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Montana State Legislators, Medical Experts, Bioethicists, Constitutional Law Experts, Civil Liberties and Human Rights Advocates, Family Urge Supreme Court to Uphold Right of Montanans to Aid in Dying

HELENA, MT - A broad, diverse group of organizations and individuals have filed friend of the court briefs urging the Montana Supreme Court to uphold a lower-court ruling that terminally ill Montanans have the right to choose aid in dying. Six Montana family members of those who wanted aid in dying and could not access this choice told the court of unnecessarily painful, traumatic deaths in the absence of physician aid in dying in Montana. Medical associations, civil liberties and human rights organizations, bioethicists, religious leaders, constitutional law experts and thirty-one Montana State legislators all filed briefs arguing that terminally ill Montanans have the right to choose a dignified death, under the State Constitution's guarantees of privacy and dignity. The Montana Supreme Court will hear arguments later this year on whether to uphold the landmark decision issued last December by First Judicial Court Judge Dorothy McCarter.

The Montana family members told the Court what it means to a dying patient trapped in an unbearable dying process to be denied this compassionate option. All of the Montana family members witnessed the intense suffering of their loved ones in the weeks or months before their inevitable deaths. The statements dispel the myth that medication can always control all pain. As family members attest, a slow, deteriorating death often leads to loss of dignity and self-respect for the dying person.

Zoltan Balogh, the son of Janet Murdock, who died a horrible death from ovarian cancer, told the court, "Watching my mom over the last five months was gut-wrenching. As her health and her body declined, it was heartbreaking, because there wasn't anything we could do, and my mom was miserable a lot of the time. This is a volatile topic, but once you watch someone go through the end of a debilitating disease, it does indeed make you question what is fair and right and moral, to stand by and watch someone die a death you wouldn't want to wish on your worst enemy."

Doris Fischer witnessed her husband, retired University of Montana philosophy professor Richard Gottshalk's, horrible suffering, which medication could not ease. "During the last two weeks of Richard's life, despite the conscientious efforts of his personal doctor, hospice nurses, and caregivers to provide comfort, he endured both physical and emotional pain of stunning magnitude. His mind was haunted by an acute awareness that

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his body was stiffening, becoming rigid, and rendering him immobile. He described a sense of being ‘stuck,’ ‘trapped,’ ‘chained to the bed,’ ‘tied down,’ and ‘in prison.’ He suffered anxiety, panic attacks, and claustrophobia. In addition, he endured severe muscle spasms, frequent episodes of shortness of breath and the fear of suffocation, swallowing difficulty, and soreness of limbs. He stopped eating and drinking. For three more days, he suffered further emotional distress, physical pain and discomfort. On Day Four Richard went into a coma, received a morphine drip, and died shortly thereafter,” Fischer wrote the court.

The family members urged the court to provide legal aid in dying, as some of their relatives had resorted to crude, self-help methods. “As the experiences of Montana decedents show, some people are determined to control the dying process when faced with a debilitating terminal illness that brings suffering which the patient finds unbearable. The Montana Supreme Court cannot stop terminally ill Montanans from hastening their deaths—it does happen and will continue to happen as long as human beings have free will. The decision for the Montana Supreme Court is *how* hastened dying for the adult terminally ill should occur: Will it be through acts of violence taken alone? Will it be untrained family members compelled to assist in secrecy and fear? Or will it be by medically-trained personnel evaluating and assisting, in the open, ensuring that the patient is in fact terminally ill, mentally competent and has efficacious medications to bring about a peaceful death?”

