

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

YOLANDA BELL AND ANASTASIA ADAMS – PETITIONER

vs.

**INOVA HEALTH CARE D/B/A INOVA FAIRFAX HOSPITAL –
RESPONDENTS**

**ON PETITION FOR A WRIT OF CERTIORARI TO
SUPREME COURT OF VIRGINIA**

Yolanda Bell

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703-298-9498

QUESTION(S) PRESENTED

Yolanda Bell and Anastasia Adams are sisters. In June 2005 Anastasia suffered an anoxic brain injury subsequent to hospitalization for an accidental acetaminophen overdose. In 2003, two years prior, Anastasia had made Yolanda her durable power of attorney (DPOA) for health and property. After her release from the hospital Yolanda moved Anastasia from California to Virginia to live with her after her release from the hospital. In 2010 upon the advice of an Elder Law presenter a Virginia DPOA was drafted and finalized for Anastasia by a member of the Virginia Bar.

In December 2016 Anastasia was admitted to Inova Fairfax Hospital in Falls Church, Virginia for pneumonia and sepsis infection. While hospitalized Anastasia contracted a hospital born infection and on December 21, 2016 suffered a large pericardial effusion (fluid around the heart) and a twelve (12) inch blood clot in her right arm. On December 28, 2016 Inova attempted to discharge Anastasia without treating the effusion or blood clot. Yolanda as Anastasia's DPOA appealed Inova's discharge decision, first through the Medicare Contractor Kepro and then to the Office of Medicare Appeals and Hearings in Washington, DC.

While awaiting the Medicare administrative judge's decision Inova sued for guardianship of Anastasia. Inova did not allege abuse, neglect, or exploitation, Inova sued for guardianship solely on the grounds that Yolanda "refused to consent to discharge of Anastasia" and therefore was not making decisions in Anastasia's best interest. The Fairfax County Circuit Court deemed Anastasia incapacitated

and granted a plenary guardianship over her to professional guardians designated by Inova.

THE QUESTIONS PRESENTED ARE:

1. Does the granting of plenary guardianships in absence of abuse, neglect or exploitation by state courts, when the prospective elderly or disabled ward has previously designated an attorney-of-fact years prior to the triggering event, violate a natural born citizens guaranteed individual inalienable and enumerable constitutional rights of life, liberty, and property under due process and equal protection clauses under the First, Fifth and Fourteenth Amendments to the U.S. Constitution where the Virginia Code does not contain a mechanism for incapacitated persons to object to the proceeding and ill and hospitalized persons are not afforded an opportunity to appear at the incapacitation guardianship hearing? Do these same laws prejudice disabled and incapacitated individuals, by not having a means to appeal the guardianship in their own name because their rights have been taken away by the very Order/Judgment they wish to appeal and appointed guardians will not?

2. Do Virginia guardianship laws, as practiced, under Virginia Code 64.2-2000 et seq unconstitutionally strip and deprive in loco parentis parents, siblings, and disabled wards of their due process rights; effectively stripping disabled wards of their natural born rights of citizenship?

a. Do Virginia guardianship laws under Virginia Code 64.2-2019, violate Plaintiffs constitutional rights under the Fifth and Fourteen equal

protection and due process clauses where Virginia Code does not contain a mechanism for incapacitated persons to object to the proceeding and ill and hospitalized persons are not afforded an opportunity to appear at the incapacitation guardianship hearing?

b. Does service and certification on an individual already deemed incapable of making decisions violate (1) Adams constitutional equal protection and due process rights under the Fifth and Fourteenth Amendments, and (2) violate federal law requirements for making informed decisions when the attorney in fact is not allowed to be present?

c. Did Bell have a protected interest in the care and control of her sister Anastasia as her in loco parentis parent and/or her attorney in fact? And did the States placing Anastasia under guardianship violate that protected interest?

d. Do Virginia guardianship laws, as practiced, under Virginia Code 64.2-2000 et seq violate (1) substantive due process under the Ninth Amendment and (2) fundamental procedural fairness, as procedural due process guarantee protects one against “arbitrary takings”; where an involuntary plenary guardianship without representation and/or advocate for respondent is a “taking” in the true and purest sense, and undeniably at odds with the fundamental rights of liberty.

e. Did the Commonwealth of Virginia violate Adams’ constitutional rights to liberty and life under the First, Ninth, and Fourteenth

Amendments, Section 11 of the Virginia Constitution, and VA Code 64.2-2000 et seq by conveying complete authority beyond personal decision on health care decisions – to those of visitors and family contact; by granting a plenary guardianship when only a temporary guardianship was sought, the law allows for limited guardianships, and Federal and Virginia Code state the least restrictive device should be utilized. Were Bell and Adams prejudiced by the Court granting relief not sought in pleadings or tried by consent?

3. Does the isolation of elderly and disabled wards and barring of familial association violate cruel and inhumane punishment protections under the Eighth Amendment, 42 USC 1395i-3a, (title 42, chapter 7, subchapter XVIII), and liberty protected interest under the Fifth Amendment.

a. do nursing facilities as defined under 42 USCA 1395i violate the Statute and constitutional rights of “family association” when they bar and then restrict visitation up until and including the date of wards death?

b. whether there is a constitutional and fundamental right of association between (a) in loco parentis parent and child, (b) siblings - sister and sister, (c) family members immediate and extended, and (d) clergy and friends known to the incapacitated individual under the First, Fifth, Ninth, and Fourteenth Amendments, 28 USCA 1331, and 42 USCA §§ 483.10(j)(2), 42 1395i, 1396r.

4. Is a professional “Guardian” appointed by the Court a state actor as through the act of being deemed a ward of the court defined as defined under the First Fifth and Fourteenth Amendments to the Bill of Rights?

FEDERAL AND STATE LAW

5. Does Federal regulation for the rights of Medicare patients for Medicare Appeals preempt state guardianship laws. Conflict between Virginia Code and Federal Statute and regulation on Medicare beneficiary rights.

6. Did Inova seeking guardianship to remove Adams from the hospital preempt federal statute 42 U.S.C. 1395i – Appeal Rights of Medicare Beneficiaries, when Adams case was under review by an Administrative Judge at the Office of Medicare Hearings and Appeals in Washington, DC?

7. Did Inova and the Courts overt failure to acknowledge and abide by Federal Medicare Statutes regarding guaranteed beneficiary appeal rights prejudice and violate Ms. Bell and Ms. Adams due process and equal protection rights under the Fourteenth and Ninth Amendments?

8. Were Bell and Adams First, Ninth, and Fourteenth Amendment rights violated by the U.S. District Court’s denial of a temporary restraining order when there was a clear danger of irreparable harm?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix J to the petition and is unpublished.

The opinion of the United States district court appears at Appendices F, G, H, I, and K to the petition and are unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendices A and B to the petition and are unpublished.

The opinions of the Fairfax County Circuit Courts appear at Appendices C, D, and E to the petition and are unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case (17-2368) it has not yet been decided and is still pending.

The date on which the United States Court of Appeals decided my case (17-1606) was October 19, 2017.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my cases was January 17, 2018. A copy of those decisions appear at Appendices A and B.

