



Date: February 19, 2024

RE: Support for HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

To: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble

Dear Judiciary Committee Members:

Elder Voice Advocates strongly supports HF3483/SF3438, which aims to limit blanket immunity for guardians in Minnesota. As a nonprofit organization dedicated to protecting the rights vulnerable adults and improving the care given, we know how critically important it is to have accountability for wrongdoing.

Minnesota is believed to be an outlier in its recent guardian immunity interpretation that a guardian is not liable for their own acts of negligence when performing their core functions. This bill seeks to rectify this issue by restoring essential rights to individuals under guardianship.

The existing position of granting guardians complete immunity for their core responsibilities is illogical. Elders and vulnerable adults rely on us to safeguard them from harm, yet the current system poses a threat to their well-being. It's unreasonable that guardians are exempt from any consequences, even in cases of neglect or direct harm inflicted on those they are supposed to protect.

People under guardianship should not have fewer rights to pursue claims of negligence than others. If a guardian causes harm, the affected individual should have the right to seek recourse without encountering immunity barriers.

The legislature did not intend to grant guardians blanket immunity. Other professionals do not enjoy such broad immunity, so there's no reason why guardians, who oversee our most vulnerable citizens, should be exempt.

Given the significant power guardians wield over vulnerable individuals, it's crucial to implement additional safeguards to prevent abuse. Allowing guardians complete immunity puts those under their care at risk of harm.

With approximately 35,000 people under guardianship in Minnesota, the stakes are high. These individuals are relying on the legislature to safeguard their interests, and blanket immunity fails to provide adequate protection. It's imperative to support HF3483/SF3438 and address this issue promptly.

Thank you for your attention to this matter and for your dedication to improving the quality of care in our community.

Kristine Sundberg, Executive Director
Elder Voice Advocates

A handwritten signature in cursive script that reads "Kristine Sundberg". The signature is written in black ink and is positioned below the typed name and title.



Legal Services Advocacy Project

February 19, 2024

The Honorable Jamie Becker-Finn
Chair, Judiciary Finance and Civil Law Committee
Minnesota House of Representatives
559 State Office Building
St. Paul, MN 55155

The Honorable Peggy Scott
Republican Lead, Judiciary Finance and Civil Law Committee
Minnesota House of Representatives
335 State Office Building
St. Paul, MN 55155

Re: HF 3483 - Guardian Immunity

Dear Chair Becker-Finn, Lead Scott, and Members of the Judiciary Finance and Civil Law Committee:

Legal Aid respectfully writes in support of HF 3483, the Guardianship Immunity Bill. Legal Aid provides civil legal services to low-income Minnesotans, Minnesotans with disabilities, and elder Minnesotans, statewide, to help them meet their basic needs. Legal Aid's Legal Services Advocacy Project provides legislative and administrative advocacy on behalf of our clients and all low-income Minnesotans.

The reason this issue is before the committee is because of a legal case¹ that arose when a vulnerable adult with Alzheimer's disease in long-term care facility was the victim of an unspeakable act by a facility staff member and the victim's guardian recklessly breached her duties by failing to inform the failing of the heinous act and its traumatic impact on the victim. The court ruled that the plain language of the statute held the guardian immune from any responsibility for her negligent action and essentially establishes that no matter how egregious or harmful a guardian's act or omission is, that guardian cannot be held legally accountable.

¹ Zika v. Elder Care of Minnesota, Inc., 979 N.W.2d 472 (Minn. Ct. App. 2022).

HF 3483 would establish that a breach of fiduciary duties or a breach of other duties the guardian has agreed to undertake that rose to the high legal level of wantonness or recklessness could give rise to personal liability. Of course, some would argue that imposing any liability – no matter how ghastly the act or omission – will chill people from becoming guardians in a world where it is already difficult to find them.

While of course, no one wants to discourage people from becoming guardians, it appears to Legal Aid there must be some middle ground between creating liability for second guessing reasonable, everyday decision making by guardians and those acts or omissions that shock the conscience and cause severe or irreparable harm. HF 3483 strikes such an appropriate balance.

In addition, the taskforce should be helpful in identifying issues with guardianship and moving Minnesota to a model that favors supported-decision making and other alternatives to guardianship.

In sum, Legal Aid applauds this effort to right an obvious wrong and urges the passage of HF 3483.

Sincerely,



Ron Elwood
Supervising Attorney

This document has been formatted for accessibility.

SEMCIL

SE MN Center for Independent Living, Inc.

February 16, 2024

Rosalie Eisenreich, MPH
Strategic Initiatives Director
507-421-4503
rosalie@semcil.org

Re: HF3483/SF3438 – Jean’s Law on Addressing Guardianship Immunity

To: Rep. Sandra Feist and the House Judiciary Finance and Civil Law Committee and Sen. Scott Dibble and the Senate Judiciary and Public Safety Committee

As a Center for Independent Living (CIL) that is controlled, led, and managed by people with disabilities since 1981, we ask you to support House File 3483 and Senate File 3438 put forward by Elder Voice Advocates. Blanket immunity for guardians perpetuates violence and ultimately discriminates against people with disabilities by removing their constitutional right to bring forward a liability complaint when abuse and neglect occur.

SEMCIL has been a witness to and advocated for many who have been abused and neglected by their guardians. This is not a new issue, but because of community leaders such as Cindy Hagen, we are identifying concerning ways in which people are not only abused by their guardians but also how professionals across systems are working actively to remove decision-making rights, even after previous legislation from 2020 was supposed to redirect people and professionals to supported decision-making options.

Guardianship in Minnesota, as it currently stands in policy and practice, silences people from their ability to advocate and functionally segregates people from any hope of justice, let alone equal opportunity. Previous legislation provided infrastructure for alternatives, but it did not provide the necessary policy to understand how, when, and where abuse occurs, to what extent, and ultimately provides no accountability of perpetrators.

Blanket immunity strips Minnesota residents of our value and perpetuates the message that we are third class citizens. Our community is demanding action. We are asking for partnership. It is time the power comes back to the vulnerable which requires policies that inhibit restrictive decision-making options and address dangerous and abusive situations in an immediate manner. I and our Executive Director, Jacob Schuller, are available to help provide community-led technical assistance regarding the subject of guardianship. I have included my contact information above for any questions or concerns you may have. We thank you for your thoughtful consideration.

Sincerely,

Rosalie Eisenreich, MPH

Date: February 19, 2024
RE: Support for HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity
To: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist Senate Judiciary and Public Safety Committee and Sen. Scott Dibble
From: Cindy Hagen

Dear Judiciary Committee Members:

My name is Cindy Hagen. I am a Minnesotan who was paralyzed in a car accident when I was 15. I support HF3483/SF3438, which would limit blanket immunity for guardians in Minnesota. Here is my story.

I am a quadriplegic. Since 1994, I have lived in my own home independently for the vast majority of the time. I currently live in Mankato, Minnesota, where I have rented the same apartment for 22 years.

In January 2023, after I had been stuck in a hospital for months, I was forcibly placed under guardianship and conservatorship without me or my lawyer being notified until after the court approved it. At the court hearings, I was never given the opportunity to speak. Before that, I had been trying very hard—to no avail—to get my county to approve disability services so I could move back home to my Mankato apartment. The hospital wanted me to move to a place they found, but I did not agree. I knew that if I went to their chosen place, I would lose my apartment and probably never get out. I was left in an impossible situation without a case manager. I didn't want to be in the hospital. I hated it there. But if I moved somewhere chosen by the hospital, then I would have lost my apartment and my independence.

I knew others were being bullied into doing what they didn't want to do and forced out of their homes. I couldn't let that happen to me. Having no case manager, I knew I had to fight because going back to another understaffed nursing home or facility would mean I would not get my cares met. The numerous pressure sores, infections, being forced to stay in bed because nobody would get me up, and then going weeks to months without getting bathed properly with mold in my hair. Mentally I already knew how much of a toll hospitalization was taking on me without fresh air and sunlight, but what about my body? Would I be able to endure another year or more of this until I could find new adequate accessible affordable housing? No, I knew I'd become just another statistic. This is why I never agreed to go in any of these places: another nursing home, or a group home where I would live in one little room, lose most of my belongings, with a huge monthly spend down, not being able to afford much of my daily expenses. That would have ended my ability to do things that made me happy: getting a new cat, going to concerts, buying new clothes, because living on a hundred dollars a month would be gone really quickly.

The hospital threatened guardianship for the first time on December 16th, 2022. The whole hospital management team came in and threatened me with guardianship: either I move to the place they found, or they would place a guardianship over me and they would forcibly move me. Yet on December 22nd, during a different meeting with Moving Home Minnesota, social services, and others, it was agreed that guardianship was not necessary because now, with the new, appropriate people, we were part of the "moving Cindy home project".

I remember the morning of January 5, 2023, very clearly. I had just woken up when a hospital social worker came into my hospital room, telling me my county's social services wanted to talk to me. Before I could say anything, a laptop was set on a table in front of the bed with my former social worker and a few other

people I did not recognize. Despite a previous meeting stating people were not allowed to talk to me without my lawyer or other advocates present, the meeting went on anyway without my consent. **I was told that I must agree to and be physically placed in a group home approximately three hours away from my Mankato apartment, or else they would force guardianship upon me.** This meeting was a crushing blow to me.

How should I go about talking about the mistreatment and abuse that I received when hospital management told staff to do what they needed to do to make me feel as uncomfortable as possible because "we need this room for somebody else that deserves to be here"? I understood what it meant to be in the hospital. I no longer needed to be there medically. But I was left in an impossible situation without a case manager. I didn't want to be in that hospital. I hated it there. But I knew if I left there and went somewhere else that the county / hospital deemed as fit then I would be stuck there and I would have lost my apartment. I felt guilty most of those ten months because I knew there were people who needed to be there instead of me. The proper people were not leaving me with much choice.

I remember the first time I met my guardian on February 14, 2023. Of the 15 minutes she spent talking to me, she wasn't concerned about how I was feeling and what was happening. About 13 minutes of that time was her wanting to know about my assets: how many bank accounts I had, how much money I had, and where did I bank? What property was in my apartment? What other things did I own?

