

# elder voice

## ADVOCATES

February 27, 2024

The Honorable Peter Fischer  
Chair, Human Services Policy Committee Minnesota House of Representatives  
551 State Office Building  
St. Paul, MN 55155

The Honorable Deb Kiel  
Republican Lead, Human Services Policy Committee Minnesota House of Representatives  
203 State Office Building  
St. Paul, MN 55155

Re: HF 3483 - Guardian Immunity

Dear Chair Fischer, Lead Kiel, and Members of Human Services Policy Committee:

Elder Voice Advocates (EVA) strongly supports HF 3483/SF 3438, which limits complete immunity for Minnesota guardians. This is a top priority for EVA as we strive to promote quality care and safeguard the rights of vulnerable adults, whether due to age or disability. The significant impact guardians have on the lives of vulnerable adults underscores the need for accountability for egregious wrongdoing.

Minnesota is believed to be an outlier in the recent interpretation by the Minnesota Court of Appeals that a guardian is not liable for their own acts of negligence when performing their core functions. EVA does not believe that the legislature intended to grant guardians this complete immunity. It is illogical, absurd, and dangerous putting vulnerable adults at risk when bad actors have complete immunity.

People under guardianship should not have fewer rights to pursue claims of injury than others. If a guardian causes serious harm, the affected individual should have the right to seek recourse without encountering immunity barriers. Complete immunity is not believed to be granted to any other profession or role, so why would that be acceptable for our most vulnerable.

Given the enormous seriousness of this outlier court ruling, we actively engaged with stakeholders, including individuals from the disability and aging communities, attorneys, other professional guardians, and advocacy organizations. They were invited to discussions held monthly from August through November 2023.

Many stakeholders understood the urgent need while others simply wanted to take no legislative action. They were asked to provide legislative language that addressed their concerns so it could be reviewed by all stakeholders, but none was provided.

Given the urgency to address the risk of harm and loss of rights, we proceeded with drafting qualified immunity language in the bill, keeping stakeholders informed throughout the process. It is important to note that we actively encouraged dialogue and welcomed suggestions for refining the language.

With approximately 35,000 people under guardianship in Minnesota, the stakes are high. These vulnerable individuals are relying on the legislature to safeguard them from blanket immunity. It's imperative to support HF 3483/SF 3438 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.

Sincerely,

A handwritten signature in cursive script that reads "Kristine Sundberg". The signature is written in black ink and is positioned below the word "Sincerely,".

Kristine Sundberg, Executive Director

Elder Voice Advocates

February 28, 2024

Re: HF 3483

Dear Chair Fischer and Members of the Committee:

The Minnesota Elder Justice Center and The Arc Minnesota write in support of the changes to liability in HF3483 (sections 1 and 2 of the bill), and to express concerns with the current focus and structure of the Task Force in section 3 of the bill.

The Arc Minnesota is a statewide nonprofit advocacy organization that works to promote and protect the human rights of people with intellectual and developmental disabilities (IDD), supporting them and their families in a lifetime of full inclusion and participation in their communities. The Minnesota Elder Justice Center is a statewide nonprofit organization that works to prevent and alleviate the abuse, neglect, and financial exploitation of older and vulnerable adults.

For too long, people with IDD, older adults, and individuals with mental health support needs have been subjected to restrictive guardianships that strip them of their civil rights and decision-making authority. We believe all people have the right to make decisions, have control in their lives, advocate for themselves, and get support from trusted allies as they make decisions. That's why we promote less restrictive alternatives to guardianship – such as Supported Decision Making – when working with people who have IDD, older adults, and their trusted supporters navigating the aging and disability service system.

- **Sections 1 and 2: The Liability Language Strikes the Correct Balance**

We support HF3483's language to amend immunity of guardians whose conduct falls under the categories listed in section 2. We believe the standard in line 5.25 represents a well-balanced approach to address a gap in protections for persons under guardianship who have experienced reckless behavior by their guardian, while still protecting guardians who serve in their roles in good faith.

- **Section 3: A Task Force on Guardianship Must be Centrally Focused on Funding and Promoting Less Restrictive Alternatives**

Both of our organizations have concerns about the current scope of the proposed Task Force on Guardianship. Primarily, we are concerned that the concept of such a task force is too focused on increasing guardianship, when the current policy direction of the state and all recent best practice research nationwide shows that we should instead be focusing on prioritizing and expanding alternatives to guardianship, like Supported Decision-Making. **Supported Decision-Making is a best practice in helping individuals with disabilities, older adults, and others with cognitive limitations make informed choices.** It respects the autonomy of older adults, individual living with disabilities, and those with cognitive impairment, while intentionally supporting them to build their confidence and competence in decision-making.

Four years ago, our organizations helped lead an effort that resulted in significant reforms and updates to Minnesota's guardianship and conservatorship laws. For the first time, Minnesota recognized the critical role that Supported Decision-Making plays for older adults and persons with disabilities. Under those changes, Courts ordering guardianship now must ensure that less restrictive means to guardianship, including Supported Decision-Making, have been tried before ordering a guardianship. At that time, however, no state funding was available to help organizations and counties expand their Supported Decision-Making services.