No petition for rehearing was filed as Anastasia died on November 16, 2017.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

The United States “Supreme Court has exclusive jurisdiction to review judicial decisions by state and District of Columbia courts. 28 USCA § 1257. *Richardson v. District of Columbia Court of Appeals*, 83 F.3d 1513, 317, U.S.App. D.C 465, rehearing denied. *See also Exxon Shipping Co. v. Airport Depot Diner, Inc.* 120 F.3d 166 (D.C. Cir 1997).

Original jurisdiction exists based upon federal question, constitutionally protected rights to life, liberty, pursuit of happiness, exercise of their religious freedom, substantive and procedural due process, and federal law and regulation. Ancillary and supplemental jurisdiction exists under 28 U.S.C. § 1367(a) (2000) and provides that where a court has original jurisdiction in a civil action, the court has supplemental jurisdiction over "all other claims that are so related to claims in the

action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution"¹.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The issues involved encompass direct conflicts between the U.S. Constitution, state and federal law, and violations of due process and freedom of religion.

Current federal law under Title 42 of the United States Code is in direct conflict with guaranteed protections of the U.S. Constitution. Current state law of the Commonwealth of Virginia unilaterally allows the complete stripping of constitutionally guaranteed rights of disabled incapacitated individuals. It allows the Commonwealth of Virginia to ignore and override federal statute regarding the disabled under Titles 28 and 42 of the United State Code, as amended and Title 42 of the Code of Federal Regulations, Decisions issued by Federal Administrative Law Judges (ALJ), and federal protections for Medicare beneficiaries and those in nursing facilities. Specific provisions involved are:

1. First Amendment of the U.S. Constitution provides freedom and right to practice and express our religion; right to family association, right to privacy of home.
2. Fourteenth Amendments Due Process and Equal Protection Clauses of the provides right to life, liberty and pursuit of happiness, security in one's person and autonomy based right to privacy under the due process clause.
3. Eighth Amendment – Constitutional right against cruel and unusual punishments of isolation, denial of familial association, parental rights.

¹ Justice Antonin Scalia in *Kokkonen v. Guardian Life Ins. Co. of Am.* 114 S. Ct 1673 (1994)

4. Thirteenth Amendment of the U.S. Constitution – provides a federal civil right of action to vindicate rights and permits the removal of state actions where vindication of those rights is not possible in state court.

6. Seventh Amendment – due process of law in denial of trial by jury or jury trial in guardianship cases.

7. Ninth Amendment – violation of fundamental and unalienable rights, the values of privacy of home and associated rights.

8. Title 42, United States Code, Section 1395i-3 – provides rights for nursing home residents, including visits from family and friends and clergy.

9. Title 42, United States Code, Section 1396r - provides rights for nursing home residents, including visits from family and friends and clergy. 37

10. Title 42, Code of Federal Regulations, Chapter IV, Subchapter G, Part §§ 483.10 - Resident Rights – give residents of long term care facilities the “right to receive visitors of his or her choosing at the time of his or her choosing...”

11. Title 42, Code of Federal Regulations, Chapter IV, Subchapter B, Part 405, Subpart I – Determination, Redeterminations, Reconsiderations, and Appeals Under Original Medicare (Part A and Part B) – provides the right to a hearing before an Administrative Law Judge upon request.

A written request for a hearing before an Administrative Law Judge was made by Adams through Bell her durable health power of attorney. The Medicare contractor, “QIC”, chose not to participate in the hearing.

12. Title 42, Code of Federal Regulations, Chapter IV, Subchapter F, Subpart B §§ 478.38 – Reconsiderations and Appeals, effect of reconsidered determination

13. Title 28, United States Code, Section 1331 – district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

14. Title 28, United States Code, Section 1367(a) - ...district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

15. Constitution of Virginia, Section 11 – Due Process of Law Jury by Trial in Civil Cases.

STATEMENT OF THE CASE

This is an appeal of two decisions of the Supreme Court of Virginia, the first being an Adult Guardianship proceeding, and the second a Denial for Reconsideration and Emergency Termination of Guardianship Order and Petition for Aid to bar family, friend and clergy visitation under Code of Virginia, § 64.2-2000 et seq. The aforementioned decisions of the Virginia Supreme Court came after but are related to SCOTUS Appeal No. 17-7880.

On December 2, 2016 Anastasia Adams was admitted to Inova Fairfax Hospital in Falls Church, Virginia for pneumonia and sepsis infection. While hospitalized Anastasia contracted a hospital born infection and on December 21,

2016 suffered a large pericardial effusion (fluid around the heart) and a twelve (12) inch blood clot in her right arm.

On December 28, 2016 Inova attempted to discharge Anastasia without treating the effusion or blood clot. Yolanda as Anastasia's DPOA appealed Inova's discharge decision, first through the Medicare Contractor Kepro and then to the Office of Medicare Appeals and Hearings in Washington, DC.

On January 9, 2017 and January 11, 2017 Inova through counsel filed a petition and an amended petition, respectively, to appoint Anne M. Heishman and Kenneth E. Labowitz co-guardians and co-conservators for Ms. Adams.

On February 14, 2017, Ms. Bell through counsel filed a cross-petition as an interested person seeking to be appointed as her sister Anastasia's guardian if the Court found a guardian was necessary.

On February 15, 2017 a two hour bench hearing was held in front of Judge Stephen C. Shannon of the Fairfax County Circuit Court. On this same date the Court adjudicated Ms. Adams incapacitated and granted full guardianship of her to the Inova designated guardians. HT1 109:19-22 & 110:1-7; 112:14-22 & 113:1-3

The Courts Order also suspended Anastasia's previously legal and duly executed Durable Power of Attorney, Health Power of Attorney, and Advanced Medical Directive which appointed her sister Yolanda Bell "Ms. Bell" as her duly appointed legal representative and agent in all matters concerning her health, her person and her estate.

Ms. Bell appealed² the Circuit Courts decision to the Virginia Supreme Court on February 15, 2017, filing an amended appeal on March 3, 2017.

On March 3, 2017 the Federal Administrative Law Judge, issued his decision concluding on multiple basis that “inpatient services after December 30, 2016 were medically reasonable and necessary and Medicare should have continued to cover any inpatient acute hospital level of care after that date” for Ms. Adams and Directed the Medicare Contractor KePro to process Ms. Adams claim in accordance with the ALJ Order. The ALJ’s decision also found Ms. Bell “was a passionate and effective advocate on her sister’s [Ms. Adams] behalf... maintaining that [Ms. Adams] required continued inpatient hospital care.”

On March 7, 2017 a Motion to Stay Finality of Judgment was filed.

On March 23, 2017 an Emergency Petition for Protective Order and Petition. A Motion for Emergency Stay of Order was also filed with the Supreme Court of Virginia.