I was forcibly subjected to guardianship and conservatorship for 80 days. I can't tell you how many times I was in fear of my life. At any given time, I could be forcibly removed from the hospital. I would have no choice and they didn't have to tell my loved ones, my lawyer, or anybody else who was helping me where I was going. Many times I had been told, "Did you know that they're coming today to take you to some mystery place? They found a facility for you to go." Then I would spend that whole day thinking, oh, great, today's the day someone's going to force me to go to some place and I have no idea where. But at the end of the day I'd still be in the hospital. They did this to me constantly. Hospital management and staff threatened to report to my guardian any of my "behaviors", *i.e.*, anything I said or did that they believed was unfit or unacceptable.

One of the last places that I remember them talking about was a mental institution that did not like the way that I was catheterized. They wanted me to have an invasive surgery, making it more convenient for their staff. I guess you could say luckily the guardian did not agree to this. Finally, everybody agreed to drop the guardianship and conservatorship, and allow me to have the right under court-mandated timelines to go home with disability services.

I constantly had nightmares then and I still do now. As I have flashbacks over all of this, I still constantly wonder, what happens if they come back and force me under guardianship again?

It's been difficult being around certain people who know my story. I don't get treated the same way I used to. They still don't think that I can make decisions and others take it upon themselves to make decisions for me. I have to fight even harder in an already ableist society than the average disabled person since the guardianship.

Sometimes it's difficult for me to even leave my apartment because I'm afraid. I constantly worry that if I don't make the right decision in other people's eyes, they will think that I'm doing something wrong or that they don't like. This happened once before and is it going to happen again even though I am doing nothing wrong? Because I have a disability, I don't get the same rights to live my life?

I still can't fathom how courts can make the decision to appoint a complete stranger to make life decisions for somebody they don't know and decide what is in their best interest. To be such an inconvenience that now you're just seen as an object. And if God forbid, a guardian makes a decision that ends up causing the vulnerable person bodily harm or death? Do you think that somebody who spent fifteen minutes with you or your loved somehow makes them fit to be your or your loved one's guardian?

My situation could have ended up much worse, but I had the power and the ability to speak up no matter what was thrown at me. What about the others who fall between the cracks? **You give the guardian and other parties blanket immunity so when these vulnerable people end up injured physically or mentally and some are dying from the guardian's neglect, the guardian isn't held accountable? We can no longer allow blanket guardianship immunity in the state of Minnesota or quite frankly anywhere. People with disabilities and the elderly are human beings and have rights. When did we forget this?** If these guardians actually know what's best for vulnerable adults subject to their guardianship, why would they need blanket immunity?

My guardianship story was never about me being incompetent. It was an issue of having no case manager to finalize disability services for me to obtain staff in my own home, and a hospital that demanded that I be moved somewhere I didn't want to go, and that would have resulted in me never returning home to my Mankato apartment. That is why the county and hospital pursued guardianship and conservatorship over me—because I knew I had the right to go back home with the disability services I need.

Thank you.

A handwritten signature in black ink that reads "Cindy Hagen". The signature is written in a cursive, flowing style.

Cindy Hagen
Wheelgal13@gmail.com

Randy F. Boggio
Brenna M. Galvin
Lauren L. Fink
Sarah B. Sicheneder



Allison J. Frasier
J. Noble Simpson
Christopher Kradle
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Luther M. Amundson*
*Retired

MASER | AMUNDSON | BOGGIO P.A.

February 17, 2024

Representative Sandra Feist
Judiciary Finance and Civil Law Committee
409 State Office Building
St. Paul, MN 55155

RE: A bill for an act amending immunity for guardians and creating a task force on guardianship
HF3483-0

Dear Representative Feist:

My name is J. Noble Simpson. I'm an elder law litigation attorney interested in protecting vulnerable adults by holding guardians accountable. I was the lead drafting attorney on the Minnesota State Bar Association Elder Law Section's amicus curiae brief in *Zika v. Elder Care of Minnesota, Inc., et al.*, and an attorney on the district court case *In re Conservatorship of Thomas Dredge*, No. 27-GC-PR-11-421 (Henn. Co. Dist. Ct. Apr 20, 2017) in which the district court held a conservator personally liable for his negligent acts and omissions the conservatorship. I write in support of HF3483-0, which would allow guardians to be held personally liable for their wanton, reckless, or intentional acts or omissions, for their acts or omissions that violate the law, and for their acts or omissions in breach of their fiduciary duties.

If a person subject to guardianship is harmed or dies because of their guardian's neglect, their estate and family members should be able to hold the guardian accountable. Currently, under *Zika*, removal of the guardian is the only remedy. The results of guardian immunity from monetary liability are that courts can't enforce the *Bill of Rights for Persons Subject to Guardianship and Conservatorship* and that persons subject to guardianship who can't afford a professional guardian are put at greater risk of non-recoverable harm than those who can afford a professional guardian. This creates a lower standard of human dignity owed to the most vulnerable population, which runs counter to every value held by society. As a society, we have a duty to protect this population from abuse and neglect, which is why I support HF3483-0.

Respectfully,

MASER, AMUNDSON & BOGGIO, P.A.

/s/ J. Noble Simpson

J. Noble Simpson
Attorney

JNS



February 19, 2024

Minnesota House of Representatives
House Judiciary Finance and Civil Law Committee

Re: HF3483/SF3438

Dear Sirs or Madams,

I am writing in support of HF3483/SF3438, Jean's Law. As I am sure you are aware the Minnesota Court of Appeals interpreted the current version of Minn. Stat. § 524.5-313(c)(2) to state that Guardians have what amounts to blanket "immunity from liability for negligence in the performance of the guardian's duty to provide for care, comfort, and maintenance needs of the person subject to guardianship." *Minn. Ct. App A21-1710, filed August, 2022*. Blanket immunity from negligent actions is an absurd consequence of the Appeals Court's interpretation of a statute that, by its nature, is meant to protect the most vulnerable of our citizens. Minnesota, if this interpretation is allowed to stand, would be the only state that allows for blanket immunity to guardians.

As an attorney, I represent guardians as well as petitioners for guardianship and persons subject to guardianship. I encounter many good guardians but also those not properly caring for the person subject to guardianship. Legal recourse must be available when harm due to negligence occurs. Opponents of the bill make the claim that this change will result in fewer people agreeing to be guardians because it places them at risk of liability for their actions. This is nothing more than fearmongering in an attempt to maintain the status quo. Under tort law, negligence requires a finding that the individual owed a duty of care to the injured person, that they breached that duty of care, that the breach caused an injury, and that there are actual damages. Any individual who feels that they were harmed by the negligence of another can file a claim against that person and have the facts considered under tort law. Why should guardians be immune? The duty of care is the equivalent of the necessary standard of care imposed on Guardians under the statute. Guardians agree to a duty of care for the persons under their charge. They sign an oath accepting their appointments and agreeing to fully and faithfully perform their duties. Should they not be held to that oath? Additionally, every year, Guardians are required to provide a copy of a Bill of Rights for Persons Subject to Guardianship and Conservatorship. What good are these rights if the only recourse when the rights are violated by the Guardian is that a new Guardian is appointed? Should Guardians be allowed to breach their duty of care to those who rely on them with no consequences?

The change in the statute, proposed by HF3483/SF3438 would fix this issue of blanket immunity and would balance the rights of the person subject to guardianship with the role of the guardian to fulfill their duties.

SW MN Office: 106 Center St. N., PO Box 117, Lake Benton, MN 56149
Metro Office and Mailing Address: 2633 Innsbruck Drive, Suite A, New Brighton, MN 55112
Local 1-507-247-5900 ~ Toll Free 1-866-457-3131 ~ Fax 1-507-247-5868

I urge you to support HF3483/SF3438. It is the right thing to do and vulnerable people are counting on laws to protect them. If you have any questions please call 1-866-457-3131.

Sincerely,
PLUTO BOES LEGAL

A handwritten signature in black ink that reads "Traci J. Sherman". The signature is written in a cursive, flowing style.

Traci J. Sherman
Attorney at Law
tsherman@plutoboeslegal.com

SW MN Office: 106 Center St. N., PO Box 117, Lake Benton, MN 56149
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Date: February 20, 2024

RE: HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

**To: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble**

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 addressing blanket immunity for guardians. So many rights are taken away when a guardian is appointed. We cannot take away the fundamental right of a person under guardianship to bring a liability claim for terrible harm caused by a guardian.

I am writing with grave concerns about the granting of full immunity to guardians. This would put lives at jeopardy with safety and civil rights of individuals.

No entity should have complete power and control of lives, as guardians do, and not have any consequences when duties are not responsibly carried out. I am aware of this power and control firsthand. The long-term care facility at which my mother resided sought guardianship over her. They did not notify the family of the emergency guardian hearing or appointment and after my brother found out, the facility told him he didn’t need to attend. My brother was my mother’s appointed agent as attorney-in-fact and health care agent, which should have avoided the guardianship as a least restrictive alternative, but it did not. My mother was near the end of her life and we spent her last precious days fighting an unnecessary guardianship.

Presently, guardians do not have enough oversight and therefore the possibility of not fulfilling their responsibilities is becoming more commonplace.

This does put lives in danger. Then on top of this granting immunity to guardians would only compound problems. There is no incentive for people to do the right thing if they are granted full immunity. Minnesota is known for being in the forefront of having progressive and insightful solutions to problems and detrimental practices that are in place. I would appreciate a good look at the detrimental outcomes from a policy of full immunity for guardians would cause. Please say NO to full immunity to guardians! Please support HF3484/SF3438. Thank you!

Sincerely,

/s/ Colleen Howe

Colleen Howe
37139 Fenway Ave
North Branch, MN 55056

Date: February 19, 2024

RE: HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

**To: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble**

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 addressing blanket immunity for guardians. Minnesota has many people subject to guardianship and they need the right to bring a claim if the guardian is negligent resulting in harm.

My sister and I were very close. We grew up on the farm together, lived near each other, and were a constant fixture together in our community. I watched out for her and helped care for her when needed. One time when my sister’s daughter-in-law phoned her, my sister went to the phone to answer and she missed the chair as she sat down and fell on the floor. The in-law phoned to tell me this so I immediately went to my sister to help but she had already gotten up by herself and didn't want to go to a doctor. I phoned to tell the in-law this and she said they would come there but they waited a long time before coming. My sister was in pain. She had no broken bones and was hospitalized only overnight. After that, the in-law placed her in an assisted living place in spite of the fact that I had always intended to take my sister into my own home to tend to her needs. In addition, the in-law became my sister’s emergency guardian.

