

Senate Judiciary Committee
Chair, Terry Murphy
P.O. Box 200500
Helena, MT 59620-0500

SENATE JUDICIARY
COMMITTEE NO. 21
DATE 2/9/11
SB 116

Re: SB 116

Dear Chairman Murphy and Members of the Senate Judiciary:

Please accept this letter as my testimony on SB 116, which is before your committee for consideration. I ask that you vote Do Not Pass on this piece of legislation. The bill has several flaws, both procedural and constitutional and is the wrong intrusion into a subject, end of life decisions, which should properly be left between a competent terminally ill patient and their doctor. The State of Montana should not and I believe, constitutionally cannot, intervene in this process.

First, the bill adds a new Subsection (3) to § 45-2-211, MCA, declaring that it is against public policy to allow a victim to consent "to the victim's own homicide" by seeking to obtain substances which could be used to aid in dying. The language of the amendment struggles with the fact that in Montana, a homicide by definition, § 45-5-102 (1)(a), MCA, is an act of purposefully and knowingly causing the death of "another human being." A person cannot commit a "homicide" by taking a person's own life, and thus the language of the amendment is ambiguous and seriously flawed. Further, in Montana while it is against the law to assist another person to commit suicide, § 45-5-105, MCA, it is not against the law to commit suicide. If passed and challenged the law as presented will undoubtedly be declared void.

Second, the law as presented, seeking to prohibit physician assisted aid in dying, violates Art. II, Sect. 10 of the Constitution of Montana, which reads: "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without a showing of a compelling state interest." Given that there is no declared state interest expressed in the Senate Bill as presented, this intrusion into individual privacy will undoubtedly be declared unconstitutional. The law is flawed and will be declared void should it pass.

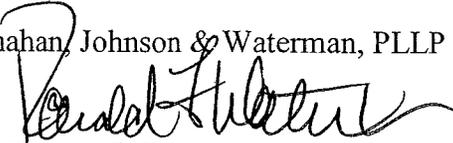
These technical and constitutional flaws should warrant rejection of this piece of legislation. I understand that the sponsor, in good faith has introduced this bill concerned about the hypothetical of elder abuse should the State of Montana continue in allowing patients to seek aid in dying from physicians. Please understand that although the Montana Supreme Court in late 2009 ruled that there was nothing in current state law which prohibited physicians from assisting terminally ill persons from dying, this had been the state of the law for decades and yet, despite the complete absence of regulation, there has been no reports of elder abuse in this area of assistance in dying. Likewise, in Oregon and Washington, which have laws similar to SB 167, which is before your committee for consideration in conjunction with this proposed legislation, there has been no reports of documented elder abuse, although those laws which do authorize aid in dying have existed for more than a decade in Oregon and for a shorter period of time in Washington.

If there is a concern about elder abuse, then clearly legislation such as SB 167 will address and avoid this potential. Requiring a showing of competency and requiring a witness to a terminally ill person's request for assistance in aid of dying and in requiring two physicians to attest to the terminally ill person's competency and the person's intent to seek such assistance, independent from third party pressure are sufficient and adequate safeguards against such abuse. Prohibiting assistance in dying totally, however, is excessive and the state has no such compelling interest in outlawing this process.

I urge your vote against SB 116 and ask that you defeat this unnecessary, void and unconstitutional proposed legislation.

Very truly yours,

Gough, Shanahan, Johnson & Waterman, PLLP

A handwritten signature in black ink, appearing to read "Ronald F. Waterman", written over the printed name.

Ronald F. Waterman

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c: Jen McLellan