



Equity, Opportunity, and Inclusion for People with Disabilities since 1975

October 5, 2021

The Honorable Richard Blumenthal
U.S. Senate
393 Russell Senate Office Building
Washington, DC 20510

The Honorable Ted Cruz
U.S. Senate
324 Hart Senate Office Building
Washington, DC 20510

Dear Senators Blumenthal and Cruz:

Thank you for the opportunity to provide feedback on steps Congress should take to significantly reduce the reliance on guardianship and expand access to alternatives that protect human rights and honor self-determination, such as supported decision making. We are grateful to you for tackling the issue of guardianship (known as conservatorship in some states) which at its core results in the removal of basic human rights of people with disabilities and older adults.

TASH is an international leader in disability advocacy. Founded in 1975, TASH advocates for human rights and inclusion for people with disabilities who have the most significant support needs: those most vulnerable to segregation, abuse, neglect and institutionalization. TASH works to advance inclusive communities through advocacy, research, professional development, policy, and information and resources for self-advocates and family members. The inclusive practices TASH validates through research have been shown to improve outcomes for all people.

All persons with disabilities have the right to self-expression and choice through person centered and self-determination practices. Guardianship/conservatorship removes a clear set of rights, and places people with disabilities and older adults under the control of the court system. According to the National Council on Disability, people with disabilities under guardianship are often denied due process, determined incapacitated in hearings without sufficient scientific evidence, denied the consideration of less restrictive alternatives, rarely have their rights restored and are abused or exploited in court-appointed guardianship proceedings.

Access to general and individualized accommodations, services and supports – including the use of Supported Decision-Making (SDM), powers of attorney and other Less Restrictive Alternatives (LRAs) - can reduce the automatic flow of people with disabilities into the pipeline. The federal government should act to provide greater oversight of state court systems and federally funded programs to prioritize and incentivize:

- comprehensive data collection on guardianship, including information on key demographics;
- investments and federal legislation focused on assuring alternatives, such as supported decision making (SDM), become the primary vehicle of decisional supports for individuals with disabilities who need them in the United States;
- the implementation of existing probate law and new legislation that promote and ensure:
 - a reduction in the number of new guardianships/conservatorships ;
 - an increase in the number of guardianships/conservatorships terminated through the restoration of rights;
 - proof that individuals are made aware of and offered other less restrictive alternatives, including the use of Supported Decision-Making;
 - a process for confirming that individuals chose on their own accord to not pursue these alternatives if the decision is made to move forward with guardianship/conservatorship;
 - better protections through due process of law;
 - access to chosen attorneys as zealous advocates for the conservatee’s expressed wishes;
 - the reduction of abuse and exploitation within the probate court system through background checks and oversight of conflicts of interest;
 - required revisiting of the need for continual guardianships/conservatorships on a regular basis, with the goal of transitioning the individual to a less restrictive decisional supports model over time;
- increased federal investments to improve access of individuals with disabilities at risk of being subjected to guardianship/conservatorship to accommodations, assistive technologies (including communication and other devices), and support services to include evidence-based models that further self-determination and person- centeredness.

TASH appreciates your consideration of these recommendations, and we reiterate our gratitude to each of you for your leadership in introducing historic legislation. If you have any questions regarding the recommendations we have outlined, please do not hesitate to contact Serena Lowe, TASH’s Senior Policy Advisor, at slowe@tash.org or 202-907-8369.

Sincerely,

Michael J. Brogioli

Michael J. Brogioli
Executive Director