

TESTIMONY OF THANH VAN T. DOAN
SUPPORTING SENATE BILL 508
FEBRUARY, 17, 2022

Good Afternoon, Chairman and Members of the Judicial Proceedings Committee.

I am here today to provide testimony in support of Senate Bill 508. I am an attorney in the Maryland Bar. I have practiced family law for over 20 years, during which time I have represented families throughout the state of Maryland. I reside in Howard County.

For as long as I've been practicing law, petitions for guardianship have been accepted as the ideal method for parents to ensure that a person they trust would be given the legal authority to care for their children in their impending absence. In Maryland, because of our diverse population and military bases, many of our parents have needed to appoint a guardian due to deployment, employment abroad, and the need to care for sick family members abroad. With the parent(s)' consent, courts routinely granted the petitions in light of the clear need to have someone authorized to make decisions regarding a child's education, health care, participation in extracurricular activities, etc. However, the availability of guardianship as a means to authorize another person to act in the parent's absence came to a grinding halt in 2014 when the Court of Special Appeals in *In re Guardianship of Zealand W.* held that a court is "not authorized, under Section 13-702 of the Estates and Trusts Article to appoint a third party as temporary or permanent guardian of the person of either Zealand or Sophia when (1) the children's mother is alive; (2) mother's parental rights have never been terminated; **and** (3) no testamentary appointment has been made." (emphasis added) *In re Guardianship of Zealand W.*, 220 Md. App. 66 (2014). In other words, regardless of consent and the parents' wishes, one cannot file a Petition for Guardianship and appoint a guardian for their minor child while a parent is alive **and** a parent's rights have not been terminated.

The chaos and uncertainty created by *Zealand* are still felt today as courts in different jurisdictions grapple with how to deal with the practical need for guardianship when for all intents and purposes, a parent can't appoint a guardian while they're alive. Some jurisdictions strictly follow *Zealand*, where other jurisdictions have carved out exceptions such as having both parents' consent, and yet in other courts, it's a matter of individual judicial interpretation where one judge may rule on the petition, while their colleague in the same courthouse may dismiss the same petition for lack of subject matter jurisdiction.

In those jurisdictions that adhere to *Zealand*, and thereby making guardianship non-existent, courts have advised parents to file a Complaint for Custody. Because of the legal ramifications which come with custody such as the right to child support, requiring parents to share custody is an unacceptable alternative to guardianship.

The lack of consistency and unpredictability from the courts and the absence of an acceptable alternative to authorize a person to act in the parent's stead are the reasons why Senate Bill 508 is necessary. The proposed amendments to Section 13-702 will rectify the problem created by *Zealand*. Parents will once again have the legal means to authorize a person of their choosing to make any decisions needed and to have that person's authority recognized by

schools, health care providers, etc. Parents will not have to worry about having to share custody or what will happen to their child in their absence.

Senate Bill 508 will ensure that when petitioning for the appointment of a guardian, parents will have access to and get the same result and relief from the courts regardless of where they live within Maryland. For these reasons, I ask this Committee for a favorable report on this bill.