In the assisted living, the in-law began to order staff at the assisted living to not let me see my sister. I tried to see my sister for she had NO right to keep me away but the in-law called Police who questioned me and let me go. The in-law then removed the phone in my sister's room and she suddenly moved her out of there to another facility. I was not allowed to know where they took her but a friend told me that she was in the same home as his mother! I went there but was not allowed to come in there either. A professional guardian was appointed permanently who continued to not allow contact or communication about my sister.

My sister loved reading 3 county newspapers but I was later even forbidden to bring those to her. I was beside myself given our extensive history and companionship. I so wanted to support her, bring her things that were familiar that I knew she liked, but I was prevented. One time when I brought her flowers, they refused to let me bring them in when I rang the doorbell. I saw my sister in the large window so I knocked on the window lightly and they called the Police so I left before the Police came. When I sent her mail, they would NOT give any of it to her. My friend sent her merely a photograph by Certified Mail that was refused and returned to the sender. I tried everything to get word to her and information about her, but the professional guardian would not communicate and neither my brother nor I could ever talk to the guardian at any time! The in-law told me nothing.

She was the best sister in the whole world and I loved her with all my heart and we had done everything together before she was taken away. I would NEVER hurt my sister and missed her terribly. It pained me terribly to think she wondered where I was and whether I still loved her

because I could not be around. I tried everything to get word to her and information about her, but the guardian would not communicate. After five years of not seeing my sister, I asked the guardian for one supervised visit and was told no. I finally asked the court to allow one supervised visit so I could see my sister. She was 94 years old and I was age 85 at that time. The court had not given an opinion for 69 days when tragically my sister died. I was not notified by her son, the in-law, or the guardian and found out from my attorney. It is believed that someone at the assisted living found my sister by her bed and that she lived for several hours prior to passing away. They NEVER called me or any of our brothers so we could have gotten there to say goodbye to her!! I greatly wonder whether she may have fallen from her bed or been badly bruised in some way because they REFUSED to let me see my sister at the mortuary before she was sent for cremation.

It remains extremely painful to think that I could not be there to support my sister for over five years and could not even see her when she died and it has left me extremely depressed. A friend who went there to sing for her one time long ago was even forbidden to come back to sing a familiar song to my sister! NONE of our mutual friends nor I were allowed to phone, visit, or write to my beloved sister for years.

The guardian exerted tremendous power over my sister and contributed to her pain, injury, and death. We must take extra measures to make sure guardians do not abuse that power. If they do harm the person subject to guardianship, the person should have the right to bring a claim. Under the current law, we are putting persons subject to guardianship at risk of harm when allowing their guardians to have no liability. Blanket immunity for guardians needs to be changed. . I am privileged to be able to share my horror story but I know several friends and others who are suffering from being forbidden to contact their beloved family members as well.

Please support HF3483/SF3438.

Sincerely,

/s/ Inga Mae Urke

Inga Mae Urke
403 Hope St.
Starbuck, MN 56381

Date: February 19, 2024

RE: HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

**To: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble**

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 to remove blanket immunity for guardians. Minnesota is believed to be an outlier in its current interpretation that a guardian is not liable for their own acts of negligence when performing their core functions. This bill restores key rights to persons subject to guardianship.

First of all, it’s hard to believe that a person who is not liable for their own acts of negligence when performing their core functions can be appointed guardian over someone else’s human and civil rights.

This committee is receiving a lot of personal testimony from friends and family whose loved ones were abused, exploited, harmed, neglected, or deceased because of negligent acts of persons who are in the business of guardianship. We all had hope that someday, our family members would be safe, and our families made whole again. But we’ve learned “Someday” is a very long time to wait for accountability.

Our testimonies come at great personal cost to those who dare to speak in public about such acts; the grief of having to explain to a body of policymakers why guardians acts against protected persons are inexcusable, or recount for your hearing the number of pressure sores, bruises, broken bones and teeth, or in my family member’s case, nine falls in 8 years, at least 3 physical assaults, and countless tears. I cannot begin to communicate the power imbalance for my family member having a guardian appointed over them, and for our whole family. The Guardian controls all aspects of my family member’s life.

We also face a very real risk of retaliation for speaking out against guardians, the local agencies that protect them and the judges that enable them to evade accountability. Retaliation such as mailing annual reports to incomplete addresses so they do not arrive, or mark “no restrictions” on those annual reports to the court when in reality the guardian has agreed to and enforces restrictions but didn’t personally sign the authorization for the restriction, so they can’t be held accountable.

Retaliation such as moving our family members without telling us where they are. Requiring phone calls to be on speaker phone with a staff member present, at 6:30 pm or only when convenient for staff, or requiring personal visits to be approved a week or more in advance. Limiting water to a person who is forced to be wheelchair bound and now has lost pelvic floor function. Withholding food as punishment.

Our family member wants a change in the guardianship but has stopped talking about their “someday” because nothing seems to change. Every time I spoke up to advocate, they paid the price. And every time we lost a little more hope. Restore hope, remove guardianship immunity.

Please support HF3483/SF3438.

Sincerely,



Anne Murray
2500 38th Ave NE
St Anthony Village, MN 55421

To: Judiciary, Finance and Civil Law Committee
From: Robert A. McLeod
Rmcleod@taftlaw.com

**Response to Proposed Legislation Affecting
Minnesota Statute 524.5-313(c)(2)
HF3483 - SF 3438**

How the Issues Raised are Handled Today

- 1) Guardians must report (524.5-316(d)) to family:
 - a. Changes in health or need of physician treatment or hospitalization;
 - b. A significant situation that requires action by ambulance, law enforcement, or fire department;
 - c. If the person dies;
 - d. Changes of place of abode.
- 2) These notice provisions were added in 2020 (Zika is before 2020) so the family would know what happened in Zika under current law.
- 3) The court has established a complaint line - process to report complaints and have them investigated by the court.
- 4) If a guardian is removed that is reported on all matters where the guardian serves. This is a very successful deterrent for professionals.
- 5) Unintended Consequences:

When people became guardian they were not exposed to this liability.

- a. We need to give the appointed guardians the ability to resign.
- b. But the reality is there is no one to replace the guardians.
- c. There is not a pool of persons willing to serve.
- d. Even the court can't appoint a successor because there is no pool of persons willing to serve. There is no funding to cure this problem.

Less Restrictive Alternatives

- 1) The passing of the Bill of Rights was accomplished to give great liberty to persons under guardianship.
- 2) The proposed statutory changes compel a guardian to restrict persons under guardianship to avoid harm. The only way to act within the proposed changes in law is to lock-down the person under guardianship which is contrary to the most recent guardianship legislation.

False Impressions That Minnesota Treats Guardianships Different

- 1) **Let's start with the obvious.** The great compromise was simple. Guardians will not be paid in Minnesota, but they are found liable in very limited circumstances. The compromise allowed Minnesota to receive the benefit of guardians for its citizens at limited cost. In exchange, the guardians did not have to fear excessive liability.
- 2) **Look at the numbers: They don't work.** There are about 27,000+ guardianships in Minnesota. There are about 6,000 conservatorships. For the moment, let's assume a conservatorship has money to pay a guardian (most times they don't and conservatorships are started to finish lawsuits or divorces or to accomplish tasks that don't pay a guardian). That leaves about 21-22,000 guardianships that are not paid privately. If a person serves as guardian they can ask the county to pay for their services. Each county is different. The fees range from \$35 per hour to \$75 per hour (typical fees are about \$50) and these fees are capped each month usually between 3-5 hours. The false assumption in the legislation is that guardians are insured and are handsomely paid. They are not. If a guardian is paid 4 hours per month that is \$200 and that is \$2,400 per year. If that guardian is sued, those fees are consumed instantly by attorney fees and the guardian is self-financing the remaining fees.
- 3) **There is no insurance or bond.** The assumption is that everyone is insured or that they can be easily bonded. This assumption is patently false and as explained, any hypothetical insurance is not affordable.
- 4) **A lawsuit is the same thing as liability.** The argument is made that a good guardian has nothing to fear because they can defend themselves in court and the facts will vindicate the guardian. But that argument is specious if not outright dishonest. The moment a lawsuit starts, the guardian is paying immense legal fees from their own pocket.
- 5) **A reasonable person standard is not fair.** For the same reasons as a lawsuit is the same thing as liability, a reasonable person standard is unfair. Please tell me how a guardian knows if they are acting in a manner that everyone agrees is reasonable. More to the point, how can the guardian act in a reasonable way that everyone will know is reasonable without litigation? They can't! A mere difference of opinion results in litigation.
- 6) **Why would anyone expose their personal net worth to serial litigants and tort attorneys?** Why become guardian for your nephew if your life savings can be lost? Why

become guardian of your grandmother if your siblings, aunts and uncles see your personal net worth as their new retirement plan. If the immunity is taken then why would anyone in their right mind become a guardian?

- 7) **This legislation is created to fund attorneys not to protect persons subject to guardianships.** The advocates bringing this legislation were actively in search of “guardian horror stories” to justify this legislation. This legislation is based upon one case with facts presented from one side. This legislation’s sole purpose is to give tort attorneys a new target for lawsuits at the expense of the guardianship system as a whole. If competent thoughtful people realize they are a fool to become a guardian, then who will fill the breach? You should be very nervous about what type of people you are demanding to enter the guardianship world.
- 8) **The assumption that the law is a mistake or its intent is not understood is false.** When the statutes were updated in 2003 the statutes deliberately retained the language of existing law that provided immunity. This was no mistake. It was a deliberate effort to retain existing law and duties without disrupting the law this area. That was the established policy of the statutory redrafting committee in 2003 and was presented to the legislature in that manner.

Minnesota Is Not a Statutory Outlier.

- 1) If immunity is removed, a different burden of proof is needed and a high burden is common. Each state has different guardianship statutes and procedures. It is not reasonable or practical to compare the Minnesota “immunity” provisions to other state procedures which is explained below. In some states, for example, attorneys serve as guardians and the attorneys then have insurance.

