

1 ENGROSSED SENATE  
2 BILL NO. 2204

By: Ivester and Johnson  
(Constance) of the Senate

3 and

4 Dank of the House

5  
6  
7 [ guardian and ward - creating Uniform Adult  
8 Guardianship and Protective Proceedings Act -  
9 codification -

10 effective date ]

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13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 ARTICLE 1

15 GENERAL PROVISIONS

16 SECTION 1. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 3-301 of Title 30, unless there  
18 is created a duplication in numbering, reads as follows:

19 This act shall be known and may be cited as the "Uniform Adult  
20 Guardianship and Protective Proceedings Jurisdiction Act".

21 SECTION 2. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 3-302 of Title 30, unless there  
23 is created a duplication in numbering, reads as follows:

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1 As used in the Uniform Adult Guardianship and Protective  
2 Proceedings Jurisdiction Act:

3 (1) "Adult" means an individual who has attained eighteen (18)  
4 years of age;

5 (2) "Conservator" means a person appointed by the court to  
6 administer the property of an adult;

7 (3) "Guardian" means a person appointed by the court to make  
8 decisions regarding the person of an adult;

9 (4) "Guardianship order" means an order appointing a guardian;

10 (5) "Guardianship proceeding" means a judicial proceeding in  
11 which an order for the appointment of a guardian is sought or has  
12 been issued;

13 (6) "Incapacitated person" means an adult for whom a guardian  
14 has been appointed;

15 (7) "Party" means the respondent, petitioner, guardian,  
16 conservator, or any other person allowed by the court to participate  
17 in a guardianship or protective proceeding;

18 (8) "Person," except in the term incapacitated person or  
19 protected person, means an individual, corporation, business trust,  
20 estate, trust, partnership, limited liability company, association,  
21 joint venture, public corporation, government or governmental  
22 subdivision, agency, or instrumentality, or any other legal or  
23 commercial entity;

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1 (9) "Protected person" means an adult for whom a protective  
2 order has been issued;

3 (10) "Protective order" means an order appointing a conservator  
4 or other order related to management of an adult's property;

5 (11) "Protective proceeding" means a judicial proceeding in  
6 which a protective order is sought or has been issued;

7 (12) "Record" means information that is inscribed on a tangible  
8 medium or that is stored in an electronic or other medium and is  
9 retrievable in perceivable form;

10 (13) "Respondent" means an adult for whom a protective order or  
11 the appointment of a guardian is sought; and

12 (14) "State" means a state of the United States, the District  
13 of Columbia, Puerto Rico, the United States Virgin Islands, a  
14 federally recognized Indian tribe, or any territory or insular  
15 possession subject to the jurisdiction of the United States.

16 SECTION 3. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 3-303 of Title 30, unless there  
18 is created a duplication in numbering, reads as follows:

19 A court of this state may treat a foreign country as if it were  
20 a state for the purpose of applying this article and Articles 2, 3  
21 and 5 of this act.

22 SECTION 4. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 3-304 of Title 30, unless there  
24 is created a duplication in numbering, reads as follows:

1 (a) A court of this state may communicate with a court in  
2 another state concerning a proceeding arising under this act. The  
3 court may allow the parties to participate in the communication.  
4 Except as otherwise provided in subsection (b) of this section, the  
5 court shall make a record of the communication. The record may be  
6 limited to the fact that the communication occurred.

7 (b) Courts may communicate concerning schedules, calendars,  
8 court records, and other administrative matters without making a  
9 record.

10 SECTION 5. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 3-305 of Title 30, unless there  
12 is created a duplication in numbering, reads as follows:

13 (a) In a guardianship or protective proceeding in this state, a  
14 court of this state may request the appropriate court of another  
15 state to do any of the following:

16 (1) Hold an evidentiary hearing;

17 (2) Order a person in that state to produce evidence or give  
18 testimony pursuant to procedures of that state;

19 (3) Order that an evaluation or assessment be made of the  
20 respondent;

21 (4) Order any appropriate investigation of a person involved in  
22 a proceeding;

23 (5) Forward to the court of this state a certified copy of the  
24 transcript or other record of a hearing under paragraph (1) of this

1 subsection or any other proceeding, any evidence otherwise produced  
2 under paragraph (2) of this subsection, and any evaluation or  
3 assessment prepared in compliance with an order under paragraph (3)  
4 or (4) of this subsection;

5 (6) Issue any order necessary to assure the appearance in the  
6 proceeding of a person whose presence is necessary for the court to  
7 make a determination, including the respondent or the incapacitated  
8 or protected person;

9 (7) Issue an order authorizing the release of medical,  
10 financial, criminal, or other relevant information in that state,  
11 including protected health information as defined in 45 C.F.R.  
12 Section 164.504, as amended.