While guardianship is appropriate in some instances, it should be the very last alternative considered as it can greatly restrict a person's ability to make decisions about where to live, their healthcare, or even if they can vote. A new grant program at DHS was established last legislative session to increase access to the service, and facilitate a culture shift toward Supported Decision-Making service options as a first, more person-centered choice. That funding, however, will run out quickly and we must investigate options to create permanent Supported Decision-Making funding and infrastructure in this state.

A practical concern with the current focus of the Task Force is spending too much time and investment in making sure that guardianship is funded at the expense of less restrictive alternatives. Instead, the Task Force focus should be primarily focused on funding and promoting less restrictive alternatives to avoid expanding and deepening the state's unsustainable dependence on guardianship.

We have been in discussions with proponents of the bill regarding amendments to the Task Force language, and are deeply grateful for the changes being considered - among them, focusing the Task Force's work on Supported Decision-Making and other less restrictive alternatives to guardianship, and expanding Task Force membership to be more representative of the diverse communities impacted by this issue.

We hope to see these amendments offered in the next Committee stop, and will gladly offer our full support for the bill once adopted.

Gratefully,

Amanda Vickstrom, Executive Director  
The Minnesota Elder Justice Center ([amanda.vickstrom@elderjusticemn.org](mailto:amanda.vickstrom@elderjusticemn.org))

Tina Rucci, Public Policy Director  
The Arc Minnesota ([tinarucci@arcminnesota.org](mailto:tinarucci@arcminnesota.org))

MINNESOTA  
ELDER JUSTICE  
CENTER



The Arc  
Minnesota



February 27, 2024

Dear Members of the Human Services Policy Committee:

On behalf of the Minnesota Chapter of the Alzheimer's Association, I am writing to share our support for HF 3483, which provides some much-needed consumer protections for Minnesotans subject to guardianship. The Alzheimer Association is a nonprofit organization that provides support for people living with Alzheimer's or another form of dementia and their caregivers.

While the Alzheimer's Association supports alternatives like supported decision making, there will still be situations where a guardianship is in the best interest of someone living with dementia and their loved ones. Unfortunately, a recent court ruling involving a vulnerable adult with Alzheimer's disease in a long-term care has worrying implications for guardianship in Minnesota, granting complete immunity for guardians in even the most egregious acts of wrongdoing. The Alzheimer's Association supports the effort in HF 3483 to bring Minnesota in alignment with other states and to hold guardians accountable in certain situations when they break the law, violate their fiduciary duty, or execute their duties in a wanton and reckless manner.

The Alzheimer's Association also appreciates the creation of a task force on guardianship. We are particularly interested in the effort to identify standards of practice for guardians and the best strategies to educate guardians. It is our hope that this task force, if created, will consider policies to ensure that guardians have proper training on supporting people with Alzheimer's disease or another form of dementia.

Thank you to Rep. Feist for authoring HF 3483 and your effort to ensure basic protections for Minnesotans subject to guardianship.

Sincerely,

Sam Smith  
State Affairs Director  
Alzheimer's Association, MN-ND

**Date: February 25, 2024**

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

**To: Human Services Policy Committee**

Dear 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 guardian 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. Everytime 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,

*/s/ Anne Murray*

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

Date: February 19, 2024  
RE: Support for HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity  
To: **Human Services Policy Committee**  
From: Cindy Hagen

Dear 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.

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 16<sup>th</sup>, 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 22<sup>nd</sup>, 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 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.

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 a decision, people 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 you 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?**

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.

Cindy Hagen  
[Wheelgal13@gmail.com](mailto:Wheelgal13@gmail.com)

**Date: February 25, 2024**

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

**To: Human Services Policy Committee**

Dear 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

**Date: February 25, 2024**

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

**To: Human Services Policy Committee**

Dear 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 take away 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, there is not enough oversight of guardians 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 yet currently there are 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

February 27, 2024

To: House Human Services Policy Committee

Re: Proposed Amendments to Minn. Stat. § 524.5-313 and Minn. Stat. § 524.5-315 in the House of Representatives (House File No. 3483) for the State of Minnesota, and the Senate in the State of Minnesota (Senate File No. 3438).

Dear Committee Members:

My name is David Ludescher. I am a licensed attorney in the State of Minnesota and have been since 1989. I have been working in the guardianship and conservatorship area for almost my entire career. I have a certification from Mitchell Hamline Law School in Elder Law. I am writing in support of the above legislation.

Almost all of my guardianship and conservatorship practice has involved representing people who are under guardianship and conservatorship. There have been what I would consider relatively recent developments in the law which are designed to provide greater protection for people under conservatorship. For example, after some rampant abuse by a corporate conservator and guardian in a number of counties, including Rice County, the legislature changed the law to add Minn. Stat. § 524.5-120, which was designed to make it clear that people under guardianship and conservatorships retained all their ordinary human rights unless those rights are taken away by a judge. Those rights include accountability for harm.

