

SUPREME COURT OF FLORIDA

BARRY KRISCHER,  
Petitioner,

v.

CECIL McIVER, etc., et al.,  
Respondents.

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CASE NO. 89,837

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AMICUS CURIAE BRIEF

OF

THE FLORIDA SILVER HAired LEGISLATURE0 INC.

IN FAVOR OF

PHYSICIAN ASSISTED AID IN DYING

**FILED**

SID J. WHITE

MAR 31 1997

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

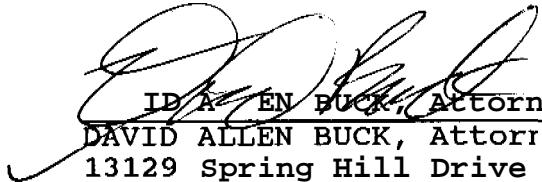
  
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### INTEREST OF THE AMICUS

The Florida Silver Haired Legislature, Inc. is a Florida, not-for-profit, Corporation, composed of the older Citizens of Florida, who volunteer, at their own expense to become members. The eleven Areas select their Representatives and Senators, who annually attend their session in Tallahassee, meeting in the House and Senate chambers in the State Capitol. Their process of introduction of Bills, consideration by Committees, and then the House and Senate, parallels that of the Florida Legislature. In their 1996 Session, they passed the "Florida Death with Dignity Bill", a copy of which is attached, and then voted to make this "Bill" one of the top four in their priority. The Florida Silver Haired Legislature, Inc., has no axe to grind, supports no Candidates, and only advocates its properly adopted positions. We believe we are uniquely able to represent the interests and the thinking of the Older segment of our population, which is quite significant in Florida, and most especially in the area of legalizing physician assisted aid in dying, which affects primarily the older part of our population. Their position is based on their many years of experience in life and dying, and on their observations of the related issues. Therefore, we request that this Court will sincerely consider our views in full support of physician assisted aid in dying, which is called "assisted suicide" by others.

STATEMENT OF THE CASE AND FACTS

The Case before this Court is an Appeal from the Circuit Court of Palm Beach County, in which the Court held that a Physician could lawfully assist a person in dying, and that the Physician would not be prosecuted under **the** provisions of FS § 782.08, which makes it a Felony to assist one in "self murder"

Your Amicus agrees with the Trial Court, and believes that **it should** have gone further to declare FS § 782.08 to be unconstitutional, and further **applied** the right **of** a physician to assist a **person** in dying, to all Persons in Florida.

Others use the terms "**Suicide**" and "Self-murder" **interchangeably**, but we do not think this **is** so. We believe that the true issue here is the right of any "**Person**" to "Physician Assisted Aid in Dying", which is what needs to be decided.

## SUMMARY OF ARGUMENT

We believe there is no "Compelling State Interest" in the preservation of life, against the decision of the person wishing to die, especially as to our elder citizens with abundant reasons for wanting to die. If the State believes there is, the State should be required to specifically plead as to these reasons, and then submit adequate, competent proof to back up these reasons.

We believe that F.S. § 782.08, is unconstitutional, in that it criminalizes one for "deliberately assisting another in the commission of self-murder", when there is no Statute that prohibits one from committing "self-murder"

We agree with the Trial Judge, in that the provisions of our Constitution, under the right to privacy, makes the assistance of one's suicide legal.

We very strongly believe that an individual who has rationally decided to end his life, for whatever reason, be it pain, suffering, loss of quality of life, or whatever, that person has a right to proceed to end his life, and further has a right to ask a Physician to provide the means to end his life, and that such Physician should not face criminal sanctions.

## ARGUMENT

### I. **THERE IS NO PRACTICAL DIFFERENCE IN THE WITHHOLDING OR WITHDRAWAL OF LIFE-PROLONGING TREATMENT, WHICH WILL CAUSE DEATH, AND PHYSICIAN ASSISTANCE AID IN DYING.**

When a man is on a respirator, and this is required for him to maintain life, he has a "RIGHT" to order the Doctor to turn off **the** respirator, and thus die. However if the same man asks the **Doctor** for Medication that he will take himself, and will cause his death, then that Doctor, who dares to furnish such medication, can be prosecuted for a Felony. Both sides in this Case quote various Case-Law, which supports their point. We, The Florida Silver Haired Legislature, **Inc.**, believe there is absolutely nothing but technical, nit-picking differences, which this Court should wipe out, and allow our Citizens the right to make their own decisions. Why should one person, who does not have a machine to disconnect, be forced to starve himself to death when there **is** a far more humane way to end his suffering?