On March 24, 2017 Ms. Heishman and Mr. Labowitz filed a petition for aid with the circuit court seeking authorization to bar Ms. Bell from seeing her sister Anastasia and to not communicate with and share no information on Ms. Adams with her sister Ms. Bell. After a very brief hearing the Court granted the guardians

² Ms. Bell was represented by counsel during the guardianship hearing however she found out at 9:45pm the night before the hearing that her counsel had not contacted a single witness or any of the alternate guardians, preventing anyone from being able to attend the hearing on 12 hours notice. Counsel then refused to request a continuance, and Ms. Bell was prevented from addressing all factors during the hearing, so Ms. Bell chose to part ways with the attorney after the judgment and appeared pro se before the Court.

petition and Ms. Heishman barred Ms. Bell from seeing Ms. Adams. It was not until a month later when Anastasia wound up in the hospital with severe sepsis, severe anemia, pneumonia, blisters on her eyes (chemosis) and a severe UTI that Ms. Bell was allowed to see her again. Bell timely appealed this decision to the Virginia Supreme Court. App B

During a March 24, 2017 hearing Ms. Ms. Bell argued that Ms. Heishman had changed Ms. Adams' "Code Status" from a Full Code to a Do Not Resuscitate (DNR) in violation of the Virginia Code. Ms. Bell also informed the Court at this time that Ms. Adams had suffered several injuries, including a severely broken hip, since being placed under the custody of the guardians. The Court against 42 USC § 1395i granted authorization for guardians to bar Ms. Bell from seeing her sister Ms. Adams or anyone else and to not share any information with Ms. Bell or anyone else including clergy in violation of First Amendment rights to practice their Catholic religion.

The changing of an incapacitated persons code status from a full code to a DNR clearly goes beyond the state courts discretionary aspects of the court's decision, it is the court's interpretation and ascertainment of the General Assembly's legislative intent and a clear question of law.

"When the language of a statute is unambiguous, the Supreme Court of Virginia is bound by the plain meaning of that language and may not assign the words a construction that amounts to holding that the General Assembly did not mean what it actually stated." *Commonwealth v. Diaz*, 266 Va. 260 (2003) at 2

A court cannot enter judgment based on facts that are not alleged in the parties' pleadings and "a court is not permitted to enter a decree or judgment order based on facts not alleged or on a right not pleaded and claimed.

Given Adams power of attorney had already been triggered by her brain injury and she had no such DNR before the DPOA and guardianship makes the changing of her code status a violation of her right to life under the First Amendment.

On April 10, 2017 Bell filed an Emergency Ex Parte Motion for Temporary Restraining Order (TRO) in the U.S. District Court, Eastern District of Virginia. A hearing was held whereby the Court denied Bell's motion. App L.

On May 8, 2017 Bell timely appealed the Courts dismissal to the U.S. Court of Appeals for the Fourth Circuit. 17-1606

On May 15, 2017 Mr. Labowitz and the Envoy of Alexandria, owned and managed by Consulate Health Care, Inc., so severely restricted visitation for Anastasia that it has made it virtually impossible for anyone who worked to visit her at all. On this date visitation for Anastasia was restricted to between the hours of 9:00am to 5:00pm, only on Monday through Friday, only for two (2) hours maximum, and only two (2) visitors at a time. Ms. Bell was only allowed to visit with her sister Anastasia in the facility lobby so Anastasia had to be brought out in a Geri chair which was extremely uncomfortable for her. Title 42 U.S.C. §§ 1395i and 1396r clearly provide that family members and friends may visit residents without restriction.

On October 3, 2017 the U.S. District Court, Eastern District of Virginia dismissed Bell's case for lack of jurisdiction. App G

On October 19, 2017 the U.S. Court of Appeals for the Fourth Circuit dismissed Bell's appeal (17-1606). App J.

On Friday, November 10, 2017, Nutrition and Hydration were withdrawn from Appellants sister Anastasia Adams.

On Monday, November 13, 2017 Appellant filed an emergency stay and motion.

On Tuesday, November 14, 2017 Appellant contacted the Deputy Clerk for the Supreme Court of Virginia via phone to inquire if the Court had ruled and if a copy could be emailed or faxed to her. Appellant was informed the Court had denied her Emergency preliminary injunctions.

On Wednesday November 15, 2017 the Supreme Court of Virginia issued their written decision denying Appellants Emergency Motion to Stop Withdrawal of Hydration and Nutrition and Renewal of Petition for Emergency Stay of Judgment Pending Appeal and placed it in the U.S. Mail First Class.

On Thursday, November 16, 2017 Appellants sister Anastasia died. [Virginia Constitution guarantees victims of crimes the right to address the circuit court at the time sentence is imposed, yet victims of these guardianships are denied this very same right. See Virginia Constitution, Section 8-A. Rights of Victims of Crime. App R

On November 27, 2017 Bell filed appealed the district Court's dismissal of her case for lack of jurisdiction to the U.S. Court of Appeals for the Fourth Circuit. 17-2368.

On December 5, 2017 a Writ Panel was held at the Supreme Court of Virginia where Bell provided oral argument on her Petition for Appeal.

On January 17, 2018 the Supreme Court of Virginia denied review of Bell's Petitions for Appeal. App E and F.

REASONS FOR GRANTING THE PETITION

Conflicts between U.S. Constitution and Federal Law and Statute, between U.S. Constitution and State Law, between Federal Law and State Law, the unilateral stripping of constitutional rights for disabled citizens, Constitutional and state law conflicts with rights of the disabled and incapacitated with no remedy of appeal, and due process rights under the First, Fifth, Ninth, Thirteenth, and Fourteenth Amendments.

1. This case involves fundamental rights of substantive due process covered by the First, Fifth, Eighth, Ninth, Thirteenth, and Fourteen Amendments. Rights so fundamental the court must subject any infringement of them to close scrutiny. Intrusion on fundamental liberty without the showing of a justification which supports the intrusion is a direct violation of that liberty protection and due process. Family relationships are an individual liberty and fundamental right provided and protected by the U.S. Constitution and Bill of Rights as this Court has repeatedly held.

2. Resolution is needed for a significant conflict between the U.S. Constitution and its Amendments, Federal Law, Title 42 of the United States Code, the Code of Virginia (64.2-2000 et seq), the Virginia Constitution and Laws of Confederacy, and natural law with respect to religious rights, family association, guardianship laws and the isolation of wards. More specifically, direct conflicts exists between the U.S. Constitution, state and federal law, and violations of due process and freedom of religion. Current federal law under Title 42 of the United States Code is in direct conflict with guaranteed protections of the U.S. Constitution Amendments 1, 5, 9, and 14.

Current state law of the Commonwealth of Virginia unilaterally allows the complete stripping of constitutionally guaranteed rights of disabled incapacitated individuals in violation of U.S. Constitution Amendments 1, 5, 8, 9, 13, and 14. It allows the Commonwealth of Virginia to ignore and override federal statute regarding the disabled under Titles 28 and 42 of the United State Code, as amended, Title 42 of the Code of Federal Regulations, Decisions issued by Federal Administrative Law Judges (ALJ), and federal protections for Medicare beneficiaries and those in nursing facilities. As it stands Virginia Code 64.2.2000 allows the Commonwealth of Virginia to entirely strip disabled incapacitated individuals of all constitutional rights, including the right to be secure in their home and person, to exercise their religion, family association, association with friends, where they live, their choice of medical insurance, and their right to life.

3. The fundamental rights of sisters Yolanda Bell and Anastasia Adams under the U.S. Constitution were violated by a hospital seeking to discharge a Medicare patient through guardianship in clear violation of federal law, title 42 1395i, and guaranteed Medicare beneficiary appeal rights. The Administrative Judge for Medicare sided in the sister's favor but by that time Inova had already taken custody.

