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Granny Snatching and Personal Jurisdiction— An Argument for a New Federal Interpleader

*Brittany Griffin Smith*¹

INTRODUCTION

AN estimated 5.4 million Americans now suffer from Alzheimer's disease,² at a time when families are simultaneously becoming increasingly geographically dispersed and mobile.³ More adult children are finding themselves in the role of "parents" to aging mothers and fathers with hundreds of miles between them and their relatives. This change in American family life has brought new challenges to state courts, such as when more than one person applies for guardianship of the same person in different jurisdictions. The aging relative may not be able to testify, the courts may not be able to access evidence in other states, and even if one state declares a guardian, other states may not give that adjudication full faith and credit.⁴

Of particular concern, however, is when relatives living in different states take advantage of traditional rules for personal jurisdiction by removing the incapacitated adult from his or her home to adjudicate the guardianship proceeding outside the prying eyes of other relatives. The typical scenario that frustrates the state courts, referred to as "granny snatching,"⁵ occurs

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2 William Thies & Laura Bleiler, *2011 Alzheimer's Disease Facts and Figures*, 7 ALZHEIMER'S & DEMENTIA: J. ALZHEIMER'S ASS'N 208, 215 (2011), available at <http://download.journals.elsevierhealth.com/pdfs/journals/1552-5260/PIIS1552526011000367.pdf>.

3 See COMM. L. & AGING AM. BAR. ASS'N, STATE ADULT GUARDIANSHIP LEGISLATION: DIRECTIONS OF REFORM—2010 1 (2010), available at http://www.americanbar.org/content/dam/aba/uncategorized/2011/2011_aging_gship_elss_2010.authcheckdam.pdf.

4 See UNIF. ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT prefatory note, available at http://www.guardianship.org/spotlight/UAGPPJA_Final_Dec07.pdf.

5 See, e.g., Julia B. Meister, *Guardians, Granny Snatching, and Geography: Recent Ohio Supreme Court Guardianship Decisions and the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)*, 19 PROB. L.J. OHIO 177 (2009); Donna S. Harkness, *Now That We've Got It, What Does It Do for US?: The Uniform Guardianship and Protective Proceedings Jurisdiction Act*, TENN. B. J., Dec. 2011, at 25, 26 ("The most dramatic arise out of incidents involving what has been termed 'granny snatching,' where an older person is involuntarily transported across state lines for purposes of obtaining a guardianship or conservatorship as part of a family feud over caregiving." (emphasis added)).

when one aging adult visits his or her child in a different state, or that child visits the parent in the parent's home state, and then moves the parent to the child's home state, often with the purpose of financially exploiting the parent.⁶ Once in the child's home state, the child seeks guardianship over the parent.⁷ In effect, the child deprives the parent of adjudication in the state with access to the best evidence and uses *in personam* jurisdiction in the child's state to gain control over the parent and, through the powers bestowed on the guardian, the parent's assets.⁸

The National Conference of Commissioners of Uniform State Laws responded to this problem by drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA).⁹ Jurisdiction over the incapacitated adult can only be exercised in two cases: (1) if the state is the adult's "home state," where the individual has been present for at least six months, or (2) if the adult has a "specific connection" to the state, meaning some connection other than just mere presence.¹⁰ The "home state" has preference over the "specific-connection state,"¹¹ and states can cooperate in the proceedings so that the best evidence is maintained.¹² A state court can decline to exercise jurisdiction if it deems it to be inequitable under the circumstances.¹³ The UAGPPJA also allows for sanctions if any party engages in wrongful conduct in obtaining jurisdiction.¹⁴ If guardianship is granted, it allows the new guardian to register in other state courts to insure the court's ruling is given full faith and credit.¹⁵

But not all states have adopted the UAGPPJA. As of spring 2012, thirty states and the District of Columbia have done so.¹⁶ Until all states adopt

6 See Kerry Peck, *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, CBA REC., Feb.-Mar. 2010, at 36, 36.

7 See *id.*

8 See A. Frank Johns, *Ten Years After: Where is the Constitutional Crisis with Procedural Safeguards and Due Process in Guardianship Adjudication?*, 7 ELDER L.J. 33, 37-38 (1999).

9 UNIF. ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT §§ 101-505 (2007), available at <http://www.uniformlaws.org/Act.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act>.

10 *Id.* § 203. For example, the incapacitated adult may be without a home state. In that case, a state with which the incapacitated adult has a specific connection, such as buying a home, would have jurisdiction. See *Adult Guardianship and Protective Proceedings Jurisdiction Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act> (last visited Mar. 5, 2012).

11 See *id.* §§ 203 cmt., 201(a)(3).

12 See *id.* §§ 104-105.

13 See *id.* § 207(a)(1).

14 See *id.* § 207(b).

15 See *id.* § 401, 403.

16 See *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/Act.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act> (last visited Mar. 5, 2012).

this Act and apply its provisions uniformly, granny snatching will persist as states without the Act offer—to borrow a layman’s favorite—a “loophole” for would-be snatchers. Surely if someone were devious enough to consider removing a defenseless relative from his or her home just to seize control of his or her assets, he or she would also be capable of shopping for a forum without the protection of the UAGPPJA.

Therefore, the better answer does not involve the states. This note will explore another option—the passage of a new statutory interpleader, much like 28 U.S.C. § 1335, that adopts the UAGPPJA’s definitions of “personal jurisdiction.” In a § 1335 interpleader, one defendant forces several plaintiffs to try their claims in a single action. In this action, one *res*,¹⁷ which is the subject of dispute by several interested parties but which cannot be divided amongst them all, is placed in the protection of the court. All parties are forced to litigate over who should receive the *res*. In a similar manner, the incapacitated person and his or her assets could be placed in the protection of the court while the family litigates over who would be the best guardian.

Part I of the note explains the gritty details of granny snatching by discussing infamous cases where state courts wrestled to protect incapacitated adults from their children’s ill intentions. If the reader still doubts the dramatic effect this problem has on modern American families, consider the unanswered questions at the end of Part I.

Part II will explain why state action has so far been inadequate to address the problems identified in Part I. If the UAGPPJA were adopted in every state and applied uniformly, the necessity of a federal interpleader would wane. However, because the solution in the UAGPPJA uses procedural law, and because the granny-snatching scenario arises only when people are moved between states, the UAGPPJA simply cannot solve this problem unless all states adopt it. If someone were devious enough to snatch a relative from his or her home so as to exploit his or her assets, then surely that same person would not be beyond forum shopping for a state without strict jurisdictional rules.

Part III will illustrate how a statutory interpleader could resolve this dilemma. Congress could use its powers over the jurisdiction of the federal courts to create a diversity-based jurisdictional statute. It could borrow the language of the current statutory interpleader¹⁸ to bring all interested parties into federal court and enjoin them from bringing the case concurrently in state court.¹⁹ Families could use this statute to prevent parties from forum

¹⁷ *Res* can refer to something intangible, as is the case in the doctrine of *res judicata*, or it can refer to tangible property, such as matrimonial *res*. In each of these circumstances, *res* refers to something of value.

