

**SB 2029**  
**House Human Services Committee**  
**Testimony Presented by Scott Bernstein, NCG**  
**Executive Director of Guardian and Protective Services**  
**May 10, 2025**

Chairman Ruby, members of the House Human Services Committee, for the record, I am Scott Bernstein, Executive Director of Guardian and Protective Services, a member of the Task Force and I also serve on the board of Guardianship Association of North Dakota.

I stand in **opposition** to SB 2029, and I will attempt to be succinct in clearly identifying my points of opposition.

1. **I believe this solution represents overreach.** I do not believe that the legislature in the last session, when they approved the SHALL STUDY, were giving the Judicial Branch complete freedom to step in and take over guardianship and absorb guardianship into the Judicial Branch.

I was in the room when Representative Kempenich, sitting on the OMB Committee, suggested it would be a good idea to take a closer look at where the various forms of funding for guardianship landed. His hope was the Shall Study may be able to offer a possible solution that would consolidate the funding in one department. **At no time, to my recollection, did he ever suggest moving it to a different branch of government, taking it out of the reach of the legislature.**

2. Historically, there has been reticence on the part of DHHS to bring all things guardianship under their purview due to a perceived conflict of interest.

**Right from the top, the court has an obvious conflict of interest.**

- No one receives a guardian without Court appointment.
- Only the Court can strip a person of their human rights and delegate them to an individual named as the guardian. I will return to this point later.
- The Court has the power to remove a guardian, terminate a guardianship, and they must approve a successor guardianship.
- The Court can, and frequently does, request that a Court Visitor visit a person under guardianship for any reason.

- The Court requires guardians to turn in reports to the Court verifying the well-being and the appropriate handling of all the finances and benefits related to the person under guardianship.
- Guardians appear before the Court for a whole host of reasons AND are required to gain the Court's approval for the sale of a protected person's property, potential required injections, Court Ordered stays for psychiatric treatment – and the list goes on.

I think it is clear to see that the Court is intimately connected to the person under guardianship. If this doesn't represent a conflict of interest, I don't know what does.

The proposed solution is to form a new Office of Guardianship and Conservatorship that supposedly creates an arms-length relationship between the Court and the oversight of the guardian.

**I would suggest this is a VERY SHORT arm. The Court cannot abrogate responsibility that solely belongs to the Court.** Establishing a new office that essentially holds 50 professional guardians accountable is overkill. Minnesota has nearly 400 professional guardians. Do they have an Office of Guardianship and Conservatorship? No. They have adopted technology that creates greater transparency between the Court and the guardian. I don't believe the legislature needs to create an office, under judiciary, focused on disciplining a guardian gone rogue, that the Court has the power to remove.

**Please understand, guardians are not opposed to accountability.** Not only are we entrusted to care for the most vulnerable – many for the rest of their lives, but we are required to submit copious numbers of reports and accountings to agencies, benefit providers, banks, and the list goes on. GaPS has a team of five professionals whose job is to pay the bills of clients, complete court reports, submit information and affidavits to Social Security. And that's just the tip of the iceberg. At times it is overwhelming. But at the end of the day, we know why we are doing this.

**We, the guardian team, are the voice for the voiceless.** We speak on their behalf. We strive to make decisions that would be the decisions they would make if they were capable...right down to the most crucial end of life decisions. We take this seriously 24/7, 365 days a year.

Remember I said I would return to the point of stripping an individual of their human rights? Who speaks for them? The guardian. I'm deeply concerned that under this proposed bill

the people that speak for them, the guardian, will also lose their voice. I feel strongly that the legislature is accountable to ALL people. One of the few rights that the Court frequently leaves in tack, when appointing a guardian, is the right to vote. I think that's vitally important. You will not see our clients sitting here. **But we sit here. Putting guardians behind the door of the Judiciary indirectly silences their voices.** Approving this bill creates an office, with significant authority, to flesh out rules. Which is just another word for laws that never come before the legislature.

**There is a reason why all the professional guardians in North Dakota stand in opposition to this bill. We believe there is a better solution. For this reason, I urge you to vote against the bill as it now stands.**

Thank you for listening and I will be happy to answer your questions.