## II. LACK OF A COMPELLING STATE REASON.

Throughout the various Briefs, it is said that there is a "Compelling State Reason", to keep one alive against ones will. We most strongly believe that where one sets forth a "Compelling State Reason", such should be pleaded in some exactitude, and then Compelling Proof should be required, followed by a "Finding" by the Court, that is subject to review on its merits by the Court deciding the Appeal.

We advocate that there is no compelling state reason to keep one alive against ones will, to require one to endure continuing suffering, physical pain, mental anguish, with complete loss of any purpose in life, and at great expense to the estate of the afflicted, when in contrast there should be a viable option to hasten a dignified and painless death, and that option should include the assistance of a physician to aid the person in his dying.

In the last resort, this Court could remand this Case to require that the State prove by Competent Evidence, subject to Cross Examination, and Rebuttal, exactly what the Compelling State Interest is in the keeping of the person alive against that persons will. We do not believe that the State will be able to produce such proof. The Trial Court then should be required to rule on each of the reasons put forth by the state, so that this Court can rule on the merits, the claimed "Compelling State Interest".

### III THE UN-CONSTITUTIONALITY OF F.S. § 782.08

Over the years, the State of Florida has systematically **repealed** all of the criminal provisions regarding to ones Suicide. The provisions regarding Suicide are well set forth in 16 Fla Jur 2d, HOMICIDE, page 63, § 1046, SUICIDE, which reads:

"At early common law, suicide was a felony, sometimes referred to as "self-murder," and it is still regarded as a criminal act in some jurisdictions. In Florida, however, the common-law consequences of suicide, such as attain of blood, confiscation of the instrument producing death, and public disgrace of the deceased, do not pertain. And although intentional self-destruction is regarded as morally reprehensible, neither self-murder not attempt to commit suicide is criminally punishable in this state. By statute, however, a person who deliberately assists another in the commission of self-murder is guilty of manslaughter."

To the ordinary Citizen, it is not understandable that when it is lawful for a person to do something, it can be a Felony for someone to assist him in his lawful endeavor. It should be noted that Prosecutions under F.S. § 782.08, are unheard of.

It is also to be noted that a death at the hand of another is not always Murder. If Justifiable Homicide is not Murder, then is not one who kills himself because of pain and suffering, justified in doing so, and therefore there is a Justifiable Homicide, not Murder, and the one assisting in the Justifiable Homicide, not Guilty of Assisting a Self-Murder??



#### IV THE RIGHT TO PRIVACY.

The Voters of Florida changed their Constitution to adopt the Right to Privacy, as one of our basic Constitutional guarantees. We advocate that this Court adopt the well reasoned position of the Trial Court, as to the application of this Constitutional provision to Assisted Suicide, or as we would rather put it the right to "Legalized Physician Assisted Aid in **Dying.**" This Court has approved a number of Decisions in which the Right to Privacy controls. These have been adequately briefed by others, **and** we adopt this reasoning, and urge this Court to **apply** same to the existing Case.

CONCLUSION

THE FLORIDA SILVER HAired LEGISLATURE, INC. has carefully considered this subject, and adopted as a Priority position, its "Bill" in favor of "LEGALIZED PHYSICIAN ASSISTED AID IN DYING" and believes this position represents the vast majority of the Elder Citizens of Florida. We urge this Court to Affirm the Trial Judge below, and additionally find the provisions of F.S. § 782.08, to be unconstitutional.

We feel that the State has failed completely to show that there is a Compelling State Interest in the keeping of people alive against their will, especially when there is no future, life has lost its meaning, and they are in pain and discomfort.

We feel the Right to Privacy provision of the Florida Constitution controls, and the State has no right to intercede.

We feel that this Decision is one that follows the logical progression of past decisions of this Court, and should be approved.

We feel that many of the various objections raised are primarily those of a religious nature, and should not be considered as a matter of Law affecting all of our citizens.

RESPECTFULLY SUBMITTED



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David Allen Buck  
Fla Bar # 0078344

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6 January 1997

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To: All Friends of The Florida Silver-Haired Legislature,

Re: Accomplishments of the 1996 Session of The Florida Silver-Haired Legislature, held in Tallahassee, Florida, October 14-18, 1996.

We, The Officers and Members of The Florida Silver-Haired Legislature, proudly submit the result of our work during the 1996 Year.