¹⁸ See 28 U.S.C. § 1335 (2006).

¹⁹ See, e.g., *Holcomb v. Aetna Life Ins. Co.*, 228 F.2d 75, 79–80 (10th Cir. 1956); see 28 U.S.C. § 2361 (2006).

shopping and, after using the nationwide service of process available under the interpleader statute,²⁰ bring the action in the state that meets the definition for personal jurisdiction (as borrowed from the UAGPPJA) over the incapacitated person. This should not circumvent any state powers, as the federal courts would apply the substantive law of the forum state.²¹

Ultimately, this Note's goal is to offer a *preventive* tool for families of incapacitated persons who suspect one member of ill intentions. To be clear, this Note is not meant to discourage states from adopting the UAGPPJA. However, the focus of the Note is to offer a uniform procedural remedy for families in the event states languish on adopting the Act, or if several states interpret these provisions in divergent ways.²² Granny snatching can and will continue so long as one or more states open its courts for would-be snatchers.

While states have approaches outside the UAGPPJA to protect incapacitated persons, they are inadequate in preventing granny snatchers. These approaches usually involve re-examining intrastate procedural law, which completely ignores the fact that this is an *interstate* problem that states, acting alone, are not equipped to handle. Meanwhile, innocent people must rely on already burdened family members to protect them and hope that state courts will not behave naively if a would-be snatcher appears. To fix this problem, states either must act in unison — by passing the UAGPPJA and interpreting its provisions uniformly — or else Congress must step in to protect those who badly need a preventive solution, yet who have no voice in state courts because of their incapacity.

However, it is unclear if all 50 states will act in unison. As of early 2012, twenty states had yet to pass the UAGPPJA, and among those that have, it is yet to be seen whether they will all interpret the Act's provisions

²⁰ See § 2361.

²¹ See 28 U.S.C. § 1652 (2006).

²² For example, the UAGPPJA allows for a state to exercise personal jurisdiction if there is no home state and the state has a specific connection with the incapacitated adult. See UNIF. ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT § 203 (2007). The court is free to deny jurisdiction if it suspects foul play. *Id.* § 207. These provisions, read together, could be interpreted to impose a duty on a state court to investigate the circumstances when an incapacitated adult has recently moved from his or her home state, an interpretation that certainly seems consistent with the intent of the drafters, or together they could be interpreted as a safety valve with no real teeth unless advocates raise the issue of foul play. The later interpretation seems to defeat the purpose of the UAGPPJA, which gives the courts the power in preventing granny snatching. If a state court were not vigilant, it could interpret this provision to allow anyone petitioning for guardianship over an adult who had recently moved into the new state to argue the adult now had a specific connection, and if the state had no procedure for other parties to intervene, there may be no way of bringing evidence of suspicious circumstances absent court investigation. Meanwhile, a sister state could interpret these provisions as affirmative duties on the court and thus prevent a granny snatcher, leading to inconsistent interpretations and thus, a broken link in the otherwise "uniform" solution to an interstate problem.

in a similar manner. If states fail to interpret the UAGPPJA provisions uniformly, a granny snatcher could weave his way through the cracks. Interstate problems need cohesive solutions. Federal procedural law, applied uniformly across all 50 states, can offer that cohesive solution to help innocent family members caring for incapacitated relatives.

I. GRANNY SNATCHING IN STATE COURTS

As mentioned earlier, state courts may decline to give another state's judgment on guardianship full faith and credit. Family members may have to either challenge a granny snatcher's guardianship or defend their own from a granny snatcher in other state courts. Once one state finds it has jurisdiction over the incapacitated adult, there may be little a family member can do to stop the case, and the contempt power of the ward's home state may not reach into other jurisdictions to prevent the granny snatcher from filing in another court. Even if the innocent relative were successful in fighting a granny snatcher's application for guardianship, there is still the unnecessary cost of litigation, the trauma to the incapacitated person, and the additional stress on the family. A federal statute could resolve several of these key issues in granny-snatching cases.

A. *Impact of the Full Faith and Credit Clause*

Mack v. Mack,²³ a case from Maryland, illustrates how complicated and messy interstate guardianship proceedings can be. In *Mack*, the ward, Ronald Mack, was a Maryland resident in a persistent vegetative state.²⁴ The Circuit Court of Baltimore County appointed the ward's wife as his guardian, and afterward she moved to Florida.²⁵ A year later, the ward's wife sought appointment as her husband's guardian in the Circuit Court of Marion County, Florida, which granted her application and discharged her of guardianship in Maryland.²⁶ While Ronald was still in Maryland, his wife inquired into removing his gastronomy tube. Ronald's father filed a complaint in Maryland to enjoin the hospital from removing the tube and also to be declared guardian.²⁷

The Circuit Court of Baltimore County refused to honor the Florida court's declaration of Ronald's wife as his guardian, finding that the court never had personal jurisdiction over Ronald.²⁸ The court subsequently named a temporary guardian, and Ronald's wife and father both prolonged

²³ *Mack v. Mack*, 618 A.2d 744 (Md. 1993).

²⁴ *See id.* at 746.

²⁵ *Id.* at 747.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

the struggle over Ronald's care through litigation over whether the Florida decision should have been honored.

The *Mack* opinion does not discuss any ill will between the parties, but it illustrates the complications that arise in modern guardianship proceedings. In these cases, one state does not necessarily have to recognize another state's judgment. If Mrs. Mack had access to the federal court of Maryland, where she could bring all family members together in one suit, perhaps the issue could have been resolved immediately instead of burdening both the Florida and Maryland courts.

When the intentions of the parties have sinister undertones, the procedure becomes even more clouded. For example, one state cannot enjoin another state from hearing the case once it decides it has jurisdiction,²⁹ and each state has the power to decide whether it has jurisdiction over a case.³⁰ Therefore, family members can either try to intervene, if that procedure is allowed, initiate a new proceeding in a different state and hope the court will not give the first proceeding full faith and credit, or collaterally attack the first judgment in another state court. A state court may threaten a granny snatcher with contempt, but this penalty may or may not be successful in deterring him once the snatcher has left the state's jurisdiction. The following cases illustrate these problems.

B. The Limits of State Power Over Sister States

Courts are additionally confounded by their inability to enjoin sister states from hearing a guardianship case once the sister state court decides it has jurisdiction. Each state has jurisdiction to decide its own jurisdiction, and a sister state does not have the authority to prevent a state from determining its jurisdiction.

Such was the case of *In re Glasser*.³¹ Lillian Glasser was a long-time domiciliary of New Jersey³² who had vacation property in Florida, the same state where her son, Mark Glasser, lived. She also had a daughter, Suzanne Mathews, who lived in San Antonio, Texas.³³ In February 2005, Mathews moved her mother from her vacation home in Florida to Mathews' home in Texas.³⁴ One month after moving her mother, she filed for guardianship in Texas.³⁵ Her application for guardianship in Texas made no mention of her mother's New Jersey connections.³⁶

29 *See, e.g.*, *James v. Grand Truck W. R.R.*, 152 N.E.2d 858, 862-63 (Ill. 1958).

