

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

KATHRINE MORRIS, M.D.,
AGROOP MANGALIK, M.D. and
AJA RIGGS

Plaintiffs-Appellees,

v.

No. 33,630

GARY KING, Attorney General of
The State of New Mexico

Defendant-Appellant.

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Not Dead Yet, ADAPT, the American Association of People with Disabilities, the Autistic Self Advocacy Network, Disability Rights Education and Defense Fund, the National Council on Independent Living, and the United Spinal Association (collectively “the Disability Rights Amici”), which have members residing in New Mexico, move this Court, pursuant to Rule 12-215(A) NMRA, for leave to file an amicus brief in support of Defendant-Appellant Gary King, Attorney General of the State of New Mexico, and request that the Court allow filing of the brief past the deadlines specified in Rule 12-215(C) NMRA. The amicus brief of the Disability Rights Amici is conditionally filed with this motion. In further support of their motion, the Disability Rights Amici state as follows:

1. The Disability Rights Amici request leave to file their brief after the time allowed by Rule 12-215(C). As grounds for this request, the Disability Rights Amici state that the Attorney General's Brief-in-Chief was filed far ahead of schedule and prior to the filing of the transcripts, which could not have been anticipated. As a result, no briefing schedule had been set as of the filing of the Brief-in-Chief, and the Disability Rights Amici did not become aware of the filing until well after the deadline had passed for seeking leave to file an amicus brief in support of the Attorney General's position. Therefore, good cause exists to allow the Disability Rights Amici to file the attached amicus brief out of time. The Disability Rights Amici have contacted counsel for all of the parties, pursuant to Rule 12-309(C) NMRA, and none oppose the filing of the instant motion and attached amicus brief.

2. This case involves whether there is a right to physician-assisted suicide under the New Mexico Constitution. This decision implicates the most fundamental rights and interests of persons with severe disabilities, whether labeled terminal or not terminal, who will be the persons adversely affected if the lower court's decision is upheld. Through amicus curiae participation, the Disability Rights Amici seek to assist the Court in more fully understanding the impacts of its ruling on the rights and interests of the disabled community.

3. Not Dead Yet ("NDY"), an Illinois non-profit corporation, is a national disability rights organization formed in response to the movement to permit physician-

assisted suicide in the United States and around the world. Its mission is to advocate for the civil rights and equal protection of people with disabilities by opposing legalization of physician-assisted suicide as discriminatory, and to bring a grassroots disability-rights perspective and awareness of the effects of discrimination related to these practices. NDY's position is based on the prevalent societal discrimination faced by people with disabilities, the inequities of the health care and long term care systems, and the discrimination inherent in a public policy that treats suicidal people differently based on their health or disability status. Many of its members, including people who reside in New Mexico, use assistive devices, including motorized and manual wheelchairs, ventilators, and personal assistance services for meeting their personal needs, such as transferring from bed to wheelchair and bathing. Since 1989, NDY members have participated actively in numerous states in the formulation of public policy regarding people with disabilities, have written numerous published articles, testified in legislatures, and spoken at professional conferences on assisted suicide. NDY works to educate, support, coordinate and lead the disability community's effort to stop the "right to die" from becoming a duty to die or a right to kill. NDY has filed numerous amicus curiae briefs, including one cited by the U.S. Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702,733 n.23 (1997), as well as briefs in *Sampson v. State*, 31 P.3d 88 (Alaska 2001), *Krischer v. McIver*, 697 S.2d 97 (Fla. 1997), *Baxter v. Montana* 224 P.3d 1211(2009), cases in which a right

to physician assisted suicide was sought under the Alaska, Florida, and Montana Constitutions, respectively, and *Gonzales v. Oregon*, 546 U.S.243 (2006).

4. ADAPT is a national organization organized nearly twenty years ago, comprised primarily of people with disabilities, including members in New Mexico. It has a long history and record of enforcing the civil rights of people with disabilities, helped enact the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, and has been a plaintiff in numerous lawsuits to enforce the civil rights of people with disabilities.

5. The American Association of People with Disabilities (“AAPD”) is the nation's largest disability rights organization. AAPD promotes equal opportunity, economic power, independent living, and political participation for people with disabilities. As such, AAPD believes that all people have the right to live, regardless of disability status, and that denying the equal protection of that right represents a clear violation of an individual's civil and human rights.

6. The Autistic Self Advocacy Network (“ASAN”) is a national, private, nonprofit organization, run by and for individuals on the autism spectrum. ASAN provides public education and promotes public policies that benefit autistic individuals and others with developmental or other disabilities. ASAN’s advocacy activities include combating stigma against individuals with significant disabilities, promoting

nondiscriminatory access to health care, and educating the public about the inherent value of the lives of individuals with developmental disabilities.

