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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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**No. 84379-1**

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**In the Matter of the  
GUARDIANSHIP OF SANDRA LAMB**

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**BRIEF OF AMICUS CURIAE JULIAN WHEELER**

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**Julian Wheeler  
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February 3, 2011**

**ORIGINAL**

## TABLE OF AUTHORITIES

### **Cases**

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## **I. ARGUMENT.**

The State and perhaps others argue that advocacy has no value, or that persons with guardians are better off without guardians who advocate. I respectfully disagree.

Citizens, including me, commit to substantial periods of time to travel to a public hearing or private appointment in Olympia, or elsewhere if necessary, in order to provide comments in support of the interests of other individuals or constituents who are unable to represent themselves. This would include such individuals as Ms. Sandra Lamb and Ms. Rebecca Robins, who I understand are diagnosed with a developmental disability that bar them from attending such public functions as hearings, or even to travel a substantial distance from their homes in order to do so. Some say guardianship may be a deprivation of liberty, but ultimately its purpose is to fill the gap between disability and fulfillment of rights and empower the individual.

After many years of experience of advocacy, I find my own efforts and those of others to be of clear value to our constituents, and that while the prevalence of our position is never certain in advance, prevailing in such an arena usually requires such efforts of advocacy and might not otherwise occur.

How does that advocacy provide a realistic or actual benefit?

Given my many years of experience in volunteering to advocate on behalf of others, the value of advocacy is realized the moment that such communication is made to another person, party, or decision-maker, regardless of the outcome of the proceeding or determination. I expend my time in such efforts, with the support of colleagues who support my position or who in fact have preceded me in stating our shared position. Most of those efforts were as a volunteer. But while my time was volunteered, many advocates get paid for their time, and provide high quality representation to advance their position, either in a public hearing, or via appointment in a decision-maker's office. Such time is valuable, and many advocates need to sustain themselves financially while they continue to advocate their positions on a part- or full-time basis.

I have been involved consistently for the past 22 years as an adult, including in a number of public functions and private appointments that involved communicating my position to one or more decision-makers. Many times, my position did not prevail at the function or many subsequent ones in question. But for those positions that did prevail, it was due mainly to my presence and that of others who shared my position, including many who were paid for their time.

Over the past few years, I have joined in efforts to advance positions in support of the best interests of people who do not have the ability to give comments to others because of the distance (or ability to travel to the distance) to the location of the advocacy. The ability of such clientele to conduct themselves in a manner free of distraction to others attending the same events is dubious. They lack the ability to either voice their own concerns, or even to maintain such decorum that such events would require. It is with this constituency in particular that the need for a guardian to serve as an advocate is paramount.

One thing is obvious to me. Many decisions reflect the positions advanced by many advocates who have been paid for their advocacy services. Many other advocates advance positions on behalf of their own constituency, and in some cases paid from the public purse, in order to convince decision-makers to act in their organization's best interest. It is highly uncertain if such decisions would have been made if the positions advanced would have been advanced solely by volunteer advocates for individuals.

There are exceptions, of course. I have advanced many positions without being paid for my time, some of which prevailed; and I have

witnessed other volunteer advocates prevail against positions advanced by paid advocates. Many positions prevail due to the merits of their arguments. But I believe that total reliance on volunteer efforts may in fact disadvantage a position, particularly where the discussion involves other advocates who are fully funded and promote the opposite position in the same discussion.

Denying a constituent the right to advocacy, including paid representation, in public and private forums as mentioned earlier puts individuals like Ms. Lamb and Ms. Robins at a substantial disadvantage if their guardians are silenced by the effort of the State or other organizations.

In particular, the State argues that advocacy does not provide a “realistic” or “actual” benefit and therefore is not subject to compensation. However, our freedom to petition the government for a redress of grievances is meant to protect our rights regardless of the outcomes of the petitioning process. See *Minnesota Board for Community Colleges v. Knight*, 465 U.S. 271, 309-10 (1984) (Stevens, J., dissenting) (“The First Amendment was intended to secure something more than an exercise in futility – it guarantees a meaning opportunity to express one’s views.”)

The State and the Court of Appeals both appear to have taken the

position that the legislative advocacy is futile. However, the right to petition guarantees that leaders hear, even if they do not listen to, citizens. The result of this democratic discourse may be silence or indifference by public officials or, as in this case, a directly contrary position by State concerning the content of that discourse. The right to petition is not an exercise in futility, or unsuccessful, or lacking in “realistic” or “actual” benefit, merely because the message is disapproved by DSHS which seeks to suppress it.

It is surprising -- is it not -- to hear that exercising the individual right to petition is futile for Ms. Lamb and Ms. Robins. Are they to be treated differently than all other citizens because they are profoundly and severely disabled? In my view, Ms. Lamb and Ms. Robins should be empowered and the Court should decline to accept the invitation of the State or others to carve out an exception to the right to petition for our most vulnerable citizens.

The State also argues that advocacy for a “broad” group – otherwise unrepresented – provides no benefit “particular” to Ms. Lamb or Ms. Robins. They should be disempowered and not permitted to exercise their right to petition because of the character of the benefit. That argument is vacuous. Implicit in the state and federal constitutions is a

right to join with others to pursue goals independently protected, including political advocacy. See, e.g., *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984). In that case, the U.S. Supreme Court stated, “An individual's freedom to . . . petition the Government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in a group effort towards those ends were not also guaranteed.” *Id.*

Indeed, the failure to recognize advocacy on behalf of a group of clients may “particularly” foreclose a single indigent disabled individual from meaningful exercise of the right to petition. The exercise of the right to petition on behalf of a group of 23 residents is more effective and economical than if each had a separate guardian. The pooling of resources thus provides a realistic or actual benefit to each resident that would be “particularly” and “broadly” foreclosed if the State’s position were adopted.

The State’s opposition to recognition of advocacy as a “benefit” is a failure is a failure to recognize that the exercise of this right on behalf of Ms. Lamb and Ms. Robins is primarily abstract, and secondarily tangible, with each attribute conjoined to the other. Tangible results may not always accrue, but without the abstract attributes, the tangible ones may never

emerge to empower them as individuals. Regardless of whether the exercise of this right to petition or its designation as “group” or individual, or abstract or tangible, the fact that this right is exercised to *any* degree is already of benefit to Ms. Lamb. The fact that Ms. Lamb’s and Ms. Robins’ guardian joined their cause to that of others similarly situated was of direct interest to them, however fractionalized her interest may appear to a third party such as the State that does not represent their best interests.

I respectfully urge the Court to declare legislative and other advocacy provide by guardians has realistic and actual value, that advocacy is not futile because it may be unsuccessful, and that

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Respectfully submitted,



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Pro se