30 *See Durfee v. Duke*, 375 U.S. 106, 109-12 (1963).

31 *In re Glasser*, No. 209568, 2006 WL 510096 (N.J. Super. Ct. Ch. Div. March 3, 2006).

32 *Id.* at *1.

33 *Id.* at *2.

34 *Id.* at *2-3.

35 *Id.*

36 *Id.* at *3.

In April 2005, Glasser's son filed an opposition to Mathews's appointment in Texas courts, but he was denied.³⁷ Glasser's nephew, Eric Smith, who also filed an opposition, pointed to financial transactions involving Glasser's assets that Mathews made while acting as a temporary guardian.³⁸ The New Jersey trial court stated that while Glasser was in Texas, several of her assets had found their way into a family partnership;³⁹ one year later, the court entered an order listing the value of Glasser's assets as approximately \$25 million.⁴⁰ Smith subsequently brought suit in New Jersey⁴¹ and also sought a temporary restraint in New Jersey courts against Mathews's exercise of any guardianship authority.⁴² His requests were denied.

Eventually, a Texas judge appointed a guardian ad litem for Glasser. He then recommended she be allowed to travel to her home in New Jersey.⁴³ After she was taken home, adult protective services sought a petition for protective services in New Jersey courts, alleging that Glasser was a "vulnerable adult" and was being held against her will.⁴⁴ Judge Waugh, of the New Jersey court, entered a temporary restraining order to keep all interested parties from removing Glasser from New Jersey.⁴⁵ However, in a very suspicious timing of events, Mathews's attorney had already taken Glasser back to Texas, allegedly before Mathews received the order, citing concerns for Glasser's health.⁴⁶ The court could not reach into Texas's jurisdiction nor could it prevent Texas from declaring Mathews guardian.

Back in New Jersey, Judge Waugh was left with the decision of which court should be exerting primary jurisdiction over Glasser, who was now suspected of being incapacitated.⁴⁷ Should it be Texas, where the guardianship petitions were first entered (and subsequently challenged)? Should it be New Jersey, where Glasser had lived all her life? Citing public policy, Judge Waugh decided that comity should give way and New Jersey would be the state of primary jurisdiction,⁴⁸ asking Judge Spencer in

37 *Id.*

38 *Id.*

39 *Id.*

40 *See id.* at *4 (appointing counsel as guardian).

41 *Id.* at *3–4.

42 *Id.* at *3.

43 *Id.* at *4–5.

44 *Id.* at *5.

45 *Id.*

46 *Id.* at *6. Two months later, the Texas Department of Family and Protective Services concluded its investigation of Mathews and her husband over allegations that they had been physically abusing and financially exploiting Glasser. *Id.* at *7. They dropped their investigation after finding that there were not enough facts to support the charges. *Id.*

47 *See id.* at *7–8.

48 *Id.* at *12–13.

Texas to transfer the proceedings, should Texas law allow.⁴⁹ Fortunately for Glasser, the judges were willing to cross jurisdictions to communicate about her case.

In a trial court order, Judge Waugh concluded that Glasser had either Alzheimer's disease or Parkinson's or both,⁵⁰ and that Mathews had likely exerted undue influence over her mother and her mother's estate plan.⁵¹ In fact, the judge clearly regarded Mathews's story with heavy skepticism, saying her story was "totally unworthy of belief" because she was "clearly acting to protect the assets for the benefit of herself and her family."⁵²

Glasser illustrates how equal state powers, exercised concurrently, make granny snatching such a perplexing issue for states. Lillian Glasser was lucky to have two judges involved in her proceeding who were willing to cross state lines to discuss the ramifications of her case. However, it easily could have gone the other way. All states are on equal footing with each other in our union, so once a state court decides it has jurisdiction to hear the case, a sister state has no power to stop the proceeding. Therefore, New Jersey has equivalent powers of Texas, and Judge Waugh could not keep a Texas court from hearing the case once it decided it had proper jurisdiction. Had the Texas judge declined to transfer the case, Lillian Glasser would have been left at the mercy of the Texas court and her daughter, Susan Mathews, to watch out for her best interests. If Mathews were declared guardian, she would have the sole voice to decide what happened to Lillian Glasser, and she would have all \$25 million of her mother's assets at her disposal.

C. The Limits of a State's Contempt Power Against Individuals

States can try to threaten a would-be snatcher with contempt if he leaves the state's jurisdiction to flee to another sovereign state court. However, if the granny snatcher never returns to the state and never reveals his new location, the court may have difficulty enforcing its contempt power. In *Weissenborn v. Graham*,⁵³ the state court held a granny snatcher in contempt after he took his mother out of the state and across the country, never revealing her new address. The state was left with few options to protect the ward once she was outside the state's jurisdiction.

In *Graham*, an elderly Betty Pat Graham, resident of Florida, instituted a directive to declare one of her sons, Larry, as her guardian and grant

⁴⁹ *Id.* at *13.

⁵⁰ *In re Glasser*, No. 209568, 2007 WL 867783 (N.J. Super. Ct. Ch. Div. Mar. 8, 2007) (appointing court-appointed counsel as guardian).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Weissenborn v. Graham*, 963 So. 2d 275 (Fla. Dist. Ct. App. 2007).

him broad authority over her health and property.⁵⁴ That property totaled \$500,000 in assets, which included a home and \$350,000 in a Merrill Lynch account, the later of which disappeared sometime before litigation began.⁵⁵

Graham's other son, Luke, executed a petition to have his mother examined for competency.⁵⁶ When the examiner concluded not only that Graham was in fact incapacitated, but also that Luke was the son who had his mother's best interest at heart,⁵⁷ Larry moved his mother to California without notice to the court or the parties, and thereafter refused to reveal her whereabouts.⁵⁸ Larry's attorney then moved to have the petition dismissed in Florida.⁵⁹ The Court summarized his attorney's reasoning: "Betty's right to due process is being violated by the continued Florida guardianship proceeding. The petition argues that Florida has lost jurisdiction over Betty because she is now in California and that the Florida guardianship proceedings must be terminated."⁶⁰

The attorney then argued that *in personam* jurisdiction in California comported with "fair play and substantial justice."⁶¹ The court pointed to the original directive executed by Betty Graham, which appointed Florida courts as the courts of competent jurisdiction, and held that Larry's actions could not and did not divest Florida courts of jurisdiction.⁶² It concluded that the guardianship proceedings must take place in Florida.⁶³

Several questions go unanswered after the *Graham* opinion. Did Betty Graham ever return to her home in Florida? What happened to her assets? Did Luke ever see his mother again? The Florida opinion does not state whether Larry instituted proceedings while in California. The Florida court can hold Larry in contempt (and did so),⁶⁴ but it cannot prevent the California court from trying the case.

