IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CASE NO. 89,837

L.C. NO. CL-96-1504-AF

BARRY KRISCHER,

Petitioner,

vs.

CECIL McIVER, M.D., et al.,

Respondents.

On Appeal From The Honorable S. Joseph Davis, Jr.

Brief For The *Amici Curiae*:

A COALITION OF FLORIDIANS AND OTHER AMERICANS WITH DISABILITIES, IN SUPPORT OF RESPONDENTS.

Andrew I. Batavia
Counsel of Record
Marina L. Fontani
Susan F. Dournaux
McDERMOTT, WILL & EMERY
201 S. Biscayne Boulevard
Suite 2200
Miami, FL 33131
(305) 358-3500

Attorneys for ***Amici***

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case Authorities

constitutional Provisions

Statutes

Treatises and Other Materials

I. INTRODUCTION--THE AMICI [1]

The majority of people with disabilities in this country believe that individuals with terminal illnesses should be permitted to end their own suffering with the assistance of their physicians and to choose a death with dignity. *Amici* are individuals and organizations representing people with a broad array of disabilities who share this belief. They contend that individuals with disabilities should have autonomy over the decisions that affect their lives. They believe that the fundamental right of privacy and self-determination must apply to all significant life decisions, including perhaps the most intimate and personal decision of all -- whether to hasten impending death if their conditions become terminal.

The *Amici* organizations represent people who have AIDS, some of whom are in the terminal phase of their illnesses. The Florida AIDS Action Council is an organization with over 1,400 members representing Floridians with AIDS. The PWA Coalition of Broward County, Florida, Inc. is a coalition of AIDS patients and providers in Broward County. The Lambda Legal Defense and Education Fund is a national non-profit public interest legal organization working for the civil rights of people with HIV and AIDS. These organizations contend that the State of Florida should not be allowed to prohibit their members from receiving the

---

[1] *Amici* were granted consent by the parties to file this brief.

assistance of their physicians in ending their lives when they have decided that life is no longer bearable.

The individual *Amici* are leaders in the disability community or prominent individuals with disabilities. Evan Davis is a partner with a major national law firm who contracted polio at age five. Hugh Gallagher is one of the leading historians on disability *in* this country. Michael Stein is the former President of the National Disability Bar Association. Jean Payne is a Floridian who has metastasized breast cancer. Barbara Swartz is a professor who has kidney disease. Allan Terl is a Floridian with AIDS who was the recipient of the Florida Chief Justice's Tobias Simon Pro Bono Service Award. Susan Webb is the director of an independent living center for people with disabilities and an elected member of a national disability rights organization. All believe that they should have the right to hasten their death if and when confronting terminal illness. Their personal statements are attached as an appendix to this brief.

Amici believe that both the federal Constitution and the Florida Constitution guarantee people in the final stages of terminal illnesses the right to end their lives in a manner that allows them to maintain personal dignity. *The* attempt of Petitioner and its *amici* to use disability to justify state deprivation of this fundamental right is deeply offensive to *Amici* and the thousands of people with disabilities they represent. They assert

that Florida Statutes Section 782.08,[2] which has been interpreted by the State as criminalizing physician assisted suicide, violates Art. I, ***Sec. 23*** of the Florida Constitution (the Privacy Amendment).[3])

A. The Diarbility Rights Movement

The disability rights movement is a socialmovementwith the goal of achieving independence and autonomy for people with disabilities in all aspects of their lives. Gerben **DeJong,** ***Independent*** Living: ***From Social Movement to Analytic Paradigm. 60*** Arch. Physical Med. Rehab. 435 **(1979).**[4] Judy Heumann, one of the pioneers of the movement, co-founder of the World Institute on Disability and currently the Assistant Secretary for Special Education and Rehabilitation Services at the U.S. Department of Education, expressed the driving spirit of the movement best in an early policy report:

---

[2] Section 782.08 provides that "[e]very person deliberately assisting another person in the commission of self-murder shall be guilty of manslaughter, a felony of the second degree..." **Fla.Stat. §** 782.08 (1995).

[3] The Privacy Amendment provides that "[e]very natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law. " FLORIDA CONST. art. I, § 23.

[4] The terms "disability rights movement" and "independent living movement" are often used interchangeably by members of the disability community. Whether they are two separate social movements or two names for basically the same movement is a matter of debate. For purposes of this brief, the broader term "disability rights movement" is used to refer to both.

> To us, independence does not mean doing things physically alone. It means being able to make independent decisions. It is a mind process not contingent upon a "normal" body.

Susan Stoddard Pflueger, ***Independent Living: Emerging Issues in Rehabilitation,*** foreword ii (December, 1977) (unpublished report on file with the Institute for Research Utilization).

Similarly, Edward V. Roberts, one of the founders of the movement, made the following observation:

> I believe that the basic premise of the . . . movement is that everyone has potential to live more independently. Our experience shows that even the most severely and profoundly disabled individual can be independent -- they may need all kinds of help -- But that they can be in control of their lives.

(emphasis added) ***Id.*** at 1.

Over time, the movement has made important progress in altering the general belief in our society that people with disabilities are invariably vulnerable, exploitable, and incapable of making decisions that fundamentally affect their lives. Until recently, however, many people with disabilities accepted the predominant paternalism concerning disability and the control of their lives by other people, often to their detriment. It was only after three decades of political struggle, with the bipartisan enactment of The Americans with Disabilities Act of 1990 (the ADA),[5] that our nation developed a consensus that competent adults

---

[5] The Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (1990).

with disabilities can and should exercise control of their lives in the mainstream of our society.[6]

Among the rights that the movement has secured for people with disabilities are the right to live in the community, as opposed to in isolated, degrading and disempowering institutions, *Youngberg v. Romeo, 457* U.S. *307* (1982); *Schulman v. State, 358 So.* 2d 1333, 1335 (Fla. 1978); the right to be free of involuntary sterilization, *Relf v. Weinberger,* 372 F.Supp. 1196 (D.C.D.C. 1974); *scheinberg v. Smith, 659* F.2d 476, 485 (5th Cir. 1981) *(citing Skinner v. Oklahoma,* 316 U.S. 5335 (1942)), the right to raise a child, *In re Marriage of Carney, 598* P.2d 36 (Cal. 1979); the right to have access to public streets, public transportation, schools, public services, privately owned places of public accommodation and places of employment, 42 U.S.C. §§ 12111-12181; and the right to a free and appropriate education, *20* U.S.C. § 1400 et seq. (1991).[7]

Entirely consistent with these rights is the right to control one's death when it is imminent -- arguably the most fundamental right of all.

