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BEST RESPONDENT'S BRIEF: THE 20TH ANNUAL CHARLES W. FROESSEL INTRAMURAL CONSTITUTIONAL LAW MOOT COURT COMPETITION

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THE 20TH ANNUAL CHARLES W. FROESSEL INTRAMURAL CONSTITUTIONAL LAW MOOT COURT COMPETITION

BEST RESPONDENT'S BRIEF

Lisa J. Ferlazzo & Linda Orndorff

A Note on the Format

The Best Respondent's Brief is a reproduction of the brief that was originally submitted for the Froessel Competition. Although the brief is printed in its entirety, minor formatting changes have been required for publication purposes.

In the

SUPREME COURT of the UNITED STATES

September Term 1996

Docket No. 1269/96

WILLAMINA WALLACE and MURRON MCGREGOR,

Petitioners,

-against-

THE STATE OF FROESSEL,

Respondent,

On Writ of Certiorari to the
Court of Appeals for the Thirteenth Circuit

BRIEF FOR THE RESPONDENT

Counsel for Respondent
August 30, 1996

QUESTIONS PRESENTED

I. Under the Fourteenth Amendment, should this Court find that FMS §186.5 comports with the Equal Protection Clause, given that Petitioners are not discriminated against based on their sex or sexual orientation, and if so, does Froessel's legitimate public policy interests, advanced by the marriage statute, satisfy rational basis scrutiny?

II. Under the Fourteenth Amendment, should this Court find that Froessel's statutes prohibiting physician assisted suicide comport with the Due Process Clause, given that no fundamental liberty interest exists in this nation's history and tradition, and if so, does Froessel's substantial public policy interests outweigh Petitioners' asserted interest?

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OPINIONS BELOW

The United States District Court, District of Froessel, granted Petitioners' motion for declaratory and injunctive relief to obtain a marriage license and allow physician assisted suicide. The United States Court of Appeals for the Thirteenth Circuit reversed the decision of the district court and denied Respondents' declaratory and injunctive relief on both causes of action.

COUNTER-STATEMENT OF THE CASE

In 1993, the Petitioners, Willamina Wallace and Murron McGregor, a same-sex couple, decided that they wanted their relationship to become a legally recognized marriage. (R. at 2). They contend that the legal recognition of their relationship will entitle them to benefits that they would ordinarily be denied, such as naming each other the beneficiary of each other's life insurance policies. (R. at 2). Soon after they applied for a marriage license, their application was denied by the Froessel Department of Health. (R. at 3). Specifically, in accordance with historical definitions and nearly every other state and the Federal Government, Froessel's Marriage Statute ("FMS §186.5") provides that: "A marriage is valid only if it is solemnized and registered, between an unmarried male and an unmarried female, both whom are at least 18 years of age and not otherwise disqualified." (R. at 6).

On October 5, 1994, Ms. McGregor was diagnosed with cancer. (R. at 3). Soon after, Ms. McGregor and Dr. Wallace contacted Dr. Robert Bruce, a leading cancer specialist, who informed them that a cure would be available in one and a half years. (R. at 4). With only six months left until a possible cure, Ms. McGregor asked Dr. Wallace to assist her in killing herself. (R. at 5).

Prior to being diagnosed with cancer, Ms. McGregor signed a living will entitling her to removal from being kept alive by artificial means. (R. at 5). While Froessel has a living will statute, it prohibits

physician assisted suicide. (R. at 5). Accordingly, forty-two states permit the refusal of unwanted medical treatment, while thirty-two states make assisted suicide a crime. (R. at 5). Moreover, the Limke Study by the Froessel Department of Health and Hospital services found that suicide is the second leading cause of death in young people ages thirteen through thirty-four, and one of the top five causes of death for the thirty-five through fifty-four age group. (R. at 23). Additionally, the Limke study found that fifty-one percent of all suicides are not committed by people suffering from terminal illness but by those suffering treatable mental disorders. (R. at 23).

Ms. McGregor and Dr. Wallace filed suit in the District Court of the State of Froessel to challenge the constitutionality of Froessel's prohibition of same sex marriage and the statutes prohibiting assisted suicide. (R. at 16). The district court granted declarative and injunctive relief in favor of Petitioners on both issues. (R. at 16). However, the Court of Appeals for the Thirteenth Circuit reversed the decision of the lower court on both counts. (R. at 16-17).