In my own county, the guardian and conservator were responsible for fifty-one (51) cases, all of which were neglected or in which the person was abused in some way. In some cases, persons under guardianship or conservatorship went without needed medical care because the guardian/conservator was not available to give consent. In a case that I was on, the guardian/conservator was convicted of felony theft of funds of the conservatee. The person who was supposed to be under protection was both double billed and charged for services after the date of death. In addition, the guardian/conservator spent nearly \$200,000.00 of the person's money in approximately two (2) years of the conservatorship. The guardian/conservator had a bond that was supposed to protect the protected person, but because the conservatee was only held responsible for the money that was actually stolen, my client was not able to recover for her wanton mismanagement of the \$200,000.00 nor was she able to recover about \$20,000.00 in fees

that the conservator charged in the process of spending the \$200,000.00. These are examples of the power of a court appointed agent, whether guardian or conservator.

The proposed legislation does not change anything fundamentally about how guardianships are handled, except that a guardian can be held responsible under the new legislation if the guardian acts in a wanton, reckless, or intentional manner, or violates a known law. Simply put, the only guardians that need to worry about this law are guardians who should not be guardians.

In many other areas of law when a person is handling someone else's money or arranging care for them, the law holds them responsible to a much higher duty than the duty to which guardians are currently held, which is none at all. Guardians right now are not held liable because the law (as interpreted by the Court of Appeals) grants complete immunity.

Since my admission to the bar thirty-five (35) years ago, there have been three phenomena that have drastically changed this area of the law. First, medical advances have allowed people to live much longer in situations where they lack full capacity. Second, the proportion of the people who are elderly as compared to those who are able to care for those people has changed such that there are less family caregivers available to care for family members resulting in more institutionalization and more need for responsible people such as guardians to be involved. Third, societal changes have resulted in a significant number of persons being placed under guardianship, supposedly for their own protection.

My experience with corporate guardians is that they have divided loyalties between their corporation making a profit and them spending the needed time with the person who needs protection. The end result is often that the person in need of help or protection finds that they have lots of protection from others, but very little protection or recourse against their guardians, even when the guardian fails in their duties.

In sum, the law needs to make it clear that guardians who are wanton, reckless, or intentional about their behavior or who knowingly violate the law can be held responsible under the law in the same manner as any other person. Please pass HF3483. Thank you for your attention.

Sincerely,  
*/s/ David Ludescher*  
David L. Ludescher

# elder voice

## ADVOCATES

February 24, 2024

The Honorable Peter Fischer  
Chair, Human Services Policy Committee Minnesota House of Representatives  
551 State Office Building  
St. Paul, MN 55155

The Honorable Deb Kiel  
Republican Lead, Human Services Policy Committee Minnesota House of Representatives  
203 State Office Building  
St. Paul, MN 55155

Re: HF 3483 - Guardian Immunity

Dear Chair Fischer, Lead Kiel, and Members of Human Services Policy Committee:

Guardianship matters are a top priority for Elder Voice Advocates (EVA) as we strive to promote quality care and safeguard the rights of vulnerable adults, whether due to age or disability. The significant impact guardians have on the lives of vulnerable adults underscores the need for accountability.

Following the concerning *Zika* court decision, which grants complete immunity to guardians, we have been diligently working to seek solutions to preserve the rights of vulnerable adults and to reduce the risk of harm to those under guardianship while balancing the important interests of the guardian. EVA's objective is simply to return to a pre-*Zika* understanding of limited liability for guardians.

With guidance from our legal advisor, Suzanne Scheller, we discussed legislative efforts in 2022 following the *Zika* decision. However, these efforts were paused during the 2023 legislative session due to the Minnesota Supreme Court's scheduled review of the issue. Once oral arguments were canceled in June 2023, discussions regarding legislative language began in earnest.

One of the first calls made was to Robert McLeod in an effort to receive his input while drafting legislative language. We actively engaged with him and other stakeholders, including individuals from the disability and aging communities, attorneys, professional guardians, and various organizations. Approximately 27 individuals participated in discussions from September to December 2023.

We considered input from these stakeholders and conducted research on guardianship immunity across states, resulting in a finding that Minnesota is the only state to grant complete immunity. Some understood the urgent need while others wanted to slow down. Although, general themes arose such as ensuring there were limits to liability, no specific proposals were presented by stakeholders to achieve the main goal of moving away from complete immunity. We responded to other stakeholder concerns, such as attracting qualified guardians and funding for IFP guardians, by establishing a Guardianship Task Force to review these important issues and to offer remedies for the same.

Given the urgency to address the risk of harm and loss of rights, we proceeded with drafting qualified immunity language in the bill, keeping stakeholders informed throughout the process. It is important to note that we actively encouraged dialogue and welcomed suggestions for refining the language.

The current position of granting complete immunity to guardians even when their negligence may cause harm or death to the person subject to guardianship, is an anomaly in the United States and undermines key legal rights of vulnerable adults. Our commitment to rectifying this anomaly and to ensuring key rights of vulnerable adults remains steadfast.

We wanted to take the opportunity to inform you of the extensive efforts that have gone into the current language of this bill. Thank you for your attention to this critical matter. We ask that you vote for passage of this important legislation that protects our most vulnerable adults.

Sincerely,

A handwritten signature in black ink, reading "Kristine Sundberg". The signature is written in a cursive, flowing style.