13 (b) If a court of another state in which a guardianship or  
14 protective proceeding is pending requests assistance of the kind  
15 provided in subsection (a) of this section, a court of this state  
16 has jurisdiction for the limited purpose of granting the request or  
17 making reasonable efforts to comply with the request.

18 SECTION 6. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 3-306 of Title 30, unless there  
20 is created a duplication in numbering, reads as follows:

21 (a) In a guardianship or protective proceeding, in addition to  
22 other procedures that may be available, testimony of a witness who  
23 is located in another state may be offered by deposition or other  
24 means allowable in this state for testimony taken in another state.

1 The court on its own motion may order that the testimony of a  
2 witness be taken in another state and may prescribe the manner in  
3 which and the terms upon which the testimony is to be taken.

4 (b) In a guardianship or protective proceeding, a court in this  
5 state may permit a witness located in another state to be deposed or  
6 to testify by telephone or audiovisual or other electronic means. A  
7 court of this state shall cooperate with the court of the other  
8 state in designating an appropriate location for the deposition or  
9 testimony.

10 (c) Documentary evidence transmitted from another state to a  
11 court of this state by technological means that do not produce an  
12 original writing may not be excluded from evidence on an objection  
13 based on the best evidence rule.

14 ARTICLE 2

15 JURISDICTION

16 SECTION 7. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 3-307 of Title 30, unless there  
18 is created a duplication in numbering, reads as follows:

19 (a) In this article:

20 (1) "Emergency" means a circumstance that likely will result in  
21 substantial harm to a respondent's health, safety, or welfare, and  
22 for which the appointment of a guardian is necessary because no  
23 other person has authority and is willing to act on the respondent's  
24 behalf;

1 (2) "Home state" means the state in which the respondent was  
2 physically present, including any period of temporary absence, for  
3 at least six (6) consecutive months immediately before the filing of  
4 a petition for a protective order or the appointment of a guardian;  
5 or if none, the state in which the respondent was physically  
6 present, including any period of temporary absence, for at least six  
7 (6) consecutive months ending within the six (6) months prior to the  
8 filing of the petition; and

9 (3) "Significant-connection state" means a state, other than  
10 the home state, with which a respondent has a significant connection  
11 other than mere physical presence and in which substantial evidence  
12 concerning the respondent is available.

13 (b) In determining under Section 9 and subsection (e) of  
14 Section 16 of this act whether a respondent has a significant  
15 connection with a particular state, the court shall consider:

16 (1) The location of the respondent's family and other persons  
17 required to be notified of the guardianship or protective  
18 proceeding;

19 (2) The length of time the respondent at any time was  
20 physically present in the state and the duration of any absence;

21 (3) The location of the respondent's property; and

22 (4) The extent to which the respondent has ties to the state  
23 such as voting registration, state or local tax return filing,  
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1 vehicle registration, driver's license, social relationship, and  
2 receipt of services.

3 SECTION 8. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 3-308 of Title 30, unless there  
5 is created a duplication in numbering, reads as follows:

6 This article provides the exclusive jurisdictional basis for a  
7 court of this state to appoint a guardian or issue a protective  
8 order for an adult.

9 SECTION 9. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 3-309 of Title 30, unless there  
11 is created a duplication in numbering, reads as follows:

12 A court of this state has jurisdiction to appoint a guardian or  
13 issue a protective order for a respondent if:

14 (1) This state is the respondent's home state;

15 (2) On the date the petition is filed, this state is a  
16 significant-connection state and:

17 (A) the respondent does not have a home state or a court  
18 of the respondent's home state has declined to  
19 exercise jurisdiction because this state is a more  
20 appropriate forum, or

21 (B) the respondent has a home state, a petition for an  
22 appointment or order is not pending in a court of that  
23 state or another significant-connection state, and,  
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1 before the court makes the appointment or issues the  
2 order:

3 (i) a petition for an appointment or order is not  
4 filed in the respondent's home state,

5 (ii) an objection to the court's jurisdiction is not  
6 filed by a person required to be notified of the  
7 proceeding, and

8 (iii) the court in this state concludes that it is an  
9 appropriate forum under the factors set forth in  
10 Section 12 of this act;

11 (3) This state does not have jurisdiction under either  
12 paragraph (1) or (2) of this subsection, the respondent's home state  
13 and all significant-connection states have declined to exercise  
14 jurisdiction because this state is the more appropriate forum, and  
15 jurisdiction in this state is consistent with the constitutions of  
16 this state and the United States; or

17 (4) The requirements for special jurisdiction under Section 10  
18 of this act are met.