---

[6] *See generally,* Jane West, ed., *The* Americans *with Disabilities Act: From Policy to Practice (1991);* Jane West, ed., *Implementing the* Americans *with Disabilities Act (1996);* Mark Nagler, *Perspectives on Disability* (2nd ed. 1993); Lawrence 0. Gostin & Henry A. Beyer, eds., *Implementing the Americans with Disabilities Act: Rights and Responsibilities of All Americans (1993).*

[7] The Individuals with Disabilities Education Act (IDEA).

B. The Views of People with Disabilities

According to a major public opinion poll, 66 percent of people with disabilities support the right to assisted suicide, as compared with 70 percent of the general population. Louis Harris and Associates, Harris Poll no. 9, Table 105 (1995). This result is corroborated by a recent study finding that 63 percent of people with AIDS support this right, and 55 percent actually have considered this option for themselves. William Breitbart, et al., *Interest in Physician-assisted Suicide Among Ambulatory HIV-Infected Patients,* 153 Am. J. Psychiatry 238 (1996). Another study found that 90 percent of people with AIDS support the right. Brett Tindall et al., *Attitudes to Euthanasia and Assisted Suicide in a Group of Homosexual Men with Advanced HIV Disease, 6* J. Acquir. Immune. Defic. Syndr. 1069 (1993).

While resolution of this issue by a poll of those most affected would quickly end criminalization of assisted suicide, constitutional issues are not rightly settled by popular vote. The personal and religious views of those who support either side of this debate are immaterial to the question of whether patients who are terminally ill have a constitutional right to receive such assistance. However, the experiences and treatment realities of those who have lived with disabilities, including cancer and AIDS, are relevant to the Court's analysis. These experiences provide an explanation of why requested assistance in accelerating death is a legitimate medical option which merits constitutional protection.

The experiences of those involved in the treatment of AIDS are particularly illustrative. Since the beginning of the AIDS epidemic in the early 1980s, people with AIDS and their advocates and service providers have been committed to ensuring that individuals with AIDS have as much autonomy in their lives as possible. Many living with this disease have been involved decision makers in each stage of their treatment, In striving to maintain control over their lives as their physical conditions deteriorate, they have made increasing use of legal planning documents, such as health care proxies and powers of attorney, to maintain control of their final days.

The right to end their lives with the assistance of their physicians is a natural extension of the efforts of people with AIDS and other diseases to maintain autonomy. The State's intrusion, effectively forcing a person to extend the dying process against his or her will, destroys the autonomy that has been central to the struggles of these individuals and people with disabilities generally.

It is clear that people with disabilities, like the public at large, believe that the State should not be allowed to interfere with a terminally ill individual's personal decision of how and when to die. This important fact has been obscured by the vocal minority of disability leaders who adamantly oppose recognition of the right to assisted suicide, despite the above statistics and the hard-fought battle for people with disabilities to win their autonomy. It is anomalous that some, purporting to

represent the interests of people with disabilities, are advocating in favor of the State's right to interfere with the individual's autonomy and privacy. It is equally anomalous that concerns expressed regarding the potential abuse of this right are being used as a basis to deny recognition of that right altogether.

In essence, those opposing the right to assisted suicide appear to be saying that an individual with a disability should have control over every decision in his or her life, except for the decision of whether to prolong the end stages of a terminal illness. This blatant contradiction is unacceptable to a substantial majority of people with disabilities, who will be intimately affected by this Court's ruling.

C. The Interests of People with Disabilities

The interests of *Amici* are similar to the interests of millions of people with disabilities throughout Florida and the other states of this country. Although the personal circumstances of people with disabilities vary substantially, they share a common interest in maintaining control over their lives, including the ability to choose a dignified death.

The medical conditions of some individuals with disabilities, including most of the individual *Amici,* will not become life-threatening or reach a terminal phase. To these individuals, issues concerning assisted suicide are the same as those for anyone else, except that some have a greater physical need for assistance. Like people without disabilities, these Amici

want the right to make this choice for themselves if they someday become terminally ill. They do not want to be deprived of this right simply because they have disabilities. Nor do they want their disabilities to be used by others to justify a wholesale denial of this right.

Other individuals have conditions which are more likely to become life-threatening, such as the individuals with AIDS represented by the three ***Amici*** organizations. For these ***Amici***, the issue of whether there is a right to obtain physician assistance in hastening death has a more immediate and direct impact. ***Amici*** in this situation want to be able to retain autonomy in making decisions about whether or when to end irreversible suffering if their illness or disability enters a terminal phase. Whether or not Respondent, Mr. Charles Hall, survives until this Court renders its opinion, these ***Amici*** are entitled to a declaratory judgment as "persons who have, or reasonably may have an actual present adverse and antagonistic interest in the subject matter...." See, ***Martinez*** v. ***Scanlan, 582*** So. 2d 1167 (Fla. 1991); see, ***also In re Guardianship of Browning, 568 So. 2d 4, 8*** n. 1 (Fla. 1990).

All ***Amici*** have a significant interest in how this issue is resolved. While not all are certain whether they would ever decide to hasten their own deaths, all want the freedom of knowing that this option will be available if the worst were to occur. Further, they want the security of knowing they can exercise this option safely, effectively and legally with the professional assistance of their physicians. ***Amici*** believe this is a uniquely

personal, moral and religious decision, one that would primarily impact themselves and their loved ones -- a decision that they should have the right to make for themselves without undue state interference.

In his personal statement, *Amicus* Evan A. Davis expresses concern that this Court may be misled by disability organizations claiming that recognition of a right to die with the assistance of one's physician would harm people with disabilities. He points out:

> The narrow issue before this Court is whether a terminally ill person whose death is inevitable and imminent has a right to die with dignity. Thus this case concerns only circumstances where life is already ebbing out and the natural process of death has already begun. In these circumstances I do not want myself or any others to be deprived of an ability to die with dignity because of arguments about the interests of people with disabilities that are not accurate or germane.

Personal statement of Evan A. Davis.

II. SUMMARY OF ARGUMENT

Like others in our society, people with disabilities wish to have autonomy over the uniquely personal decisions that effect their lives. Unlike most other people, many of their basic rights historically have been denied. After having fought for their rights for so long, and having achieved recognition through enactment of the ADA as citizens fully capable of autonomy, they are offended that, on the basis of their disabilities, others are

attempting to deny all of us the right to end our lives with dignity if we become terminally ill.

People with terminal illnesses have a privacy interest under the Privacy Amendment of the Florida Constitution to end their lives with the assistance of their physicians, if they so choose. This privacy interest must be considered fundamental. It is a right as compelling as other privacy interests recognized by this Court, such as the right to terminate life support. Specifically, the current case involves an individual who is acutely aware of his suffering and impending death, and whose decision to hasten death by a few days or weeks does not harm the interests of any other person.