This Court should grant review in the interest of justice because Virginia and laws in other states like Nevada, Florida, Pennsylvania, New Mexico, Colorado, and Minnesota, as they now stand, violate the most basic tenants of our U.S. Constitution by stripping natural born citizens of their basic and unalienable rights of life, liberty, property, pursuit of happiness, the right to choose who will make their decisions, the right to make choices for themselves and dictate who is to make them in the event they become incapable of doing so. Other than death here is no greater irreparable injury or irreparable harm than the wanton stripping of constitutional rights from a citizen.

A. CONSTITUTIONAL CLAIMS

Bell has stood in loco parentis for Adams since the year 2005. The custody, care, and nurture of a child reside first in the parents, who primary function and freedom include preparation for obligations the state can neither supply nor hinder. The Bill of Rights in general, and the due process clause of the Fourteenth Amendment in particular, were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy which

may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.

“Under the principle of judicial review established in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), the Supreme Court is the final arbiter of the meaning of the Constitution, the interpretation of federal statutes, and the validity of those statutes under the Constitution. Congress can pass laws, but unless those laws are enforced, they have little meaning in people’s lives. And unless they are upheld when challenged in the Supreme Court they cannot be enforced.” See *75 Ind. L.J. 1297-1315 (2000) (Twins at Birth: Civil Rights and the Role of the Solicitor General, Georgetown Law Faculty Publications, Seth P. Waxman, March 2010.*
<http://scholarship.law.georgetown.edu/facpub/287/>

a. Deprivation of Rights

Article III of the constitution provides a colorable federal right. In 1875 it conferred general federal question jurisdiction to lower federal courts.

The US Constitution is the supreme law of the land and guarantees the right of life, liberty and property of an individual. The preamble of the Constitution provides for domestic tranquility and promotes the general welfare and blessings of liberty of its citizens. This was taken away from sisters Yolanda Bell and Anastasia Adams. And the state court of law conveying complete authority beyond making personal decision on health care, to those of visitors and family contact particularly where no abuse, negligence or exploitation has been alleged or found, conflicts with

constitutional protections and Medicare federal statutes regarding visitors, family, and religious rights.

Constitutional rights are afforded and apply to all natural born citizens at birth. These rights are the one constant in our society, other than taxes. Natural born U.S. citizens may not be stripped of their citizenship. An incapacitated person is still a citizen of this country unless prior to their incapacitating event they voluntarily renounced their citizenship. Therefore a guardianship may not strip or deprive an incapacitated person of their inherent constitutional rights granted at birth; including their right to association with family. Given federal law trumps state law, it logically follows that no state law may strip an incapacitated individual of their right to associate with family, including being present during personal care.]

By granting the plenary guardianship of an incapacitated adult who is not being abused neglected or taken advantage of by strangers or lawyers, by involuntarily confining Anastasia to a nursing home that allegedly allows utilization of chemical constraints violated Anastasia's 14th amendment right to liberty and pursuit of happiness. In *Carson v. Elrod*, the Fourth Circuit affirmed "no bond is more precious than that between a parent and child – and none should be more zealously protected by the law." To paraphrase the Fourth Circuit of Appeals, by granting an unwanted and unneeded guardianship of Anastasia to INOVA, the Court overreached and caused harm which ensued from the overt and excessive use of their authority. When state courts exercise overt and excessive authority it extends into the homes and lives of countless other persons who thought

themselves secure in their capacities either as legally appointment powers of attorney or legally appointed guardians.

In *O'Conner v. Donaldson*, 422 U.S. 563 (1975) the U.S. Supreme Court found, "a State cannot constitutionally confine *without more* a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends." (*emphasis added*)

Even prisoners and prisoners of war are guaranteed humane treatment. The civilized world has long recognized prolonged isolation of prisoners to be inhumane, even torture. The Geneva Conventions forbid it, yet guardians are freely granted permission to isolate their wards from loving family and support systems any time they see fit.

To not find a violation of Anastasia's constitutional rights, and to not grant a restraining order to stop and prevent the continued violation of Anastasia's constitutional right by Inova and their guardians was an egregious miscarriage of justice and based upon the evidence would most certainly lead to her further isolation, to further victimization, and to an untimely death.

Professional guardians appointed by the circuit court, monitored by the Commonwealth, and required to report to the court, are de facto agents of the state as without the state bestowing that power upon them it would not exist. The state court of law conveying complete authority beyond making personal decisions on health care to include controlling family visitation, particularly where no abuse, negligence or exploitation was been alleged or found, conflicts with constitutional

protections and Medicare federal statutes under Title 42 regarding visitors, family, and religious rights.

b. Freedom of Religion

Freedom of Religion – The First Amendment of the U.S. Constitution guarantees religious liberty: freedom from constraint, or control in matters affecting the conscience, religious beliefs, the practice of religion, and to engage in or refrain from any form of religious observance or public or private religious worship. Black's Law Dictionary, abridged 6th Ed.

Ms. Bell, her sister Anastasia, and other siblings were born and raised devout Catholics in addition to being Air Force brats. Our family has practiced Catholicism for generations. Our mother and father, grandparents, great grandparents, and great great grandparents all practiced our Catholic faith and passed it down to their children. Our Catholic faith is not faith in name only, i.e., attending mass only on Easter, Christmas or just on Sundays; it is who we are, and it is an inseparable part of us.

Anastasia and Ms. Bell's brothers all went to Catholic grammar and middle schools. They were always educated in the Catholic tradition. When their father was transferred overseas while serving our Country in the United States Air Force Ms. Bell and her siblings continued their Catholic education through weekly Confraternity of Christian Doctrine (CCD) classes and each received the sacraments of baptism, first communion and confirmation. Ms. Bell and Anastasia's brothers were both altar servers. Ms. Bell works in the sacristy at their church, All Saints in

Manassas, Virginia. Ms. Bell and Anastasia attended daily mass together. Ms. Bell currently opens the church and has served in the choir, as a mass coordinator and the liturgical coordinator at previous parishes.

The refusal to allow priests to visit Anastasia and give her the sacraments of the church was a denial of her fundamental right to practice her religion. The sacraments instituted by Jesus are at the heart of Catholic tradition and practice (see 1 Cor 11:24, Mark 14:22, Luke 22:19, Matt 26:26, John 6:47-56, Acts 2:42-47, and James 5:14-16). . Also the changing of Anastasia's directives to "do not resuscitate" contradicts their beliefs and causes Ms. Bell so much pain. The mere thought of Anastasia's not receiving the sacraments of the Catholic Church, especially when her health is so precarious, caused Ms. Bell great emotional pain and turmoil. "Dying or suffering through great illness without the sacraments of the church is unthinkable for us."

The right to live is an inalienable right. Thomas Jefferson used the moral authority of natural law to assert for all time that all members of the human family are created equal and possess the fundamental right to life. "It is the Creator which endows all men at the point of creation with equality and the self-evident rights to life and liberty. Thus found in in natural law." Further, "Every human being is regarded with equal worth, in a society where law is founded upon and infused with Christian morality." *22nd Issue, Law and Medicine*, 1119.