Montana State Sen. Christine Kaufmann, Rep. Dick Barrett and twenty-two other state legislators from both parties, including Representatives Anders Blewett, Mary Caferro, Jill Cohenour, Robyn Driscoll, Ron Erickson, Robin Hamilton, Teresa Henry, Brian Hoven, Chuck Hunter, Betsy Hands, Margaret MacDonald, Sue Malek, Mike Phillips, and Franke Wilmer, and Senators Ken Hansen, Bob Hawks, Carol Juneau, Gary Branae, Mike Menahan, Cliff Larsen, David Wanzenried, and Carol Williams filed a friend of the court brief, urging the court to uphold the right to death with dignity. Sen. Christine Kaufmann said, “Recognition of a right to aid in dying will alleviate unnecessary pain and suffering of competent, terminally-ill patients and their families. For some Montanans facing the end of life, continuing to suffer at the hands of a merciless terminal disease denies them dignity and self-determination. In keeping with Montana's traditions of individualism and strong constitutional rights, legislators believe that the Court should uphold the lower court’s ruling. Moreover, if the Court does so, the Legislature likely will need to assess whether any safeguards are necessary so that citizens are free to exercise the right while remaining protected from potential abuses. We take this role seriously and are confident in our ability to fulfill it.”

Compassion & Choices Legal Director Kathryn Tucker, co-counsel to the plaintiffs/respondents, commented on the friend-of-the-court briefs: “We are pleased that such a diverse group joined us to urge affirmation of the lower court’s decision. This case is about the right of mentally competent terminally ill patients to request a

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prescription for medication from their doctors which they can ingest to bring about a peaceful death. This is a choice the Constitution entrusts to them, not to the government. Montanans trapped in an unbearable dying process deserve this end-of-life choice. This is a choice that Bob Baxter sought for himself, and his courage in bringing this case forward will help bring comfort and relief to his fellow citizens.”

The family members included:

- A widow whose husband discussed choosing guns, plastic bags for suffocation, and other means of ending his life before he finally took sleeping pills to end his suffering from late-stage ALS ("Lou Gehrig's Disease");
- A widow whose husband suffered agony during his last two weeks of life and endured emotional distress and physical pain after refusing to eat and drink in order to hasten his death;
- A woman whose life partner of 23 years died, suffering from gasping and inability to breathe after his hospice medication failed;
- A woman whose sister begged her to help her die and who tried to move to Oregon in order to end her terrible suffering from late-stage Multiple Sclerosis;
- A son whose father considered freezing to death and shooting himself and actually attempted to horde pain medication, overdose his morphine pump, and destroy his oxygen machine in order to relieve his suffering from terminal mesothelioma—all of which failed;
- A daughter whose father tried to stab himself with a plastic knife and begged her to bring him a gun to use to end his misery from cancer.

Friends of the court supporting death with dignity include: six family members of individuals who experienced the positive aspects of physician aid in dying in Oregon; the American Medical Women's Association; the American Medical Students Association and a coalition of Montana clinicians; the American Civil Liberties Union of Montana; the Montana Human Rights Network; the Billings Humanist Association; the Northwest Women's Law Center and many other women's rights groups; terminal patients' surviving family members; Montana religious leaders; and Montana's leading constitutional law experts.

Compassion & Choices encourages terminally ill patients to contact Compassion & Choices if they would like information about aid in dying, or suggestions on how to open a dialogue with their physician and loved ones. Physicians may also contact Compassion & Choices for suggestions on how to evaluate and respond to a request. Our counselors and informative materials are available to Montanans by calling 800 247-7421.

The Friends of the Court briefs are available in full here:

Link to Baxter Web Page:

http://www.compassionandchoices.org/act/legal_work/baxter

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Baxter Amicus Brief:

<http://www.compassionandchoices.com/documents/BAXTERAmicusBrief.pdf>

Baxter Religious Amicus Curiae Brief:

<http://www.compassionandchoices.com/documents/ReligiousAmicusBrief.pdf>

Baxter Montana Legislators Amicus Brief:

<http://www.compassionandchoices.com/documents/AmicusCuriaeMontanaLegislators.pdf>

Baxter Autonomy Amicus Brief:

<http://www.compassionandchoices.com/documents/AmicusCuriaeBriefAutonomy.pdf>

For more information please visit www.compassionandchoices.org

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