Examples of other state laws related to guardianship and statutory liability include:

- a. Alabama, Section 26-3-13: A judge is liable for not requiring a sufficient bond in guardianship. (In Minnesota there are no bonds.)
- b. Alaska Section 13.26.316(a), (c): A guardian acts in good faith (i.e., bad faith to find liability) and the guardian is not liable for the care and maintenance of the ward.
- c. Connecticut Section 45a-683: A guardian is liable for “**gross negligence**”.
- d. Idaho, Section 15-6-602(g): **No liability for volunteer guardians.**
- e. Indiana section 29-3-11-4: **A guardian is immune of civil liability.**
- f. Iowa Section 633.633: The liability standard is “**willful and wanton misconduct**”.

- g. Kansas Section 59-3075: A guardian acts in good faith (i.e., **bad faith** to find liability).
- h. Pennsylvania Section 20 Pa CSA s. 5521(g): Requires “**gross negligence, reckless or intentional conduct**” to find liability.
- i. Rhode Island Section 33-15-4.4: Requires “**gross negligence or willful or wanton conduct**” to find liability.
- j. South Dakota Section 29A-5-415: Requires personal negligence for a conservator to be liable.
- k. Texas Section 1151-105: Applies liability to a guardian who “**willfully neglects to use ordinary diligence.**”
- l. Utah 75-5-312: Requires a guardian to act diligently and in good faith (i.e., **bad faith** to find liability).
- m. Virginia Section 64.2-2019: Requires a guardian to be **personally negligent** to be liable.

- 2) If guardianship immunity is removed, in addition to a high burden of proof, currently acting guardians must be given the ability to resign.

Alternate Proposals

- 1) This should be resolved by a working group to find reasonable compromises and not by extreme legislation from a small group.
- 2) If immunity is removed, the standard of care might be gross negligence. The proposed standard is a personal opinion without any measurable ability to apply the law with consistency.
- 3) The guardian needs to be able to resign.
- 4) The Bill of Rights needs to be revoked as they are incompatible with the new liability standards.

Date: February 20, 2024

RE: HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

**To: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble**

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 addressing blanket immunity for guardians. We cannot take away even more rights of a person subject to guardianship. Blanket immunity puts vulnerable people at risk.

My name is Colleen Berning, and this is my family's truth about the guardian and why I believe that you must change the laws to protect other innocent people...

Our story is about my Uncle John (John J.O. Roland). He was having some trouble with his ostomy bag and went to the hospital for help, he left his place of residence never to return, until I picked him up from the crematorium.

During his first few days in the hospital, they were asking about his cognitive condition and if he was safe at home and I said that he was showing some confusion but nothing that I thought was unsafe at that time. I have over 20 years in geriatric care so I felt comfortable with my assessment. His wife, Beverly ended up in the same hospital a few days later and one of the social workers came to her room asking her for permission to give John shots, she asked what they were for and was not given an answer. I was in her room for this conversation. He touched on a few other subjects and then said that we may have to get a guardian if she was unwilling or unable to make a decision. Then I was asked to be the guardian and by other family members was instructed not to do it that it would just cause "family drama", believe me, I wish I would have because I am sure that he would still be alive. So we ended up with a court appointed guardian and that was the beginning of the end.

He was kept at the hospital for 10 months and every care center that was suggested was negated for one reason or another, until the guardian found a spot in Elmore, Minnesota. A 3 hour trip from his wife and home; Beverly doesn't and has never driven. I believe that the guardian had informed the staff at Elmore not to let John talk to Bev on the phone. One night Beverly got a phone call from the hospital in Faribault Minnesota saying that John had a heart attack and was wondering why he was in memory care because he didn't need to be, but he had some other medical issues and they were going to get him better and get him back home. The guardian stated that there were no hospital beds available in Minnesota and that he had to go to Souix Falls, South Dakota.

After speaking with the nurses, they were as confused as I was, but they were clear about what was going on with him. He had weeping sores on his legs and his backside, that had become septic. My husband and I talked with more family members and we planned a trip to Souix Falls, where Beverly and I stayed there Labor day weekend. We had been instructed by another attorney to get a written statement from Uncle John stating that he wanted to live. He asked what we were doing with the paper and Beverly told him that you need to write down that you want to

live, he said "that's ridiculous, of course I want to live " and we left him the pen and paper but it was gone in the morning. The day after we returned home we got a call saying we needed to have a care conference and at that point the guardian discontinued his antibiotics and he was DNR/DNI comfort measures only, changed by the guardian without permission and against my uncle's wishes. He was transported back to Rochester to a hospice unit to die.

When guardians get in there and they know that they are protected by the law, it gives them the room to do anything. This bill is about the right to bring a claim if necessary. Please support HF3483/3438.

Sincerely,

/s/ Colleen "Kelly" Berning

Colleen ("Kelly") Berning

From: JAMES M. ZIKA
Date: February 20, 2024
Re: HF3483/SF3438
To: House Judiciary Finance and Civil Law and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 to remove blanket immunity for guardians. Minnesota is an outlier in its current interpretation that a guardian is not liable for their own acts of negligence when performing their core functions. This bill restores key rights to person subject to guardianship.

From the very beginning of the guardianship appointment, the guardian abused her power and made decisions that were not in the best interest of my sister, Jean Krause. She did not communicate with the family despite knowing Jean wanted the family to know her health information. My Sister (Jean Krause) who suffered from dementia was placed by her guardian in an assisted living facility which lacked a memory care unit, or programs essential for dementia patients. The guardian refused our multiple requests to move her to a facility which could provide her the care and treatment she deserved even though such care was locally available. I believe based on my thirty years working in health care that my sister deteriorated mentally more quickly than she would have in a modern memory care skilled nursing facility. It is the fault of her guardian that she was deprived of proper care and treatment for her condition.

After my sister died we learned from the county prosecuting attorney that she had been sexually assaulted in that facility and that the guardian had coerced the facility management into not informing us (the family). If we had that information, we would have arranged post assault care and had her moved away from that place of trauma. Soon after she went into a rapid decline, at the time we did not understand the changes, We now know the decline began after the assault. Her guardian not only did not make an effort to see my sister got proper medical care, but did nothing to help her through this traumatic event.

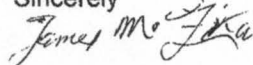
Under the current law my sister's guardian failed to get her proper care, and hid vital information from our family, further preventing my very vulnerable sister from proper care for her trauma. The guardian willfully did great harm to my sister's life in her final days but has no liability or accountability for her actions. This has been an incredibly long and difficult journey for our family, advocating for my sister only to have the guardian block our attempts, deny our claims, and have the court not even hear our case on the merits. We continue to advocate for this change in law on behalf of my sister and all those under guardianship.

Guardians have great power over very vulnerable people. These people should expect to be protected. People under guardianship are not protected if their guardian can act with no liability for their actions. People who are harmed by a guardian need to have recourse. They should be able to bring a claim.

The current law needs to be changed. No one should get full immunity for their actions when dealing with vulnerable people.

Support HF3483/SF3438

Sincerely



James M. Zika

February 20, 2024

Dear Committee Member,

I am writing in support of Jean's Law (HF3483/SF3438). My Mother, Jean Krause, was assigned a non-family member, Naree Weaver, as guardian/conservator in February 2013 due to her Alzheimer's disease. I objected at the time and throughout the guardianship. During her entire time as guardian, Ms. Weaver NEVER submitted any of her legally required accounting or inventory, and at times other statements of condition for my mother. She never kept any member of my mother's family informed of her physical or mental condition and refused to give complete information when asked. After nearly three years the conservatorship was taken from her & given to my uncle James Zika and he had to submit the corrected and completed various accountings to the state and the court that Ms. Weaver had failed to complete. She was, however, allowed to remain as guardian. At no time during this process was she ever given any consequences for her failures. She did, however, manage to pay herself thousands of dollars from my mother's savings as well as pay herself mileage at three times the I.R.S. allowable rate.

In late spring of 2016, my mother's health took a sharp turn for the worse. My mother passed away on September 18, 2016. In July of 2017, I received a call from the Crow Wing County Attorney. I was then informed that my mother had been raped in May 2016 at her place of residence, her assisted living facility. At no time did Ms. Weaver ever inform me or any family members of my mother's rape. She forbid the assisted living from informing us. I had no idea what had happened to her until the County Attorney called me. I found out at the time that she had turned down any involvement in seeking justice for my mother. She had also informed the County Attorney that "Jean's family was not interested in her". Nothing could be further from the truth. Luckily, the Minnesota ombudsman for the area was very familiar with me as I had extensive conversation with her about my mother's case starting in 2013 and she was able to supply my contact information to the County Attorney. I was able to give a statement at the rapist's sentencing on behalf of my mother. At the time of the attack, my mother was completely physically disabled and had very little vocal volume left. She couldn't even call out for help.

After all this I find out that guardians do not have any liability for their failures in caring for their wards. No matter how neglectful or abusive they are, they cannot be held accountable in Minnesota. It is my firm belief that this attack and lack of post-trauma care hastened my mother's death. When interviewed by her hospice care social worker, my mother indicated she would like to meet with a sexual assault therapist. Ms. Weaver was informed of this and didn't even bother to return the social worker's call. Without liability, there is nothing to stop guardians from completely neglecting or abusing the wards. I urge you with all my heart to pass this law so the vulnerable adults of Minnesota can get the protection they so clearly need.

Thank you for your time and attention.

Sincerely,

/s/ Robert Krause

Robert E. Krause

Date: February 20, 2024

RE: HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

**TO: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble**

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 addressing blanket immunity for guardians. Those under guardianship in Minnesota should not be stripped of yet another right, their right to bring a claim against the guardian for egregious harm.



I am writing this letter on behalf of my brother William Richard Say Jr. who suffered a life-threatening massive stroke and sadly passed away on December 4, 2018. This is a summary of the treatment he received while under the care of a nursing home located in St. Cloud, MN and the legal guardianship by a professional guardian assigned by the Sherburne County Court Judge.

William aka Billy was supposed to temporarily be treated at the nursing home for physical therapy and to have short term care until his home could be repaired so it would be safe for him to live there. Unfortunately, Billy would never be given the opportunity to go back to where he would daily plead to please allow him to return to his home. My brother would cry and did not understand why he was not able to leave. Billy had feelings and he suffered emotional and physical abuse while being placed under guardianship. When I would request doctor updates it would be denied, we were not allowed to ask or receive information unless the guardian approved. I was not allowed access to what type of medical care my brother was receiving.