The only way in which the State may constitutionally deny the right to physician assisted dying is through a narrowly tailored restriction necessary to achieve a compelling state interest. The blanket prohibition of all assisted suicide, in all situations, is not a narrowly tailored restriction, and there is no compelling state interest in denying a person who is suffering and who has little life left from ending his or her life with dignity. Any interests the State has in denying the right are significantly outweighed by the interests of the individual. All legitimate state interests, such as ensuring competence, preventing coercion, and avoiding abuse, may be achieved through state regulation that does not unduly interfere with the fundamental right at stake.

All objections raised against recognition of this right are either misplaced or may be addressed through appropriate

regulation. Contrary to the assertions of opponents, neither the privacy interest in hastening death with physician assistance, nor the diminished state interest in preventing this from occurring, is in any way based upon quality of life considerations being imposed on the individual. It is derived from the autonomy of terminally ill individuals to define their own meaning of quality of life.

Moreover, as the Second Circuit Court of Appeals found, competent, terminally ill individuals are similarly situated to people on life support who, when competent, indicated that they did not wish to live under those circumstances. *Quill v. Vacco, 30* **F.3d** 716 (2nd Cir. **1996),** cert. *granted* 117 S.Ct. 36 (1996). Denying terminally ill individuals the right to physician assisted suicide violates the Equal Protection Clause of the Fourteenth Amendment and the Florida Constitution.

In a compassionate society that respects the autonomy of people with disabilities, we must not deny those with terminal illnesses the right to end their suffering, For these individuals, physician assistance is the only means by which to ensure that their lives will end in a safe and humane manner. It is also the only means by which to avoid the abuses that inevitably occur when the exercise of this right is criminalized, and thereby forced underground.

III. ARGUMENT

A. People With Disabilities Assert That People With Terminal Illnesses Have A Constitutional Right To Hasten Inevitable Death With The Assistance Of Their Physicians

1. Competent, Terminally Ill Adults Have a Strong Privacy Interest in Waking End-of-Life Decisions Free of Undue Government Interference[8]

In 1980, by enacting the Privacy Amendment, the people of Florida voted to ensure themselves "the right to be let alone and free from governmental intrusion" in their private lives. FLORIDA CONST. art. I, § 23.[9] This Court has found that the privacy right was intended to be "as strong as possible" and that "... the right is much broader in scope than that of the Federal Constitution." *Winfield v. Division of Pari-Mutuel Wagering, 477*

---

[8] Although this brief will focus primarily on Florida's Privacy Amendment, *Amici* believe the right considered here is also guaranteed by the right to privacy and the Due Process clause of the Fourteenth Amendment of the federal Constitution. U.S. CONST. AMEND. XIV, §1. Recognizing a liberty right in determining the time and manner of one's death, the Ninth Circuit Court of Appeals concluded that "[c]ertainly, few decisions are more personal, intimate or important than the decision to end one's life, especially when the reason for doing so is to avoid excessive and protracted pain." *Compassion in Dying v. State of Washington, 79* F.3d 790, 813 (9th Cir. 1996), *cert. granted, Washington v. Glucksberg,* 117 S.Ct. 37 (1996); see, *Planned Parenthood v. Casey, 505* U.S. 833 (1992) (*aff'g Roe v. Wade, 410* U.S. 113 (1973)); see, *also Cruzan v. Dir., Mo. Dept. of Health, 497* U.S. 261 (1990)). In addition, it has been argued that a Fourteenth Amendment property right in one's body precludes state prohibition of assisted suicide. Roger F. Friedman, *It's My Body and I'll Die if I Want To: A Property-Based Argument in Support of Assisted Suicide,* 12 J. Contemp. Health L. & Pol'y 183 (1995).

[9] In his famous dissent in *Olmstead v. United States, 277* U.S. 438, 478 (1928), Justice Brandeis stated that the framers of the federal Constitution "conferred, as against the government, the right to be left alone--the most comprehensive of rights, and the right most valued by Civilized men."

So. 2d 544, 548 (Fla. 1985). The United States Supreme Court has found that the federal Constitution encompasses a right of privacy that protects the decision-making or autonomy zone of an individual's privacy interests, including matters concerning marriage, procreation, contraception, child rearing and education. See, ***Roe v. Wade,*** 410 U.S. 113 (1973).

In defining the concept of privacy for purposes of applying Florida's Privacy Amendment, this Court has stated:

> ... the concept of privacy encompasses much more than the right to control the disclosure of information about oneself. "Privacy" has been uaed interchangeably with the common understanding of the notion of "liberty," and both imply a fundamental right of self-determination subject only to the state's compelling and overriding interest. For example, privacy has been defined as an individual's "control over or the autonomy of the individual of personal identity" . . . . as a "physical and psychological zbne within which an individual has the right to be free from intrusion or coercion, whether by governments or by society at large."

(emphasis added) (citations omitted) In re Guardianship of Browning, 568 So, 2d at 9.[10]

The threshold question in this case is whether Mr. Hall's interest in ending his life with dignity is a privacy interest under the Florida Constitution. In the context of disclosural privacy, this Court has said that the appropriate test

---

[10] In ***Rasmussen v. South Fla. Blood Serv., Inc., 500*** So.2d 533, 536 (Fla. 1987), this Court held that the Privacy Amendment provides "an explicit textual foundation for those privacy interests inherent in the concept of liberty."

for answering this question is whether the individual claiming the interest has a "reasonable expectation of privacy." *Winfield v. Division of Pari-Mutuel Wagering, 477 So.* 2d at 547. Clearly, a terminally ill individual such as Mr. Hall has a reasonable expectation of privacy (i.e., self-determination) in seeking to end his suffering with the assistance of his personal physician. If the Privacy Amendment means anything, it must mean that the State may not intrude into the most personal and private decisions in an individual's life without a very strong justification.

This Court recognized the primacy of the right at issue when it concluded, "[w]e can conceive of few more personal or private decisions concerning one's body that one can make in the course of a lifetime . . . [than] the decision of the terminally ill in their choice of whether to discontinue necessary medical treatment." *In* re *T.W.,* 551 So. 2d 1186, 1192 (Fla. 1989); see, *Public Health Trust* v. *Wons,* 541 So. 2d 96 (Fla. 1989). Similarly, it is difficult to conceive of a more personal or private decision than that of a terminally ill individual to hasten his or her death with a medication prescribed by a personal physician.[11] When the alternative is drug-induced unconsciousness or continuous pain and suffering, hastening death in this manner is an appropriate medical option under the circumstances.

---

[11] "A competent person has the constitutional right to choose or refuse medical treatment, and that right extends to all relevant decisions concerning one's health." *In re Guardianship of Browning, 568 So.* ad at 11.