Kristine Sundberg, Executive Director

Elder Voice Advocates



# Adult Representation Services

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February 26, 2024

The Honorable Peter Fischer  
Chair, Human Services Policy Committee  
Minnesota House of Representatives  
551 State Office Building  
St. Paul, MN 55155

The Honorable Deb Kiel  
Republican Lead, Human Services Policy Committee  
Minnesota House of Representatives  
203 State Office Building  
St. Paul, MN 55155

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 department 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 law firm in the State of Minnesota that provides exclusive representation for respondents in Guardianship and Conservatorship matters. 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 singularly 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 guardianships 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

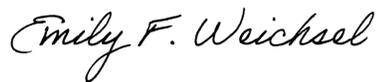
Hennepin County Adult Representation Services  
525 Portland Avenue South, Suite 1000  
Minneapolis, MN 55415-1600  
Main Office: 612-348-7012 | Fax: 612-543-0938  
[ContactARS@hennepin.us](mailto:ContactARS@hennepin.us)  
<http://www.hennepin.us/ars>

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.

HF 3483 ensures that some of the most vulnerable in our community are protected by deterring harmful behavior and providing recourse for those victimized should harm occur. For these reasons, I respectfully request that you support Jean's Law.

Sincerely,

A handwritten signature in cursive script that reads "Emily F. Weichsel".

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

**Date: February 25, 2024**

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

**To: House Human Services Policy Committee**

Dear 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

**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.

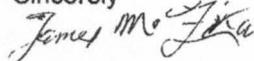
Under the current law my sister's guardian failed to get her proper care, and hid vital information from our family, further preventing my very vulnerable sister from proper care for her trauma. The guardian willfully did great harm to my sister's life in her final days but has no liability or accountability 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

**Date: February 25, 2024**

**RE: HF3483/SF3438 - Jean's Law Addressing Guardian Immunity**

**To: Human Services Policy Committee**

**Dear Committee Members:**

I am writing 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.

I was shocked and horrified to learn that you actually were planning to give abusive, for-profit guardians immunity for harming persons under guardianship! It is like saying parents are not responsible if they harm their children! This is ludicrous!

My mother was kidnapped, forced into an involuntary, abusive, for-profit, fraudulent guardianship and conservatorship, trafficked 215 miles away from family and friends to a negligent nursing home which refused to allow her to have a phone and drugged her continuously with harmful chemical restraints. The minute she was told she was going to a nursing home, she said "NO!" The nurse gave her a shot, so I asked what it was. I was told it was Morphine because the guardian had authorized it.

Within three weeks of being at that negligent nursing home, my mother developed pneumonia, a staph infection, septic blood, a UTI, bed sores, bumps and bruises and temperature of 102! Thank goodness the evening nurse called 911. My mother was given four IV antibiotics on Monday. By Wednesday, with better care, she was sitting up and doing great! So I found her a bed at a nearby nursing home. But the guardian insisted that my mother go over 80 miles back to the negligent nursing home on Thursday, just three days after nearly dying!

Well, the rest is history. The guardian refused to release my mother's records and the nursing home doctor ordered Hospice, against my mother's will and against her family's wishes. My mother just fought pneumonia, a staph infection, septic blood and UTI only to be forced on Hospice, which was a death sentence! She couldn't breathe or swallow on the Hospice drugs. She had chest and stomach pain, migraine headaches and seizures. I pleaded that she be allowed to see a real doctor, but the guardian refused. My mother died with a blood clot by the heart, as determined by the autopsy, which could have been dissolved had she been allowed to see a doctor! Hospice is for the

terminally ill. My mother was not terminally ill and should never had been forced on Hospice!

A local police officer came out and told me that he wished he could help, but could not, as she was in a guardianship. Nonetheless, he said that my mother would have more rights if she were a convicted criminal! At least she could refuse the harmful drugs and not be forced to take them. Something is truly messed up with our laws when criminals have more rights than innocent, precious, law abiding citizens!

My mother had a POA, HCD and family, but the guardian trumped everyone! This is truly unbelievable!

Since my mother's experience with a guardian, I have tried to help others with guardianships. We tried two years ago to simply get the Wards Bill of Rights enforced, but were blocked from getting a hearing in the House. Guardians and Conservators must be held accountable for their actions! Under the current law, a person could provide no care or directly harm the person subject to guardianship and not be held accountable for their actions. Which is why, when I have informed guardians, on many occasions, that they were violating the Bill of Rights, they just laugh at me and say "Oh, whose going to enforce it?!" There Is No Enforcement! Persons under guardianship have no liberty, justice or freedom! This is disgraceful!

Guardians have tremendous power over vulnerable people. We must take extra measures to check that power. Under the current law, we are continuously putting persons subject to guardianship at risk of harm when permitting their guardians to have no liability!

Individuals subject to guardianship in Minnesota are relying on the Legislature to protect them. Blanket immunity does not do that and needs to be changed. We all reap what we sow. How do you want to be remembered? Take a stand and do what is right. Protect our most vulnerable. Please support HF3483/SF3438.

With Sincere Appreciation,

Joyce Lacey  
Box 66  
Ashby, MN 56309

## EVA Guardianship Testimony 2/28

Chair Fischer and members of the committee, I am Kris Sundberg, Executive Director of Elder Voice Advocates. We are a nonprofit whose mission is to assure quality care and protect the rights of elders and people with disabilities. Since our inception in 2017, guardianship abuse has been a frequent problem for many of these vulnerable adults. Many have come today in person or are viewing online.