After Billy’s stroke, we as a family had decided it would be in the best interest of Billy to have a guardian that would help allow him to express his right to make decisions on his own behalf with legal guidance. Our family needed to try and focus on the help and support Billy would need from us to become better and in hopes he would be able to return home.

The importance of this letter is that no matter what type of situation, a person who is provided with a guardian they should be treated respectfully and with the intent to protect their rights and try to allow them the best health care to recover, so they can try to make their own decisions.

My brother seemed to be punished and imprisoned rather than supported and cared for by his appointed guardian. His wife and I were very restricted to the point that we would receive threatening emails with more restrictions or false accusations. One time, Billy came from a medical appointment with Mt. Dew. He was not supposed to have pop due to diet restrictions based on swallowing. I was unsure and asked how he got that can of pop. Billy proudly said he was given it, and I thought his medical professionals must have thought it was ok and that he was improving. I got home to see that I had already received an email from the guardian stating that I was being an

unsupportive sister and that I did not have Billy's best interest for his care and treatment by encouraging him to have Mt. Dew when it was not allowed. The next day I walked into his room only to find that same Mt. Dew was not taken away by any of the staff. I was the one who had to remove the pop out of his room, and it was heartbreaking because he enjoyed that pop and it made him very sad. I had to explain to him that it was not allowed and that we want to make sure he is safe drinking only certain fluids while he was recovery from the stroke.

His wife and I were constantly being denied any help in trying to get Billy out of his guardianship. Billy requested several times that he wanted me to become his new guardian. I went to the Sherburne County courthouse and filed for guardianship, and it was never granted.

Billy was neglected by the guardian. We would report to the Department of Health. I still have a letter for investigation that was followed up by the State of MN. When I called to find out the status the representative could only state that follow-up had not occurred.

I saw my brother as a whole person since he had a life altering stroke. Billy still had an extraordinarily strong mind and showed pure determination to live his life to the fullest. Billy was improving in the short-term care and asked if he could marry his long-term girlfriend. My husband and I took Billy and his wife to be to the St. Cloud Mall to pick out outfits for the special occasion and Billy even had picked out a ring at the jewelry store and we all were having such a wonderful day.

We had agreed to have their wedding at the chapel in the nursing home. It was officiated by a very well-known Sherburne County court representative who had retired after several years of service, and who also knew and worked closely with the Judge assigned to my brother's case. I had asked if he thought my brother was in sound mind and understood what he was agreeing to by getting married. The wedding officiant stated he had tested my brother just to make sure and he was extremely confident that Billy was competent to be married. The wedding was simple but beautiful and Billy had tears in his eyes filled with love for his wife. I have a video and I would always ask my brother his permission to be recorded. I stated to my brother hopefully we could have the whole family join in another ceremony when things between the family are able to calm down and he can return home.

The guardian was given the legal rights to my brother, and we were left with regrets while we watched the guardian slowly diminish any hope of Billy returning home. They restricted his wife, his son, and me to limited and supervised visitations. I was constantly stressed and worried about my brother. Billy was denied permission to attend court and could not appear in front of the judge on his own behalf. This devastated my brother. He did not understand why he was not being allowed in front of the judge. It was stated he was not well enough to attend and that was not true he would have been completely able to attend. The court assigned attorney would not even look or talk with me regarding his well-being and I wanted to ask her what reason they had that made him not well enough to attend. I was absolutely saddened by what was happening, especially being told such harsh and untrue statements. I believed in the truth and was going to support my brother. It was heartbreaking to watch as he would be denied his rights and completely discarded of his health care and living requests.

It was a complete nightmare watching how my brother was being cared for by his guardian. There are laws that are written by our legal system that are supposed to protect those under guardianship from abuse. In my brother's case, unfortunately, that law did not protect him and only protected the guardian. Their poor decisions on my brother's health care eventually caused him to lose his life.



He could never leave the facility with his family. He had extremely limited visits with his wife and me.

His wife was allowed to take Billy once to attend his son's birthday party but if she did not have him back within the time limit the guardian allowed the authorities would be notified. It was absolutely a constant worry that we would be possibly arrested by being falsely accused or did not agree to follow all the restrictions set on Billy by his guardian. I never could understand why this was happening. Having your brother have a major

stroke is stressful and then have constant fear from your brother's guardian. It was such an awful experience. This was someone who we loved and adored only wanting him to recover and be safe.

The guardian moved Billy to long-term care. He became nonverbal and extremely sick, and I was notified by his wife to come immediately Billy had become nonresponsive and they were denying him emergency care. When I finally got there and came into the room, my brother looked to be septic. I explained my parents both had passed away in similar situations and I knew he needed immediate medical attention. We needed to get him into the hospital. I begged the nurses and staff to call the guardian so they would release him to the hospital. They kept denying the request stating he was going to be all right and stable. It took over an hour while the nurses and staff kept stating that their on-call doctor would not release Billy because he was in stable condition. I went to the front counter nurse and said please what would you do if this was your loved one. My brother will not last the night if you deny him to be seen at St. Cloud hospital. The guardian finally agreed to have him released where he was seen by their doctors, and it was determined and noted that Billy had become septic and would not have lived much longer without their treatment. Billy had an open sore on his foot that was never treated properly and as the months went by, he became worse, and his physical condition declined rapidly. I went for emergency guardianship and was denied.

The guardian went against the family's request and wishes. The guardian placed Billy back into the same nursing home even with a St. Cloud doctor who requested to hold Billy, so we found another care facility which I was able to in Buffalo, MN. I had notified the guardian that they had the staff, and the room for him. They would have been able to accept him as a transfer and provide the dialysis treatment that he needed for his kidneys. The guardian denied and sent him back and placed even harsher restrictions on his wife and me. It was absolutely horrifying to only be allowed to watch them send him back knowing that he was never going to leave there.

The hurtful emails I would receive continuously from the guardian stating all the rules and restrictions. I was completely being denied the right to care for and see my own brother. A stranger who had no history with my brother was given complete and too much authority over his life decisions and they had too much control over my rights by restricting me and not allowing me to be there for him as his sister.

We were constantly threatened and abused by the guardian and to this day I am still trying to heal from the pain they caused not only for my brother but for my family and myself. Nobody should ever have to watch their loved one die while some stranger who does not know your loved one can decide when you are allowed to support him, when you can see him or visit him in his most crucial time of

recovery. Billy was a stroke victim who was being punished and denied his family support. It was cruel and absolutely appalling to know my brother had died alone while his guardian had all legal rights. The guardian had no empathy for my brother and would deny my requests to meet in person with them. I never met my brother's guardian, only her assistant once.

The email threats were getting profoundly serious, stating the staff has the right to call the authorities if they felt the need. I was tired of being afraid and threatened constantly and had to make the difficult decision towards the end of my brother's life. There is not a doubt in my heart and mind that I honestly believe my brother Bill would have healed enough while in short term care that he could have left the nursing home with his family and brought home where he would have been safe. He could have shared happier memories and cherished our time together if the guardian had worked with us instead of being determined to keep us apart from him. Instead, we lost Billy. The court decision that allowed the guardian to have more legal rights, that was appointed to my brother's case, seemed to be a business transaction rather than an actual decision to protect him.

The guardian is responsible. They ripped our family completely apart and their accusations were unprofessional. The guardian left my family and I completely heartbroken. The guardian assigned had caused me emotional pain, anxiety, and such a deep sadness for the fact that I was not allowed to be a sister to my brother in his darkest days to help support and protect him. Please consider the importance of writing laws that will protect the person who is placed under guardianship and hold the guardian accountable for any negligence.

When a guardian was appointed, we were taken in a room at the courthouse and the court staff talked about guardianship but never explained in full detail before making the crucial decision on behalf of my bother that once you allow a guardian to be assigned to someone you love, it is exceedingly difficult to have a change in that guardianship. even when you notice your loved one has become neglected and appears to be abused. The laws in place as of today do not protect the ward as intended, based on my own experience with my brother and his guardian. A person will lose their rights when they become the responsibility of a third-party guardian, and the family also loses all rights to their loved one and makes it difficult to help with any important health decisions or care choices. I cannot express the importance of knowing your rights and the rights of your loved one who is under guardianship. Please support HF3483/SF3438.

Thank you for your time,

/s/ Sherry Ramler

Sherry A Ramler
[address]



COUNCIL ON DISABILITY

1600 University Avenue W, Suite 8, St. Paul, MN 55104
651-361-7800 | www.disability.state.mn.us

Date: February 21, 2024

RE: HF3483 – Jean’s Law Addressing Guardian Immunity

To: House Judiciary Finance and Civil Law Committee

Dear Chair Becker-Finn and Judiciary Committee Members:

The Minnesota Council on Disability (MCD) stands in support of HF 3483, which seeks to eliminate blanket immunity for guardians. It has come to our attention that Minnesota's current stance, which absolves guardians of liability for their negligent actions while performing core duties, deviates from prevailing norms. This bill aims to reinstate fundamental rights for individuals under guardianship.

The prevailing notion of absolute immunity for guardians in their core functions lacks coherence and fairness. It is incongruous to grant complete immunity in any circumstance.

Under existing legislation, individuals under guardianship may suffer from neglect or direct harm without recourse for accountability. It is imperative that individuals under guardianship possess the same rights to pursue claims of negligence as any other individual. If a guardian perpetrates harm against an individual under guardianship, the affected individual must have the opportunity to seek recourse without the impediment of immunity. It is evident that the legislature did not intend to confer blanket immunity upon guardians; however, rectification of the current law is imperative. Guardians wield significant authority over vulnerable individuals, necessitating stringent measures to oversee and regulate this authority.

By retaining the current law, we expose individuals under guardianship to undue risk and harm by granting guardians unchecked immunity. The approximate 35,000 individuals under guardianship in Minnesota underscore the significance of this issue. They rely on legislative action to safeguard their rights and well-being. Blanket immunity fails to provide this protection and requires amendment.

The Minnesota Council on Disability respectfully urges the committee to endorse HF 3483. This measure represents a crucial step towards ensuring accountability and safeguarding the rights of individuals under guardianship.

Sincerely,

A handwritten signature in black ink that reads "Trevor Turner".

Trevor Turner
Public Policy Director
trevor.turner@state.mn.us

A handwritten signature in black ink that reads "David Dively".