SUMMARY OF THE ARGUMENT

This Court should uphold the decision of the Court of Appeals for the Thirteenth Circuit denying Petitioner's motions for declaratory and injunctive relief. Froessel's Marriage Statute ("FMS §186.5") comports with the Equal Protection Clause of the Fourteenth Amendment. Furthermore, a state has a compelling interest in protecting the health and well-being of its citizens by preventing sexually transmitted diseases and promoting procreation. Froessel advanced these legitimate interests by passing the marriage statute which promotes monogamy and stability, therefore satisfying rational basis scrutiny. Since the statute encompasses the traditional definition of marriage and provides equal rights to marry for both males and females, it does not discriminate based on sex and, thus, should be upheld as constitutional in accordance with the Equal Protection Clause.

Additionally, Froessel's statutes prohibiting assisted suicide

conform with the Due Process Clause of the Fourteenth Amendment. Moreover, physician assisted suicide is not a fundamental liberty interest because it is not rooted in this nation's history and tradition. Even if a liberty interest was found to exist, the state's compelling interests in preserving life, preventing suicide, and avoiding the influence of third parties outweigh the asserted liberty interest. Therefore, this Court should uphold the finding of the lower court denying declaratory and injunctive relief to Petitioners.

ARGUMENT

I. FROESSEL'S MARRIAGE STATUTE COMPORTS WITH THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT GIVEN THAT THE STATE'S INTERESTS IN PREVENTING STDs AND PROMOTING PROCREATION CAN ONLY BE ADVANCED BY THE TRADITIONAL DEFINITION OF MARRIAGE, WHICH INEVITABLY EXCLUDES SAME-SEX COUPLES.

This Court should uphold the United States Court of Appeals decision, which denied Petitioners declaratory and injunctive relief to a marriage license under the Froessel Marriage Statute ("FMS"). The reversal of the district court is warranted because FMS §186.5 is constitutional as applied to same-sex marriages. The limitation of marriage in FMS §186.5 to opposite-sex couples is not discriminatory because it defines the institution without denying rights of one gender over the other. Therefore, it does not offend equal protection rights.

Additionally, any statute may be struck down if it is inherently discriminatory in purpose. However, "a statute which distinguishes between certain classes of persons is generally presumed to be constitutional and will be upheld if it rests upon some reasonable and rational basis; only classifications which are 'inherently suspect' must meet the test of a compelling state interest." Singer v. Hara, 522 P.2d

1187, 1195 (Wash. 1974). Froessel's interests in preventing the spread of sexually-transmitted diseases and promoting procreation are legitimate public policy concerns for the general welfare. Since only the traditional institution of marriage incorporates these interests, Froessel has shown that its statute is reasonably related to advancing these goals. Therefore, since the Froessel Marriage Statute does not discriminate based on sex, but rather protects the fundamental right to marriage for both sexes equivalently, and the state provides a rational basis for denying same-sex couples marriage licenses, the statute should be upheld.

A. FMS §186.5 Provides Equivalent Rights To Marry To Both Males And Females; Therefore, It Does Not Discriminate Based On Sex.

The Froessel statute defines "marriage" as valid within the context of a union between one male and one female. FMS §186.39 (4). Under the statute, both genders are equally permitted to marry the other. Thus, a female and a male have equivalent rights to marry. "Sex" is defined as "the sum of the peculiarities of structure and function that distinguish a male from a female organism; the character of being male or female." BLACK'S LAW DICTIONARY 1375 (6th ed. 1990). Since the marriage statute does not distinguish between the rights of either gender, it cannot distinguish based on sex. The district court asserted that "if Dr. Wallace were a man, Froessel would allow her to marry Ms. McGregor." (R. at 6.) However, the court in Singer held that Petitioners must show that they are somehow being treated differently by the government than they would be if they were males. 522 P.2d at 1191. Therefore, Petitioners' argument fails because if Ms. McGregor were also a man, they would similarly be denied a license to marry. This exemplifies that the statute does not provide rights to one sex that it denies the other. Therefore, Petitioners are not excluded on account of their sex.