19 SECTION 10. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 3-310 of Title 30, unless there  
21 is created a duplication in numbering, reads as follows:

22 (a) A court of this state lacking jurisdiction under paragraphs  
23 (1) through (3) of Section 9 of this act has special jurisdiction to  
24 do any of the following:

1 (1) Appoint a guardian in an emergency for a term not to exceed  
2 ninety (90) days for a respondent who is physically present in this  
3 state;

4 (2) Issue a protective order with respect to real or tangible  
5 personal property located in this state;

6 (3) Appoint a guardian or conservator for an incapacitated or  
7 protected person for whom a provisional order to transfer the  
8 proceeding from another state has been issued under procedures  
9 similar to Section 16 of this act.

10 (b) If a petition for the appointment of a guardian in an  
11 emergency is brought in this state and this state was not the  
12 respondent's home state on the date the petition was filed, the  
13 court shall dismiss the proceeding at the request of the court of  
14 the home state, if any, whether dismissal is requested before or  
15 after the emergency appointment.

16 SECTION 11. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 3-311 of Title 30, unless there  
18 is created a duplication in numbering, reads as follows:

19 Except as otherwise provided in Section 10 of this act, a court  
20 that has appointed a guardian or issued a protective order  
21 consistent with this act has exclusive and continuing jurisdiction  
22 over the proceeding until it is terminated by the court or the  
23 appointment or order expires by its own terms.

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1           SECTION 12.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3-312 of Title 30, unless there  
3 is created a duplication in numbering, reads as follows:

4           (a) A court of this state having jurisdiction under Section 9  
5 of this act to appoint a guardian or issue a protective order may  
6 decline to exercise its jurisdiction if it determines at any time  
7 that a court of another state is a more appropriate forum.

8           (b) If a court of this state declines to exercise its  
9 jurisdiction under subsection (a) of this section, it shall either  
10 dismiss or stay the proceeding. The court may impose any condition  
11 the court considers just and proper, including the condition that a  
12 petition for the appointment of a guardian or issuance of a  
13 protective order be filed promptly in another state.

14           (c) In determining whether it is an appropriate forum, the  
15 court shall consider all relevant factors, including:

- 16           (1) Any expressed preference of the respondent;
- 17           (2) Whether abuse, neglect, or exploitation of the respondent  
18 has occurred or is likely to occur and which state could best  
19 protect the respondent from the abuse, neglect, or exploitation;
- 20           (3) The length of time the respondent was physically present in  
21 or was a legal resident of this or another state;
- 22           (4) The distance of the respondent from the court in each  
23 state;
- 24           (5) The financial circumstances of the respondent's estate;

1 (6) The nature and location of the evidence;

2 (7) The ability of the court in each state to decide the issue  
3 expeditiously and the procedures necessary to present evidence;

4 (8) The familiarity of the court of each state with the facts  
5 and issues in the proceeding; and

6 (9) If an appointment were made, the court's ability to monitor  
7 the conduct of the guardian or conservator.

8 SECTION 13. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 3-313 of Title 30, unless there  
10 is created a duplication in numbering, reads as follows:

11 (a) If at any time a court of this state determines that it  
12 acquired jurisdiction to appoint a guardian or issue a protective  
13 order because of unjustifiable conduct, the court may:

14 (1) Decline to exercise jurisdiction;

15 (2) Exercise jurisdiction for the limited purpose of fashioning  
16 an appropriate remedy to ensure the health, safety, and welfare of  
17 the respondent or the protection of the respondent's property or  
18 prevent a repetition of the unjustifiable conduct, including staying  
19 the proceeding until a petition for the appointment of a guardian or  
20 issuance of a protective order is filed in a court of another state  
21 having jurisdiction; or

22 (3) Continue to exercise jurisdiction after considering:

23 (A) the extent to which the respondent and all persons  
24 required to be notified of the proceedings have

1 acquiesced in the exercise of the court's  
2 jurisdiction;

3 (B) whether it is a more appropriate forum than the court  
4 of any other state under the factors set forth in  
5 subsection (c) of Section 12 of this act; and

6 (C) whether the court of any other state would have  
7 jurisdiction under factual circumstances in  
8 substantial conformity with the jurisdictional  
9 standards of Section 9 of this act.