Even though these cases illustrate uniquely *interstate* issues with granny snatching — such as the limits of the Full Faith and Credit Clause, the inability to prevent co-sovereigns from exercising jurisdiction, and the limits of the contempt power across state lines — states without the

54 *Id.* at 276.

55 *Id.* at 277.

56 *Id.* at 276.

57 *Id.* at 277 ("Larry had recently . . . tried to arrange for her to be moved to a locked-down Alzheimer's ward The petition explained that Betty does not suffer from Alzheimer's and that Larry's purpose . . . was to prevent Luke from seeing her or discovering her whereabouts.").

58 *Id.*

59 *Id.* at 277–78.

60 *Id.* at 278.

61 *See id.* at 279.

62 *Id.*

63 *Id.* at 280.

64 *Id.* at 277.

UAGPPJA seem stuck on *intrastate* solutions to granny snatching. Part II will explain how these procedures fail to address these issues because they leave many unresolved questions, such as: What should family members do if someone removes a relative to a state without a procedure for intervention? What if they live in a state that does give full faith and credit to guardianship proceedings so that the family cannot directly challenge the judgment? Even if they can challenge the guardianship determination, what should they do if the snatcher has already depleted the relative's assets?

II. STATE REMEDIES FOR GRANNY SNATCHING

The most recent version of the UAGPPJA was approved in 2007 with the goal of resolving interstate guardianship issues.⁶⁵ The Act is narrow in scope, dealing exclusively with jurisdiction and controversies related to jurisdiction,⁶⁶ its key objective is to provide a uniform definition of jurisdiction for these cases.⁶⁷

Since the drafting of the UAGPPJA, thirty states have adopted it.⁶⁸ Some states have chosen other routes in guardianship reform instead of adopting the UAGPPJA. Perhaps one reason is those states have concerns about the guardianship process that they believe the UAGPPJA does not adequately address. In 1987 the Associated Press published an exposé of guardianship laws,⁶⁹ which led to a call for reform focused heavily on the due process rights of the wards in the proceeding.⁷⁰ The exposé revealed several substantive flaws, such as guardianship monitoring, guardianship training, and alternatives to guardianship, that states have struggled to resolve.⁷¹ The AP report spurred a “flurry” of activity focusing on protecting the elderly from abuse and finding alternatives to guardianship to protect

⁶⁵ *Why States Should Adopt UAGPPJA*, UNIFORM L. COMMISSION, <http://www.nccusl.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UAGPPJA> (last visited Mar. 8, 2012).

⁶⁶ *Adult Guardianship and Protective Proceedings Jurisdiction Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act> (last visited Mar. 8, 2012).

⁶⁷ *Id.*

⁶⁸ *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/Act.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act> (last visited Mar. 5, 2012).

⁶⁹ Fred Bayles & Scott McCartney, *Guardianship: Few Safeguards*, L.A. TIMES, Sept. 27, 1987, http://articles.latimes.com/1987-09-27/news/mn-10389_1_guardianship-petitions.

⁷⁰ See A. Frank Johns & Vicki Joiner Bowers, *Guardianship Folly: The Misgovernment of Parens Patriae and the Forecast of Its Crumbling Linkage to Unprotected Older Americans in the Twenty-First Century – A March of Folly? Or Just a Mask of Virtual Reality?*, 27 STETSON L. REV. 1, 43, 47–48 (1997).

⁷¹ *Id.*

individual autonomy.⁷²

While this focus on *substantive* issues in the guardianship hearing and post-guardianship monitoring is extremely important to protect incapacitated people from abuse, it overlooks the *procedural* problems that could lead to granny snatching. While the protection of the ward's autonomy is certainly compelling, concerns with granny snatching stem from the exploitation of an incapacitated person—whose lack of autonomy is not questioned—through state procedural rules. For example, when Virginia created a statute to address the due process concerns as illustrated in the AP expose;⁷³ its legislature was more concerned about preservation of the ward's autonomy than it was about the procedure for initiating the guardianship proceeding.⁷⁴ Virginia's law, which requires a guardian to file an annual report updating the court on the status of the ward, simply does not address these procedural issues because the guardian has already been appointed before the responsibilities to report attach.⁷⁵ Simply requiring the guardian to file a report explaining whether the ward "agrees" with his or her current habitation plan is a poor safeguard to prevent the guardian from removing the ward in the first place. If the granny snatcher has gone to such extensive lengths to secure the guardianship, surely he or she would not then risk the guardianship by suggesting in his or her report that the ward was unhappy with the situation.

Some states are beginning to contemplate procedural protection, but the manner in which they are implementing such protection leaves opportunities for would-be snatchers to forum shop.

One approach has been to look at other aspects in the state's civil procedure and adapt them for these proceedings, such as drafting venue provisions.⁷⁶ But these provisions do nothing to prevent interstate granny snatching.⁷⁷ For example, in North Carolina, which as of early 2012 had not yet considered the adoption of the UAGPPJA, original jurisdiction is vested with the county clerk.⁷⁸ Venue is the ultimate deciding factor of whether the court can hear the petition for guardianship. Venue is also broadly defined, and can exist wherever the incompetent adult resides, is domiciled, or is an inpatient.⁷⁹

72 Johns, *supra* note 8, at 106–07.

73 See VA. CODE ANN. § 37.2–1021 (2011).

74 Jamie L. Leary, Note, *A Review of Two Recently Reformed Guardianship Statutes: Balancing the Need to Protect Individuals Who Cannot Protect Themselves Against the Need to Guard Individual Autonomy*, 5 VA. J. SOC. POL'Y & L. 245, 277 (1997).

75 VA. CODE ANN. § 37.2–1021 (2011); see also Leary, *supra* note 74, at 279–80.

76 See Sally Balch Hurme, *Crossing State Lines: Issues and Solutions in Interstate Guardianships*, 37 STETSON L. REV. 87, 92–94 (2007).

77 See *id.* at 93–94.

78 N.C. GEN. STAT. § 35A–1103(a) (2009).

79 *Id.* § 35A–1103(b).

Interestingly, in North Carolina, if there is more than one county where venue is proper and proceedings are brought in both, venue will be upheld wherever the first proceeding was filed.⁸⁰ In the end, the statute awards jurisdiction to whoever reaches the courthouse first. Because the state recognizes venue in either the case of “residence” or “domicile,” someone who removed the incompetent into the state could still argue under the statute’s language that the incompetent now “resides” in North Carolina and venue is therefore proper. The statute gives no suggestion as to how an interstate granny snatching case should be handled. On its face, the statute arguably supports a snatcher’s efforts by allowing for “residency” to confer venue and thus, jurisdiction.

