

TESTIMONY OF MICHAEL KEBEDE, ESQ.

Ought to Pass – LD 1774

**An Act Clarifying the Right to Legal Representation
for Individuals Subject to Guardianship**

JOINT STANDING COMMITTEE ON JUDICIARY

January 14, 2022

Senator Carney, Representative Harnett, and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Michael Kebede, and I am the Policy Counsel at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support this bill because it would help protect the liberty of adults subject to guardianship.

An adult subject to guardianship experiences a substantial loss of independence and many, if not all, of their rights. Depending on their capacity at the time the guardianship is established, the person guardianship cannot make their own choices about: where they live; where they work; what kind of medical care they get – or whether they will get any medical care; what they eat; who they spend time with; and whether they will get married. Recognizing the serious and far-reaching implications of this system, Maine law requires Probate Courts to grant guardianships in a manner that ensures that the person subject to guardianship retains “maximum self-determination and independence.” 18-C M.R.S. §5-301(2).

This bill would help ensure that the “self-determination and independence” of the person subject to guardianship are zealously guarded. If enacted, this bill would give adults subject to guardianship the right to retain counsel and communicate with other advocates. Currently in Maine Probate Courts, the only people subject to guardianships who have a right to counsel are those who have an active case. Initiating a case in Probate Court requires surmounting a series of bureaucratic steps that make the right to counsel practically inaccessible to many who adults subject to guardianship. This bill would go a long way in solving that problem.

Once in court, the legal requirements for modifying a guardianship arrangement pose still more barriers, especially where the guardian is causing harm to the person subject to guardianship. Proving that circumstances have changed, communicating with healthcare professionals, submitting the requisite court forms and all the other requirements of modifying a guardianship arrangement are better done through counsel or other advocates. This bill would help ensure that people subject to guardianships are able to perform such tasks through professionals who can perform those tasks with ease, and better protect their fundamental rights and liberties.

We urge you to vote *ought to pass*.