

Testimony in Opposition to
HB 477

Exhibit No. 16
Date: 3/26/15
Bill No. HB 477

James C. Nelson

My name is James C. Nelson. I am a retired Justice of the Montana Supreme Court. Respectfully, I offer my testimony in opposition to HB 477 and urge you not to favorably consider this proposed legislation.

Appellate courts typically decide cases on the narrowest grounds, avoiding constitutional issues if possible. And that is what the Montana Supreme Court did in *Baxter*. The Court concluded that, reading various Montana statutes together, persons with incurable illnesses who were going to die within a short period of time, accompanied by great suffering, had a legal avenue to seek and receive their physician's assistance in dying a dignified death. Importantly, the Court did not rule on any of the Constitutional issues raised in *Baxter*.

District Judge Dorothy McCarter had concluded that two fundamental rights protected under Montana's Constitution, the right of individual privacy, Article II, Section 10, and the right of inviolable human dignity, Article II, Section 4 protected the ability of incurably ill patients to end their physical and mental suffering with the assistance of their physicians. The Court didn't disagree with her, but, as noted, simply concluded that there was a narrower way to uphold her decision on non-constitutional grounds. And because the Court did not rule on these constitutional issues an incurably ill patient's right to physician's assistance in dying a dignified death grounded the rights of individual privacy and inviolable human dignity are still on the table. And, I believe will be successfully reasserted if HB 477 becomes law.

Montanans who are enduring the maelstrom of a life-ending illness; who are suffering terribly from pain and disability; who are not only losing their bodies to their illness, but—and in many cases, worse—their spirits, their dignity and their autonomy, cultivated and treasured over a lifetime, do, and let me repeat, *do* have an individual constitutional right to end their lives with the assistance of their physicians. That right is protected and guaranteed by Montana's Constitution. That right is fundamental: it is a natural right grounded in the attributes of humanness with which each of us is born; it is a right grounded in our ability to make and take responsibility for our own moral decisions; it is an elemental part of our individual sentience and consciousness. It is a right that Montanans respect. Indeed, I can think of no more empowering and comforting final thought in the

mind of a person who chooses to end her own life and personal suffering, than the knowledge that her autonomy, privacy and dignity were respected by her family, friends and fellow citizens to the end. She was born a whole person and she died the same way. She was loved.

Risk is a part of life. Some accept—even seek—more risk than others; but we all live out our lives with risks small and great. That, also, is a part of the human condition.

The playwright, Neil Simon, once observed that, “if no one ever took risks, Michelangelo would have painted the Sistine floor.” In choosing to avoid the constitutional issues of individual privacy and inviolable human dignity in *Baxter*, the Montana Supreme Court painted the floor, when it should have painted the ceiling.

This body has the chance to succeed where the Court failed. You have the power to honor incurably ill Montanans’ constitutional rights of individual privacy and inviolable human dignity by leaving in place the *Baxter* decision. You do not need to make criminals out of the sick, their families and their doctors.

Please, do not pass HB 477.

Thank you.