1. The right to marry can only be afforded to opposite-sex couples since the traditional definition of this institution requires the exclusion of male and female pairs equally.

Under the Equal Rights Amendment, individuals are protected from denial of existing rights solely because of their sex. U.S. Const. art. 31, §1. However, the Constitution does not provide for the creation of new rights for Petitioners simply because they are females. Although Petitioners claim that "sex" may include "sexual orientation," "laws which differentiate between the sexes are not invalid when they are based upon unique characteristics of one sex rather than upon membership in such sex per se." Singer, 522 P.2d at 1194. Therefore, since FMS §186.5 concerns the unique characteristics of both sexes in the union of marriage, it cannot discriminate based on sex.

2. Marriage is a fundamental right afforded to individuals of both sexes, which must be forfeited when they choose a partner of the same sex.

Froessel's limitation of marriage to a man and a woman does not violate any individual rights. The fundamental right to marry exists only between members of the opposite sex. This is evidenced by prior courts which have considered the question and all concluded that same-sex relationships are outside of the proper definition of marriage. Similarly, "the relationship proposed by the appellants does not authorize the issuance of a marriage license because what they propose is not a marriage." Jones v. Hallahan, 501 S.W.2d 588, 590 (Ky. 1973). However, Petitioners claim they should be granted a marriage license because the Constitution protects individuals from infringement of fundamental rights. Consequently, Froessel is denying neither Dr. Wallace nor Ms. McGregor from obtaining a marriage license. Rather

the license is conditional to having a partner of the opposite sex in accord with the customary definition of marriage.

The notion of marriage as a fundamental right is paramount throughout the history of civilization and incorporated in the traditional values that have shaped our society. "Marriage was a custom long before the state commenced to issue licenses for that purpose. It has always been considered as the union of a man and a woman and we have been presented with no evidence to the contrary." Id. at 589. Additionally, Congress's recent amendment to the definition of marriage distinctly specifies, "the word 'marriage' means only a legal union between one man and one woman as husband and wife." Defense of Marriage Act, Pub.L. 104-199, 110 Stat. 2419 (1996). Therefore, as in Adams, where the common meaning of "spouse" was evaluated for immigration purposes, it would similarly be inappropriate to expand the meaning of the terms as Congress has plainly defined them for purposes of granting Petitioners a marriage license. Adams v. Sullivan, 673 F.2d 1036, 1040 (9th Cir. 1982).

Petitioners question the application of the statute because it invariably excludes same-sex couples from marriage. However, it is significant to look to the intent of the statute to determine if it discriminates. "The fundamental starting point for statutory interpretation is the language of the statute itself. Where statutory language is plain and unambiguous, it must be construed to its plain and obvious meaning." Baehr v. Lewin, 852 P.2d 44, 47 (Haw. 1993). Thus, in determining the proper intention of the statute, this Court should adhere to the explicit definition as amended by Congress. In examining the importance of the traditional concept of marriage, it has been held, "this historic institution manifestly is more deeply founded than the asserted contemporary concept of marriage and societal interests . . . the Fourteenth Amendment is not a charter for restructuring it by judicial legislation." Baker v. Nelson, 191 N.W.2d 185, 186 (Minn. 1971). The right to marry, therefore, is fundamental to individuals of both sexes, yet, evidently it is qualified in that it can only be granted to individuals of both sexes together. Although Petitioner

may argue that the absence of an explicit statutory prohibition against same-sex marriages, a legislative intent to authorize such marriages is not implicated, nor can it be assumed. Id. at 185.

3. The right to marry does not offend Equal Protection because Petitioners are not homosexuals and Froessel's statute would similarly deny them a license if they were males.

