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Testimony of

Latifa S. Ring of Elder Abuse Victims Advocates

HR 3040 – The Senior Financial Empowerment Act of 2009

To

Committee on the Judiciary,

Subcommittee on Crime, Terrorism and Homeland Security

May 25, 2010

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Mr. Chairman, Congressman Gohmert, Members of the Committee. Good morning and thank you for giving me the opportunity to address this committee on the critical issue of fraud and financial exploitation of the Elderly.

I am Latifa Ring, an elder rights advocate and a grassroots organizer with Elder Abuse Victims Advocates out of Houston, Texas. Our organization is a loosely knit one comprised of private citizens from all over America who have come together to create a voice for those who have no voice - the weak, the disabled and the elderly - and to bring that voice to our Leaders in Washington. Our mission is to seek meaningful change to improve the lives of our most vulnerable citizens and to educate public and private citizens on what they can do to help prevent abuse and exploitation of the elderly.

In America today, we have a rising epidemic of Elder Abuse and financial exploitation of the elderly. The Senior Financial Empowerment Act of 2009 can go far toward preventing and combating some of these forms of exploitation, specifically Mail Fraud, Telemarketing and Internet based Fraud. It is time for tough laws that treat financial exploitation as the devastating crime that it is, and it is time for our criminal justice system to take a tough stance against the perpetrators of these crimes.

According to the CDC¹ by 2030, the number of U.S. adults aged 65 or older will more than double to about 71 million. With medical advances and technology, people are living longer. This increased lifespan brings with it increased opportunity for predators to commit fraud and financial exploitation on the elderly.

Despite the many expert reports that have discussed, the problem of financial exploitation of the elderly over the past twenty years, still remains a silent crime that has mostly gone unaddressed and has escalated into what some call the Crime of the 21st Century. As financial Exploitation increases, the cost in both State and Federal Taxpayer Dollars will increase as the victims, whose estates have been looted, end up on SSI, Medicare and Medicaid. According to a recent Met Life Study, Financial Exploitation of the elderly “involves millions in increased costs to Medicare and Medicaid because of fraud and the costs of caring for

¹The Health and Economic Effects of an Aging Society - <http://www.cdc.gov/chronicdisease/resources/publications/AAG/aging.htm>

impoverished victims. Based on the research in this study, fraud robs America's seniors of more than \$2.6 billion a year"².

Many senior citizens worry about their financial security and do not want to be a burden on their families. They have worked a lifetime to build a retirement nest egg, have struggled to pay off their mortgages, and have carefully invested the surplus and any inheritance in risk free investment opportunities. Exploiting and robbing the elderly can be a lot easier, more lucrative and safer than robbing the bank where they keep their money, but it is no less a crime. These citizens are easy targets for what looks like "a get rich quick" opportunity from perpetrators of telemarketing or mail fraud. Seniors are finding it more and more necessary to use computers for communication and to manage their affairs. They are often intimidated by technology and unaware of security risks such phishing and spamming, so they become easy prey to internet based fraud schemes.

One of the issues mentioned in this bill is the fact that many elderly do not report cases of fraud because they are afraid to report the crime, are ashamed to admit that they have been robbed, or may not know where to go to report these crimes. An underlying fear mentioned is the fear that they will be declared to be incompetent with their lives and assets controlled by a stranger. As part of my testimony today, I would like to address some of the problems that incapacitated elderly face in guardianship and why this is a fear that must be if we addressed.

When a victim of fraud, reports a crime to family, the police, or protective agencies it often results in the elderly victim being thrust into a legal process (determination of incapacity and assignment of a guardian) designed to "protect" them, which instead, worsens the crime, deepens their misery, and robs them of their cherished rights as American citizens. Since a finding of incompetence often results in a loss of autonomy in all aspects of life: financial, social, residential, and medical, through guardianship, many seniors remain silent regarding the crimes committed against them. Speaking out could cost them their home (90% of the elderly prefer their own home to a nursing home and, in fact, dread the thought of a nursing home) and it could cost them the freedom to make financial, medical, and social choices. It could put their estates and savings, as well as their very lives, in the hands of strangers who are a part of a corrupt and unmonitored system. Their dreams of leaving a financial legacy to the grandkids will dissolve the minute the guardian is appointed.

