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MARYLAND ASSOCIATION OF THE JUDGES OF THE ORPHANS' COURTS

HB 0868
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Dear Delegate Clippinger and Members of the House Judiciary Committee,

I am writing today to convey the opposition of the Board of Directors of the Maryland Association of Orphans' Court Judges to the passage, or even favorable report from Committee, on this bill. We offer the following support for our position:

1. This bill is the product of a single Personal Representative's dissatisfaction with the distribution of her grandmother's estate as directed by the Decedent's Will. She sought in the course of probate of that Estate to impose conditions on legacies that were not expressed in the Will and to alter the actual beneficiaries of her grandmother's will. The way this bill is written, with its retroactive application, is purely self-serving and an attempt by this Personal Representative to change existing law to mirror her personal desires.

2. To be retroactive to apply to wills probated on or after October 1, 2021, is to impose new legal conditions on estates which were probated before such conditions were law, on wills that were written when no such third-party implication of conditions was contemplated, and on testators who are no longer available to testify as to their intent beyond what they have written.

3. The point of a will is to allow each of us to exercise our right of disposition over our own property. Courts have held for centuries that "Mom told me…" and equivalent arguments could not affect distribution under a will unless the allegation of what the decedent may have said in life was actually part of the written will. This venerated practice has helped to derail many attempts at fraud and has preserved the sanctity of the testator's specifically written directives.

4. Allowing a PR to testify and use extrinsic evidence under this Bill is in violation of the MD Rules of Evidence and opens a Pandora's box for unsubstantiated and even fraudulent information to be allowed in a court in which evidence must be able to be verified as factual, which is why for the most part a decedent's verbal statements may not be used in probate proceedings under the Deadman's Statute.

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5. To posthumously impose conditions on any testamentary legacy that are not part of the written will is to deprive the testator, after death, of the rights of disposition that were unequivocally theirs during life. If this can be done by a third party to suit their own ends, what, then, is the purpose or use of a will?

6. The specificity of this bill regarding "health equity issues" is a precedent that would open the gates to a potentially infinite number of qualifications to be applied to every legacy stated in a will.

7. Holding recipients under the will accountable for any added conditions imposed by the Personal Representative for an extended time after the estate is closed unreasonably limits the gift devised and requires charitable legatees to hold the gift in limbo pending the Personal Representative's approval. It also would mean that the estate could not be truly closed OR that the Personal Representative would be exercising authority that has already terminated with the closing of the estate. This bill would upend probate and not allow for a final accounting and distribution to be the end of the estate process, thereby creating uncertainty.

8. The requirement that "**THE COURT SHALL DEFER TO THE JUDGMENT OF THE PERSONAL REPRESENTATIVE REGARDING THE ADMINISTRATION OF THE WILL UNDER THIS PARAGRAPH IF THE WILL INCLUDES THE FOLLOWING LANGUAGE: …"** is directly contrary to Estates and Trusts 2-102, which provides that the court may "direct the conduct of a personal representative." At no time should any court be deferring to the judgment of a Personal Representative, particularly when the PR may have a pecuniary interest in the Estate.

9. The further descriptions of instances when the court would be required to defer to the Personal Representative put the burden of proof on the court to prove that the conditions imposed by the Personal Representative are ***not*** the intent of the testator. This is contrary to foundational law and practice that the testator's intent is best determined by what the testator wrote down.

Thank you for considering our opposition and reasons.

Respectfully,
Melissa Pollitt Bright
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