HF 3483 seeks to balance the rights of the 35,000 persons under guardianship with the important role of the guardian. The *Zika v. Naree Weaver, et al.* case interpreted Minnesota law to grant complete immunity to guardians. How can this protect vulnerable adults from the wrongdoing of guardians?

Under complete immunity a guardian cannot be found liable, and the case is not heard on the merits. Under qualified immunity, a guardian is immune from liability except under certain circumstances, which are proposed in HF 3483. In Minnesota, government officials, municipalities, and Good Samaritans, for instance, receive qualified immunity. The proposed language raises the bar from a reasonable person standard to a more restrictive intentional standard.

Based on state-by-state research, Minnesota is believed to be the only state with complete immunity. A minority of states have qualified immunity.

This bill is based in part on Iowa law, which grants immunity to guardians except for breach of fiduciary duty and willful or wanton misconduct. It is important to note that guardians in Minnesota have always been immune from third party acts. Additionally, guardians in other states are functioning with qualified immunity and even no immunity.

After the court decision in *Zika*, Elder Voice Advocates reached out to a broad range of stakeholders and convened a series of meetings beginning in August last year. We have worked hard to listen to the concerns of professional guardians and their attorneys and repeatedly asked for their language alternatives. None were provided over the 5 months of meetings.

Nonetheless, this bill represents a balance of these competing interests and offers a viable compromise while protecting the fundamental right to pursue accountability for harm done. The proposed Guardianship Task Force was added to delve into the funding and recruitment issues.

We have faith that guardians will continue to serve, while we protect the legal rights of vulnerable adults in Minnesota. Approximately 3,000 new guardianships are added each year, one-third being for those age 65+ and one-third having a professional guardian.

In conclusion, please place the protection of and legal rights of vulnerable adults over the negligent guardian. Do not let the *Zika* ruling strip away the fundamental rights that is common for most other people.

Liability laws are crucial to protecting individuals, which nearly every other Minnesota profession is subject to. So why would we grant complete immunity to guardians whose negligence or abuse causes significant harm to our most vulnerable population? This would be a tragic violation of the legal rights of people with disabilities.

Good Afternoon

I am a director at Lange Board and Room Assisted Living, and the new projective law was brought to my attention by a Guardianship company we work very closely with, which is very concerning. I am feeling very frustrated about the safety and health of our vulnerable adults who need guardianship to make adequate decisions in their lives. Many companies, including the one we work with, have to pull back and not accept new clients due to this new law they are trying to pass, which will also place multiple risks on these companies. Vulnerable adults need a court-appointed guardian for specific reasons, and the court decides that they are incapable of making good and safe choices, which places multiple risks on their autonomy. The Guardian focuses on patient-centered issues and always is the one to stand in their corner; they focus on investigating and determining that they are incapable of making good quality choices for their lives. The majority of our patients are not able to live on their own despite them believing so; they would not take the correct medications and abstain from alcohol or substance abuse, which then deemed necessary for them to have an appropriate legal guardian in place to help advocate and find the resources they are seeking. The idea of allowing a vulnerable adult with mental health needs to sue a guardian despite their care and advocacy over their wellbeing, whether they understand it or not, and on top of that, not allowing the Guardian to resign and secure their assets should not be tolerated. Our state, which makes all these nonsensical policies, is absurd and ineffective with patient care.

The safety of the vulnerable adult must come first and foremost. Someone must do something. We are a mental health facility, and almost all our 33 residents have no active family involvement, and the nursing team cannot act as that for them when it comes to the majority of choices. I have pursued a guardian for 11 residents with three more pending cases. The court has deemed them fit for one, clearly stating, "The respondent is incapacitated with regards to the person because the respondent is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions concerning respondents' personal needs for medical care, nutrition, clothing, shelter or safety." The statutes are currently prominent and decisive as they are listed. Statute 524.5-313 Powers and Duties of Guardian, Statute 524.5-207. Please take into consideration the vulnerable adult population who have mental health concerns and are unable to mentally or emotionally make appropriate choices. If we continue this way, there will be more problems in the community with mental health and poor decision-making. The guardians were put in place to protect and provide autonomy.

Sec. 524.5-313 MN Statutes. (n.d.). <https://www.revisor.mn.gov/statutes/cite/524.5-313#:~:text=524.5-313%20POWERS%20AND%20DUTIES%20OF%20GUARDIAN.%20%28a%29%20A,demonstrated%20needs%20of%20the%20person%20subject%20to%20guardianship.>

Sec. 524.5-207. (n.d.). MN Statutes. <https://www.revisor.mn.gov/statutes/cite/524.5-207/pdf#:~:text=524.5-207%20POWERS%20AND%20DUTIES%20OF%20GUARDIAN.%20Subdivision%201.,own%20funds%20for%20the%20person%20subject%20to%20guardianship.>

Sec. 524.5-311 MN Statutes. (n.d.). <https://www.revisor.mn.gov/statutes/cite/524.5-311>

February 26, 2024

To: House Human Services Policy Committee

RE: HF3483 and SF3438, Jean's Law

Dear Committee Members,

My name is Leanne Ashley and I live in Chanhassen, Mn of Carver County. I have an adult disabled daughter under guardianship with a professional as guardian.