²Broken Trust: Elders, Family & Finances <http://www.metlife.com/mmi/research/broken-trust-elder-abuse.html#findings>

A significant component of the problem is ageism, a modern prejudice more firmly rooted than racism. Many elderly people are presumed to be incompetent just because they are old. Ordinary financial mistakes that would be viewed as insignificant in non-elders are seen as signs of clinical decline in an elderly person. Some seniors, realizing that statistically they have only a few years left to live, may choose to live on fast food, offer dollars to the homeless, travel to far off places, donate to charities of their choices or even join a commune . While these choices might be questioned of a younger person, the same choices made by an elder can set in motion incapacity proceedings that ultimately remove all liberties.

In guardianships the incapacitated person is stripped of all of their civil rights and can lose all of their life savings through lengthy drawn out legal maneuverings that rarely benefit the wards. Too often these very systems set up to help our frail elderly, especially those with dementia and Alzheimer’s disease, and those who are incapacitated results in even more abuse and financial exploitation of that elderly person once they become incapacitated. Elders are often forced into plenary guardianships when sometimes all they need is a helping hand with a life activity such as balancing the checkbook or cooking meals.

Many perfectly competent seniors are alleged to be incompetent in fraudulent financial schemes designed to separate them from their estates. Others are placed in professional guardianships because of unproven allegations that family members are stealing the assets. These allegations are usually unfounded and rarely result in charges, but they do provide an opportunity for the guardianship players to deplete the assets at a rate and to a degree far in excess of that alleged family member did. The loss of autonomy and dignity that accompanies a guardianship can lead to confusion, depression, guilt, loneliness, a total sense of worthlessness and a complete loss of all of your liberties and privacy.

The determination of incapacity is often a haphazard, sloppy process decided by a single jurist deferring to a single “medical professional” and social worker. It often takes a single hearing, lasting a mere fifteen minutes, to establish a guardianship of an elderly person. There is no uniform standard definition for “incapacity” and the criteria vary from state to state.

The senior may or may not be present at the hearing that determines how the remainder of his or her life will be lived and where a stranger can be appointed to control their life. Emergency Guardianships are frequently used to speed up the process and keep objections from family members at bay. Even in a plenary guardianship hearing where the Alleged Incapacitated Person (AIP) stands to be stripped of all rights, there is no guarantee that the elder will be represented or have an advocate by his or her side. While a criminal will

always have at least one attorney even if he cannot afford one the alleged incapacitated person will stand alone or even be absent unrepresented by counsel at a hearing that will abolish all of his or her rights of citizenship. For criminal to be found guilty of a crime the standard is tough “beyond a reasonable doubt”. Yet a person can now be declared incapacitated if they only have a “diminished capacity” instead of the higher standard of being “mentally incompetent”.

Once incapacity has been found, a guardianship is imposed. If the incapacitated person has assets, a battle is sure to ensue with the professional companies and/or attorney guardians fighting the families in an effort to be appointed guardian. Since guardianship companies can use the ward’s assets to fund their effort, the ward stand to lose life savings as well as property through lengthy drawn out legal maneuverings that usually benefit the guardian and its attorneys and do not benefit the ward. The family, which must foot its own legal bills, often faces bankruptcy. The guardianship system, created to protect our frail elderly and to conserve their assets, instead, it results in even more abuse, financial exploitation, and depletion of the assets the elderly person struggled and sacrificed to save in order to maintain independence and to not be a burden on society.

Perpetrators of financial exploitation in guardianships includes professional “fee for service” guardians, attorneys and other professionals have become skilled perpetrators of financial exploitation with inflated fees or fraudulent billing schemes. The list of fraudulent practices is endless. These businesses have turned guardianships into a lucrative money making enterprise that fleeces the estates of vulnerable citizens and leaves them supported by the taxpayers. It all happens right within the courtroom. Overwhelmed or corrupt judges are allowing it by routinely rubber stamping exorbitant fee applications for services that do not benefit the ward or for services that may not have ever been provided.

One of the problems, as I see it, is the very existence of Medicaid dollars to care for indigent wards. The judges know that the American public will take care of the ward when or if the money runs out. The judges work with a small number of lawyers and guardians that specialize in the guardianship arena and develop a relationship with them. They want to be sure that those lawyers and guardians are taken care of and they are willing to allow the ward’s assets to be used for their fees since they know that the State will take care for indigent incapacitated people with State and Federal Tax Dollars. Somehow there needs to be someone in the court room to protect the public's interest in having the elderly pay their own way for as long as possible.

Another reason why the judges rubberstamped is because the judiciary wants to get through the docket and may not have the time to sort through the deliberately complicated and vague fee applications. Since the judges know that state and federal tax dollars will care for the indigent ward, the conscience isn't deeply troubled by the preference of expediency over justice. The same reasoning eases the pangs of conscience in the guardians and their attorneys, if it exists, permitting them to fleece the estates with ease.

