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Date: January 26, 2023

To: Chairman Prozanski & Members of the Senate Committee on Judiciary

Submitter: Alana Hawkins, Attorney
Kueny Law, LLC

Re: SB528

I am a local elder law attorney at a small elder law office that practices in Portland, Salem, and their surrounding communities. I am on the Executive Committee of the Elder Law Section for the Oregon State Bar Association, and my office represents and regularly works with Guardians, Conservators, Professional Fiduciaries, as well as Protected Persons and Respondents. I submit this written testimony in my individual capacity and as an attorney at Kueny Law, LLC.

I see and empathize with the positive intention behind SB528, however, what it seeks is overbroad.

The majority of the clients that I represent in guardianships and conservatorships are seeking guardianship and/or conservatorship over a beloved family member. I represent exhausted and overwhelmed spouses who are scared that they cannot afford the necessary care for their spouse. I represent adult children who have spent countless hours assisting their parent who is no longer able to live safely at home. Often, these loved ones need care due to dementia diagnoses, and they eventually require the protective environment and 24-hour supervision of an adult care home or memory care facility.

- SB528 will overburden and overwhelm our already stressed and overworked family members who provide care and/or manage care services for their loved ones.
 - SB528's five-year requirement to continue a proceeding will dramatically increase the emotional and financial overburden and overwhelm of supportive family members. The Guardianship process is a stressful process for the entire family, the additional burden of reestablishing a Guardianship every five years will be overwhelming to many of my clients, who may push off seeking the additional care and support for which they are eligible.
 - SB 528's requirement of limited authority and specific findings could easily require that hearings be held in cases where there are no objections. At hearings, family members will likely testify, in front of their loved ones, as to why the Guardianship

is necessary by providing explicit and specific examples. Hearings are also difficult for Respondents and Protected Persons, who often become confused and scared, and/or even believe that they did something wrong.

- SB528 also risks further limiting access to our justice system and access to public benefits like Medicaid services:

Many of clients seeking guardianship and/or conservatorship do not have the money to pay for an adult care home or memory care facility and many do not have the necessary estate planning documents in place. Spouses and adult children are surprised to learn that a guardianship is necessary to successfully place their loved one in the appropriate care setting and even to apply for and maintain the available and necessary public benefits to access to ongoing care.

- SB528's requirements increase the cost and ongoing burden for guardians. Guardianships and Conservatorships are often necessary to complete and sign necessary applications, gather documentation, medical and care records, create and fund income cap trusts, etc. SB528 would dramatically increase the cost and emotional toll of applying for Medicaid services, and/or prevent families from accessing public benefits all together.
- SB528's impacts will be felt most by those who have the least financial reserves, access to the justice system, and professional support.

Additionally, we do have protections in place for protected persons:

- Less restrictive alternatives are already a significant consideration prior to the appointment of a Guardian and/or Conservator.
- Ongoing notice requirements and rights to object regarding protective proceedings.
- Annual reports and accountings.
- Judges also use their discretion, and are not shy to do so, to appoint counsel to Respondents and Protected Persons when they believe counsel is necessary.

If Oregon wishes to offer more protection for Respondents and Protected Persons SB528 is not the way to do so. Funding programs that can help to monitor and/or represent Respondents and Protected Persons when concerns and/or objections are raised, will help to ensure that assistance and advocacy is available without placing additional burdens on an overly broad spectrum of cases.

Thank you for your time and consideration.

Sincerely,



Alana J. Hawkins, Attorney