The guardians changed Anastasia to a Do Not Resuscitate (DNR) which goes against our beliefs. The withholding of nutrition and hydration can serve only one

purpose and that was to slowly starve and dehydrate Anastasia until she succumbed to death. The intentional or “direct” Killing of the innocent is always gravely immoral. The Catholic tradition, in its interpretation of Holy Writ, has always maintained that the intentional, deliberate killing of innocent human beings is gravely evil.” It is said there must be common moral law otherwise objective moral judgments cannot be possible. In the Abolition of Man, C.S. Lewis insightfully wrote:

“This thing which I have called for convenience the Tao, and which others may call Natural Law... is not one among a series of possible systems of value. It is the sole source of all value judgments. If it is rejected, the value is rejected. If any value is retained, it is retained. The effort to refute it and raise a new system of value in its place is self-contradictory.”

Equally if not more important is there should ALWAYS be a presumption of life and wanting to live. Therefore, the guardian’s changing of Anastasia’s code status from a full code to a DNR not only violated Virginia Code 64.2-2019(B) (citing §64.2-2012) violated the sister’s rights to exercise their religious freedom, a freedom guaranteed by the First Amendment of the U.S. Constitution, by living their Catholic faith.

The sister’s right to freely exercise of their religion was further violated by the barring of visitation on Sunday, and Anastasia was prevented from attending Mass regularly with her sister as was their custom. Catholicism requires one to attend Mass every Sunday and on Holy Days. Additionally, Inova guardian’s decision to change Anastasia’s Code status exhibits hostility toward a specific

Christian religious faith, Catholicism, and violated the First Amendment by preventing Anastasia's right to practice her religion.

Giving Inova and their guardians to take full and complete custody of Anastasia placed her at continued significant risk and violated her religious rights and right to freedom. Guardianship is not and should not be a prison or isolation ward. There was absolutely no reason for Anastasia to be placed under a prematurely and questionable guardianship or to continue that guardianship beyond hospital discharge or the ALJ's March 3, 2017 Decision; especially since (1) Medicare decided in favor of Ms. Adams invalidating Inova's discharge decision, and (2) Inova had already received what they were seeking and that is Ms. Adams discharge from Inova Fairfax Hospital.

c. Family Association

The fundamental rights of Ms. Bell and her sister Anastasia are being violated. The bond between siblings especially the bond between sisters is like no other. As Isadora James most eloquently wrote "A sister is a gift to the heart a friend to the spirit, a gold thread to the meaning of life." Simply put, Ms. Bell and Anastasia are and have always been each other's lifelines. To truly express what that means Ms. Bell wrote following on April 1, 2017 on the webpage she started about their situation : "My sister and I are of the same soul in different spheres. We are 5 years and 8 days apart but twins. She is an older version of me and I a younger version of her. We travel the same path hand in hand".

“The sibling relationship is life’s longest lasting relationship, longer, for the most of us by a quarter of a century, than our ties to our parents. It lasts longer than our relationship with our children, certainly longer than with a spouse, and with the exception of a few lucky men and women, longer than with a best friend.” *The Sibling Bond* by Stephen Bank and Michael Kahn; also see *Journal of Family Theory and Review* (citing *Cicirelli*, 1995; *Hernandez*, 1997; U.S. Bureau of the Census 2005).

Ms. Bell watched her sister Anastasia be repeatedly injured. She had to look into Anastasia’s eyes brimming with tears and see the tortured look on her face from excruciating pain when her right hip was broken by medical staff at the facility where Inova guardians sent her to once they obtained guardianship.

The U.S. Supreme Court in *Stanley v. Illinois*, affirmed that “a parent’s interest in the companionship of his or her children rises to a constitutionally secured right – given the centrality of family life as the focus for personal meaning and responsibility.” Even if state law may authorize involuntary confinement of an individual to a nursing facility, it does not itself establish a constitutionally adequate purpose for the confinement because even if the involuntary confinement was initially permissible it could not constitutionally continue after that basis no longer existed. Once Anastasia was discharged from the hospital the stated basis for the guardianship no longer existed.

Further Federal Courts of Appeal have held that injuries such as deprivation of constitutional rights and deprivation of statutory rights are deemed irreparable

harm because “unlike monetary injuries, constitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm.” *Nelson v. NASA*, 530 F.3d 865, 882 (9th Cir. 2008), *also See Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524, 1528 (9th Cir. 1993) (noting that any loss of First Amendment freedoms, even briefly, can constitute irreparable injury); *Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir. 1983) (First Amendment rights are given special protection and their loss for even minimal amounts of time constitutes irreparable injury). Even the temporary loss of contact with family can constitute irreparable harm. *See, e.g., Parrish v. Brownlee*, 335 F. Supp. 2d 661, 668 (E.D.N.C. 2004) (finding loss of “companionship of family” during time of unjustified call to active military duty “significant and irreparable”); *see also Keirnan v. Utah Transit Auth.*, 339 F.3d 1217, 1220 (10th Cir. 2003) (finding lost “contact with friends and family” helped demonstrate irreparable harm).

When their parents passed away Yolanda willingly and whole heartedly stepped into their shoes and took on the role of parent and protector for her sister Anastasia. The day before their mother died she promised her she would take care of and protect her sister Anastasia. The granted plenary guardianship to Inova, forcibly broke that death bed promise.

Further unlike sisters Myra Anthony and Magdalene Write, *Anthony v. City of New York*³ where the sisters were temporarily separated only for a short amount of time and the hospital allowed Magdalene to spend the night with her sister, here Inova guardians and nursing facilities barred and then severely restricted any

³ *Anthony v. City of New York*, 339 F.3d 129, (2nd Cir 2003)

visitation with Anastasia, effectively separating the sisters up to the date of Anastasia's death nine months later.

Ms. Bell was continually and unreasonably restricted from seeing her sister Anastasia, as was everyone else including their pastor and other clergy familiar to Anastasia. Because of these restrictions Appellants sister Anastasia died alone without family, friends, or clergy there to hold her hand or pray over her.

Our bond with our families is innately inherent, as are the inalienable rights granted to us by the U.S. Constitution. Those of us with sisters know there is an inexplicable and incomparable bond between sisters it is something that cannot be defined or explained, so depriving Ms. Bell of her right of association with Anastasia and depriving Anastasia of her right to associate with her family was a violation of both their constitutional rights. The Constitution guarantees it citizen's liberty, which includes personal security in our person. Anastasia was deprived of her liberty and constitutionally protected right of association with her sister, family and clergy when it was most needed and desired.

"A parent has a fundamental liberty interest in the companionship and society of his or her child, and the states interference with that liberty interest without due process of law is remediable under 1983. Unwarranted state interference with the relationship between parent and child violates substantive due process. USCA Amendment 14. The standard for deprivation of familial companionship in violation of the Fourteen Amendment is unwarranted interference, not conduct which shocks the conscience.

Bell and Adams Fourteenth Amendment rights to familial companionship were violated by the states continued failure recognize Medicare Laws or to hear any reconsideration matter brought before them; by continuing the guardianship.