Perhaps the best way to illustrate the inadequacy of venue provisions is to look at a state, such as Kentucky, which employed such provisions until its legislature adopted the UAGPPJA. Kentucky gives its district courts exclusive jurisdiction over all proceedings involving guardianship.⁸¹ Prior to the UAGPPJA’s adoption,⁸² if the ward were a Kentucky resident, venue was either in the county of residence or the county of domicile.⁸³ However, the prior statute did not clearly define “residence.” Therefore, if a granny snatcher brought the incapacitated person into the state and then argued Kentucky was his or her new “residence,” the statute did not say whether jurisdiction would be declined. If someone moved the incapacitated person to another county, the statute prohibited another county district court from hearing the case—however, if that same person were moved to another state with a law such as Kentucky’s, the court had the same conundrum. The statute did not require the court to decline jurisdiction.

Tennessee also used to employ provisions analogous to Kentucky’s former provisions, until its legislature adopted the UAGPPJA.⁸⁴ Analysis of how Tennessee’s Court of Appeals handled a granny snatching case under these old provisions illustrates the pressing need for a solution. Tennessee’s jurisdictional statute for appointments of conservators provided that such actions could be brought in any probate court where there was venue,⁸⁵ and all actions shall be brought in the county of residence.⁸⁶ Unfortunately, the statute did not explicitly define “residence,” so when the Tennessee Court of Appeals was faced with an interstate granny snatcher in the case of *Salvatore v. Clayton*,⁸⁷ it had to decide what “residence” meant for the

⁸⁰ *Id.* § 35A-1103(c).

⁸¹ KY. REV. STAT. ANN. § 387.520(1) (West 2006 & West Supp. 2011).

⁸² Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, ch. 47, 2011 Ky. Acts 184 (2011) (as codified at KY. REV. STAT. ANN. § 387.810 (West Supp. 2011)).

⁸³ KY. REV. STAT. ANN. § 387.520(2)(a)–(b) (West 2006 & Supp. 2011).

⁸⁴ See TENN. CODE ANN. § 34-8-203 (Supp. 2010).

⁸⁵ *Id.* § 34-3-101(a).

⁸⁶ *Id.* § 34-3-101(b).

⁸⁷ *Salvatore v. Clayton*, 914 S.W.2d 84 (Tenn. Ct. App. 1995).

statute to determine whether the probate court's dismissal of a petition for guardianship was appropriate.⁸⁸

In *Salvatore*, the ward, Lois G. Clayton, was an Alzheimer's patient and long-time resident of Florida.⁸⁹ She had been declared incompetent, and her stepdaughter, who also lived in Florida, became her guardian.⁹⁰ Afterward, Clayton was admitted to a nursing home in North Carolina. Her son, a resident of Tennessee, removed her from the nursing home and took her to Rutherford County, Tennessee, where he filed a conservator petition.⁹¹ The probate court initially appointed him conservator and ordered him to intervene in the guardianship proceeding in Florida.⁹² When his stepsister subsequently intervened in the Tennessee action, she cited Tennessee's jurisdictional statute in her motion to dismiss. The probate court dismissed the action.⁹³

When Clayton appealed, he argued that his mother was residing in Tennessee and therefore jurisdiction and venue were proper.⁹⁴ The Court concluded that the statute made venue "jurisdictional;" therefore, if the ward was not a resident, there was no jurisdiction—but that left the problem of what "resident" meant for the statute.⁹⁵ The Court recognized that resident could either mean a place of abode—the usual, ordinary meaning—or it could be more synonymous with "domicile."⁹⁶ The legislative history provided no help, so the court decided to look at the purpose of these proceedings to determine what "resident" should mean—the purpose of a guardianship proceeding, it concluded, was to "protect the person and property of a disabled person."⁹⁷ The Court also concluded that the best source of protection was the court system itself. Because the courts of the person's domicile will likely have stronger ties to the person and thus be better able to protect them, the meaning of "resident" must be more analogous to "domicile."⁹⁸ The Court also pointed out that other jurisdictions construing other statutes similar to Tennessee's have equated

88 *Id.* at 89–91.

89 *Id.* at 87.

90 *Id.*

91 *Id.* at 88.

92 *Id.*

93 *Id.*

94 *Id.* at 89.

95 *Id.* This issue is why the UAGPPJA refrained from the term "resident" or "domicile" and instead gave a duration of time—the type of vagueness with which the Tennessee Court wrestled only exacerbates the problem and gives more wiggle room for a clever granny snatcher. See UNIF. ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT §§ 201(a)(2)–(3), 203 cmt. (2007), available at http://www.guardianship.org/spotlight/UAGPPJA_Final_Deco7.pdf.

96 *Salvatore*, 914 S.W.2d at 89.

97 *Id.* at 90.

98 *Id.* at 90–91.

“residence” with “domicile.”⁹⁹

While perhaps the Court was correct that Tennessee must have meant “domicile” when it said “resident,” and perhaps it was also right that the purpose of the statute is to protect incapacitated persons, the Court could not deny that these terms’ common meaning have different legal significance.¹⁰⁰ Presumably, the Tennessee legislature was aware of these distinctions, and if it wanted venue established in the same place as the party’s “domicile,” it could have said so. The Court was arguably more concerned about the ramifications of holding jurisdiction proper in this case, and admits as much in the opinion:

Approving Mr. Clayton’s conduct in this case would set an unfortunate precedent for future cases. Intra-family hostility is disruptive and inimical to a disabled person’s best interests. Granting Mr. Clayton’s petition in light of his conduct, no matter how well-motivated, would signal this court’s approval of this type of behavior.¹⁰¹

The probate court must have thought Clayton was a resident and therefore jurisdiction was proper; it was not until the sister’s appearance that the Court even questioned this assumption. The Court could have just as easily concluded that “resident” means the common meaning—place of abode. The fact that the Court felt compelled to interpret the statute this way highlights the problem with venue provisions as a solution to interstate guardianship issues.

As pointed out by Sally Bach Hurme, an attorney who has spent the past nineteen years working for the AARP studying various elder law issues,¹⁰² venue provisions are an odd solution to this interstate problem.¹⁰³ While venue provisions may help find the most convenient forum, they are a bad fit for the complicated problem of interstate granny snatching. Venue provisions attempt an intrastate solution, focusing on which court within the state is proper to hear the case; this does little to discourage a kidnapper from taking the person into that state in the first place. Granny snatching needs a *preventive* solution to protect vulnerable people from greedy intentions of would-be guardians. That requires a solution that looks outward, using procedures that transcend state lines, not procedures such as venue that only point inward.

Another option for states to address granny snatching is through reform of the probate courts, such as through the adoption of uniform probate

99 *Id.* at 91.

100 *See Mas v. Perry*, 489 F.2d 1396, 1399 (5th Cir. 1974).

101 *Sakvatore*, 914 S.W.2d at 91–92.

102 *Biography of Sally Hurme*, STETSON L. REV., <http://elder.law.stetson.edu/professional/content/shurme.htm> (last visited Mar. 8, 2012).

103 *See Hurme*, *supra* note 76, at 97–98.

standards.¹⁰⁴ Perhaps this is because probate courts theoretically have more expertise with guardianship proceedings and, if following uniform standards, would be quicker to spot a possible granny snatching case. One example of a state that adopted uniform standards for its probate courts is Arizona, which adopted the Uniform Probate Code.¹⁰⁵ Arizona, like Tennessee, also recently adopted the UAGPPJA.¹⁰⁶ However, analysis of the UPC's definition of jurisdiction shows why the UPC is insufficient to resolve the problem of granny snatching.