Petitioners are not being denied a fundamental right to equal protection of the laws. According to the plain meaning of "marriage" and "sex" provided by numerous courts, it would be inconceivable for any marriage statute to discriminate based on sex. Although the term "sex" could possibly be interpreted to include "sexual orientation," Dr. Wallace and Ms. McGregor told the clerk that they were not "a homosexual couple." (R. at 3.). Since Petitioners are not part of a sex-based classification, they are not, as the district court claims, analogous to the interracial couple in Loving. (R. at 3.) (citing Loving v. Virginia, 388 U.S. 1, 7 (1967)). The intent of that statute was to classify based on race, while Froessel's statute does not intend sex classification. Whereas in Loving, the couple was clearly interracial, Petitioners' sexual orientation is questionable, and they do not belong to a suspect class which would require heightened scrutiny. Therefore, the equal application of FMS §186.5 to Petitioners does not constitute a violation of the Equal Protection Clause since Froessel is not discriminating against Petitioners based on their sex or sexual orientation.

Furthermore, as the court of appeals held, even when a marriage statute was found to discriminate based on sex, the court did not permit same-sex marriages. A failure to recognize the right to same-sex marriages is not violative of the fundamental principles of liberty and justice, which are the basis of our civil and political institutions. "Neither is the right to same-sex marriage implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if it were

sacrificed." Baehr, 852 P.2d at 47. Another court has held that there is "no constitutional sanction or protection of the marriage between persons of the same sex." Jones, 501 S.W.2d at 589. Conversely, petitioners in similar circumstances have argued, "the absence of an express statutory prohibition against same-sex marriages evinces a legislative intent to authorize such marriages." Baker, 191 N.W.2d at 185. However, yet another decision on this issue held that there is no United States Supreme Court decision that supports "the assertion that the right to marry without regard to the sex of the parties is a fundamental right of all persons and that restricting marriage to only couples of the opposite sex is irrational and invidiously discriminatory." Id. at 186.

Although Froessel restricts marriage to opposite-sex couples, it cannot be inferred that it is discriminating against homosexuals. Froessel may use its police power to pass laws for the general welfare of its citizens so long as it does not interfere with Constitutional rights. (R. at 18.). Since there are legitimate state concerns supporting the marriage statute and it does not discriminate based on sex, FMS §186.5 comports with the equal protection clause of the fourteenth amendment.

B. Petitioners Are Not A Suspect Class Requiring Heightened Scrutiny, And Froessel's Legitimate Interests Are Advanced By FMS §186.5; Therefore, Rational Basis Is Satisfied.

The proper standard of review is the rational basis test because Petitioners are not a suspect class requiring strict judicial scrutiny. They claim that they are not homosexuals, but rather, a same-sex couple. Therefore, since Froessel's Marriage Statute does not classify based on gender, strict scrutiny is unwarranted. Rather, as the court of appeals has explicated, the classification in question can be reconciled if Froessel's legitimate interests outweigh the disadvantages imposed on Petitioners. Romer v. Evans, ___ U.S. ___ ; 116 S. Ct. 1620, 1628

(1996). Therefore, as this Court has held, when there is an equal protection challenge, the standard of review remains, "the legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985).

1. The proper standard of review is the rational basis test since Petitioners are not discriminated based on their sex.

Froessel has proven that, although the statute unavoidably excludes same-sex relationships, it is constitutional because it satisfies the rational basis scrutiny. The legitimate interests the state advances include 1) preventing the spread of sexually transmitted diseases ("STDs") and 2) promoting procreation. (R. at 22.). This Court must weigh these interests against the interests of Petitioners to "enjoy the benefits of marriage, including naming each other as the beneficiaries of each other's estate and life insurance policies." (R. at 2.). Ms. McGregor is still able to name Dr. Wallace as the beneficiary of her estate by providing for it in her will. Furthermore, if this Court finds in favor of Froessel on the liberty interest issue, Dr. Wallace will not be able to inherit life insurance after Ms. McGregor's death because the policy itself, not the state, mandates that "no benefits will be paid to a beneficiary who was involved in the suicide if a valid state law prohibits assisted suicide at the time of the suicide." (R. at 3.).

Although Petitioners may claim that their interests in marrying cannot be rectified by the state, as in Cleburne, "if that were a criterion for higher level scrutiny by the courts, much economic and social legislation would now be suspect." 473 U.S. at 445. Finally, applying heightened scrutiny "is also purportedly inappropriate when many legislative classifications affecting the group are likely to be valid." Id. at 468.

