible. Is there room for improvement? Yes. SB528 is not that path. Oregon is not there yet in system and legal supports to achieve this goal.

END-OF-LIFE DECISIONS. As an elder law attorney, I discuss dying with dignity each day of my life with clients and loved ones. The idea that there is a prohibition on assisting with end-of-life decisions is unconscionable to me. A guardian is required to make decisions based on what the guardian believes the protected person would have wanted, taking in religion, beliefs, statements, etc. A complete prohibition on end-of-life decisions will keep Oregonians on life support if they did not complete an Advance Directive. There are many protected persons who will never have the capacity or legal opportunity to complete and Advance Directive. Oregon is known for our death with dignity around the country; this is a step in the opposite direction.

ALTERNATIVES. I oppose SB528. Instead, I urge the legislature to get more information on the financial impact that this will have on our courts and community. There is a better way to achieve the fundamental goals that SB 528 is trying to achieve. The legislature could fund programs for:

- Indigent guardianships
- Attorney representation of protected persons
- Court visitors
- The Public Guardian
- Professional fiduciaries
- Guardianship education
- The Oregon Judicial Department

Thank you for your time,



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