The stark reality is that going into guardianship or conservatorship in our country does nothing to conserve the assets of the ward, nothing to spare tax payers from having to foot the bill, and does nothing to preserve the estate for their heirs. What it does do is it sets up a situation where others can benefit from the incapacitated person's life labor, and a stranger will make intimate decisions regarding visitors, residence medical care and medications.

While exploitation in guardianships is rampant, it is largely kept out of the public eye under the guise of protection. It is a system where abuse and exploitation can be perpetrated with impunity, and where even the victims of the crime do not have the right to report it. This pernicious behavior knows no boundaries and can ensnare any of us with sufficient assets to attract a member of the guardianship industry.

As the late Congressman Claude Pepper reported in 1989, "Guardianship is in many ways the most severe form of deprivation of civil rights that can be imposed on a citizen of the United States. An individual under guardianship typically is stripped of his or her personal rights such as the right to vote, the right to marry, and the right to handle money"³.

The 14th amendment of the U.S. Constitution guarantees that no citizen shall be denied the right to life, liberty or property without due process of the law, and yet every day thousands of American citizens are determined to be incapacitated and are placed in guardianships without legal representation, without notice, and without the right to be heard offered the rankest criminal. These innocent victims are stripped of all rights, denied any autonomy, and often denied the comfort of their own home and even their family.

Newspapers throughout the country regularly popularize horror stories of elder abuse and exploitation by rogue telemarketing entrepreneurs in basement boiler rooms or overseas fraud schemes on the Internet that go on unchecked and ignored by our state criminal justice systems and adult protective agencies. Too few

³ Guardianship: Friend or Foe of America's Frail and Elderly?" by Claude Pepper, Journal of Elder Abuse and Neglect, Vol 1(3) 1989. – Harthorwne Press, Inc.

of these stories document the abuse and exploitation that is perpetrated by fiduciaries and in and through the guardianship and conservatorship systems.

Adult protective agencies that should be investigating financial crimes against the elderly are too often not doing so. Most APS case workers are educated in routine social work, not criminal investigations. The minions in this narrowly focused bureaucracy are often the first to admit they are unqualified to investigate crimes involving financial exploitation. Too often, the typical response is to petition to place the client in an involuntary conservatorship or guardianship. In our work with victims, the members of my organization s have found that APS routinely sends the victims of financial exploitation into the guardianship courts instead asking that the perpetrators be pursued through the criminal justice system. This fits neatly in the old maxim, “When the only tool you have is a hammer, every problem looks like a nail.” It is a sad but true fact that when a person is placed in a public guardianship by APS, that agency will not respond to reports of subsequent abuse, because it has a political stake in protecting their bureaucracy from evidence of mistakes in the first place. There is also a reluctance to interfere in matters before the court.

Reporting guardianship abuse to the appropriate authorities is virtually impossible as there is no agency that will take reports of court approved abuse. Furthermore, HIPPA rules and other privacy claims regularly deny families access to the information necessary to substantiate the abuse. Family members are forced to sit back silently and watch their loved ones suffer or be exploited. They dare not speak out for fear that the guardians will deny visits to their loved one. Retaliation against caring family members, who are seen as troublesome by the guardian, is common. Family members quickly learn that if they report abuse or complain too much they will be denied access to or visitation with their own loved one who will be left to spend their last days without family at their side. Additionally, every family request results in court time for which the guardians and their attorneys can charge the client’s estate.

It is important that the Senior Financial Empowerment Act address not only the problem of fraud against the elderly but also some of the reasons why elderly victims of fraud are afraid to come forward to report the these crimes. They have every right to fear a guardianship system that commits its own form of abuse and is so broken it has the potential to destroy lives and tear apart families.

Many seniors are aware that they can lose all their civil and constitutional rights, can lose control of their own lives, can lose access to and control of their own money and essentially lose all of their liberty and property. You don't need to be a senior to find this a terrifying scenario. Many senior citizens have their advanced directives totally ignored in the guardianship system.

We hear numerous reports from victims of guardianships being adjudicated and fee for service or attorney guardians being appointed as the guardians when the alleged incapacitated person had previously designated a pre-need guardian if they were ever found to be incapacitated or incompetent. Trusts that were carefully created and deemed impenetrable are broken with a stroke of a pen. A common tactic again is the use of unproven and often false allegations to exclude the named surrogate decision maker or power of attorney from having any standing in the proceeding other than that of a defendant being accused of alleged crimes that are never proven but create the fodder for more litigation maneuvers.