The UPC simply does not address the principal concern in granny snatching cases—detering granny snatchers from removing the incapacitated person from his or her home state. The probate code demands several pieces of information from a petitioner for guardianship, including a general statement of the incapacitated person's property,¹⁰⁷ names and addresses of the incapacitated person,¹⁰⁸ any conservators¹⁰⁹ (guardians), nearest relative¹¹⁰ and the person who seeks appointment.¹¹¹ However, the code, as adopted by Arizona, defines jurisdiction in terms of venue, specifying that venue exists “where the incapacitated person resides *or is present.*”¹¹² In adopting this code, the state specifically cited uniformity as a goal.¹¹³ The irony is that the code therefore *uniformly* defines jurisdiction in a similar manner as Tennessee did in *Salvatore*, which left that state completely unprepared for a granny snatching case.¹¹⁴

In summation, each sovereign state can draft or adopt whatever laws it thinks best to protect its citizens from any nationwide problem, but that also means potentially fifty answers to the same issue. If the guardianship proceeding involves entirely local parties and assets, there is no reason to believe that the states cannot legislate effectively to protect the ward through the proceeding. But each state cannot control the decisions of its sister states; should a sister state decline to extend extra procedural protections, there is nothing the ward's home state could do to stop the sister state's courts from the exercise of *in personam* jurisdiction over the

104 *Id.* at 99.

105 See *Uniform Commercial Code Locator: Probate Code Locator*, LEGAL INFO. INSTIT., <http://www.law.cornell.edu/uniform/probate.html> (last visited Oct. 20, 2011).

106 See *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/Act.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act> (last visited Mar. 5, 2012).

107 ARIZ. REV. STAT. ANN. § 14-5303(B)(6) (2005).

108 *Id.* § 14-5303(B)(2).

109 *Id.* § 14-5303(B)(4).

110 *Id.* § 14-5303(B)(5).

111 *Id.* § 14-5303(B)(3).

112 ARIZ. REV. STAT. ANN. § 14-5302 (2006) (emphasis added).

113 ARIZ. REV. STAT. ANN. § 14-1102(B)(5) (2006).

114 See *Salvatore v. Clayton*, 914 S.W.2d 84, 87–89 (Tenn. Ct. App. 1995).

incapacitated person.

III. CREATING A NEW STATUTORY INTERPLEADER

Interstate problems need interstate solutions. Co-sovereign states cannot police each other, and once a sovereign state decides it has jurisdiction over a guardianship proceeding, there could be little another state can do, as illustrated in the *Glasser* case. The ward may be unable to speak for himself and once removed to another state, his relatives may not be able to intervene in state proceedings. Thus, the status of both his welfare and his assets may depend entirely on one court's judgment. A federal interpleader statute would circumvent these problems by allowing parties access to the federal courts where they can join all interested parties into the same suit. Such an interpleader should adopt definitions of personal jurisdiction borrowed from the UAGPPJA so as to protect the incapacitated relative, and then it should give the courts the power to enjoin any other parties from bringing such proceedings concurrently in state courts.

A. *Applying interpleader rules to a guardianship proceeding*

Statutory interpleader¹¹⁵ vests original jurisdiction in federal courts if at least one adverse party is diverse from another adverse party,¹¹⁶ and the parties have an amount in controversy of at least \$500.¹¹⁷ The statute allows several parties, all of whom have similar claims to a piece of property that cannot be divided, to adjudicate all claims at the same time and save them from duplicitious litigation.

Interpleader is frequently used in disputes involving multiple claimants to one insurance policy, on the grounds that one suit for all claimants conserves judicial resources and protects the defendant, who has limited funds, from having to defend multiple suits.¹¹⁸ It also can protect the stakeholders, in that without such a joinder rule, one stakeholder may have to challenge the validity of a judgment in favor of an adversarial stakeholder. This can be especially hard if the defendant has a limited policy and has already exhausted the policy to satisfy that separate judgment. Therefore, the best solution is to bring all claimants to an insurance policy, just like applicants for guardianship, together in an interpleader action. Then the court can weigh the parties' evidence and decide who is best entitled to the policy, just as the court in a guardianship proceeding must decide who has the ward's best intentions at heart.

Just as the *res* in an interpleader cannot be divided, guardianship over

115 See 28 U.S.C. § 1335 (2006) (detailing the requirements of interpleader).

116 28 U.S.C. §§ 1332(d)(2), 1335(a)(1) (2006).

117 § 1335(a).

118 See *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 533 (1967).

an incapacitated person and his assets cannot logistically be split between adversarial “stakeholders.” A family member seeking to protect the aging relative may face the same conundrum as a claimant to a limited insurance policy, wherein he would have to challenge the validity of another state’s decision in favor of an adversary before re-litigating the case himself. Even if the relative were successful in challenging the state’s judgment, there is still the risk that the relative’s adversary would have already depleted the ward’s accounts, sold off his assets, and possibly even committed the ward to a nursing facility—just like a limited insurance policy that is already “cashed out.”

The courts additionally serve a protective function in the current interpleader by keeping the disputed *res* within the court’s control.¹¹⁹ In the same manner, an incapacitated person and his assets could be kept safely away from any greedy relatives while the court controls the incapacitated person’s care. A federal interpleader would thus remove many of the issues facing state courts and offer several substantive benefits to concerned families.

First, this Note will explain how the federal court could obtain both constitutional and statutory jurisdiction over a granny snatching case, as this would be a prerequisite for any effective solution that involves federal courts. Next, this Note will explain the specific substantive provisions of this joinder rule that are necessary for an effective solution.

1. *Jurisdictional Aspects.*—First, granny-snatching cases must involve parties from different states. If the parties are all domiciled within the same state and never take the subject of the lawsuit outside the state, there is no granny snatching issue—no one has robbed the ward of the benefits of personal jurisdiction in his or her home state. It is only when interested parties are diverse from each other and have the power to remove the aging adult to their home state’s courts that concerns about granny snatching arise. Therefore, the constitutional power to create a new statutory interpleader would arise under the Diversity Clause.¹²⁰ Diversity will always be present in granny snatching cases and the statute can mirror the minimal diversity present in the current statutory interpleader.

Second, the amount in controversy, should Congress choose to require one, would easily be \$500 or more in any claim for guardianship.¹²¹ Once declared guardian, all control over the ward’s care and property is placed in the guardian’s hands.¹²² Therefore, because the control of property is part of what will be decided in the case, Congress should define the amount in

¹¹⁹ § 1335(a)(2).

¹²⁰ U.S. CONST. art. III, § 2, cl. 1.

¹²¹ This figure is borrowed from the amount in controversy mentioned in the current interpleader. § 1335(a).

¹²² See Johns, *supra* note 8, at 37.

controversy to include the value of the incapacitated person's assets.