David Dively
Executive Director
david.dively@state.mn.us

Champlin Office
11660 Theatre Dr. N.
Suite 260
Champlin, MN 55316
(f) 763.634.8111

**Rule 114 Qualified
Neutral*

February 21, 2024

House Judiciary Finance and Civil Law Committee

**RE: Support for HF3483/SF3438 –
Jean’s Law Addressing Guardian Immunity**

Dear Judiciary Committee Members:

I am an attorney in the area of Elder Abuse and Neglect and the Legal Advisor for Elder Voice Advocates. I write in support of HF3483 to balance the rights of the person under guardianship with the important role of the guardian, after a Minnesota Court of Appeals opinion in the case of *Zika v. Naree Weaver, et al.* interpreting Minn. Stat. §524.5-313(c)(2) to grant complete immunity to guardians. The change is seen as an urgent need to restore important rights to the 35,000 persons under guardianship in Minnesota. In addition, 3,000 new guardianships are added each year, one-third being for those age 65+ and one-third having a professional guardian. Complete immunity is generally not the answer to protecting individuals, reducing risk of immediate harm, and deterring bad conduct.

Prior to the *Zika* decision, the court had not been presented with a need to interpret the 1981 statute at issue and upon research, the *Zika* case is believed to be the only liability claim found involving negligence for core guardian functions of care. Minnesota does not have a history of bringing such claims. Also prior to *Zika*, the interpretation in the guardianship community of the last sentence at issue in §524.5-313(c)(2) varied. Many believed it referenced no liability for the failure to apply for government benefits and the 1981 legislative history has some evidence of that explanation. Others indicate they believed a guardian had significant immunity for negligent acts when performing their core functions but have not articulated a belief that a guardian could never be liable, even for egregious harm, as we now have by court interpretation.

Concerns of opening up liability claims and rising insurance premiums have been expressed, yet even under the prior understanding of some that a guardian could be liable in limited circumstances, guardians have always been subject to claims of liability and still agreed to appointment. Guardians in Minnesota have always been immune from third party acts. Guardians in other states are able to function with qualified immunity and even no immunity. We have faith that guardians will continue to serve and that the status quo can be maintained, while still addressing issues such as funding and alternatives in the proposed Guardianship Task Force.

It is important to understand the difference between complete and qualified immunity. Complete immunity means there is never a circumstance where a person may be found liable and the case is not heard on the merits, as in the *Zika* case. Qualified immunity, on the other hand, states that a person is immune from liability except under certain circumstances, which are proposed in HF3483. The goal is to deter claims by setting forth the higher standard while acknowledging the right of an aggrieved party to bring a claim for egregious harm. In Minnesota, government officials and municipalities, for instance, receive qualified immunity, where acts or omissions do not create liability unless performed in a reckless or similar manner. The proposed language brings clarity and raises the bar. Claims are not based on a reasonable person standard but rather a heightened and more restrictive intentional standard.

Based on state-by-state research, Minnesota is believed to be the only state with complete immunity. There are a minority of states that have successfully come to terms with qualified immunity, such as Indiana, which grants immunity to guardians of the person and guardians of the estate except for actions taken in bad faith and for gross misconduct. Iowa, upon which some of the current language was based, grants immunity to guardians of the person and conservators of the estate except for breach of fiduciary duty concepts and willful or wanton misconduct. Minnesota would join those minority of states in qualified immunity provisions under HF3483. Also, Minnesota is believed to be granting complete immunity, without any qualifications or exceptions, to guardians alone and not to other important positions such as government workers or even Good Samaritans.

Elder Voice Advocates sought out stakeholders and invited them to the table to discuss this important language. We have worked hard to listen to the concerns of professional guardians and others to balance competing interests. Much of the language was determined after comments or suggestions by the stakeholders. However, some stakeholders have ceased communication on this bill, although repeatedly invited. By all appearances, professional guardians do not want to be subject to suit or the perceived ramifications, and no amount of time will likely change that concern. Complete immunity is not a compromise. The bill as proposed represents a viable compromise.

In the *Zika* matter, after full briefing and scheduled oral arguments under certiorari at the Minnesota Supreme Court, the guardian passed away and this case was dismissed. We now turn to the legislature to address the arguably confusing last sentence of 524.5-313(c)(2). While we may be unable to completely determine what the 1981 legislature intended with the language, we do know that the record is devoid of discussion on such an important matter of granting complete immunity. Nevertheless, the intent is perhaps less relevant now than the need to have the 2024 legislature determine the language. We do not believe the current position of complete immunity correctly balances the interests of those subject to guardianship with guardians. We therefore propose qualified immunity in HF3483 to better balance those interests.

Sincerely,

/s/ Suzanne Scheller

Suzanne M. Scheller, Counselor at Law



Adult Representation Services

Minnesota House Judiciary Finance and Civil Law Committee
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

February 20, 2024

Re: In Support of Jean's Law; HF3483

To the Committee:

I write in support of Jean's Law (HF3483). I am an attorney at Hennepin County Adult Representation Services ("ARS"). ARS is an independent county organization that provides advocacy to clients experiencing poverty in civil matters where they are entitled to an attorney, which includes representing persons subject to a Guardianship and Conservatorship.

ARS is the only county-funded firm in the State of Minnesota that provides exclusive representation for clients experiencing poverty who are subject to guardianship in Hennepin County. ARS does not provide representation to petitioners, family members, or third parties involved in adult guardianship matters. We do not represent professional or private guardians. Our interest is to advocate for adequate protections for our clients which safeguard their rights and dignity. As of December 2022, there were over 7,200 open guardianship cases in Hennepin County alone. 2,962 new guardianship were established in Minnesota in 2023.

The current interpretation of Minn. Stat. § 524.5-313(c)(2) fails to adequately protect the rights and dignity of persons subject to guardianship in Minnesota, leaving our clients at increased risk of harm and without a remedy should harm occur. The change proposed in

Hennepin County Adult Representation Services
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HF3483 is urgently needed to bring balance to the rights of persons subject to to guardianship with the role of the guardian. This bill would correct the blanket immunity issue created by the Court of Appeals' narrow interpretation of the statute.

Currently, Minnesota is the only state that grants blanket immunity to guardians. It is unjust that persons subject to guardianship, who have been adjudicated as incapacitated by the Court and are now subject to restricted civil liberties as a result would have less protection and redress for intentional harms committed to them by the person charged with protecting them.. Unfortunately, the current interpretation of the statute post-*Zika* makes this scenario a reality for Minnesotans subject to guardianship.

I respectfully request that you support Jean's Law.

Sincerely,

Emily F. Weichsel
Attorney
(612) 596-9243
Emily.weichsel@hennepin.us

Date: February 20, 2024

RE: HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

**To: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble**

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 addressing blanket immunity for guardians. We cannot take away even more rights of a person subject to guardianship. Blanket immunity puts vulnerable people at risk.

My name is Colleen Berning, and this is my family's truth about the guardian and why I believe that you must change the laws to protect other innocent people...

Our story is about my Uncle John (John J.O. Roland). He was having some trouble with his ostomy bag and went to the hospital for help, he left his place of residence never to return, until I picked him up from the crematorium.

During his first few days in the hospital, they were asking about his cognitive condition and if he was safe at home and I said that he was showing some confusion but nothing that I thought was unsafe at that time. I have over 20 years in geriatric care so I felt comfortable with my assessment. His wife, Beverly ended up in the same hospital a few days later and one of the social workers came to her room asking her for permission to give John shots, she asked what they were for and was not given an answer. I was in her room for this conversation. He touched on a few other subjects and then said that we may have to get a guardian if she was unwilling or unable to make a decision. Then I was asked to be the guardian and by other family members was instructed not to do it that it would just cause "family drama", believe me, I wish I would have because I am sure that he would still be alive. So we ended up with a court appointed guardian and that was the beginning of the end.

He was kept at the hospital for 10 months and every care center that was suggested was negated for one reason or another, until the guardian found a spot in Elmore, Minnesota. A 3 hour trip from his wife and home; Beverly doesn't and has never driven. I believe that the guardian had informed the staff at Elmore not to let John talk to Bev on the phone. One night Beverly got a phone call from the hospital in Faribault Minnesota saying that John had a heart attack and was wondering why he was in memory care because he didn't need to be, but he had some other medical issues and they were going to get him better and get him back home. The guardian stated that there were no hospital beds available in Minnesota and that he had to go to Souix Falls, South Dakota.

After speaking with the nurses, they were as confused as I was, but they were clear about what was going on with him. He had weeping sores on his legs and his backside, that had become septic. My husband and I talked with more family members and we planned a trip to Souix Falls, where Beverly and I stayed there Labor day weekend. We had been instructed by another attorney to get a written statement from Uncle John stating that he wanted to live. He asked what we were doing with the paper and Beverly told him that you need to write down that you want to

live, he said "that's ridiculous, of course I want to live " and we left him the pen and paper but it was gone in the morning. The day after we returned home we got a call saying we needed to have a care conference and at that point the guardian discontinued his antibiotics and he was DNR/DNI comfort measures only, changed by the guardian without permission and against my uncle's wishes. He was transported back to Rochester to a hospice unit to die.

When guardians get in there and they know that they are protected by the law, it gives them the room to do anything. This bill is about the right to bring a claim if necessary. Please support HF3483/3438.

Sincerely,

/s/ Colleen "Kelly" Berning

Colleen ("Kelly") Berning

From: JAMES M. ZIKA
Date: February 20, 2024
Re: HF3483/SF3438
To: House Judiciary Finance and Civil Law and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 to remove blanket immunity for guardians. Minnesota is an outlier in its current interpretation that a guardian is not liable for their own acts of negligence when performing their core functions. This bill restores key rights to person subject to guardianship.

From the very beginning of the guardianship appointment, the guardian abused her power and made decisions that were not in the best interest of my sister, Jean Krause. She did not communicate with the family despite knowing Jean wanted the family to know her health information. My Sister (Jean Krause) who suffered from dementia was placed by her guardian in an assisted living facility which lacked a memory care unit, or programs essential for dementia patients. The guardian refused our multiple requests to move her to a facility which could provide her the care and treatment she deserved even though such care was locally available. I believe based on my thirty years working in health care that my sister deteriorated mentally more quickly than she would have in a modern memory care skilled nursing facility. It is the fault of her guardian that she was deprived of proper care and treatment for her condition.