B. DUE PROCESS AND EQUAL PROTECTION

A state has the right and the duty to protect vulnerable and incapacitated residents through a judicial determination of their interest's guardianship proceedings to show that the incapacitated person should be wards of the state because they lack the capacity and/or family to make suitable decisions and provide suitable care. A guardian appointed by the state has an affirmative duty of providing medical care to protect the wards life and ability to live it. By not having Anastasia's hip fixed the state appointed guardian significantly reduced Anastasia's ability to enjoy her life, her ability to just sit up straight and level in a chair, an act so simple most of us take it for granted.

Due process requires that the government be constrained before it acts in a way that deprives individuals of liberty interests protected under the Due Process Clause. Anastasia was not provided with separate counsel to protect her liberty and rights. The Guardian Ad Litem (GAL), Saben Johnston, after conducting her investigation in isolation, determined herself that Anastasia did not need counsel. Anastasia was not allowed to be at the hearing to witness the proceedings. Contrary to the guardian's beliefs, Anastasia is aware of what goes on around her and does speak, just not to everyone. Further Plaintiff knows for a fact that

Anastasia would have wanted a jury trial because as a former Sheriff's deputy Anastasia knew what can happen in a courtroom.

Rights to Appeal guardianships vary though out the fifty (50) states and territories of the United States. Just within the States that surround and make up the National Capital Region, District of Columbia, Maryland, Virginia, West Virginia, and Pennsylvania Guardianship appeal rights vary from "no mention of appeals in statute" in Virginia, to "within 14 days of the appointment of a guardian or conservator, the guardian or conservator must mail a copy of the order...which include the right to appeal the appointment" in West Virginia, to "At the conclusion of a proceeding in which a person is found to be incapacitated, 'the court shall assure that the person is informed of his right to appeal'" in Pennsylvania, to "specific right of appeal to guardianship decisions..." in Maryland.

Equal Protection - Citizens convicted of crimes who are set to have their lives taken are protected by the U.S. Constitution afforded appeal rights before their life can be taken. Anastasia Adams was afforded this right. When Ms. Bell appealed the circuit court decision to the Supreme Court of Virginia the Court refused to grant a stay until the appeal. The Court also denied Ms. Bell's emergency petition for stay when the Inova guardians stopped feeding and providing hydration for her Anastasia.

In Adams' guardianship case she was not allowed to be present at the hearing with Inova stating "she was too ill and would not understand the proceedings" so informing her of her right appeal the guardianship decision would

not have been possible. The question must be asked if Anastasia was too ill to attend a hearing that would strip her of her constitutional rights then how was she not too ill to be removed from the hospital two days later?

Further under the Virginia Code and many other state laws once a person has been deemed incapacitated they lose their right to file suit in their own name which also deprives them of their right to appeal the guardianship decision or any decision thereafter in violation of rights guaranteed under the First, Fourteenth, Ninth, Fifth, Eighth, and Thirteenth Amendments.

A guardian ad litem has merely the same authority as a court investigator, which is to investigate and report back to the judge whether the evidence warrants appointment of a guardian for the putative ward. Deprivations of a wards liberty can only result from the appointment of a guardian.

Deprivation of constitutional rights and violation of federal law are substantially federal issues. Article III, §2 permits federal courts to hear all cases arising under the laws of the US Constitution. This is adapted in 28 USC § 1331. Ms. Bell spoke to violations of her rights and to her sister Anastasia's constitutional rights religious as well as security in her person. Ms. Bell specifically spoke specifically to the violation of federal law in the Defendant denying her access to her sister Anastasia as well as family and clergy. It is the absence of redress for an individual deemed incapacitated in Virginia law and the particular federal questions raised in Ms. Bell's complaint that provides federal jurisdiction.

The fact that the decision made from the bench did not match the order written and submitted by the Plaintiff aside, both Anastasia and Yolanda, as natural born citizens had a legitimate claim of entitlement to due process to protect their property interests; a property interest is protected by the due process clause of the Fifth Amendment. Further they both had the right to live with and not be separated from each other. “The right to live with and not be separated from one’s immediate family is “a right that ranks high among the interests of the individual” and that cannot be taken away without procedural due process. *See Ching v. Mayorkas*, 725 F.3d 1149, 1157 (9th Cir 2013). “...Procedural due process right protects, not the outcome. *Id.* Substantive due process is violated when brothers, sisters, cousins and other family members are not allowed to live together. *Also see Moore v. City of East Cleveland*, 431 U.S. 494, 499, 503-504 (1977) (*plurality Opinion*), *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

In *Stanley v. Illinois* 405 U.S. 645 (1972) this Court opined “if there is delay between the doing and the undoing petitioner suffers from the deprivation of his children, and the children suffer from uncertainty and dislocation.” Unlike Stanley the deprivation in this case went well beyond Anastasia suffering mere uncertainty and dislocation. Substantive due process rights to familial association were violated when sisters were separated and Bell was prevented from seeing Adams for a month and then only one hour three times a week, Monday through Friday, between the hours of 9:00a.m. and 5:00p.m. The restriction also separated Adams from seeing her other family including her brother and sister-in-law. Unlike

Anthony the sisters were separated for an extended period of time. *See Anthony v. City of New York*, 339 F.3d 129 (2nd Cir 2003).

The autonomy based right of privacy under the due process clause of the Fourteenth Amendment protects an individual's freedom in making certain highly personal choices about one's relationships and family. *See FlaskCup v. Dearborn Public Schools*, 385 F.3d 935 (2004), Fed App. 0343P rehearing en banc denied. States have never been permitted to deny due process procedures altogether. While liberty may by some be viewed more as a privilege versus a right as when an individual is convicted of a felony, Anastasia committed no crime to be deprived of her liberty by the state court or of her right to life. Liberty "denotes not merely freedom from bodily restraint, but also the right to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men and woman." Justice McReynolds, *See Myer v. Nebraska*, 262 US 390, 400 (1923). Liberty also denotes freedom from confinement. The confinement and restriction of a person's movement, her ability to leave their place of residence to attend church, to visit friends or family, or family is a direct assault on our right to liberty. Unlike liberty interests in property, which derives from early statutory law, these liberties spring instead from natural law traditions, as they are "intrinsic human rights." As the Court noted, the rights of a natural family arise independently of statutory law.

Comprehensiveness is inherent in the process by which the law is to be formulated in regard to issues such as guardianships of the elderly, disabled, and those so deemed incapacitated requiring issues raised in suits of a kind covered by inherent and unalienable rights to be decided according to the precepts of U.S. Constitution, its Amendments, and that same documents Bill of Rights.

In the matter of guardianships that strip individual citizens and their family members of their basic liberty (interests) and constitutional rights, the right of association, the right to make family decisions, especially where circumstances and fact evidence are void of even a scintilla of proof showing abuse, neglect, or exploitation or allegations of the same; where the very validity of a relied upon document (i.e. DMPOA/AD) used to support life and death decisions is at once at odds and in question, that neither (fundamental) liberty or justice would stand if vulnerable citizens such as Anastasia are sacrificed to such guardianship actions. Such actions by Hospitals, healthcare and nursing facilities serve no compelling state interest, are an infringement on individual fundamental liberty interests and hence are forbidden by the Fourteenth Amendment. [*Washington v. Glucksberg*, 521 U.S. 702, 720, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (quoting *Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct 1439, 123 L.Ed.2d 1 (1993)).

