AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

117TH CONGRESS
1ST SESSION

H. R. 4545

To protect the rights of legally incompetent adults who are the subject of a legal guardianship or conservatorship.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2021

Mr. CRIST (for himself and Ms. MACE) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To protect the rights of legally incompetent adults who are the subject of a legal guardianship or conservatorship.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Freedom and Right to Emancipate from Exploitation (FREE) Act''.

SEC. 2. GRANTS TO STATES FOR STATE-EMPLOYED CASEWORKERS AND LEGAL GUARDIANS AND CONSERVATORS FOR LEGALLY INCOMPETENT ADULTS.

(a) IN GENERAL.—The Secretary may make grants to eligible States, in accordance with this section, for the provision of State-employed caseworkers, legal guardians, and conservators for legally incompetent adults.

(b) ELIGIBILITY.—A State is eligible for a grant under this section if the Secretary determines that—

(1) the State maintains an up-to-date database of all legal guardianships and conservatorships that have been established for legally incompetent adults under State law;

(2) State law requires a caseworker who is a State employee to be appointed for each individual who is the subject of such a guardianship or conservatorship, and to be empowered, notwithstanding any objection of the legal guardian of, or conservator for, the individual, to communicate with the individual, and to assist the individual in petitioning a court to replace the legal guardian or conservator, as the case may be, with a legal guardian or conservator who is such an employee;

(3) State law guarantees that, notwithstanding any such guardianship or conservatorship, such an

individual retains the right to communicate with such a caseworker, and to petition a court as described in paragraph (2); and

(4) State law requires any State employee referred to in paragraph (2) to meet such financial disclosure requirements as the State may establish.

(c) GRANT AMOUNTS.—

(1) IN GENERAL.—The amount of the grant to be made to a State under this section is the State share of the amount made available to carry out this section.

(2) STATE SHARE.—For purposes of paragraph (1), the State share is the total number of legally incompetent adults in the State who are under a legal guardianship or conservatorship divided by the total number of such adults in all States.

(d) USE OF GRANT.—A State to which a grant is made under this section shall use the grant only to pay the salaries of State employees who are serving as caseworkers for, legal guardians of, or conservators for legally incompetent adults, and to cover related administrative expenses.

(e) ANNUAL REPORTS.—Within 90 days after the end of any fiscal year in which a grant is made to a State

under this section, the State shall submit to the Congress a written report that specifies—

(1) how the funds were used;

(2) the number of adults under legal guardianship or conservatorship in the State as of the end of the fiscal year;

(3) the number of petitions described in subsection (b)(2) that were submitted to the courts of the State in the fiscal year;

(4) the ratio of the number of individuals under legal guardianship or conservatorship in the State during the fiscal year to the number of State-employed legal guardians of, or conservators for, the individuals; and

(5) the number of individuals in the State who were emancipated from a legal guardianship or conservatorship during the fiscal year.

(f) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For grants under this section, there are authorized to be appropriated to the Secretary not more than $260,000,000, of which—

(A) $160,000,000 shall be for States to hire caseworkers for legally incompetent adults pursuant to this section; and

(B) $100,000,000 shall be for States to hire legal guardians of, or conservators for, legally incompetent adults pursuant to this section.

(2) AVAILABILITY.—The amounts made available under paragraph (1) are authorized to remain available until expended.

(g) DEFINITIONS.—In this section:

(1) ADULT.—The term ''adult'' means a person who has attained 18 years of age and is not in foster care under the responsibility of a State.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(3) STATE.—The term ''State'' means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

SEC. 3. PROTECTION OF RIGHTS OF LEGALLY INCOMPETENT ADULTS WHO ARE THE SUBJECT OF A LEGAL GUARDIANSHIP OR CONSERVATORSHIP.

(a) FINDINGS.—The Congress finds as follows:

(1) In a November 15, 2019 article, entitled ''Guardian stole more than $500,000 from elderly Pinellas man'', the Tampa Bay Times reported on a private guardian who allegedly stole over $500,000 from a ward over 11 months.

(2) In an August 2, 2019 article, entitled ''Florida professional guardian Rebecca Fierle: Devoted or dangerous?'' the Orlando Sentinel reported on severe cases of alleged adult guardianship fraud and abuse perpetrated by a private guardian, including physical neglect, deliberate isolation of wards from their families, financial exploitation, and using ''do not resuscitate'' orders without permission.

(3) Private guardians are at risk for financial conflicts of interest, because a ward's assets, which they usually control, are used to pay the guardian for their services.

(4) Many persons declared incapacitated by a judge and assigned to a private guardian have not even appeared in court.

(5) A person deemed incapacitated lacks the legal authority to petition to have their guardian removed or replaced if they believe they are being victimized.

(6) Pop icon Britney Spears has unsuccessfully petitioned the judicial system to remove her father as her conservator for years.

(7) Despite the fact that Ms. Spears has been a successful working artist for the past decade, her repeated requests to have her conservatorship removed have been denied.

(8) The 14th Amendment to the Constitution of the United States protects United States citizens and residents from being deprived of ''life, liberty, or property, without due process of law''.

(9) The allegations in the Orlando Sentinel and Tampa Bay Times, along with the inability of Britney Spears to free herself from her father's control, indicate that State guardianship and conservatorship systems can deprive a United States citizen or resident of liberty and property without due process.

(10) In order to restore due process guaranteed by the 14th Amendment to the Constitution of the United States, the Federal government must guarantee that a United States citizen or resident placed under guardianship or conservatorship retains the right to petition to have their private guardian or

conservator replaced with a State guardian who is free from any financial conflict of interest.

(b) ESTABLISHMENT OF RIGHT.—An individual who is the subject of a legal guardianship or conservatorship established under State law has the right to—

(1) communicate with a caseworker referred to in section 2(b)(2), notwithstanding any objection of the legal guardian of, or conservator for, the individual; and

(2) petition a court to replace any person who is a legal guardian of, or conservator for, the individual and who is not an employee of the State with a legal guardian or conservator, as the case may be, who is an employee of the State or who the individual has designated in a notarized document signed by the individual to act as such, notwithstanding the terms of the guardianship or conservatorship, as the case may be, and in any proceeding on such a petition, the petitioner shall not be required to prove wrongdoing or malfeasance by the legal guardian or conservator, as the case may be, as a condition of having the petition granted.

(c) PRIVATE RIGHT OF ACTION.—An individual who is the subject of a legal guardianship or conservatorship established under State law may bring an action in any

1 United States district court to enforce any right provided
2 by subsection (b). The court may provide the petitioner
3 in such an action with such relief as the court deems ap-
4 propriate.

○