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MEMORANDUM

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Euthanasia

The American Center for Law and Justice is committed to the sanctity of all life, from birth until death. As such, the ACLJ is opposed to euthanasia and physician-assisted suicide. Euthanasia is defined as "the act or practice of causing or hastening the death of a person who suffers from an incurable or terminal disease or condition, especially a painful one, for reasons of mercy." BLACK'S LAW DICTIONARY 634 (Bryan A. Garner ed., 9th ed. 2009).

Is there a difference between refusing life support and actively choosing to end life unnaturally?

It is essential to distinguish the right to refuse medical treatment, thus allowing for death by natural causes, from the active practice of ending a human life. Generally, the legal right to refuse medical treatment is well settled. In *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 279 (1990), the Supreme Court has held that a competent person has a constitutionally protected right to refuse lifesaving treatment, and lower courts have followed suit. *See, e.g., Kulak v. City of N.Y.*, 88 F.3d 63, 74 (2d Cir. 1996) ("every individual of adult years and sound mind has a right to . . . control the course of his medical treatment") (citation and quotes omitted); *In re Duran*, 769 A.2d 497, 504 (Pa. Super. Ct. 2001) ("competent persons generally are permitted to refuse medical treatment, even at the risk of death.") (citation and quotes omitted). The right to refuse medical treatment is considered to be morally acceptable and distinct from suicide. 83 C.J.S. *Suicide* § 13 (2011). An individual can ensure that their wishes to remain on or be

removed from life support in the event of incompetence through documents such as a living will or power of attorney. The ACLJ supports the right of individuals to refuse medical treatment.

What if a patient cannot communicate their wishes to live or die?

When a patient is unable to effectively communicate (for example, because the patient is in a coma or a persistent vegetative state) and has not created a document such as a living will, the Supreme Court has allowed for family members to decide to remove life support where it can be shown by clear and convincing evidence that the patient would have approved. *Cruzan*, 497 U.S. at 280 (the Court upheld the parents' desire to remove their unresponsive daughter, a victim of a car accident, from life support).

The ACLJ represented the parents of a patient in one of the country's most controversial instances of the removal of life support—the case of Terri Schiavo. Terri had suffered a heart attack in 1990 that left her severely disabled. She had left no written statement of her desires. Her husband, Michael Schiavo (who was living with a girlfriend and their three children), alleged that it was Terri's wish to never remain on life support. The ACLJ filed a friend-of-the-court brief on behalf of Terri's parents. However the Court refused to take the case. *Bush v. Schiavo*, 543 U.S. 1121 (2005) (denying certiorari). After a massive legal battle and over the objection of Terri's parents, the Schindlers, Terri's feeding tube was removed and she died in March of 2005.

Is there a constitutional right to commit suicide?

ACLJ lawyers filed a friend-of-the-court brief with the U.S. Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702 (1997), in which the Court held that there is no constitutional right to assisted suicide. In *Glucksberg*, the U.S. Supreme Court upheld Washington state's ban of assisted suicide. In doing so, the Court declared that the "right" to assisted suicide is "not a fundamental liberty interest protected by the Due Process Clause." *Id.* at 728. Furthermore, the Court held that the ban on assisted suicide was rationally related to the legitimate government interests of the state in preserving human life, maintaining the integrity and ethics of medical professionals, and protecting vulnerable persons such as the poor, elderly, disabled, and terminally ill people. *Id.* at 728–32.

Unfortunately, while individuals do not possess a constitutional right to assisted suicide, states have enacted laws that allow their citizens to seek physician-assisted suicide. In October 27,

1997, Oregon enacted the "Oregon Death with Dignity Act" (ODWDA) which permits terminally-ill persons to commit suicide by injecting themselves with lethal medications prescribed by a physician. The ODWDA also shields the physician from civil or criminal liability. *See* Or. Rev. Stat. § 127.800 et seq. (2003). In *Gonzales v. Oregon,* 546 U.S. 243 (2006), the U.S. Supreme Court upheld the Oregon law when it declared that the ODWDA did not violate the 1970 Controlled Substances Act enacted by Congress.

What is wrong about voluntarily ending your life when you are terminally ill?

Supporters of physician-assisted suicide argue that instituting statutory requirements that must be met before assisted-suicide can be authorized will protect vulnerable patients from abuse. *See, e.g.*, Emily R. Manson, *Ignoring It Will Not Make It Go Away: Guidelines for Statutory Regulation of Physician-Assisted Death*, 45 New Eng. L. Rev. 139, 160–66 (2010) (proposing a statutory construction for legalized assisted suicide). The Netherlands, where assisted suicide has been legal since 2001, has such a requirement; however that requirement has not, in fact, been successful in preventing the euthanizing of non-consenting patients. The United States Supreme Court acknowledged that there *is* in fact abuse of legalized assisted suicide in the Netherlands. Referencing a Dutch study on euthanasia, the Court stated:

> This study suggests that, despite the existence of various reporting procedures, euthanasia in the Netherlands has not been limited to competent, terminally ill adults who are enduring suffering, and that regulation of the practice may not have prevented abuses in cases involving vulnerable persons, including severely disabled neonates and elderly persons suffering from dementia.

Glucksberg, 521 U.S. at 734.

Contrary to what supporters of assisted suicide claim, playing God by prematurely ending your own life or the life of another is neither dignified nor merciful. If a legal standard is given to determine when the option of death outweighs an individual's quality of life, where is the line drawn? Testimonials and stories touted by proponents of the right to die movement as heroic examples of compassion often have an untold side. *Compare* Susan Cheever, *An Act of Mercy*, NEW YORK TIMES (Jul. 20, 1997), http://www.nytimes.com/books/97/07/20/reviews/970720.cheever.html, *with* Wesley J. Smith, *Abandoning the Most Vulnerable*, THE WEEKLY STANDARD (Oct. 12, 2009), http://www.weeklystandard.com/Content/Public/Articles/000/000/017/036nysh

p.asp. Because all life is precious and created by God and because of high potential for abuse of the weak and vulnerable, the ACLJ opposes the legalization of physician-assisted suicide.