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Pennsylvanians Outraged at Abusive Guardianships that Strip Rights of Disabled, Elderly

Seven organizations file legal brief in response

On April 18, Pennsylvania disability advocates and Independent Living Centers filed a cutting edge [Amicus Brief](#) with the Pennsylvania Supreme Court in support of people with disabilities and their civil rights to receive long-term care services in the most integrated setting appropriate to their needs as stated in SCOTUS's landmark ruling in *Olmstead*. The brief further objects to the gross over-use of guardianship under state law for disabled and older individuals, and the failure of the state and courts to apply widely available alternatives to guardianship.

The brief focuses on David Italiano, an Alleged Incapacitated Person with a Disability and was filed by attorneys for seven local and statewide disability rights organizations, the majority of which are mandated by federal law to assist people seeking to move from institutional settings to their own homes in the communities of their choice. Amicus briefs are filed by people or other entities that are not a party to a legal case, but who have an interest in the case and advocate for a certain outcome.

Mr. Italiano is currently institutionalized against his expressed wishes by the Huntingdon County Area Agency on Aging (HCAAA) has been stripped of his rights to self-determination. Despite court proceedings that found Mr. Italiano capable of transitioning to an independent living environment, this agency has doubled down on their guardianship powers and has refused to explore less restrictive alternatives or available supports for David. While Mr. Italiano is the focus of the case at hand, the issues being litigated affect every Pennsylvanian at risk for having their rights abridged because of age or disability.

“For all practical purposes, the state simply ‘disappeared’ David through an overly zealous and potentially abusive guardianship program that has deprived him of his fundamental rights as well as his own home,” said Misty Dion of Roads to Freedom Center for Independent Living of North Central PA (RTFCIL). “Our organization is broadly recognized by both federal and state agencies as qualified and experienced to advocate for disabled and older people seeking services to preserve and promote their dignity and rights. Warehousing David in an institution and depriving him of his right to connect with loved ones and friends, while prohibiting us from continuing to provide him the essential services he requests, is a gross violation of his legal and human rights.”

David, a homeowner who, prior to November 10, 2020, had been amicably working with a previous guardian and RTFCIL to return to the community, suffered a variety of abuses at the nursing facility he sought to leave. RTFCIL vigorously defended Mr. Italiano's rights, filing complaints with the State Ombudsman, which is mandated to respond to allegations of abuse in such facilities. Those complaints have gone unanswered. Although the Huntingdon County Orphans Court approved of Mr. Italiano's transition plan and supports on January 19, 2021, the judge transferred his guardianship to HCAAA.

In a devastating reversal of David's fortunes, HCAAA soon obstructed all further efforts to return David to the community, denying him access to federally mandated advocacy and transitional services. HCAAA denied David access to private communications and directed facility staff to confiscate two personal cell phones while he resided in a facility experiencing inordinately high numbers of COVID infections and deaths.

Unresponsive to the RTFCIL's allegations of abuse at the facility, the Ombudsman subsequently attacked RTFCIL with a [cease and desist letter](#) based on gross misrepresentations of the organization's advocacy for David. As of this date, the Ombudsman has yet to respond to RTFCIL's allegations of abuse or its [request for substantiation of the Ombudsman's complaints](#). As David languishes in a facility against his will, he is at risk of HCAAA selling his home - the home that he has a right to return to - to pay for his continued forced institutionalization and abridged rights through the guardianship program.

Among the recommendations of last year's Fourth National Guardianship Summit - Maximizing Autonomy and Assuring Accountability - was a recommendation that "States should adopt and implement the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (Uniform Act) Key provisions of the Uniform Act include:

- (1) prohibit guardianships where less restrictive alternatives would meet an adult's functional needs;
- (2) require specific court findings before certain critical rights (e.g., to marry, vote, choose visitors) are abridged;
- (3) require petitioners to state whether less restrictive alternatives have been tried and justify any failure to do so;
- (4) create mechanisms that adults subject to guardianship and others can use to trigger modification or termination of an order..."

While there are states that follow these recommendations, Pennsylvania is not among them, and in fact, confers great power to guardians with seemingly little oversight or concern for the rights of disabled and elderly citizens.

"Even the American Bar Association determines guardianship as a "drastic intervention," and that less restrictive options are much preferred," said Mike Grier, Executive Director PCIL. "That drastic intervention by aging organizations and courts here in Pennsylvania has stripped David Italiano and countless others of their dignity, their privacy, their right to choose where they live and with whom they associate. The current situation is simply untenable and must be changed." It is our hope that this Amicus brief will help the court and Pennsylvania begin the important process of truly reforming its guardianship and long-term care systems.

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