Generally in granny snatching cases, we presume the motivation to move the ward comes from a desire to control the ward's highly valuable assets. To strike a fair balance between the need to protect these incapacitated persons and limit the caseload of federal courts, Congress should increase this requirement to a higher dollar amount, perhaps even the minimal amount for a usual diversity claim of \$75,000.¹²³ This would focus the courts' resources on the cases that are the primary suspects for granny snatching, while also limiting the amount of additional cases that will appear before an already burdened court system. If instead Congress chose to borrow the amount in controversy from the current interpleader, it should be easy for most cases to meet that threshold. Even if the ward has no property at the time of guardianship, the cost of care for the ward could easily exceed \$500. For example, the average cost of a home health aide for an Alzheimer's patient is \$21 an hour,¹²⁴ and the average annual cost of nursing home care is \$50,000 and climbing.¹²⁵

2. *Substantive provisions.*—The current interpleader statute also provides for two critical elements in preventing a granny snatching case. First, it provides for nationwide service of process.¹²⁶ Family members can be spread across the nation, so a successful interpleader solution must have a way to serve each relative with process so as to bring all interested parties into the action. It would be strange indeed to offer interpleader as a solution and then for the courts to be unable to serve process on the one devious relative that the other family members suspect.

Second, interpleader allows the party seeking original jurisdiction in federal court to enjoin other parties from bringing actions in state courts.¹²⁷ This provision is critical, because otherwise there is no incentive for a potential granny snatcher to continue as a party to a federal lawsuit. Without this provision, the granny snatcher could begin a state court proceeding concurrently with the federal interpleader. If the provision were added, it would allow the federal court to hold the snatcher in contempt, and because federal jurisdiction reaches across all states, it could enforce its power on the granny snatcher in whichever state the snatcher chose to file the competing suit.

Admittedly, if someone were underhanded enough to consider removing an incapacitated relative to another state, that person may also be devious

¹²³ 28 U.S.C. § 1332(a) (2006).

¹²⁴ *The Facts on Alzheimer's Disease*, AM. HEALTH ASSISTANCE FOUND., <http://www.ahaf.org/alzheimers/about/understanding/facts.html> (last updated Sept. 26, 2011).

¹²⁵ *Nursing Homes: Cost and Coverage*, AARP.ORG, available at http://assets.aarp.org/external_sites/cargiving/nursing_home_costs.html (last visited Mar. 8, 2012).

¹²⁶ 28 U.S.C. § 2361 (2006).

¹²⁷ *Id.*

enough to defy a contempt order and file a concurrent state action. If he did, there is the possibility that the state proceeding could conclude before the federal proceeding and the snatcher would have an enforceable state judgment. The federal court is normally obligated to respect the state court judgment, because even though there is no constitutional equivalent of the Full Faith and Credit Clause that requires federal recognition of state court judgments, the Full Faith and Credit Statute¹²⁸ requires federal courts to give state courts comity.¹²⁹ Congress must be prepared to protect the federal courts' judgments in these cases by clearly stating in this new interpleader statute that the presumption of section 1738 that state court adjudications be given full faith and credit is not intended to apply,¹³⁰ and that any state judgment that conflicts with a federal judgment on this issue will not be entitled to preclusion.¹³¹ Such an addition to the proposed statute would not interfere with any final state judgments decided prior to the beginning of the federal court's jurisdiction, and would be the only way to protect all claimants from a party who would rather be held in contempt than give up his opportunity for guardianship.¹³²

Therefore, Congress must also explicitly say in this new statutory interpleader that the full faith and credit statute does not apply if a *state* proceeding concludes before the *federal* proceeding. Congress also must be clear in the statute that states should not infer the opposite effect, *i.e.* that states are not obligated to respect valid, final federal judgments.¹³³ This would ensure that if a party ignores the injunction after an interpleader action is filed, then the state's judgment would not receive full faith and credit in federal court, while ensuring that the Full Faith and Credit Clause still obligates the states to respect a federal judgment.

A final federal judgment should also be entitled to preclusive effect over any contrary state judgment, entered while federal courts had jurisdiction over the case, within that state's jurisdiction. The Supremacy Clause¹³⁴ states that federal law stands supreme over any state law in

¹²⁸ 28 U.S.C. § 1738 (2006).

¹²⁹ *See* *Matushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367, 386–87 (1996) (holding that where a state has subject matter jurisdiction, § 1738 requires a federal court to give the state court judgment full faith and credit).

¹³⁰ *See* *Allen v. McCurry*, 449 U.S. 90, 99 (1980); *see also* *Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 468–70 (1982).

¹³¹ *See* *Allen*, 449 U.S. at 99.

¹³² *See, e.g.,* *Weissenborn v. Graham*, 963 So. 2d 275, 277 (Fla. Dist. Ct. App. 2007) (detailing one guardian's willingness to be held in contempt rather than forfeit guardianship rights).

¹³³ The Supreme Court has previously held that the Full Faith and Credit Statute applies to state recognition of federal judgments. *See* *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938) (“Under [the Full Faith and Credit Statute,] the judgments and decrees of the Federal courts in a state are declared to have the same dignity in the courts of that state as those of its own courts in a like case and under similar circumstances.”)

¹³⁴ U.S. CONST. art. VI, cl. 2.

conflict and thus provides federal courts with the constitutional power to protect its judgments.¹³⁵ The federal court also has the power to enjoin a state proceeding¹³⁶ once an interpleader action has been filed. The Anti-Injunction Act, which otherwise prohibits federal courts from enjoining actions in state courts,¹³⁷ would not apply because the Act provides an exception for any enforcement necessary “to protect or effectuate its judgments.”¹³⁸ Section 2361 expressly authorizes a federal court in any interpleader to enjoin parties while also allowing the court to make the injunction permanent and make “all appropriate orders to enforce its judgment.”¹³⁹ Any state judgment would be in violation of the injunction and thus should not be entitled to preclude a valid federal judgment within the state’s jurisdiction.¹⁴⁰

135 See, e.g., *Miss. Valley Barge Line Co. v. United States*, 273 F. Supp. 1, 14 (1967) (“It is well settled that the courts of the United States have the inherent and statutory (28 USCA § 1651) power and authority to enter such orders as may be necessary to enforce and effectuate their lawful orders and judgments, and to prevent them from being thwarted and interfered with by force, guile, or otherwise.”); see also Allan D. Vestal, *Protecting a Federal Court Judgment*, 42 TENN. L. REV. 635, 639 (1975) (“When an attempt is made in state court to relitigate a claim or issue previously adjudicated by a federal court, statutory full faith and credit, federal supremacy, and comity all suggest that the federal judgment must be protected.”)

136 Enjoining the litigants is the same as enjoining the proceeding. In fact, the Supreme Court has held that enjoining the litigants does not circumvent the Anti-Injunction Act, e.g., *Okla. Packing Co. v. Okla. Gas & Elec. Co.*, 309 U.S. 4, 9 (1940) (“That the injunction was a restraint of the parties and was not formally directed against the state court itself is immaterial.”)