The State claims that Mr. **Hall's** privacy interest is not implicated because Florida Statutes Section 782.08 is directed against the person assisting the suicide. However, the State acknowledges that a statute prohibiting suicide would constitute a governmental intrusion into ***Mr.* Hall's** sphere of **personal decision-**making. As discussed ***infra,*** terminally ill individuals require the assistance of their knowledgeable and trusted physicians in order to end their lives in a safe and humane manner. Therefore, the State's prohibition against assisting suicide directly impedes Mr. Hall's exercise of his privacy interest in ending his suffering.'*

The privacy interest asserted here is no less compelling than the interests recognized by this Court in other cases involving self-determination and end-of-life issues. This Court and courts throughout this State have held that individuals, regardless of whether they are terminally ill, may refuse medical treatment even if it will result in death. *Matter of Dubeuil, 629* So. **2d** 819 (Fla. 1993); *In re Guardianship of Browning, 568 So.* **2d** at 11; ***Public Health Trust*** v. ***Wons,*** 541 So. **2d** 96 (Fla. 1989); ***John F. Kennedy Memorial Hospital Inc. v. Bludworth, 452 So.*** 2d 921 (Fla. 1984) ; ***Satz v. Perlmutter, 362 So.*** 2d 160 (Fla. 4th DCA **1978), *aff'd with opinion, 379 So.*** 2d 359 (Fla. 1980); ***Singletary*** v. ***Costello,*** 665 So. 2d 1099 (Fla. **App.** *4* **Dist.** 1996); *Corbett v.*

---

[12] It would be strange constitutional doctrine that terminally ill individuals have a right to end their suffering, but only in a manner that may result in greater suffering (e.g., coma, brain damage, greater pain).

D'Alessandro, *487 So.* 2d 368 (Fla. 2d DCA 1986); *In re Guardianship of Barry,* 445 So. 2d 365 (Fla. 2d DCA 1994); *St. Mary's Hosp. v. Ramsey, 465* So. 2d 666 (Fla. App. 4 Dist. 1985).

In *Matter of Dubeuil, Singletary* v. *Costello,* and *Public Health Trust v. Wons,* the individuals claiming a right to self-determination were not terminally ill. In *In re Guardianship of Browning, John F. Kennedy Memorial Hospital Inc. v. Bludworth, Corbett v. D'Alessandro,* and *In re Guardianship of Barry,* the individuals were not even currently competent. However, all were granted the right to control their lives and their deaths (in some cases through advance directives or substituted judgment). Mr. Hall, who currently is competent and terminally ill, and who is fully conscious of his brief remaining life, his pain and suffering, and his desire to die, is entitled to the same respect.

2. The Privacy Interest Asserted Here Is Fundamental and May Not Be Impaired Without a Compelling State Interest

This case is about the ability of a competent terminally ill individual to seek assistance from a trusted physician to die with dignity. However, it is equally about whether we, as a society, believe that the State should be allowed to impose itself at the patient's deathbed, between the patient, family members and the physician, as an equal medical decision maker. It is about whether terminally ill individuals are accorded the respect for the autonomy to which they are entitled in making what may be the most difficult decision of their lives, and whether the State may

incarcerate their physicians for honoring their requests for assistance in effecting these decisions.

Interference with the final wishes of a dying person is unacceptable in a free society, and violates their fundamental right to privacy as to the manner and time of their death.[13] In initially setting forth the standard for reviewing privacy interests under the Privacy Amendment, this Court has held that:

> The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion upon privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

Winfield v. Division of Pari-Mutuel Wagering, 477 So. 2d at 547.

More recently, and equally as relevant, this Court has found that:

> The state has a duty to assure that a person's wishes regarding medical treatment are respected. That obligation serves to protect the rights of the individual from intrusion by the state unless the state has a compelling interest great enough to override this constitutional right. The means to carry out any such compelling state interest must be narrowly tailored in the least intrusive manner possible to safeguard the rights of the individual.

---

13 On this point, U.S. Supreme Court Justice Stevens concluded in his dissent in *Cruzan* that "[c]hoices about death touch the core of liberty. Our duty, and the concomitant freedom, to come to terms with the conditions of our own mortality are undoubtedly 'so rooted in the traditions and conscience of our people as to be ranked as fundamental...'" (emphasis added) *Cruzan v. Dir., Mo. Dept. of Health, 497* U.S. 261, 344 (1990).

In **re** *Guardianship of Browning,* **568** *so.* **2d at 13-14;** *see, also Matter of Dubeuil, 629 So.* **2d at 822.**

A principled reading of **these** cases assures **that the constitutional protection afforded therein will be provided to the decisions of terminally ill individuals to end their lives with the assistance of their physicians. The State may not interfere with such decisions in the absence of a compelling state interest, achieved through a narrowly-tailored regulation. The blanket prohibition on any form of assisted suicide** has **not been justified by any compelling state interest, and is certainly not the least intrusive means by which to achieve any legitimate interests the State may have.**

3. There is No Compelling State Interest in Denying Terminally Ill Individuals the Right to Die, and the Individual's Privacy Interest Substantially Outweighs Any State Interests

There is no compelling state interest that justifies the wholesale denial of the right of a suffering, terminally ill individual to end his or her life with dignity. The interest being asserted here is a fundamental privacy interest, and any State restriction on pursuing that interest must be narrowly tailored. ***Winfield*** *v. Division of* ***Pari-Mutuel*** *Wagering, 477 So.* **2d** at **547-48. The restrictions imposed by Florida Statutes Section 782.08 are not narrowly tailored; they fully preclude individuals from obtaining the assistance of their physicians in hastening their death.**

Although the appropriate standard for reviewing the privacy interests of free citizens is the compelling state interest

test, several courts, including the trial court below, have applied a balancing test to determine whether the individual's privacy interest is outweighed by the State's interest in interfering with his or her self-determination. As the trial court found, the balance weighs heavily in favor of the individual. *McIver* v. *Krischer*, Case No. CL-96-1504-AP at 16. *Amici* also assert that the interests of the State in protecting competent people with terminal illnesses (or people with other disabilities) is no greater than its interest in protecting other competent individuals.

Amici recognize the legitimate interest of the State in protecting and preserving life. However, the interest in protecting life is best furthered by ensuring that the decision to end life with the assistance of a physician is made voluntarily, by a competent, terminally ill individual through the adoption of carefully-tailored, enforceable guidelines. While Amici recognize the State's interests in protecting individuals from the actions of others, they and the majority of people with disabilities in this country do not want the protection of the State from their own actions and decisions. Louis Harris and Associates, Harris Poll no. 9, Table 105 (1995).

The State's interest in *preserving* life diminishes, and the interest of the individual to be protected from state intrusion increases, "as the prognosis dims." *John F. Kennedy* Memorial *Hospital Inc. v. Bludworth, 452 So.* 2d at *924; Satz v. Perlmutter, 379 so.* 2d at 360-61; see, *also In Re Quinlan, 355* A.2d 647 (N.J.