After my sister died we learned from the county prosecuting attorney that she had been sexually assaulted in that facility and that the guardian had coerced the facility management into not informing us (the family). If we had that information, we would have arranged post assault care and had her moved away from that place of trauma. Soon after she went into a rapid decline, at the time we did not understand the changes, We now know the decline began after the assault. Her guardian not only did not make an effort to see my sister got proper medical care, but did nothing to help her through this traumatic event.

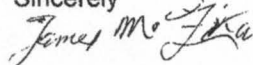
Under the current law my sister's guardian failed to get her proper care, and hid vital information from our family, further preventing my very vulnerable sister from proper care for her trauma. The guardian willfully did great harm to my sister's life in her final days but has no liability or accountability for her actions. This has been an incredibly long and difficult journey for our family, advocating for my sister only to have the guardian block our attempts, deny our claims, and have the court not even hear our case on the merits. We continue to advocate for this change in law on behalf of my sister and all those under guardianship.

Guardians have great power over very vulnerable people. These people should expect to be protected. People under guardianship are not protected if their guardian can act with no liability for their actions. People who are harmed by a guardian need to have recourse. They should be able to bring a claim.

The current law needs to be changed. No one should get full immunity for their actions when dealing with vulnerable people.

Support HF3483/SF3438

Sincerely



James M. Zika

February 20, 2024

Dear Committee Member,

I am writing in support of Jean's Law (HF3483/SF3438). My Mother, Jean Krause, was assigned a non-family member, Naree Weaver, as guardian/conservator in February 2013 due to her Alzheimer's disease. I objected at the time and throughout the guardianship. During her entire time as guardian, Ms. Weaver NEVER submitted any of her legally required accounting or inventory, and at times other statements of condition for my mother. She never kept any member of my mother's family informed of her physical or mental condition and refused to give complete information when asked. After nearly three years the conservatorship was taken from her & given to my uncle James Zika and he had to submit the corrected and completed various accountings to the state and the court that Ms. Weaver had failed to complete. She was, however, allowed to remain as guardian. At no time during this process was she ever given any consequences for her failures. She did, however, manage to pay herself thousands of dollars from my mother's savings as well as pay herself mileage at three times the I.R.S. allowable rate.

In late spring of 2016, my mother's health took a sharp turn for the worse. My mother passed away on September 18, 2016. In July of 2017, I received a call from the Crow Wing County Attorney. I was then informed that my mother had been raped in May 2016 at her place of residence, her assisted living facility. At no time did Ms. Weaver ever inform me or any family members of my mother's rape. She forbid the assisted living from informing us. I had no idea what had happened to her until the County Attorney called me. I found out at the time that she had turned down any involvement in seeking justice for my mother. She had also informed the County Attorney that "Jean's family was not interested in her". Nothing could be further from the truth. Luckily, the Minnesota ombudsman for the area was very familiar with me as I had extensive conversation with her about my mother's case starting in 2013 and she was able to supply my contact information to the County Attorney. I was able to give a statement at the rapist's sentencing on behalf of my mother. At the time of the attack, my mother was completely physically disabled and had very little vocal volume left. She couldn't even call out for help.

After all this I find out that guardians do not have any liability for their failures in caring for their wards. No matter how neglectful or abusive they are, they cannot be held accountable in Minnesota. It is my firm belief that this attack and lack of post-trauma care hastened my mother's death. When interviewed by her hospice care social worker, my mother indicated she would like to meet with a sexual assault therapist. Ms. Weaver was informed of this and didn't even bother to return the social worker's call. Without liability, there is nothing to stop guardians from completely neglecting or abusing the wards. I urge you with all my heart to pass this law so the vulnerable adults of Minnesota can get the protection they so clearly need.

Thank you for your time and attention.

Sincerely,

/s/ Robert Krause

Robert E. Krause

Date: February 20, 2024

RE: HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

**TO: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble**

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 addressing blanket immunity for guardians. Those under guardianship in Minnesota should not be stripped of yet another right, their right to bring a claim against the guardian for egregious harm.



I am writing this letter on behalf of my brother William Richard Say Jr. who suffered a life-threatening massive stroke and sadly passed away on December 4, 2018. This is a summary of the treatment he received while under the care of a nursing home located in St. Cloud, MN and the legal guardianship by a professional guardian assigned by the Sherburne County Court Judge.

William aka Billy was supposed to temporarily be treated at the nursing home for physical therapy and to have short term care until his home could be repaired so it would be safe for him to live there. Unfortunately, Billy would never be given the opportunity to go back to where he would daily plead to please allow him to return to his home. My brother would cry and did not understand why he was not able to leave. Billy had feelings and he suffered emotional and physical abuse while being placed under guardianship. When I would request doctor updates it would be denied, we were not allowed to ask or receive information unless the guardian approved. I was not allowed access to what type of medical care my brother was receiving.

After Billy’s stroke, we as a family had decided it would be in the best interest of Billy to have a guardian that would help allow him to express his right to make decisions on his own behalf with legal guidance. Our family needed to try and focus on the help and support Billy would need from us to become better and in hopes he would be able to return home.

The importance of this letter is that no matter what type of situation, a person who is provided with a guardian they should be treated respectfully and with the intent to protect their rights and try to allow them the best health care to recover, so they can try to make their own decisions.

My brother seemed to be punished and imprisoned rather than supported and cared for by his appointed guardian. His wife and I were very restricted to the point that we would receive threatening emails with more restrictions or false accusations. One time, Billy came from a medical appointment with Mt. Dew. He was not supposed to have pop due to diet restrictions based on swallowing. I was unsure and asked how he got that can of pop. Billy proudly said he was given it, and I thought his medical professionals must have thought it was ok and that he was improving. I got home to see that I had already received an email from the guardian stating that I was being an

unsupportive sister and that I did not have Billy's best interest for his care and treatment by encouraging him to have Mt. Dew when it was not allowed. The next day I walked into his room only to find that same Mt. Dew was not taken away by any of the staff. I was the one who had to remove the pop out of his room, and it was heartbreaking because he enjoyed that pop and it made him very sad. I had to explain to him that it was not allowed and that we want to make sure he is safe drinking only certain fluids while he was recovery from the stroke.

His wife and I were constantly being denied any help in trying to get Billy out of his guardianship. Billy requested several times that he wanted me to become his new guardian. I went to the Sherburne County courthouse and filed for guardianship, and it was never granted.

Billy was neglected by the guardian. We would report to the Department of Health. I still have a letter for investigation that was followed up by the State of MN. When I called to find out the status the representative could only state that follow-up had not occurred.

I saw my brother as a whole person since he had a life altering stroke. Billy still had an extraordinarily strong mind and showed pure determination to live his life to the fullest. Billy was improving in the short-term care and asked if he could marry his long-term girlfriend. My husband and I took Billy and his wife to be to the St. Cloud Mall to pick out outfits for the special occasion and Billy even had picked out a ring at the jewelry store and we all were having such a wonderful day.

We had agreed to have their wedding at the chapel in the nursing home. It was officiated by a very well-known Sherburne County court representative who had retired after several years of service, and who also knew and worked closely with the Judge assigned to my brother's case. I had asked if he thought my brother was in sound mind and understood what he was agreeing to by getting married. The wedding officiant stated he had tested my brother just to make sure and he was extremely confident that Billy was competent to be married. The wedding was simple but beautiful and Billy had tears in his eyes filled with love for his wife. I have a video and I would always ask my brother his permission to be recorded. I stated to my brother hopefully we could have the whole family join in another ceremony when things between the family are able to calm down and he can return home.

The guardian was given the legal rights to my brother, and we were left with regrets while we watched the guardian slowly diminish any hope of Billy returning home. They restricted his wife, his son, and me to limited and supervised visitations. I was constantly stressed and worried about my brother. Billy was denied permission to attend court and could not appear in front of the judge on his own behalf. This devastated my brother. He did not understand why he was not being allowed in front of the judge. It was stated he was not well enough to attend and that was not true he would have been completely able to attend. The court assigned attorney would not even look or talk with me regarding his well-being and I wanted to ask her what reason they had that made him not well enough to attend. I was absolutely saddened by what was happening, especially being told such harsh and untrue statements. I believed in the truth and was going to support my brother. It was heartbreaking to watch as he would be denied his rights and completely discarded of his health care and living requests.

It was a complete nightmare watching how my brother was being cared for by his guardian. There are laws that are written by our legal system that are supposed to protect those under guardianship from abuse. In my brother's case, unfortunately, that law did not protect him and only protected the guardian. Their poor decisions on my brother's health care eventually caused him to lose his life.



He could never leave the facility with his family. He had extremely limited visits with his wife and me.

His wife was allowed to take Billy once to attend his son's birthday party but if she did not have him back within the time limit the guardian allowed the authorities would be notified. It was absolutely a constant worry that we would be possibly arrested by being falsely accused or did not agree to follow all the restrictions set on Billy by his guardian. I never could understand why this was happening. Having your brother have a major

stroke is stressful and then have constant fear from your brother's guardian. It was such an awful experience. This was someone who we loved and adored only wanting him to recover and be safe.

The guardian moved Billy to long-term care. He became nonverbal and extremely sick, and I was notified by his wife to come immediately Billy had become nonresponsive and they were denying him emergency care. When I finally got there and came into the room, my brother looked to be septic. I explained my parents both had passed away in similar situations and I knew he needed immediate medical attention. We needed to get him into the hospital. I begged the nurses and staff to call the guardian so they would release him to the hospital. They kept denying the request stating he was going to be all right and stable. It took over an hour while the nurses and staff kept stating that their on-call doctor would not release Billy because he was in stable condition. I went to the front counter nurse and said please what would you do if this was your loved one. My brother will not last the night if you deny him to be seen at St. Cloud hospital. The guardian finally agreed to have him released where he was seen by their doctors, and it was determined and noted that Billy had become septic and would not have lived much longer without their treatment. Billy had an open sore on his foot that was never treated properly and as the months went by, he became worse, and his physical condition declined rapidly. I went for emergency guardianship and was denied.

The guardian went against the family's request and wishes. The guardian placed Billy back into the same nursing home even with a St. Cloud doctor who requested to hold Billy, so we found another care facility which I was able to in Buffalo, MN. I had notified the guardian that they had the staff, and the room for him. They would have been able to accept him as a transfer and provide the dialysis treatment that he needed for his kidneys. The guardian denied and sent him back and placed even harsher restrictions on his wife and me. It was absolutely horrifying to only be allowed to watch them send him back knowing that he was never going to leave there.