While it is better to risk some error and possible injury from such error than to not decide or act at all, the level of error within these types of guardianships, those of the disabled and elderly by professional guardians who also happen to be practicing lawyers, based upon nationwide reports are exponentially rising. So does

a judge stripping individual constitutional rights by forcibly placing them in an unwanted or unwarranted guardianship act as a legislator?

While 64.2-2006 purports to provide the right to be represented by counsel of the respondent's choice, it fails in respect to incapacitated individuals being conscripted into involuntary guardianships as it leaves the decision solely to the guardian ad litem who is not an advocate for respondent but purely an investigator for the court. No such counsel was appointed or considered in Anastasia's case nor was she allowed to be present for the hearing.

Whereas due process protects incompetent civil parties by requiring the court to appoint guardians to protect their interests and by judicially ensuring that the guardians protect those interests. *See FRCP 17 (c)* ("The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper or the protection of the infant or incompetent person."); *see also Ferrelli. V. River Manor Health Care Ctr*, 323 F.3d 196, 203 (2nd Cir 2003) ("The district judge should be aware that due process considerations attend an incompetency findings and the subsequent appointment of a guardian ad litem."); *Salomon Smith Barney, Inc. v. Harvey*, 260 F.3d 1302, 1309 (11th Cir 2001), vacated on other grounds, 537 U.S. 1085, 123 S.Ct. 718, 154 L.Ed.2d 629 (2002); *Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642, 652 (2^d Cir 1999); *Garrick v. Weaver*, 888 F.2d 687m 693 (10th Cir 1989); *Genesco, Inc. v. Cone Mills Corp.*, 604 F.2d 281, 285 (4th Cir. 1979).

The Commonwealth of Virginia violated Bell and Adams' constitutional core due process protection rights against governmental arbitrariness when it took Anastasia placing her under guardianship without requiring or providing representation as advocate or conducting a hearing on Bell's fitness as a parent. The touchstone of due process protection of the individual against arbitrary action of the government is whether the fault lies in the denial of fundamental procedural fairness, as procedural due process guarantee protects one against "arbitrary takings." Even if the guardianship hearing could be classified as a hearing on Bell's fitness as a parent, hearing transcripts and other court documents including the Guardian Ad Litem (GAL) report clearly and undeniably state Bell took very good care of her sister Anastasia. Judge Shannon went as far as to state Anastasia "was blessed" to have her sister Ms. Bell caring for her.

The Commonwealth of Virginia overreached and exceed their authority by overt act when it placed Anastasia under guardianship without evidence or finding of abuse, neglect, or exploitation; also violating the First Amendment overbreadth doctrine when the Commonwealth allowed and ignored Anastasia to be isolated from her family and thereby unable to attend Catholic Mass with her sister as had been previously commonplace. Ms. Bells right to due process was violated when the Circuit Court denied/dismissed her motion for reconsideration and emergency termination citing lack of jurisdiction when only the notice of appeal had been filed to the Virginia Supreme Court but not the petition for appeal, where the petition is reviewed de novo.

C. CONFLICT OF FEDERAL AND STATE LAWS

A hospital should not be able to seek guardianship of an incapacitated individual who has a legally designated representative, power of attorney, to circumvent patient rights guaranteed by federal statute. Had Inova or the Court complied with Title 42 and waited for the administrative judge's decision it would have saved the sisters Ms. Adams and Ms. Bell from undue severe and excruciating emotional and physical suffering, distress, and injury.

There is a conflict between the VA Code 64.2-2000 and federal statute and regulations on Medicare beneficiary rights. Federal regulations have no less preemptive effect than federal statutes and here the power delegated to the Centers of Medicare and Medicaid and their Office of Medicare Hearing and Appeals, under 42 USC 1395i-3a plainly prohibits nursing homes that accept Medicare and Medicaid funding from preventing patient visitors and the restricting times of visitation, and from being present during personal care.

The appeals process for Medicare beneficiaries is dictated by the Code of Federal Regulations, 42 CFR 478.38. Medicare laws and The Centers for Medicare and Medicaid Services (CMS) provide specific mandatory appeal rights to Medicare recipients. Ms. Adams had original Medicare. The CMS provides five levels of appeal to original Medicare recipients for hospital discharges. For Medicare recipients in the Commonwealth of Virginia the CMS first and second levels of appeal, Redetermination and Reconsideration, are decided by KEPRO, a Family Centered Care Quality Improvement Organization (BFCC-QIO), who is a Medicare

contractor. The CMS third level of appeal is decided by an Administrative Law Judge (ALJ) in the Office of Medicare Hearings and Appeals. The CMS fourth level of appeal is decided by the Medicare Appeals Council (MAC). The CMS fifth and final level of appeal is a judicial review in federal district court.

Of specific importance in this instance is how 42 CFR 478.38 effects a reconsidered determination and states in pertinent part “A QIO reconsidered determination is binding upon all parties to the reconsideration unless (a) A hearing is requested in accordance with §478.40 and a final decision rendered. (emphasis added).

It is unconscionable that INOVA and their chosen guardians continued to hold custody of Anastasia, taking away her freedom a right protected by the U.S. Constitution, without legal counsel or jury another protected right, denying her surgery to repair her fractured hip, and then barring me her sister and chosen advocate from even entering a facility where she is located under threat “of further legal action”; further isolating Anastasia from her loved ones and source of support, after discharging her, is inordinately cruel and inhumane especially in light of Medicare’s decision in favor of Ms. Adams and the Plaintiff.” Barring Ms. Bell also violates her constitutional right to family association.

It further shocks the conscience first that the courts and Virginia Code allowed this to happen, and second they allowed it to continue with no avenue for redress because the law strips the person deemed incapacitated of all inherent constitutional rights granted at their birth, their right to bring suit in their own

name, or to reverse the guardianship and reinstate these rights. The law as written prevented Yolanda, other family, and those rightfully concerned for Anastasia's welfare from bringing an action in her name. Thus through this action Anastasia became the State's and guardian's human chattel which stands in direct conflict with the Thirteenth Amendment of the U.S. Constitution.

If INOVA or any hospital can seek and petition for guardianship of a patient who is already rightly represented or already has a duly appointed agent or designated person to speak for them, just so they may impose their will regarding treatment or discharge upon the most vulnerable of us, then there is no real protection for the vulnerable, then there is no longer integrity within medicine, then the Hippocratic oath is no longer worth the paper on which it is printed; and the meaning be the words "first do no harm" are absolutely void of any real meaning.

Had Inova adhered to United States Code Title 42 and awaited Medicare's appeal decision by the ALJ, a right provided by U.S. Statute, Yolanda and Anastasia would not have been deprived of their familial association and Anastasia would not have been deprived of her liberty or her life.

The process and practice of granting guardianships in Virginia also violates Ninth Amendment fundamental inalienable rights and the basic values implicit in the concept of ordered liberty. The process and practice of guardianships in Virginia violates guarantees of the Seventh Amendment and Section 11 of the Constitution of Virginia by denying a trial by jury or jury trial in guardianship cases.