1976), cert. *denied sub nom Garger v. New Jersey, 429* U.S. 922 (1976). AS this Court has recognized, "there is a substantial distinction in the State's insistence that human life be saved where the affliction is curable, as opposed to the State interest where, as here, the issue is not whether, but when, for how long and at what cost to the individual [his or her] life may be briefly extended." *Satz v. Perlmutter, 362 So.* 2d at 162; see, *also In re Guardianship of Browning, 568 So.* 2d at 14.

This Court has consistently found that the privacy interests of terminally ill individuals to end their lives outweigh any and all State interests in preventing this from occurring. *John F. Kennedy Memorial Hospital Inc. v. Bludworth, 452* So. 2d at *924; Matter of Dubeuil, 629 So.* 2d at 828; *In re Guardianship of Browning,* 568 So. 2d at 14. Clearly, the interest of the terminally ill individual in seeking medical assistance to end his or her suffering far exceeds that of the State in preserving what little life remains.

4. Protecting People with Terminal Illnesses or other Disabilities from Potential Abuses Can Be Accomplished Through State Regulation

The State's interests in preserving and protecting life may extend to ensuring that all individuals who seek physician assisted suicide are competent adults who have made their decision voluntarily, without coercion or undue influence. They might also encompass efforts to ensure that the individual has had access to medical or psychological counseling and is fully aware of his or her options. See, personal statement of *Amicus* Barbara Swartz.

Amici believe that these interests can be protected through the legislative enactment or court implementation of guidelines, so long as they do not impose an undue burden "with the purpose or effect of placing a substantial obstacle in the path of" the ability to make the constitutionally protected decision. see, *Planned Parenthood v. Casey, 505* U.S. 833, 877 (1992). In the context of physician assisted suicide, the state may not regulate with the purpose or effect of placing a substantial obstacle in the path of a terminally ill individual to end his or her life with the assistance of a physician.

There are, however, clear measures that the State might take to protect its legitimate interests. In particular, as long as it does not cross over the substantial-obstacle line, the State might impose the following safeguards to ensure competent, voluntary decisions and prevent coercion:

- requiring the individual to repeat the request on more than one occasion;
- requiring the request to be witnessed by more than one doctor;
- requiring the individual to be provided an opportunity to discuss the decision with a mental health professional;
- requiring the individual to be informed of programs and resources that are available to sustain or improve his or her remaining life; and
- requiring the individual to be informed on several occasions that he or she may change his/her mind at any time.

In addition, the State may require hospitals, nursing homes, and other medical institutions to report on their compliance

with these requirements. Model legislation has been developed with the objective to ensure that there are adequate safeguards to protect people with AIDS and other disabilities. See, J.B. Gabel, *Release from Terminal Suffering: The Impact of AIDS on Medically Assisted Suicide Legislation, 22* Fla. St. U. L. Rev. 369, 433 (Fall 1994).

Amici recognize the importance of ensuring that the right of terminally ill individuals to obtain physician assistance in dying with dignity is not abused, that all individuals who choose to hasten their deaths do so freely, without pressure or coercion, and that they are aware of available options should they choose to continue to live. See, personal statement of *Amicus* Susan Webb.

B. The Right To Assistance In Dying Will Benefit People With Terminal Illnesses, And Will Not Adversely Affect Other People With Disabilities

1. Neither the Strong Privacy Interest in Hastening Death, Nor the Diminished State Interest in Interfering With This Decision, Are Based on Any Externally-Imposed Quality-of-Life Considerations

Some disability organizations opposing the right to assisted suicide contend that the right is based on a societal perception that people with terminal illnesses and other disabilities have a diminished quality of life. This argument misapprehends the right at issue. It completely discounts both the ability of terminally ill individuals to know when their suffering has irretrievably eliminated any personally meaningful quality of life, and the importance to those individuals of not being fettered by societal pressures to stay alive and suffer longer. While

stereotypes of people with disabilities having lives of diminished value persist in many segments of society, such perceptions have no bearing on the recognition of a terminally ill individual's right to determine when meaningful life, as that person defines it, has come to an end.

Ironically, by hinging their opposition to physician assisted suicide on the argument that it is merely the reflection of society's perception that the lives of people with terminal illnesses or other disabilities are devalued, opponents ask the Court to ignore and override the right of these same individuals to make a decision that reflects a deeply personal view of meaningful life -- perhaps the last significant personal choice left. Quality of life is a subjective valuation belonging to the individual, not the courts or the states. Whether the quality of the life remaining for a terminally ill person is sufficient to justify whatever pain and suffering he or she may be enduring is a decision for that person, and that person alone.[14] See, *In re Guardianship of Browning,* 568 So. 2d at 13.

2. **The Right to Hasten Inevitable** Death is *a* Benefit for People with Terminal illnesses That is Not Prohibited By the Equal Protection Clause, the Basic **Rights** Clause, or the Americans **with** Disabilities Act.

Some opponents of the right to physician assisted suicide argue that it would deprive people with disabilities of the equal

---

[14] For this reason, *Amici* disagree with that part of the procedure set forth by the trial court which would require the physician to make a determination of whether the terminally ill individual's decision "is objectively reasonable at the time."

protection of the laws and would otherwise discriminate against them in violation of the ADA and the Basic Rights Clause of the Florida Constitution." These arguments are based on a fundamental mischaracterization of the right. They characterize the benefit to terminally ill individuals of a right to hasten their own death as the discriminatory denial of a statutory right to be protected from their own decisions. Regardless of this flip-flopped reasoning, the majority of people with disabilities regard the right to death with dignity as a benefit, not a legal detriment.

The Equal Protection Clause of the Fourteenth Amendment commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws," which essentially means that all persons who are similarly situated should be treated alike.[16] *City of Clebuxne, Tex. v. Cleburne Living Center, 473*

---

[15] The Florida Constitution's Basic Rights Clause states in relevant part that "[n]o person shall be deprived of any right because of . . . physical handicap." FLA. CONST. art. I, § 2.

[16] It is currently not clear what standard of review should apply to legislative classifications based on disability for purposes of equal protection analysis. On the one hand, the U.S. Supreme Court clearly found that people with mental retardation (perhaps the most vulnerable group in the disability community) are not entitled to heightened scrutiny. *Cleburne, 473* U.S. at 422. On the other hand, *Cleburne* was decided in 1985, prior to the Congressional enactment of the ADA, which states that "individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society based on characteristics that are beyond the control of such individuals . . . ." 42 U.S.C. § 12101(a)(7). Based on this finding, this Court may find that legislative classifications based on disability must receive the highest level of scrutiny. *Cf. Trautz v. Weisman, 819* F. Supp. 282 (S.D.N.Y. 1993). Whichever standard this Court decides to apply, (continued...)

