



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: March 21, 2022

TO: The Honorable Members of the Delaware General Assembly

FROM: Terri Hancharick, Vice Chairperson
GACEC

RE: House Bill No. 319 Constitutional Amendment Regarding Parental Rights

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 319, which describes itself as an act proposing an amendment to affirm that Delaware parents and legal guardians have a fundamental right to the care, custody and control of their children. Council cannot support the legislation as drafted and would like to share the following observations and concerns.

A closer read of the statute reveals that as written, it would undo a Delaware Supreme Court case, that has been crucial to many parents, including those with disabilities, to have their children returned to their care once concerns about their "fitness" to parent have been addressed; Tourison v. Pepper, 51 A.3d 470 (Del. 2012). HB 319, notably, extends parental rights as a fundamental right to not only biological and adoptive parents but also legal guardians. Tourison has been used by many parents who have regained fitness to parent, to terminate a legal guardianship that gave care and custody to another party.

The assertion that there is a void in the Delaware constitution and caselaw protecting parental rights is inaccurate. The Delaware Supreme Court has affirmed that parents have a fundamental right to make decisions concerning the care, custody, and control of their children. Tourison, citing Troxel v. Granville, 120 S. Ct. 2054 (2000); Shepherd v. Clemens, 752 A.2d 533, 541; Black v. Gray, 540 A.2d 431, 435 (Del. 1988). Therefore, what HB 319 adds, substantively, is extending this same right to legal guardians, by adding "or legal guardian" to section (b) of this bill. This is what is problematic for individuals with disabilities, and others, who have had their children placed into a guardianship. This amendment to the Delaware Constitution would put legal guardians on equal footing with parents in asserting rights to raise the child. Likely this

would result in more parents with disabilities being deprived of the right to raise their own children.

Secondly, extending equal rights to legal guardians would create conflict between State law and the U.S. constitution. This could result in numerous court challenges, wasting the time of parents with disabilities and delaying the adjudication of their rights, as well as taxpayer dollars and court resources.

Lastly, Council would appreciate additional explanations on the need for this legislation. In other words, what specific problem is it intended to solve? As mentioned, it is of concern to Council that enhancing the legal standing of guardians could eclipse the efforts of biological parents who are seeking to regain custody of their children and parents with disabilities who have temporarily lost custody of their child and are seeking to regain custody.

Thank you for your time and consideration of our observations and concerns on this proposed legislation. Please feel free to contact Pam Weir or me at the GACEC office should you have any questions on our comments.