I am in support of the above referenced bill to move away from complete immunity for guardians in Minnesota. I am in support of this for many reasons. I hope it will pass to support more transparency in the guardship relationship. Currently, even though the law states that the court is in control of the guardians' actions and decisions, I have not experienced this. I have experienced complete control over my daughter's life from the professional guardian . The restrictions on her from the beginning collaborated with the county's desires. Her rights to lead a free life ended when I signed her over to a professional guardian from the constant bullying from Carver County to do so. I was assured by the Carver County attorney that if I signed her over, "You can see your daughter for Christmas." This never occurred. Shockingly, we never see each other. This began a journey of extreme control over my daughter to erase her mother from her life.

The first guardian assignment from the professional guardian company was a young woman who had been taken off two other cases. I was to believe that she would be better than myself, my daughter's safe mother in her safe beautiful home. This guardian blocked every effort of my daughter and I to be together without any court hearing for a restriction.

It has been 13 years since Carver County bullied their way into my daughter's guardianship, into a contracted professional guardian without proper procedure, erasing my daughter's rights and mine. She has had 5 different guardians at the same professional guardian company. Only one has been honest.

The few times I have had communication with my daughter she has detailed some of the abuse she has to withstand in her guardianship-controlled court ordered relationship. Please know that she is aware of her right to a county attorney. However, she would not be able to start such a procedure. She has communicated the following to me:

1. He (guardian) will not allow me to see or communicate with anybody unless he approves. (Not court ordered)
2. My group home roomies all have family coming to see them. I do not. (She could. This is guardian's demand for her to remain isolated) And I am treated differently because I do not have family seeing me. (Result of guardian restrictions, not court ordered)
3. My guardian and care team told me to write the letter to you and what to say. (They dictated to her to write to her mom. And to say that she does not wish to ever see her again). This plays into their corrupt scheme to keep me out of her life, so I do not get information about the harm they are causing and have caused.
4. They have told me to disregard your gifts and pretend I did not receive them. I did get them, and I loved them.
5. I have always wanted to see you and go home.
6. In 2021 my daughter was ready to change her guardianship to other less restrictive alternatives. The guardian and the county blocked her ability to choose.

I would desire that guardians be held accountable for their unjust actions to persons subject to guardianship and to the Interested Persons of the court,

such as myself. However, according to the law it is now, the guardian would have complete immunity for harm. Many parents of these adult children do not have the amount of money needed to retain legal help to hold guardians accountable. Perhaps this new Law, if passed, would somehow create transparency and send a message that people like my daughter still have rights. For the record, I am not the only parent experiencing this. Many parents with adult disabled children have been bullied and unjustly forced to give up our family guardianships to professional guardians.

My family has been torn apart. Our life was once in a lovely neighborhood with good people as friends. We were in the fabric of a close community where I served in leadership positions. My daughter's life was difficult with her challenges, but we had a lot of help. I had hopes and dreams for her and I. Those were never fulfilled due to the injustice the county forced on me in giving up my rights as her guardian.

Please allow this bill to pass, allowing for some accountability in Minnesota Guardianship Law. Our case is in desperate need of changes in the law supporting my daughter's rights and supporting parents of adult disabled children. Minnesota Guardianship Law is quite antiquated and harms those who are persons under guardianship as well as their families. If the harm is due to the egregious conduct of the guardian, the guardian should not be immune from liability.

Thank You for your Consideration,

*/s/ Leanne Ashley*

Leanne Ashley  
820 Santa Vera Dr.  
Chanhassen, MN 55317



Legal Services Advocacy Project

February 22, 2024

The Honorable Peter Fischer  
Chair, Human Services Policy Committee  
Minnesota House of Representatives  
551 State Office Building  
St. Paul, MN 55155

The Honorable Deb Kiel  
Republican Lead, Human Services Policy Committee  
Minnesota House of Representatives  
203 State Office Building  
St. Paul, MN 55155

Re: HF 3483 - Guardian Immunity

Dear Chair Fischer, Lead Kiel, and Members of Human Services Policy 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 case<sup>1</sup> 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.

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.

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

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,

A handwritten signature in cursive script that reads "Ron Elwood".

Ron Elwood  
Supervising Attorney

This document has been formatted for accessibility.

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



Allison J. Frasier  
J. Noble Simpson  
Christopher Kradle  
Kris L. Maser\*  
Luther M. Amundson\*  
\*Retired

**MASER | AMUNDSON | BOGGIO P.A.**

February 23, 2024

The Honorable Peter Fischer  
Chair, Human Services Policy Committee  
Minnesota House of Representatives  
551 State Office Building  
St. Paul, MN 55155

The Honorable Deb Kiel  
Republican Lead, Human Services Policy Committee  
Minnesota House of Representatives  
203 State Office Building  
St. Paul, MN 55155

RE: HF 3483 - Guardian Immunity

Dear Chair Fischer, Lead Kiel, and Members of Human Services Policy Committee:

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, 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.

Respectfully,

MASER, AMUNDSON & BOGGIO, P.A.