U.S. 432, 439 (1985). The Florida Constitution has a similar provision that has been interpreted consistently. The threshold question is whether people with terminal illnesses are similarly situated to non-terminal individuals with respect to their interest in dying. The answer is clearly no. Terminally ill individuals who are at the end of their lives, often with severe pain and suffering, have a different interest in end-of-life decisions than others.

Moreover, given the nature of the right at issue here, it is more appropriately viewed as an interest held by all individuals that may be exercised as a right if and when they become terminally ill, rather than a right held by terminally ill individuals and not others. Terminal illness, like disability generally, does not discriminate; it can affect anyone. Denying people who are not terminally ill the right to end their lives with physician assistance, until such time that they become terminally ill, does not deny them equal protection.

The second question is whether the right to assisted suicide deprives people with terminal illnesses of a benefit that is available to other individuals. Again, the answer is no. The right being asserted here would give terminally ill individuals an additional choice that they currently do not have. It would not require them in any way to exercise that choice. It would not deprive them of life. It would not deprive them of protection from

---

16(...continued)
the right of terminally ill individuals to end their lives does not violate the Equal Protection Clause for reasons discussed herein.

murder. It would not deprive them of state suicide prevention services. In fact, it would not deprive them of anything other than the potential harm and abuse that occurs when the exercise of so intensely personal a right is forced underground.

The ADA prohibits actions by or policies of public entities that "exclude from participation in" or "deny the benefits of" any program, service, or activity of a public entity or by which persons are "subjected to discrimination by any such entity." 42 U.S.C. § 12132. Again, the right being asserted does not deny any benefit to any person with a disability, nor does it exclude any person with a disability from participation in any state program, service or activity.[17] The ADA was not intended to prevent people with disabilities from having greater options than other people, particularly when they are entirely free not to exercise those options.

Moreover, the ADA was not intended to protect people with disabilities from their own decisions. One form of discrimination against people with disabilities explicitly mentioned as a basis

---

[17] The one way in which the ADA may be applicable, however, is with respect to individuals with terminal illnesses who are not capable of self-administration of the lethal drug. Certain people with disabilities, such as some people with quadriplegia, have physical limitations which severely restrict or render impossible the ability to self-administer drugs. Modern technology has resolved this issue in large part through the development of assistive devices that allow these individuals to self-administer. However, to the extent that some who are terminally ill are incapable of self-administration even with an assistive device, the ADA would probably require that they be permitted the assistance of a physician in administering the drug. Such administration would be entirely consistent with the active role physicians currently play in conducting abortions and in terminating life support systems.

for the ADA is "overprotective rules and policies." 42 U.S.C. § 12101(5). Terminally ill individuals have a particularly strong privacy interest in not being "protected" by the State from their own end of life decisions. The right to obtain physician assistance to hasten their death is a significant benefit to them. They neither seek nor need protection from this choice.

3. The Standard of Terminal Illness Will Allow the State to Prevent People Who Are Not Terminally Ill from Ending Their Lives With Physician Assistance

Some disability organizations that oppose assisted suicide contend that this right inevitably will be expanded to people with disabilities who do not have terminal illnesses. There is no reason this will occur. The requirement that the individual seeking to end his or her life must have a terminal illness that makes death imminent and inevitable is readily capable of definition and implementation.

Some opponents point to the Netherlands as proof that the right to physician assisted suicide cannot be contained to people with terminal illnesses. Any such comparison is misleading. In the Netherlands, physician-assisted suicide is not allowed by statute, but physicians who adhere to official guidelines will not be prosecuted for assisting patients who request assistance in dying. However, those guidelines have never required that the patient be terminally ill or that the patient's suffering be physical. Chris Docker, *Euthanasia in Holland,* ¶ 1 (1996) <http://www.euthanasia.org/ dutch.html>.

Two recent studies of doctor-assisted death in the Netherlands suggest that tolerance of the practice has not produced the "slippery slope" leading to abuses which critics have predicted. P.J. van der Mass, et al., *Euthanasia, Physician-Assisted Suicide and Other Medical Practices Involving the End of Life in the Netherlands, 1990-1995, 335 N.* Eng. J. Med. 1699 (1996); G. Van Der Wal et al., *Evaluation of the Notification Procedure for Physician-Assisted Death in the Netherlands, 335* N. Eng. J. Med. 1706 (1996); M. Angel, *Euthanasia in the Netherlands -- Good News? Or Bad?, 335 N.* Eng. J. Med. 1676 (1996). The situation in the Netherlands, therefore, provides no support for the proposition that the right limited to terminally ill individuals in our country will necessarily be expanded.

4. The Standard of Voluntariness Will Allow the state to Ensure Only Competent Individuals Who Choose to Hasten Death With Assistance Are Allowed to Do So

Opponents of the right to die further assert that people with disabilities will be induced to end their lives by others who consider them inferior or a burden. However, the right asserted here is based entirely on the voluntary choice of a competent individual with a terminal illness to end his or her life. As discussed above, the State is free to enact regulations to ensure that these persons are competent and not subject to coercion or undue influence. Despite such standards, opponents contend that this right will be extended to incompetent individuals. They base this conclusion on case law concerning the right to refuse life-

sustaining medical interventions. However, such expansion is by no means inevitable and may be precluded by this Court's decision.

While competent individuals in both situations are similarly situated for purposes of equal protection analysis, the right to withdraw life support is based fundamentally on the common law right to be free from bodily invasions. ***Cruzan v. Dir., Mo. Dept. of Health,*** 497 U.S. at 269. The courts have appropriately found that, like competent individuals on life support, incompetent individuals have a right to be free from such invasions. The right to assistance in dying is based on the interest of the terminally ill individual to control his or her life. Because the right is based on the autonomy of the individual, it may be limited to those individuals who are capable of autonomy--competent adults.

5. Physician Assisted Suicide is Fundamentally Different Than Euthanasia, and Recognizing the Right to Assisted suicide Will Not Implicate *a* Right to Conduct Euthanasia

Some organizations that oppose physician assisted suicide contend that this is the first step toward a society in which life is devalued and people with disabilities are routinely killed by their doctors. These groups point to the **"euthanasia"** program authorized by Nazi Germany in the 1930s as a graphic example. ***Amicus*** Hugh Gallagher, author of ***By Trust Betrayed: Patients, Physicians and the License to Kill in the Third Reich*** (Vandamere Press, **1995),** and one of the world's foremost experts on the Nazi euthanasia program, describes in his personal statement why this analogy between euthanasia and physician assisted suicide is

fundamentally flawed. In indicating his support of the right to assisted suicide, he concludes that:

> The **Nazi's** euthanasia program offers a horrible example of how easy it is to go wrong when the state or a group authorized by the state is allowed to assume the power to judge the worth of another. Ironically, this program is now being used by some as a justification to deny Americans in the terminal stage of illness the right to die with assistance. In fact, the German experience shows how important it is that the autonomy of people with disabilities be honored in all aspects of their lives....
>
> The case of assisted suicide is quite different: the patient with a terminal illness retains complete choice over whether to live or to die. Neither the state nor the physician **may** decide, based on their conceptions of the individual's quality of life; the individual must assess his or her own quality of life. This is true whether or not the individual has a disability....
>
> To my mind, the issue **comes** down **to control --** control over **one's** Self. This control over Self is the very heart of the disability rights struggle. In Nazi Germany 60 years ago, people with disabilities were deprived of all control over their Selves. They were killed not because they sought death but because they did not measure up to **"quality** of **life"** standards set by their physicians with the concurrence of the state. This must never happen here.