10 (b) If a court of this state determines that it acquired  
11 jurisdiction to appoint a guardian or issue a protective order  
12 because a party seeking to invoke its jurisdiction engaged in  
13 unjustifiable conduct, it may assess against that party necessary  
14 and reasonable expenses, including attorney's fees, investigative  
15 fees, court costs, communication expenses, witness fees and  
16 expenses, and travel expenses. The court may not assess fees,  
17 costs, or expenses of any kind against this state or a governmental  
18 subdivision, agency, or instrumentality of this state unless  
19 authorized by law other than this act.

20 SECTION 14. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 3-314 of Title 30, unless there  
22 is created a duplication in numbering, reads as follows:

23 If a petition for the appointment of a guardian or issuance of a  
24 protective order is brought in this state and this state was not the

1 respondent's home state on the date the petition was filed, in  
2 addition to complying with the notice requirements of this state,  
3 notice of the petition shall be given to those persons who would be  
4 entitled to notice of the petition if a proceeding were brought in  
5 the respondent's home state. The notice shall be given in the same  
6 manner as notice is required to be given in this state.

7 SECTION 15. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 3-315 of Title 30, unless there  
9 is created a duplication in numbering, reads as follows:

10 Except for a petition for the appointment of a guardian in an  
11 emergency or issuance of a protective order limited to property  
12 located in this state under paragraph (1) or (2) of subsection (a)  
13 of Section 10 of this act, if a petition for the appointment of a  
14 guardian or issuance of a protective order is filed in this state  
15 and in another state and neither petition has been dismissed or  
16 withdrawn, the following rules apply:

17 (1) If the court in this state has jurisdiction under Section 9  
18 of this act, it may proceed with the case unless a court in another  
19 state acquires jurisdiction under provisions similar to Section 9 of  
20 this act before the appointment or issuance of the order.

21 (2) If the court in this state does not have jurisdiction under  
22 Section 9 of this act, whether at the time the petition is filed or  
23 at any time before the appointment or issuance of the order, the  
24 court shall stay the proceeding and communicate with the court in

1 the other state. If the court in the other state has jurisdiction,  
2 the court in this state shall dismiss the petition unless the court  
3 in the other state determines that the court in this state is a more  
4 appropriate forum.

5 ARTICLE 3

6 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

7 SECTION 16. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 3-316 of Title 30, unless there  
9 is created a duplication in numbering, reads as follows:

10 (a) A guardian or conservator appointed in this state may  
11 petition the court to transfer the guardianship or conservatorship  
12 to another state.

13 (b) Notice of a petition under subsection (a) of this section  
14 shall be given to the persons that would be entitled to notice of a  
15 petition in this state for the appointment of a guardian or  
16 conservator.

17 (c) On the court's own motion or on request of the guardian or  
18 conservator, the incapacitated or protected person, or other person  
19 required to be notified of the petition, the court shall hold a  
20 hearing on a petition filed pursuant to subsection (a) of this  
21 section.

22 (d) The court shall issue an order provisionally granting a  
23 petition to transfer a guardianship and shall direct the guardian to  
24 petition for guardianship in the other state if the court is

1 satisfied that the guardianship will be accepted by the court in the  
2 other state and the court finds that:

3 (1) The incapacitated person is physically present in or is  
4 reasonably expected to move permanently to the other state;

5 (2) An objection to the transfer has not been made or, if an  
6 objection has been made, the objector has not established that the  
7 transfer would be contrary to the interests of the incapacitated  
8 person; and

9 (3) Plans for care and services for the incapacitated person in  
10 the other state are reasonable and sufficient.

11 (e) The court shall issue a provisional order granting a  
12 petition to transfer a conservatorship and shall direct the  
13 conservator to petition for conservatorship in the other state if  
14 the court is satisfied that the conservatorship will be accepted by  
15 the court of the other state and the court finds that:

16 (1) The protected person is physically present in or is  
17 reasonably expected to move permanently to the other state, or the  
18 protected person has a significant connection to the other state  
19 considering the factors in subsection (b) of Section 7 of this act;

20 (2) An objection to the transfer has not been made or, if an  
21 objection has been made, the objector has not established that the  
22 transfer would be contrary to the interests of the protected  
23 person; and

24

1 (3) Adequate arrangements will be made for management of the  
2 protected person's property.

3 (f) The court shall issue a final order confirming the transfer  
4 and terminating the guardianship or conservatorship upon its receipt  
5 of:

6 (1) A provisional order accepting the proceeding from the court  
7 to which the proceeding is to be transferred which is issued under  
8 provisions similar to Section 17 of this act; and

9 (2) The documents required to terminate a guardianship or  
10 conservatorship in this state.