***/s/ J. Noble Simpson***

J. Noble Simpson  
Attorney

JNS

# Minnesota Association for Guardianship & Conservatorship

5001 Chowen Avenue South, Minneapolis, Minnesota 55410

February 26, 2024

TO: Human Services Policy Committee  
Attn: Nick Stumo-Langer, Committee Administrator  
Email: [Nick.Stumo-Langer@house.mn.gov](mailto:Nick.Stumo-Langer@house.mn.gov)

RE: HF3483 – Guardianship Bill

Dear Committee Members:

Please take note that the Minnesota Association for Guardianship and Conservatorship (hereinafter “MAGiC”) does not support HF3483. Our non-profit organization was founded in 1989 and serves to provide education and a forum for those individuals and entities directly involved in guardianship and its lesser restrictive alternatives. We have membership in excess of 150 individuals and organizations from Minnesota and the tri-state area which include but are not limited to guardians, conservators, attorneys, social workers, long-term care and housing providers, court personnel, employees of the Minnesota Department of Human Services and others. We are also an affiliate of the National Guardianship Association (NGA) and the current NGA president, Shannon Butler, served on our Board until her appointment as NGA president last year.

As reflected above, we are a diverse, experienced and educated organization that understands the complexity and nuances of guardianship in the law and in reality. Our past president, Eric Jonsgaard, our legislative chair, Robert McLeod, and our vice president, Megan Kelly, have taken an active role to bring forward the concerns and issues raised by HF3483 on behalf of MAGiC. We are a small organization and do not have access to paid lobbyists, nor are our Board members paid for their service.

In writing this letter, I want to make clear that the perception that a collaborative drafting process with key stakeholders was made to cultivate the HF3483 language is not entirely accurate. Our representatives shared their extreme concerns about the proposed legislation, expressed opposition to the language, and made a direct ask that the legislation not be brought this session, so that the stakeholder group could continue to meet and discuss what we believe to be unintended but inevitable consequences of the proposed changes, and a better way forward. We essentially asked to put together a better-informed and thoughtful proposal to the legislature at a future date. This request was not addressed and seemingly dismissed by the proponents of this bill and instead the legislation was pushed through at an alarming pace.

Our goal is to ensure all stakeholders fully understand the role of guardians, the rights and protections that are currently in place for people subject to guardianship, the complicated funding system (when funding exists) of guardianship, the causes of the current shortage of guardians willing to serve, the inability for guardians to resign (even in cases where there are legitimate

## **Minnesota Association for Guardianship & Conservatorship**

*5001 Chowen Avenue South, Minneapolis, Minnesota 55410*

safety concerns), the lack of successor guardians for appointment after a resignation, and the lack of training and resources available to guardians. We believe that changes to immunity are interwoven with these items and that these items need to be addressed at the same time or before any significant change in legislation is approved.

The current pressures that already exist in the guardianship system will escalate if this legislation is passed. It may not happen immediately but it will happen in due course, leaving the state of Minnesota in an untenable position. If the proposed solution in this committee's mind is that the state will take over guardianship, I encourage you to reach out the Department of Human Services guardianship director. You will find out that the state of Minnesota only serves as guardian for a very limited number of individuals and those individuals are all developmentally disabled. The vast majority of guardianships in this state today are for those over age 65 or those individuals with a diagnosis that renders them incapacitated or those who have mental illness. Guardianship is an essential service with low visibility, keeping vulnerable adults safe and expediting their access to appropriate services. Additional pressures on this system will be felt throughout the state in our communities, hospitals, care facilities, and county services.

Our group has already provided key points to the previous committee about this proposed legislation and will be meeting with Representative Feist to discuss additional key points and proposed revisions to the legislation. We welcome the opportunity to discuss our concerns with any legislator. However, in the best interests of persons subject to guardianship, their families and guardians, we believe that this legislation is ill-considered and premature. Given that this is the first time this issue has arisen in over 40 years, and given that the Zika case did not actually give guardians in Minnesota "blanket immunity", we believe rushing this legislation through is unnecessary and ill-advised. A Task Force on Guardianship is long overdue and should be assembled and directed to further explore this proposed legislation and the issues identified above as it relates to the problems guardianship already faces today.

Respectfully submitted,

*/s/ Jessica Timmington Lindstrom*

Jessica Timmington Lindstrom  
2024 MAGiC President



## COUNCIL ON DISABILITY

1600 University Avenue W, Suite 8, St. Paul, MN 55104  
651-361-7800 | [www.disability.state.mn.us](http://www.disability.state.mn.us)

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**Date: February 27, 2024**

**RE: HF3483 – Jean’s Law Addressing Guardian Immunity**

**To: House Human Services Policy Committee**

Dear Chair Fischer and Human Services Policy 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](mailto:trevor.turner@state.mn.us)

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

David Dively  
Executive Director  
[david.dively@state.mn.us](mailto:david.dively@state.mn.us)

To: The Honorable Peter Fischer, Chair, Human Services Policy Committee  
The Honorable Deb Kiel, Republican Lead  
Human Services Policy Committee, Minnesota House of Representatives  
From: Misti Okerlund, Esq.  
Date: February 27, 2024  
Re: Support for HF3483/SF3438 – Jean’s Law Addressing Guardian Immunity

Dear Chair Fischer, Lead Kiel, and Members of the Human Services Policy Committee:

My name is Misti Okerlund. I am a disability rights attorney and a board member of Elder Voice Advocates, which has a Disability Voice Advocates initiative that I am leading. I strongly support the passage of HF3483/SF3438 regarding guardianship immunity.