Lately we hear of more and more case where no reason what so ever is given for not naming the person designated by the ward when they were competent as the guardian. For example a woman in Florida wanted to make sure that she would be taken care of if she should ever be declared incapacitated. She carefully prepared documents and named her niece as her power of attorney, her designated guardian and her health care surrogate. This woman was put into guardianship in Florida and despite the fact that the court had all of the pre-planning documents a paid professional guardian was appointed and the niece was never even notified of the hearing! The family is struggling to no avail to rectify the situation.

If we can do something to stop the abuse in guardianships and conservatorships, then we can help to reduce the fear that people have of being considered incapacitated or mentally incompetent. As long as they have this fear they will continue to be afraid to admit to anyone that they need help and will hesitate to report crimes that show their vulnerability.

I know if I were elderly and lost a couple thousand dollars to a fraud scheme that I would keep my mouth shut rather than report it and risk being forced into the guardianship trap that could fleece me of my liberty, my property, and my estate and that would destroy the lives of my children if they attempt to come to my rescue and I know they would. I never want anyone's children to go through what I have been through over the past five years in the guardianship system in Delaware.

I have attached to my testimony a document that addresses in much more detail the problems in guardianships and suggests some records for improvement. (Appendix A) that our organization originally drafted in 2008 and recently updated. While it does not directly address the type of fraud addressed in this bill, it does address the specific frauds that arise in guardianship systems, where many of victims who report crime will end up if they are found to be incompetent. It also makes recommendations for reform that will ensure that victims of telemarketing, internet or other forms of fraud will not find themselves in a situation where the remedy is incarceration in a system that results in exploitation, violations of civil rights, and even greater fraud.

I have also attached to my testimony a petition signed by over 900 people calling for national reform to end financial exploitation and abuses in the very systems that should be protecting vulnerable citizens. Americans from almost every State, and even abroad, have, in this petition, told the stories of the abuses that their family and loved ones have suffered. Others have made comments and suggestions. I implore each member of this committee to please take a moment to look over this petition and see what the constituents of your state are saying about elder abuse and financial exploitation of the elderly in guardianships.

HR 3040, The Senior Financial Empowerment Act of 2009, can go far toward ending fraud against the elderly but it can go further if there is an opportunity to amend it or to add additional language that can address the abuse of those seniors who have no voice, the weak and incapacitated elderly in guardianships and conservatorships who become victims of fraud and exploitation by perpetrators within the system.

Mr. Chairman, Congressman Gohmert and members of this committee, I implore you to please consider adding some language and or legislation to address the financial protection of our most vulnerable senior citizens. "It was once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped." - Hubert H. Humphrey.

How will our country be judged if we do nothing to stop the national travesty of abuse and financial exploitation of our most needy citizens; those who often fear reporting the crimes perpetrated against them?

If we do not take action today, then tomorrow we will pay for our inaction, by being subjected to the same violations, the same loss of freedom and autonomy, the same pernicious crimes currently taking place in the shadows of our society. You can make a difference today, to bring this situation into the light and address

it with tools of justice and reform. If you will take action then all of our lives and the lives of our children will benefit as we age and become vulnerable citizens.

Thank you once again for giving me the opportunity to address this committee.

Latifa S. Ring

Elder Abuse Victims Advocates -

SUPPLEMENTAL ATTACHMENTS AND APPENDICES

- A. *FINANCIAL EXPLOITATION, FRAUD AND ABUSES OF THE INCAPACITY PROCESS AND IN ADULT GUARDIANSHIPS – BY Elder Abuse Victims Advocates***

- B. *THE PETITION – TO STOP ELDER ABUSE AND GUARDIANSHIP SYSTEM ABUSE - A CALL FOR NATIONAL REFORM TO PROTECT - LETTERS TO LEADERS TO ADDRESS ELDER ABUSE AND GUARDIANSHIP ABUSE***

- C. *ISSUE BREIF ON GUARDIANSHIP – H.A.L.T.***

APPENDIX A

FINANCIAL EXPLOITATION, FRAUD AND ABUSES OF THE INCAPACITY PROCESS AND IN ADULT GUARDIANSHIPS – BY Elder Abuse Victims Advocates

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APPENDIX B

THE PETITION – TO STOP ELDER ABUSE AND GUARDIANSHIP SYSTEM ABUSE - A CALL FOR NATIONAL REFORM TO PROTECT - LETTERS TO LEADERS TO ADDRESS ELDER ABUSE AND GUARDIANSHIP ABUSE

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APPENDIX C

ISSUE BREIF ON GUARDIANSHIP

by H.A.L.T.

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