The hurtful emails I would receive continuously from the guardian stating all the rules and restrictions. I was completely being denied the right to care for and see my own brother. A stranger who had no history with my brother was given complete and too much authority over his life decisions and they had too much control over my rights by restricting me and not allowing me to be there for him as his sister.

We were constantly threatened and abused by the guardian and to this day I am still trying to heal from the pain they caused not only for my brother but for my family and myself. Nobody should ever have to watch their loved one die while some stranger who does not know your loved one can decide when you are allowed to support him, when you can see him or visit him in his most crucial time of

recovery. Billy was a stroke victim who was being punished and denied his family support. It was cruel and absolutely appalling to know my brother had died alone while his guardian had all legal rights. The guardian had no empathy for my brother and would deny my requests to meet in person with them. I never met my brother's guardian, only her assistant once.

The email threats were getting profoundly serious, stating the staff has the right to call the authorities if they felt the need. I was tired of being afraid and threatened constantly and had to make the difficult decision towards the end of my brother's life. There is not a doubt in my heart and mind that I honestly believe my brother Bill would have healed enough while in short term care that he could have left the nursing home with his family and brought home where he would have been safe. He could have shared happier memories and cherished our time together if the guardian had worked with us instead of being determined to keep us apart from him. Instead, we lost Billy. The court decision that allowed the guardian to have more legal rights, that was appointed to my brother's case, seemed to be a business transaction rather than an actual decision to protect him.

The guardian is responsible. They ripped our family completely apart and their accusations were unprofessional. The guardian left my family and I completely heartbroken. The guardian assigned had caused me emotional pain, anxiety, and such a deep sadness for the fact that I was not allowed to be a sister to my brother in his darkest days to help support and protect him. Please consider the importance of writing laws that will protect the person who is placed under guardianship and hold the guardian accountable for any negligence.

When a guardian was appointed, we were taken in a room at the courthouse and the court staff talked about guardianship but never explained in full detail before making the crucial decision on behalf of my bother that once you allow a guardian to be assigned to someone you love, it is exceedingly difficult to have a change in that guardianship. even when you notice your loved one has become neglected and appears to be abused. The laws in place as of today do not protect the ward as intended, based on my own experience with my brother and his guardian. A person will lose their rights when they become the responsibility of a third-party guardian, and the family also loses all rights to their loved one and makes it difficult to help with any important health decisions or care choices. I cannot express the importance of knowing your rights and the rights of your loved one who is under guardianship. Please support HF3483/SF3438.

Thank you for your time,

/s/ Sherry Ramler

Sherry A Ramler
[address]

Date: February 19, 2024

RE: HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

**To: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble**

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 to remove blanket immunity for guardians. Minnesota is believed to be an outlier in its current interpretation that a guardian is not liable for their own acts of negligence when performing their core functions. This bill restores key rights to persons subject to guardianship.

First of all, it’s hard to believe that a person who is not liable for their own acts of negligence when performing their core functions can be appointed guardian over someone else’s human and civil rights.

This committee is receiving a lot of personal testimony from friends and family whose loved ones were abused, exploited, harmed, neglected, or deceased because of negligent acts of persons who are in the business of guardianship. We all had hope that someday, our family members would be safe, and our families made whole again. But we’ve learned “Someday” is a very long time to wait for accountability.

Our testimonies come at great personal cost to those who dare to speak in public about such acts; the grief of having to explain to a body of policymakers why guardians acts against protected persons are inexcusable, or recount for your hearing the number of pressure sores, bruises, broken bones and teeth, or in my family member’s case, nine falls in 8 years, at least 3 physical assaults, and countless tears. I cannot begin to communicate the power imbalance for my family member having a guardian appointed over them, and for our whole family. The Guardian controls all aspects of my family member’s life.

We also face a very real risk of retaliation for speaking out against guardians, the local agencies that protect them and the judges that enable them to evade accountability. Retaliation such as mailing annual reports to incomplete addresses so they do not arrive, or mark “no restrictions” on those annual reports to the court when in reality the guardian has agreed to and enforces restrictions but didn’t personally sign the authorization for the restriction, so they can’t be held accountable.

Retaliation such as moving our family members without telling us where they are. Requiring phone calls to be on speaker phone with a staff member present, at 6:30 pm or only when convenient for staff, or requiring personal visits to be approved a week or more in advance. Limiting water to a person who is forced to be wheelchair bound and now has lost pelvic floor function. Withholding food as punishment.

Our family member wants a change in the guardianship but has stopped talking about their “someday” because nothing seems to change. Every time I spoke up to advocate, they paid the price. And every time we lost a little more hope. Restore hope, remove guardianship immunity.

Please support HF3483/SF3438.

Sincerely,



Anne Murray
2500 38th Ave NE
St Anthony Village, MN 55421

Date: February 20, 2024

RE: HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

**To: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble**

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 addressing blanket immunity for guardians. So many rights are taken away when a guardian is appointed. We cannot take away the fundamental right of a person under guardianship to bring a liability claim for terrible harm caused by a guardian.

I am writing with grave concerns about the granting of full immunity to guardians. This would put lives at jeopardy with safety and civil rights of individuals.

No entity should have complete power and control of lives, as guardians do, and not have any consequences when duties are not responsibly carried out. I am aware of this power and control firsthand. The long-term care facility at which my mother resided sought guardianship over her. They did not notify the family of the emergency guardian hearing or appointment and after my brother found out, the facility told him he didn’t need to attend. My brother was my mother’s appointed agent as attorney-in-fact and health care agent, which should have avoided the guardianship as a least restrictive alternative, but it did not. My mother was near the end of her life and we spent her last precious days fighting an unnecessary guardianship.

Presently, guardians do not have enough oversight and therefore the possibility of not fulfilling their responsibilities is becoming more commonplace.

This does put lives in danger. Then on top of this granting immunity to guardians would only compound problems. There is no incentive for people to do the right thing if they are granted full immunity. Minnesota is known for being in the forefront of having progressive and insightful solutions to problems and detrimental practices that are in place. I would appreciate a good look at the detrimental outcomes from a policy of full immunity for guardians would cause. Please say NO to full immunity to guardians! Please support HF3484/SF3438. Thank you!

Sincerely,

/s/ Colleen Howe

Colleen Howe
37139 Fenway Ave
North Branch, MN 55056

Date: February 19, 2024

RE: HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

**To: House Judiciary Finance and Civil Law Committee and Rep. Sandra Feist
Senate Judiciary and Public Safety Committee and Sen. Scott Dibble**

Dear Judiciary Committee Members:

I write in support of HF3483/SF3438 addressing blanket immunity for guardians. Minnesota has many people subject to guardianship and they need the right to bring a claim if the guardian is negligent resulting in harm.

My sister and I were very close. We grew up on the farm together, lived near each other, and were a constant fixture together in our community. I watched out for her and helped care for her when needed. One time when my sister’s daughter-in-law phoned her, my sister went to the phone to answer and she missed the chair as she sat down and fell on the floor. The in-law phoned to tell me this so I immediately went to my sister to help but she had already gotten up by herself and didn’t want to go to a doctor. I phoned to tell the in-law this and she said they would come there but they waited a long time before coming. My sister was in pain. She had no broken bones and was hospitalized only overnight. After that, the in-law placed her in an assisted living place in spite of the fact that I had always intended to take my sister into my own home to tend to her needs. In addition, the in-law became my sister’s emergency guardian.

In the assisted living, the in-law began to order staff at the assisted living to not let me see my sister. I tried to see my sister for she had NO right to keep me away but the in-law called Police who questioned me and let me go. The in-law then removed the phone in my sister’s room and she suddenly moved her out of there to another facility. I was not allowed to know where they took her but a friend told me that she was in the same home as his mother! I went there but was not allowed to come in there either. A professional guardian was appointed permanently who continued to not allow contact or communication about my sister.

My sister loved reading 3 county newspapers but I was later even forbidden to bring those to her. I was beside myself given our extensive history and companionship. I so wanted to support her, bring her things that were familiar that I knew she liked, but I was prevented. One time when I brought her flowers, they refused to let me bring them in when I rang the doorbell. I saw my sister in the large window so I knocked on the window lightly and they called the Police so I left before the Police came. When I sent her mail, they would NOT give any of it to her. My friend sent her merely a photograph by Certified Mail that was refused and returned to the sender. I tried everything to get word to her and information about her, but the professional guardian would not communicate and neither my brother nor I could ever talk to the guardian at any time! The in-law told me nothing.

She was the best sister in the whole world and I loved her with all my heart and we had done everything together before she was taken away. I would NEVER hurt my sister and missed her terribly. It pained me terribly to think she wondered where I was and whether I still loved her

because I could not be around. I tried everything to get word to her and information about her, but the guardian would not communicate. After five years of not seeing my sister, I asked the guardian for one supervised visit and was told no. I finally asked the court to allow one supervised visit so I could see my sister. She was 94 years old and I was age 85 at that time. The court had not given an opinion for 69 days when tragically my sister died. I was not notified by her son, the in-law, or the guardian and found out from my attorney. It is believed that someone at the assisted living found my sister by her bed and that she lived for several hours prior to passing away. They NEVER called me or any of our brothers so we could have gotten there to say goodbye to her!! I greatly wonder whether she may have fallen from her bed or been badly bruised in some way because they REFUSED to let me see my sister at the mortuary before she was sent for cremation.

It remains extremely painful to think that I could not be there to support my sister for over five years and could not even see her when she died and it has left me extremely depressed. A friend who went there to sing for her one time long ago was even forbidden to come back to sing a familiar song to my sister! NONE of our mutual friends nor I were allowed to phone, visit, or write to my beloved sister for years.

The guardian exerted tremendous power over my sister and contributed to her pain, injury, and death. We must take extra measures to make sure guardians do not abuse that power. If they do harm the person subject to guardianship, the person should have the right to bring a claim. Under the current law, we are putting persons subject to guardianship at risk of harm when allowing their guardians to have no liability. Blanket immunity for guardians needs to be changed. . I am privileged to be able to share my horror story but I know several friends and others who are suffering from being forbidden to contact their beloved family members as well.

Please support HF3483/SF3438.

Sincerely,

/s/ Inga Mae Urke

Inga Mae Urke
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