137 28 U.S.C. § 2283 (2006).

138 *Id.* § 2283. Admittedly, the abstention doctrine is a separate bar that the federal court must overcome. *Younger* would be the immediate obstacle. *Younger v. Harris*, 401 U.S. 37 (1971). However, civil applications of *Younger* abstention are simply inapplicable here, as these guardianship proceedings are in no way akin to criminal proceedings. See *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975) (“The component of *Younger* which rests upon the threat to our federal system is thus applicable to a civil proceeding such as this quite as much as it is to a criminal proceeding. . . . Strictly speaking, this element of *Younger* is not available to mandate federal restraint in civil cases. But . . . we deal here with a state proceeding which in important respects is more akin to a criminal prosecution than are most civil cases.”)

139 28 U.S.C. § 2361 (2006); see also *O’Daniel v. Porter*, 240 F.2d 636, 637 (D.C. Cir. 1957) (“Federal courts have the power to enjoin state court proceedings affecting the subject matter involved in an action under the Federal Interpleader Act.”)

140 The preclusive effect of the federal judgment is complicated by the fact that jurisdiction is based on diversity. This creates complex *Erie* problems—is res judicata a question of state law or federal law? In *Semtek Int’l. Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508 (2001), the Supreme Court held that the preclusive effect of a dismissal is determined by federal common law. Then the Court decided that federal common law would not need to be uniform, and in that case, it should be based on the law of the forum state. *Id.* However, that would not be the case if state law were incompatible with federal interests. *Id.* at 509. Simply put, answering this question is simply beyond the scope of this Note. In the end, whether the forum court determines to borrow federal or state law in deciding the preclusive effect of the judgment will likely come down to good advocacy—a skilled advocate representing the family of an incapacitated relative must be ready to argue that the state’s interest is either

Thus, with the combined threats of contempt and the federal court's lack of comity for a state proceeding, the would-be granny snatcher would have a greatly reduced incentive to defy the court order and adjudicate in state court.

Once the skeleton of the statute is built, the essence of its purpose—defining personal jurisdiction so as to prevent granny snatching—is next. The exercise of personal jurisdiction is the easy part. Serving a summons on someone who is subject to the forum state's general jurisdiction establishes personal jurisdiction in the federal courts,¹⁴¹ and if someone is present in the state, a court can exercise general personal jurisdiction over him without violating federal due process.¹⁴² However, the real concern in these cases is preventing the exercise of jurisdiction by those who remove incapacitated persons to the forum state just so they can adjudicate the case while they are present. Eliminating that problem requires much narrower definitions of personal jurisdiction to protect the incapacitated; Congress need look no further than the definitions for personal jurisdiction in the UAGPPJA, specifically the definitions for “home state” (where the individual has been present for at least six months)¹⁴³ and “specific connection state” (meaning some connection other than just mere presence.)¹⁴⁴ Therefore, as per the statute's definitions of personal jurisdiction, the federal court sitting in the ward's home state would also be the exclusive federal court with the power to exercise personal jurisdiction over the incapacitated adult. If there were no home state, the federal court sitting in the ward's specific-connection state would exercise jurisdiction. Defining personal jurisdiction in such a strict way ensures that the case is heard in the state that offers the best evidence of the ward's wishes and the party's intentions. By making the action an interpleader, it would force all claimants into the litigation, placing the burden on each party to make the best case and allowing an impartial adjudicator to decide amongst them all.

CONCLUSION

If such a statute existed, perhaps some of the anguish and expense that the families in the *Glasser* and *Graham* cases faced could have been avoided. In the *Glasser* case, the cost of the Texas litigation alone, at the time of Waugh's opinion on primary jurisdiction, exceeded \$1.5 million.¹⁴⁵

more procedural (law of the forum court applies) or more substantive (law of the forum state applies).

¹⁴¹ FED. R. CIV. P. 4(k)(1)(A).

¹⁴² *Pennoyer v. Neff*, 95 U.S. 714, 733–34 (1877).

¹⁴³ UNIF. ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT § 203 (2007).

¹⁴⁴ *Id.*

¹⁴⁵ *In re Glasser*, No. 209568, 2006 WL 510096, at *1 (N.J. Super. Ct. Ch. Div. Mar. 3,

An interpleader could have saved not only extensive costs in litigation but also protected Glasser from multiple moves between states and allowed her to stay at home, where she wanted to be in the first place.¹⁴⁶ Most importantly, an interpleader could have removed the incentive for Mathews to manipulate state law. Perhaps if Mathews knew that not only would the federal proceeding be given preclusive effect, but that she also could be held in contempt, her incentive to use the state court would have disintegrated.

In *Weissenborn v. Graham*, Luke could have sued for guardianship in Florida federal courts and forced Larry, then living in California, to litigate in Florida. As a result, Larry would lose the incentive to remove his mother from her home. Any state litigation would be a waste of money, and if money were his motivation in the first place, he would probably be disinclined to move her out of state.

Interstate guardianship involves issues of the ward's safety, property, liberty and welfare, and in such cases exercise of traditional *in personam* jurisdiction contorts all notions of "fair play and substantial justice."¹⁴⁷ The UAGPPJA has offered definitions of personal jurisdiction to bottleneck those who would abuse the system to exploit incapacitated persons—but if not all states adopt these definitions, it leaves the door open for potential granny snatchers to forum shop.

If Congress creates a federal statute to provide for original subject matter jurisdiction in the federal courts, using the strict definitions of personal jurisdiction provided in the UAGPPJA, then families of incapacitated persons like Ms. Graham and Ms. Glasser will have their much-needed solution. Meanwhile, each state remains free to define whatever substantive law it feels should apply in these cases.

This Note does not intend to suggest that the entirety of guardianship law should become part of the federal domain. This Note concerns one group: those who have relatives dispersed throughout the country who are clearly incapacitated and in need of guardianship, and therefore easily exploitable. State procedural law could be used to gerrymander jurisdiction over their cases, and then each state's courts could encounter the same problem faced in *Glasser*:¹⁴⁸ whose state court proceeding is entitled to preclusive effect? What happens if each state court finds that its judgment should be so entitled?

These incapacitated people are entitled to have one judgment, binding on all interested parties, so that they do not have to face duplicitous litigation. They are entitled to remain at home while their guardianship proceeding is heard. They are also entitled to keep possession of all their

2006).

¹⁴⁶ *Id.* at *4-5.

¹⁴⁷ *Int'l Shoe v. Washington*, 326 U.S. 310, 316 (1945); *Pennoyer*, 95 U.S. 714.

¹⁴⁸ *See In re Glasser*, No. 209568 at *8, *11, *13.

assets, at least until the court appoints the best guardian. Therefore, a federal interpleader designed for such cases is a completely appropriate exercise of protective jurisdiction.

The only way to fully protect our most vulnerable citizens is to provide families with one trial that hears each relative's best case, and effectively precludes any motivation for one relative to move an incapacitated person away from home.