7. Disability Rights and Education and Defense Fund (“DREDF”) is a national organization that provides legal representation and advocacy for persons with disabilities throughout the country, including in New Mexico. DREDF advocates to end discrimination against people with disabilities and to ensure that the dignity and equal rights of people with disabilities are protected.

8. National Council on Independent Living (“NCIL”) represents over 700 advocacy organizations throughout the country and people with disabilities of all types. NCIL and its members, including members in New Mexico, advocate that people with disabilities have the right to live with dignity, regardless of the degree of disability.

9. United Spinal Association (“United Spinal”) is a nonprofit disability rights and veterans service membership organization that was founded in 1946. The organization has approximately 40,000 members nationwide. United Spinal’s mission is to provide expertise and advocacy, and provide access to resources, enabling people with spinal cord injuries and disorders to fulfill their potential as active members of their communities. United Spinal drafted significant portions of the Americans with Disabilities Act and continues to advocate for the rights of persons with disabilities through state and federal legislation, the courts, grassroots advocacy, and education.

United Spinal Association's membership includes 46 chapters and 170 support groups throughout the United States. Membership includes those with spinal cord injuries, post-polio syndrome, multiple sclerosis, Lou Gehrig's Disease (ALS), spina bifida, and other disorders.

10. NDY, ADAPT, AAPD, ASAN, DREDF, NCIL, and United Spinal have a unique perspective on physician-assisted suicide. Their members, as well as other people with severe disabilities, are the potential targets of physician-assisted suicide. Their members have faced family and physicians who have actively deprived them of fundamental rights and liberties that others take for granted. They have members whose physicians have mistakenly told them they have six months to live, but have lived far beyond that prognosis. Many members have been denied health care and related services that they need to sustain or improve their quality of life based on financial considerations. Some members have been told that they would be better off dead by physicians, family members and others. Some members' families have been urged by physicians to remove life-sustaining treatment at a critical juncture and, after their families fought such recommendations, have survived and gone on to value their lives. Some members initially contemplated suicide following a severe and life-threatening injury, but were denied that option under prior law, and went on to value their lives. Each of the Disability Rights Amici have first-hand experience and knowledge of the pervasive societal discrimination against, devaluation of, and

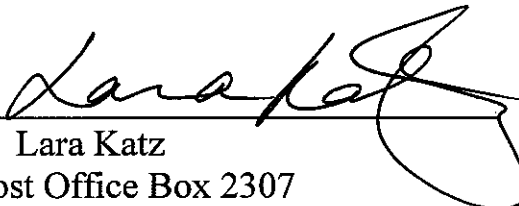
unequal protection for people with disabilities. This information and experience will assist the Court to better understand the full ramifications of its decision and the potentially devastating impact an adverse decision could have.

11. The Disability Rights Amici will argue in their amicus brief that even with safeguards, physician-assisted suicide creates unacceptable risks to people with disabilities. They will point out how physician-assisted suicide undercuts the most fundamental aspects of dignity and equal protection of people with disabilities, and how so-called protections do not and cannot protect the people they are designed to protect.

WHEREFORE, for the foregoing reasons, the Disability Rights Amici respectfully request that the Court enter an order permitting them to file an amicus brief in support of Defendant-Appellant Gary King in the above-captioned matter, and accepting for consideration the amicus brief filed conditionally with this motion.

Respectfully Submitted,

MONTGOMERY & ANDREWS, P.A.

By: 

Lara Katz

Post Office Box 2307

Santa Fe, New Mexico 87504-2307

(505) 982-3873

(505) 982-4289 (facsimile)

lkatz@montand.com

and

STEPHEN F. GOLD
1709 Benjamin Franklin Parkway
Second Floor
Philadelphia, PA.19103
215-627-7100
215-627-3183 (facsimile)
stevegoldal@gmail.com

Attorneys for Not Dead Yet, ADAPT, the American Association of People with Disabilities, the Autistic Self Advocacy Network, Disability Rights Education and Defense Fund, the National Council on Independent Living, and the United Spinal Association

CERTIFICATE OF SERVICE

I certify that on August 22, 2014, I caused a true copy of this *Motion for Leave to File Amicus Brief* to be served by first-class United States mail, postage prepaid, on the following:

Scott Fuqua
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, NM 87501

Alexandra Freedman-Smith
ACLU of New Mexico
1410 Coal Avenue SW
Albuquerque, NM 87104

Laura Shauer Ives
The Kennedy Law Firm
1000 2nd Street NW
Albuquerque, NM 87102

Maureen Sanders
Sanders & Westbrook, P.C.
102 Granite Avenue NW
Albuquerque, NM 87102

Kathryn Tucker
152 Baldwin Road
Ojai, CA 93023


Lara Katz