More important, the subject matter of the wanton stripping of an individual's inherent and unalienable constitutional rights through these predatory and often unnecessary guardianships is peculiarly one that calls for uniform law. The possibility that individual states and courts might have different meanings under state and federal law would inevitably exert a disruptive influence upon both guaranteed constitutional rights and long held civil rights. Because individuals falsely and unnecessarily placed into a guardianship are stripped of their basic right to speak for themselves, to file suit for themselves in their own name, the right to defend themselves or appoint who they wish to speak for them or to even maintain frequent contact with their families, guardianships laws as they now stand leave the determination of which rights are obtained or conceded immeasurably more difficult. The importance of any law that unilaterally strips a natural born citizen of their unalienable rights and affects separate systems of substantive law makes the need for a single body of federal law both particularly compelling and very much needed.

Like Oregon, Virginia law and state laws in Pennsylvania, Colorado, Nevada, Minnesota, and New Mexico, do not contain a mechanism for incapacitated persons to object to the proceeding, or they are insufficient and violate equal protection and due process protections guaranteed in the Fourteenth Amendment. *See Grant v. Johnson*, 757 F.Supp 1127 – D.Or (1991) where the Court held the Oregon statute for emergency appointment of temporary guardian did not provide minimum due process protections, where statute permitted ex parte appointment of guardian

without notice, for indefinite period, without medical evidence or independent investigation into the facts to support finding of emergency, and without any specific provision for post-deprivation hearing or mechanism for incapacitated person to object to the proceeding; notice after proceeding was completed, advising of right to be represented by attorney and stating that court would appoint a visitor but not indicating how to obtain an attorney or how and when a visitor would be appointed, was insufficient. (emphasis added).

The existence of conflicting legal concepts substantially impedes a person conscripted into such a guardianship, such as was Anastasia, from seeking judicial resolution of disputes or to extract themselves from the action because they have been stripped of these rights and only the predator guardian may file any claim on their behalf. To file an action against oneself is against a predator's nature as predators, generally speaking, are narcissistic. To file an action against oneself would also be in conflict with Fifth Amendment protection of self-incrimination. A state law or rule/ruling that permits an individual to sidestep constitutionally granted rights devalues those protections, their effectiveness, as well as eviscerates a central tenant of the U.S. Constitution and that is the protection of life and liberty of its citizenry and their pursuit of happiness.

Plenary guardianships presuppose an inability on part of the ward to make choices as to institutional care, medical regimens, where they live, personal care, nutrition, socialization, and association with family. Such decisions far exceed the confines of the law. In essence and fact all autonomy and self-determination is

stripped from the individual. At present there is no uniformity in state laws to require or guarantee appointment of counsel for the elderly and disabled, the most vulnerable among us, particularly for those who are unable to afford private counsel. Further as GALs are simply independent evaluators there exists no requirement for them to serve as a zealous advocate on behalf of their client as is required of all other attorney's per the ABA Model Rules. Because of this lack of uniformity among the states innocent vulnerable people are being taken and are dying. Our elderly and disabled citizens are unilaterally having their constitutional rights stripped from them by a probate guardianship system that was initially instituted to protect, but is now harming on the greatest level – the deprivation of life, liberty and property interests.

Even when state and federal purposes overlap, a conflict in the method of achieving those purposes can be grounds for setting aside a state law. Arizona, 132 S.Ct. at 2505 “Conflict in technique can be fully as disruptive to the system Congress enacted as conflict in overt policy.” (Finding state law [was] preempted from interfering with the careful balance struck by Congress with respect to unauthorized employment of undocumented workers”. *Id*

Inova's use of Section 64.2-2000 et seq of the Code of Virginia, as amended, to seek and obtain Guardianship over Ms. Adams, a disabled (incapacitated) adult; the suspension of her long time power of attorney and the severing of that authority granted her chosen representative, Ms. Bell, without an allegation or showing of abuse, neglect, or exploitation, was arbitrary and capricious and interfered with

federal law for Medicare beneficiaries and the First, Fifth, and Fourteenth Amendments.

Virginia Code 64.2-2019 is in conflict with Constitutional right to family association and Did the Commonwealth of Virginia Judgment providing the baring of family visitation violate Bell and Adams constitutional rights regarding the sanctity of their family? (Starting with Meyer and Pierce the Court has held that “the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition. As such any law, judgment, or regulation that affects the ability to form, maintain, dissolve, or resolve conflicts within a family is subject to rigorous judicial scrutiny. “If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children’s best interest, I should have little doubt that the State would have intruded impermissibly on “the private realm of family life which the state cannot enter.” *Smith v. Organization of Families*, 431 U.S. 816, 862-63 (1977)

The Court presumed that because Bell refused to consent to discharge because she believed Anastasia was still too ill, a belief that was affirmed by the Office of Medicare Appeals and Hearings, she was unable to make any decisions regarding Anastasia though she had been making decisions regarding her sister for twelve years without fail, including previous hospitalizations at Inova. This is a

presumption that distinguishes parents and siblings family members who advocate and disagree with hospitals or healthcare agencies.

CONCLUSION

“A first principle of Anglo-American jurisprudence,...basic to the conception of due process in the procedural sense’ is that the ends do not justify the means.”⁴

The granting of plenary guardianships strip natural born citizens of their inherent enumerable and unalienable constitutional rights granted at birth.

The granting of plenary guardianships without due process, availability of redress, evidence of abuse, neglect or exploitation is arbitrary and capricious, harms traditionally protected rights, and erodes the very fabric of our society.

The barring of family association and isolation of wards deprives citizens of their autonomy based right to privacy, their constitutional right to associate, interferes with the sanctity and importance of the family, and intrudes upon the protected sphere of familial relations.

There is no remedy from death, Yolanda’s sister Anastasia and others cannot be brought back to life, and the hole it has created for their families can never be filled or fixed. There is not a remedy at the state level as Virginia law provides no avenue of redress for an incapacitated ward or their family to extract them from the guardianship.

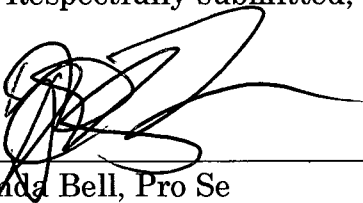
⁴ See *Ching v. Mayorkas*, 725 F.3d 1149, 1156 (9th Cir 2013); *Pillsbury Co. v. F.T.C* 354 F.2d 952, 964 (5th Cir 1966) (quoting *Douglas, We The Judges*, 354 (Doubleday 1956)).

Two basic and imminent questions must be addressed and answered in regard to the conflict presented by state guardianship laws: (1) if a natural born citizen cannot be stripped of their rights guaranteed by the U.S. Constitution how are state guardianship laws unilaterally stripping these very rights from the elderly and disabled Medicare beneficiaries? (2) if the deprivation of constitutionally guaranteed and protected rights causes irreparable harm how can these laws stand?

As a Country and society we have we have a legal and moral responsibility to protect the vulnerable among us. As Pope Francis most eloquently stated "A population that does not take care of the elderly and of children and the young has no future, because it abuses both its memory and its promise."

The bottom line is Inova through the Commonwealth took Anastasia and should not have, my sister is dead because of it – and she should not be. The system and structures in Virginia that were put in place and meant to help failed us miserably. Please grant the petition so this never happens to anyone else again. The petition for a writ of certiorari should be granted.

Very Respectfully submitted,



Yolanda Bell, Pro Se

Date: April 17, 2018