I took a crash course in Minnesota’s guardianship laws last year when I represented Ms. Cindy Hagen, a person with disabilities who, after being stuck in a hospital for several months, was subjected to an emergency guardianship and conservatorship. The county’s guardianship petition was filled with hearsay within hearsay, which typically would not be admissible in Court, yet the petition was granted by the Court one day later, without Ms. Hagen or me being notified of the petition or allowed to participate in the process until after the guardianship was in place. Ms. Hagen was not given an opportunity to speak to defend herself during the two Court hearings that were held. I believe Ms. Hagen’s constitutional rights to due process were violated. Ms. Hagen’s human rights were violated as well. I was shocked at the injustice that my client faced.

Guardians hold so much power and control over persons subject to guardianship. There is a clear power imbalance. I saw this when Ms. Hagen lost her legal rights to make her own life decisions. And I hear about the power imbalance from people who contact me, looking for legal help. I am contacted weekly by people with disabilities who do not want to be subject to overbearing guardianships anymore, and by family and friends of people with disabilities who are subject to abusive guardianships. Common problems include retaliation, visitation and phone restrictions, and other restrictions placed on these vulnerable adults’ freedoms and lives.

The guardianship laws were not written to protect guardians. They were written to protect vulnerable adults who are subject to guardianship when they need help managing certain aspects of their lives. And yet, lawyers opposing HF3483/SF3438 appear to be more concerned about guardians than they are about the legal rights of people with disabilities who have been wronged, abused, or egregiously harmed by their guardians.

The focus of HF3483/SF3438 is to remove guardians’ blanket immunity from liability claims and to replace it with a qualified immunity standard that would allow people with disabilities subject to guardianship to bring a liability claim against a guardian.

People with disabilities are human beings who have legal rights. I have worked thousands of hours as the attorney of people with disabilities and their family members without charging any of them a dime. And I do it because I am outraged at how poorly people with disabilities are still treated, and because I see the great need to fight hard for the human rights and civil liberties of people with disabilities.

Please support the passage of HF3483/SF3438.

Thank you.

A handwritten signature in blue ink, appearing to be the name 'Misti Okerlund', written in a cursive style.

Misti Okerlund  
disability rights attorney  
Board member of Elder Voice Advocates  
Head of Disability Voice Advocates Initiative  
Email: [misti.okerlund@yahoo.com](mailto:misti.okerlund@yahoo.com)  
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February 25, 2024

Minnesota House of Representatives  
Human Services Policy Committee

Re: HF3483/SF3438

Dear Committee Members,

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. I encounter many good guardians but also those not properly caring for the person subject to guardianship. I am also a member of the Minnesota Association of Guardians and Conservators (MAGiC). 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

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February 25, 2024

Re: Jean's Law – HF3483/SF3438 Addressing Guardian Immunity

TO: Human Services Policy Committee

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 25, 2024**

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

**TO: Human Services Policy Committee**

Dear 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.

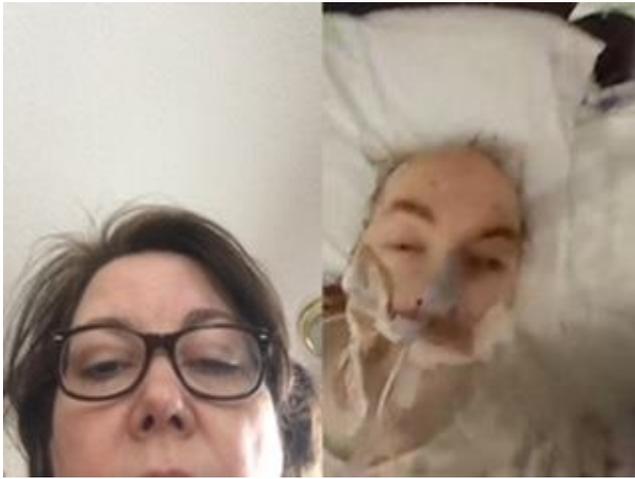
Billy was neglected by the guardian. We would report to the Department of Health. I still have a letter for investigation that was followed up by the State of MN. When I called to find out the status the representative could only state that follow-up had not occurred.

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]

# SEMCIL

SE MN Center for Independent Living, Inc.

February 23, 2024

Rosalie Eisenreich, MPH  
Strategic Initiatives Director  
507-421-4503  
[rosalie@semcil.org](mailto:rosalie@semcil.org)

The Honorable Peter Fischer  
Chair, Human Services Policy Committee  
Minnesota House of Representatives  
551 State Office Building  
St. Paul, MN 55155

The Honorable Deb Kiel  
Republican Lead, Human Services Policy Committee  
Minnesota House of Representatives  
203 State Office Building  
St. Paul, MN 55155

Re: HF 3483 - Guardian Immunity

Dear Chair Fischer, Lead Kiel, and Members of Human Services Policy 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.

# SEMCIL

SE MN Center for Independent Living, Inc.

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