Personal statement of **Hugh Gregory Gallagher.**

As with other arguments offered in opposition to the right at issue here, the generalized suggestion that its recognition will lead to wide-scale abuse or murder of people with disabilities ignores the reality, and importance, of the facts of the individual's circumstances and beliefs here. **Recognition** of a fundamental right should not be held hostage to speculations about

abuses in the event the right is exploited in a way that is not at issue before this Court. The right of terminally ill individuals to seek assistance in hastening death does not require, or lead to, a determination of the constitutionality of involuntary euthanasia, any more than recognition of the right of reproductive choice required, or led to, a determination of whether women could legally murder their born children or whether doctors with personal opposition to abortion could be forced to perform them.

The Court should not be distracted from the precise issue before it by a request that it base its decision on hypothetical consequences that are not now, or likely in the future to be, at issue.

c. Denial Of The Right To Assistance In Dying Would Deny People With Terminal Illnesses The Equal Protection Of The Laws

While Mr. Hall, who is currently in the terminal stage of his illness, is not similarly situated to people who are not terminally ill for purposes of Equal Protection Clause analysis, he is similarly situated to competent people on life support who have clearly indicated that they do not wish to live under such circumstances. Amici agree with the decision of the trial court, adopting the analysis and conclusions of the Second Circuit Court of Appeals, that allowing terminally ill people on life support and

not others to end their lives violates the Equal Protection Clause.[18] The trial court found that:

> ... suicide by the 'terminally ill through their refusal of life supporting or sustaining treatment is constitutionally protected, while it is argued that suicide with the assistance of a physician through the introduction of a death producing agent is not. Physicians are permitted to assist their terminal patients by disconnecting life support or by prescribing medication to ease their starvation. Yet, medication to produce a quick death, free of pain and protracted agony, are prohibited. This is a difference without distinction.

McIver v. Krischer, Case No. CL-96-1504-AF at 16; see, *also* personal statement of *Amicus* Barbara Swartz.

D. **A Compassionate Society That Respects People With Disabilities Must Not Deny Terminally Ill Individuals The Right To End Their Buffering With Assistance**

People with terminal illnesses have an immediate and urgent privacy interest in the right to hasten their death with the assistance of their physicians, whether or not they decide to exercise that right. Diseases such as cancer and AIDS may cause great pain and suffering, physical deterioration, and mental anguish. A society that cares about these individuals and that respects their autonomy must not deny them the opportunity to

---

[18] In analyzing the statutory provisions concerning assisted dying in New York (which are similar to those in Florida), the Second Circuit found that "New York does not treat similarly circumstanced persons alike: those in the final stages of terminal illness who are on life-support systems are allowed to hasten their deaths by directing the removal of such systems; but those who are similarly situated, except for the previous attachment of life-sustaining equipment, are not allowed to hasten death by self-administering prescribed drugs." *Quill,* 80 F.3d at 729.

shorten the period of their suffering and to die with dignity in a safe and effective manner, with the assistance of their physicians.

1. The Decision of a Competent, Terminally Ill Individual to End His or Her Life Must Be Assumed to Be Rational and Should Be Respected

In our legal system, the decisions of competent individuals are presumed to be rational.[19] This presumption applies to the decisions of people with disabilities, and any contrary assumption by a state in establishing its policy would violate the ADA and our national policy concerning people with disabilities. Therefore, the State may not assume that the decision of a competent terminally ill individual to end his or her life is irrational and may not base a policy precluding assisted suicide on such an assumption.

Yet, some disability rights advocates who oppose the right to die seem to argue that people with disabilities are not capable of autonomy for purposes of determining when and how they should face death from a terminal illness. The reason for this apparent inconsistency with their basic philosophy is that, they contend, many people with disabilities have so few resources or viable options, and the pressures to contain health care costs are so great, that they cannot make a rational, uncoerced choice to end their lives. This inconsistency is unacceptable to *Amici* and the majority of people with disabilities.

---

[19] See, Fla.Stat. § 744.102(10) (ed. 1996).

Amici are leaders in the disability community who are committed to improving the lives of all people with disabilities and to enhancing the options available to them. They agree that our society often does not provide the support necessary for people with disabilities to live independently in their communities. However, the fact that the circumstances of the disabled population are, as a whole, far less than ideal in this country, and are likely never to be perfect, is no justification for depriving those who have a terminal illness of the right to end their suffering. These individuals are entirely capable of making rational decisions. See, e.g., personal statement of Susan Webb.

As indicated above, between 66 and 90 percent of people with AIDS support the right to assisted suicide. Significantly, the study that found that more than half (55 percent) have considered this option for themselves, also found that the strongest predictor of interest in physician assisted suicide was having witnessed terminal illness in a family member or friend. Breitbart, supra at 242; Tindall, *supra* at 1069. This suggests that these individuals know from personal experience the pain and suffering a terminal illness can impose, and have concluded that a person should have the right to end that agony, if they so choose. According to one observer:

> Patients who are dying of cancer and wish to lessen their suffering raise the concept of rational suicide. They are competent to make decisions, feel that they have completed their contribution to the world, and are unlikely to contribute anything more in the few weeks remaining. The disease is advanced and

> advancing, and they understand and accept it. Estimates of survival are in weeks rather than months, and they are quite willing to relinquish the possibility of another remission. They do not believe in miracles. Indeed, their condition may be so pitiful as to command the sympathy of family, friends and caregivers alike. The only desire is to shorten the process of dying and terminate the suffering.

Charles F. **McKhann, *Is There a Role for Physician-Assisted Suicide in Cancer? Yes.*** Important Advances in Oncology, 267, 269 (1996).