11 SECTION 17. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 3-317 of Title 30, unless there  
13 is created a duplication in numbering, reads as follows:

14 (a) To confirm transfer of a guardianship or conservatorship  
15 transferred to this state under provisions similar to Section 16 of  
16 this act, the guardian or conservator shall petition the court in  
17 this state to accept the guardianship or conservatorship. The  
18 petition shall include a certified copy of the other state's  
19 provisional order of transfer.

20 (b) Notice of a petition under subsection (a) of this section  
21 shall be given to those persons that would be entitled to notice if  
22 the petition were a petition for the appointment of a guardian or  
23 issuance of a protective order in both the transferring state and  
24

1 this state. The notice shall be given in the same manner as notice  
2 is required to be given in this state.

3 (c) On the court's own motion or on request of the guardian or  
4 conservator, the incapacitated or protected person, or other person  
5 required to be notified of the proceeding, the court shall hold a  
6 hearing on a petition filed pursuant to subsection (a) of this  
7 section.

8 (d) The court shall issue an order provisionally granting a  
9 petition filed under subsection (a) of this section unless:

10 (1) An objection is made and the objector establishes that  
11 transfer of the proceeding would be contrary to the interests of the  
12 incapacitated or protected person; or

13 (2) The guardian or conservator is ineligible for appointment  
14 in this state.

15 (e) The court shall issue a final order accepting the  
16 proceeding and appointing the guardian or conservator as guardian or  
17 conservator in this state upon its receipt from the court from which  
18 the proceeding is being transferred of a final order issued under  
19 provisions similar to Section 16 of this act transferring the  
20 proceeding to this state.

21 (f) Not later than ninety (90) days after issuance of a final  
22 order accepting transfer of a guardianship or conservatorship, the  
23 court shall determine whether the guardianship or conservatorship  
24 needs to be modified to conform to the law of this state.

1 (g) In granting a petition under this section, the court shall  
2 recognize a guardianship or conservatorship order from the other  
3 state, including the determination of the incapacitated or protected  
4 person's incapacity and the appointment of the guardian or  
5 conservator.

6 (h) The denial by a court of this state of a petition to accept  
7 a guardianship or conservatorship transferred from another state  
8 does not affect the ability of the guardian or conservator to seek  
9 appointment as guardian or conservator in this state under Section  
10 3-101 of Title 30 of the Oklahoma Statutes if the court has  
11 jurisdiction to make an appointment other than by reason of the  
12 provisional order of transfer.

13 ARTICLE 4

14 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

15 SECTION 18. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 3-318 of Title 30, unless there  
17 is created a duplication in numbering, reads as follows:

18 If a guardian has been appointed in another state and a petition  
19 for the appointment of a guardian is not pending in this state, the  
20 guardian appointed in the other state, after giving notice to the  
21 appointing court of an intent to register, may register the  
22 guardianship order in this state by filing as a foreign judgment in  
23 a court, in any appropriate county of this state, certified copies  
24 of the order and letters of office.



1 MISCELLANEOUS PROVISIONS

2 SECTION 21. NEW LAW A new section of law to be codified  
3 in the Oklahoma Statutes as Section 3-321 of Title 30, unless there  
4 is created a duplication in numbering, reads as follows:

5 In applying and construing this uniform act, consideration must  
6 be given to the need to promote uniformity of the law with respect  
7 to its subject matter among states that enact it.

8 SECTION 22. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 3-322 of Title 30, unless there  
10 is created a duplication in numbering, reads as follows:

11 This act modifies, limits, and supersedes the federal Electronic  
12 Signatures in Global and National Commerce Act, 15 U.S.C. Section  
13 7001, et seq., but does not modify, limit, or supersede Section  
14 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
15 electronic delivery of any of the notices described in Section  
16 103(b) of that act, 15 U.S.C. Section 7003(b).

17 SECTION 23. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 3-323 of Title 30, unless there  
19 is created a duplication in numbering, reads as follows:

20 (a) This act applies to guardianship and protective proceedings  
21 begun on or after the effective date of this act.

22 (b) Articles 1, 3, and 4 and Sections 21 and 22 of this act  
23 apply to proceedings begun before the effective date of this act,  
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1 regardless of whether a guardianship or protective order has been  
2 issued.

3 SECTION 24. This act shall become effective November 1, 2010.

4 Passed the Senate the 9th day of March, 2010.

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\_\_\_\_\_  
Presiding Officer of the Senate

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8 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

9 2010.

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Presiding Officer of the House  
of Representatives

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