These Resolutions and Bills, are the result of a great many hours and days of dedicated work by all concerned. We do pass along, and submit for your approval, our work product.

We are very proud that many of our Resolutions and Bills, passed in years gone by, have resulted in meaningful legislation to the benefit of the Citizens of Florida.

Your Comment and Suggestions are most welcome.

THE FLORIDA SILVER-HAIRED LEGISLATURE, INC.

*Monroe W Treiman*

Monroe W. Treiman, Speaker of House, and CEO.

*Robert Winchester*

Robert Winchester, President of Senate.

*Dick Holmes*

Dick Holmes, Executive Director.

THE FLORIDA SILVER-HAIRED LEGISLATURE, INC.

The Florida Silver-Haired Legislature (FSHL) held its 9th annual legislative session in the Florida State Capitol Legislative Chambers, in Tallahassee, Florida, October 14-18, 1996.

The FSHL is a Statewide, Not-for-profit organization which highlights the needs of Older Floridians, as well as those of the general citizenry. It was initially created in 1978, as a state-funded program. Later, when the State withdrew financial support, The Florida Silver-Haired Legislature, Inc. was Chartered as a Florida not-for-profit Corporation in 1983.

All voting Florida Residents, 55 years of age or older are invited to join. Throughout the year, members meet within one of their 11 local Areas to study the problems facing Florida, and Florida's Elder Citizens, and to work on solutions by drafting, after due consideration, the ideas submitted by members, into proposals for Bills or Resolutions, for Consideration by the Annual Session of The Florida Silver Haired Legislature in the Capitol, Tallahassee, Florida.

At the Legislative Session, the proposed Resolutions and Bills are assigned to Committees of the House and Senate. The Committees, as in the Florida State Legislature, may **approve**, amend, or kill a proposed Resolution or Bill. If passed by the Committees, the House and Senate consider the proposed Resolutions and Bills on the Floor of that Chamber. If passed by both Senate and House, it is adopted as a part of the FSHL program. Additionally, members vote on the Ten Bills they wish to see recommended as our priorities. The end product is then distributed to the Florida State Legislators, our members of Congress, and to the many agencies we deal with, or may be interested in our recommendations. Individual members of the FSHL are asked to discuss our program and priorities with their own Legislators.

The State is divided into eleven areas, each area being headed by a Chairperson, who also sets on the Board of Directors of the FSHL, Corporation. Additionally, there is an Executive Board, which consists of the President **of** the Senate, President Pro-Tem of the Senate, Speaker of the House, Speaker Pro-Tem of the House, and one Executive Member at large. the position of CEO (President) is rotated between the President of the Senate and the Speaker of the House, with the positions of Corporate secretary, and Corporate Treasurer, being rotated between the Speaker Pro-Tem of the House, and President Pro-Tem of the Senate.

The Day to Day operations are handled by an Executive-Director, at the Corporation Offices. As of 1 January, 1997, the Headquarters has been Officially moved to St. Petersburg, and a new Executive-Director, **Dick** Holmes, assumed the position of Executive Director.

The FSHL is proud to note that a great many of their Bills and Resolutions have eventually found their way into Law. The FSHL is a grass-roots organization, all delegates are selected from the membership of their area, and pay their own way to the FSHL Session in Tallahassee. They are a dedicated group of "Senior-Citizens" who bring many, many years of experience in many fields to the organization. They spend many, many hours and days of their volunteer time to make Florida a better place to live.

We invite your comments and suggestions.

THE FLORIDA SILVER HAired LEGISLATURE  
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● (Voted Top Priority by delegates)

FLORIDA SILVER HAired LEGISLATURE

FLORIDA DEATH WITH DIGNITY BILL

**WHEREAS**, existing law in Florida authorizes an adult of sound mind to execute an advance directive governing the withholding or withdrawal of life sustaining treatment including both nutrition and hydration; and

**WHEREAS**, such directives are often disregarded in practice, resulting in the infliction of prolonged and unbearable physical pain and mental anguish upon terminal patients; and

**WHEREAS**, statistics reflect the disgraceful fact that, in the absence of a viable option to hasten a dignified and painless death, suicide has become a last resort and is now the major cause of violent deaths among Florida citizens in various age groups, especially the elderly; and

**WHEREAS**, competent individuals who are unequivocally determined to die voluntarily rather than continue a life, however short, without hope of recovery from unbearable pain and incurable failure of essential bodily functions should be able to seek assistance from licensed physicians; and

**WHEREAS**, recent decisions in the United States Circuit Court of Appeals issued landmark decisions which pronounced state statutes criminalizing physician-assisted suicide to be in violation of the constitutional rights of the participants, under the U.S. Constitution;

**NOW, THEREFORE BE IT RESOLVED**, That the Florida Legislature adopt legislation effectively legalizing physician assisted aid in dying.