2. Recognition of the Right to Receive Physician Assistance Will Serve to Ensure Safety and Curtail Abuse

As was true with abortion in the years before the U.S. Supreme court's decision in ***Roe v. Wade,*** the continued criminalization of physician assisted suicide has not stopped many physicians from aiding competent patients to end their suffering. See, Jody B. Gabel, ***Release From Terminal Suffering? The Impact Of AIDS on Medically Assisted Suicide Legislation,*** 22 Fla. St. U.L. Rev. 369, 372-73 (1994); L. Slome, J. Moulton, C. Huffine et al., ***Physicians' attitudes toward assisted suicide in AIDS,*** 5 J. AIDS 712-18 (1992); Dick Lehr, ***Death & the Doctor's Hand, Increasingly, Secretly, Physicians Are Helping the Incurably Ill to Die,*** Boston Globe, Apr. 25, 1993 at 1.

In the face of legal prohibitions on physician assistance, others are coming to the aid of the dying. One recent study surveyed 1139 critical care nurses in the United States, of which 71 percent practiced exclusively in intensive care units for adults. Of that group, 17 percent reported requests from patients

or family members for euthanasia or assistance in suicide; 16 percent of those asked, did so. An additional 4 percent stated they had hastened a terminally ill patient's death by pretending to provide life-sustaining treatment ordered by a physician. David Asch, *The Role of Critical Care Nurses in Euthanasia and Assisted Suicide,* 334 N. Eng. J. Med. 1374-79 (1996).

One California study of persons caring for loved ones with AIDS found more than 10 percent of these caregivers reported giving drugs to hasten their loved ones' death. M. Coode, L. Gourlay, L. Collette *et* al., *Dying of AIDS: The Role of Caregivers in Terminal Care and Hastened Death,* Center for AIDS Prevention Studies, University of California, San Francisco, Paper presented at the 10th International Conference on AIDS, Yokohama, Japan, August, 1994.

The ban on assisted suicide has simply ensured that persons lacking the requisite training will continue to intervene on behalf of those wishing to die. A desperate individual left to his or her own devices may likewise be forced to resort to whatever means are available to curtail suffering, such as "hanging, suffocation or shooting." Jeremy A. Sitcoff, *Death with Dignity: AIDS and a Call for Legislation Securing the Right to* Assisted *Suicide,* 29 J. Marshall L. Rev. 677, 687 (1996). Without physician assistance, the consequences may be other than intended, potentially resulting in severe injury (e.g., coma, brain damage or increased agony). "Often, the person who has made a rational

choice to die with dignity must accept his death in a totally undignified manner". *Id.*

3. People with Terminal Illnesses Should Not Be Compelled to Die in a Drug-Induced Semi-Conscious Haze

The typical treatment of people with terminal illnesses that cause great pain is to administer high levels of pain medication, which typically puts the individual in a semi-conscious state for an extended period of time. In administering this medication, the physician is fully aware that there is a significant probability of killing the patient. However, this is considered sound medical practice, while assisting an individual with the intent to help the individual end his or her life is a criminal act.

Individuals should not be forced to spend their final days in a drug-induced stupor to alleviate their pain. To many individuals, the prospect of leaving this world in such a state of prolonged semi-consciousness is a fate worse than death. With the option of physician assisted suicide, terminally ill individuals may choose to remain fully conscious, recognizing that they may end their suffering permanently at any time. This option, therefore, allows them to spend their remaining days saying good-bye to their friends and relatives and putting their affairs in order. To them, and to most people, this dignified exit is far preferable to having their loved ones look on hopelessly as they slowly drift from drug-induced semi-consciousness to death.

4. physician Assisted Suicide Allows People with Terminal Illnesses to Postpone Ending Their Lives Until a Later Phase of Their Illness

The recognition by people with terminal illnesses that they can end their suffering often gives them the will to continue to live. A strategy of many terminally ill individuals is to determine the point in the disease process when it would be unbearable to live and to decide to end their lives at that point. The control that this gives them over their lives often allows them to sustain a willingness to live. Many times, individuals reach the planned point and extend their self-imposed limit to a later stage of the disease. Often, they postpone the decision permanently, and die from the disease. Mary Evangelisto, *Death with Dignity: End-of-Life Issues for the HIV/AIDS Patient, 34* J. Psychosoc. Nurs. 45, 46 (1996).

IV. CONCLUSION

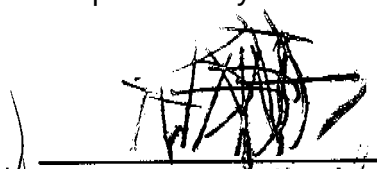
Issues of autonomy and self-determination are at the heart of the struggle of people living with disabilities. They want to be able to control the decisions that affect their lives. Like the majority of Americans, they particularly do not want the State to deprive them of such control during their final days, if they have decided their suffering is intolerable. This decision must be made by the individual in consultation with his or her loved ones and personal physician. The State has no legitimate place interfering in this profoundly personal decision making process.

The right of terminally ill individuals to control their deaths is fundamental. There are few, if any, interests that are more private or more basic to individual liberty, and few, if any, circumstances in which the State's interest is less. *Amici* do not want to be deprived of this right by the State simply because others, including others with disabilities, may not make this choice for themselves or because of concern over potential abuse. They do not want their disabilities to be used to justify the denial of this right to others. The interests of a dying person to control the remainder of his or her life far outweighs any state interests. There is certainly no state interest sufficient to prohibit all people with terminal illnesses from obtaining compassionate assistance in dying from their physician.

Amici are committed to ensuring that the right to physician assisted suicide is exercised fairly and appropriately. They believe that the majority of individuals who have available the option of physician assisted suicide will choose to live, comforted by the knowledge that the decision to continue to live is their own and that they can end their suffering at any time if it becomes too great. The enormous interest in this case by members of the disability community ensures that multitudes of disability rights advocates, including Amici, as well as other concerned individuals, will do everything they can to ensure this right is not abused.

The decision of the trial court that people with terminal illnesses have a privacy right in ending their lives with the assistance of their physicians should be affirmed.

Respectfully Submitted,

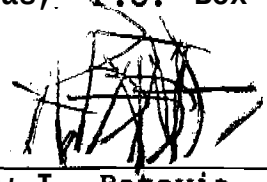


Andrew I. Batavia,*
Marina L. Fontani
Susan F. Dournaux
McDERMOTT, WILL **&** EMERY
2200 Miami Center
201 South Biscayne Boulevard
Miami, Florida 33131
Telephone: ***(305) 358-3500***

**** Counsel of Record***

ERTIFICATE OF SERVICE

I HERERBY CERTIFY that on March 28, 1997, true and correct copies of the foregoing were served via Federal Express on the following: Michael A. Gross, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, Special Projects Division, PL-01 The Capitol, Tallahassee, FL 32399-5899 and Robert Rivas, Rivas & Rivas, P.O. Box 2177, Boca Raton, FL 333427-2177.



Andrew I. Batavia, Counsel *of Record*

\09964\020\BRIEFAMI.005

APPENDIX:

STATEMENTS OF TEE AMICI CURIAE