Adopted by the Florida Silver Haired Legislature in session in Tallahassee, Florida, October 1996.

## Guest Columnist

# Assisted suicide gives us dignity

By Monroe W. Treiman  
Special to Hernando Today

Your guest column on assisted suicide by Karen Kraatz Jan. 17 deserves a reply from one who is by far more knowledgeable than she is on this subject. As a county judge in Hernando, I served as probate and mental health jurist for 24 of my 28 years. Also, in the absence of a medical examiner, I was the one who signed death certificates. Now, I am the Speaker of the House, and the CEO of the Florida Silver-Haired Legislature which has adopted a request that the Florida Legislature make assisted suicide legal, and assigned this request their priority number four.



Treiman

The Silver-Haired Legislature is a statewide organization representing older people, a group that knows far more about dealing with dying than does a funeral home that deals with dead bodies.

Florida law says "every person deliberately assisting another in the commission of self-murder shall be guilty of manslaughter." This does not refer to "suicide", but to "self-murder." There is no law against "self-murder" or suicide. So, it is fine for one to kill himself.

Murder is an unlawful killing. The executioner, throwing the switch to kill someone in the electric chair is not guilty of murder. So!, if it

is lawful to kill yourself, why is it manslaughter for someone to assist you?

Let me recount a true story. During my tenure as probate and mental health judge, a Brooksville doctor called and advised me of a patient in the hospital who would not sign a surgical consent form to remove his gangrenous foot.

I asked why he called me, and was told that they needed to have the man declared legally incompetent, have a guardian appointed to manage his affairs, and then the guardian could legally sign the consent over the objections of the patient.

I went to the hospital and talked to the man, who was expecting me. He said, "Judge, look at me. I am over 80-years-old, grossly overweight, a very severe diabetic, have emphysema, and many other physical problems. If they remove my foot, I will be a bedridden patient, and with my diabetes and being overweight, will be ridden with bedsores, with great suffering, and no quality of life.

# VIEW POINT

## TODAY

I am not willing to have this happen to me. I had a lot of joy in living my life, but now I have made my peace with myself, my family and my God, and am ready to go."

So, I advised the doctor that the man was legally competent, and I would not consider appointing a guardian.

The doctor asked me to reduce this to writing on my letterhead signed by me and with my court seal. He would place this in the medical file, remove the ice from the gangrenous foot, place him in the isolation room, and he would be dead within four days, which happened that way.

The doctor pointed out that this would be my decision, and not his.

Was I doing an "assisted suicide"?

I would say yes. Did I do anything wrong? Most definitely, no!

Of course, there is nothing like a death in the family to bring out the greed in families. This is true now, and has been true for centuries. However, to project a situation that if assisted suicide was to be allowed, we would have relatives killing off the members of their families is totally irresponsible.

Assisted suicide would be a method whereby the family member who is suffering, who has no quality of life, and has made up his mind that this is the time to go could depart this vale of tears in a humane, dignified, and legal way.

Is there any "compelling state reason", for the prolonging of life when the person says "I want to go"? My answer is no,

Society is slowly changing to recognize this. We have adopted the living

will, the do-not-resuscitate directive, and have recognized the right to remove medical equipment that artificially prolong life.

So what is so different about allowing one more step to end the life in a humane, painless, and dignified way? The answer, obviously, it is to repeal the provisions of Section 782.08 Florida Statutes, that makes the assisting of another in self-murder when self-murder is itself quite legal. This would be the most selfless, humane, thing we could do for our older generation.

Remember, the Government prosecuted Dr Kevorkian several times, and the juries have turned him loose each time, and they have now given up. Why subject Florida to the same charade?

In making my presentation to the Hernando County legislative delegation, I was asked if I had made a survey, so, I asked those assembled in the auditorium to raise a hand if they favored assisted suicide, and the overwhelming majority raised their hands. This impromptu survey was most impressive to our legislators.

Let us listen to those who know the need for assisted suicide, and I know of no better organization to listen to than The Florida Silver-Haired Legislature.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, Brief of THE FLORIDA SILVER HAired LEGISLATURE, INC. was furnished by U.S. Mail to the following parties on the \_\_\_\_\_ day of March, 1997.

  
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