In determining the standard of review, this Court has held that we must, "look to the likelihood that governmental action premised on

a particular classification is valid as a general matter, not merely to the specifics of the case before us." Id. Thus, even if Petitioners' claim that same-sex couples should be allowed to marry has merit, valid state objectives that promote the public good have greater significance. Froessel's interest in preventing STDs and promoting procreation are rationally related to a statute which protects the sanctity of marriage. Overall, a statute which distinguishes between certain classes of persons is presumed to be constitutional. Singer, 522 P.2d at 1195.

2. STDs, which threaten the health of society, are enough of a concern to require a statute that can aid in prevention.

Since Froessel's interests are to protect the health and well being of the citizens of Froessel, preventing STDs is a legitimate concern. As the statistics show, sixty-one percent of homosexuals in Froessel are affected with STDs, while the national average in 1994 was fifty-three percent. (R. at 9.). Although the total percentage of those affected is three percent, the majority of the cases occur in the homosexual population. Thus, since the risk of spreading disease is significantly greater among this group, Froessel has a legitimate concern in reducing the number of people at risk. Since marriage promotes stability and monogamy, the statute promotes health. Froessel has the power to enact a statute to promote a legitimate end concerning the health of its citizens. Furthermore, this Court has held that, "when social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude." Cleburne, 473 U.S. at 432. Therefore, Froessel has a valid interest in the prevention of STDs.

3. Procreation is essential to the continuance of the population and should be promoted by the state.

Froessel's interest in promoting procreation is a valid objective to preserving the continuance of the population. The institution of marriage as "a union of man and woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis." Baker, 191 N.W.2d at 186. Accordingly, the traditional definition of marriage and procreation is fundamental to the very existence and survival of the race. Id. If FMS §186.5 is interpreted to include same-sex marriages, the customary meaning of the institution is eradicated and many problems could potentially ensue, for example, the legal ramifications of adopting children into such a "family." Singer, 522 P.2d at 1191. In addition, the legislative purpose behind FMS §186.5, which authorizes marriage only between two persons of different sex, is to give effect to the public policy of marriage being an appropriate and desirable forum for procreation and rearing of children. The prohibition of same-sex marriages results from the impossibility of procreation. Id. at 1195.

Procreation is only possible with opposite-sex couples. Therefore, since same-sex couples undoubtedly cannot advance this goal, their exclusion is acceptable. Accordingly, Froessel is only required to establish a reasonable relation between procreation and FMS §186.5. Thus, the exclusion of same-sex marriages, "results from such impossibility of reproduction rather than from an invidious discrimination on account of sex." Id.

Petitioners have the opportunity to lobby to the legislature to change the definition of marriage as stated in FMS §186.5. However, the role of this Court is to determine the constitutionality of the statute.

> For Constitutional purposes, it is enough to recognize that marriage as now defined is deeply rooted in our society. Although married persons are not required to

> have children or even to engage in sexual relations, marriage is so clearly related to the public interest in affording a favorable environment for the growth of children that we are unable to say that there is not a rational basis upon which the state may limit the protection of its marriage laws to the legal union of one man and one woman.

Id. at 1197.

For the foregoing reasons, Froessel has shown that there is a legitimate concern to prevent STDs and promote procreation. Since FMS §186.5 is reasonably related to satisfying that goal, it comports with the Equal Protection Clause of the Fourteenth Amendment. Therefore, the decision of the court of appeals should be upheld and Petitioners motion should be denied.

II. FROESSEL'S STATUTES PROHIBITING ASSISTED SUICIDE COMPORT WITH THE DUE PROCESS CLAUSE BECAUSE EVEN IF A LIBERTY INTEREST EXISTS IN PHYSICIAN ASSISTED SUICIDE, THE STATE'S INTERESTS IN PRESERVING LIFE, PREVENTING SUICIDE, AND AVOIDING THE INFLUENCE OF THIRD PARTIES OUTWEIGH THAT ASSERTED INTEREST.

This Court should affirm the Thirteenth Circuit's decision holding Froessel's statutes prohibiting physician assisted suicide constitutional under the Due Process Clause of the Fourteenth Amendment. There is a Due Process violation when an individual's liberty interest outweighs the asserted state interests Youngberg v. Romeo, 457 U.S. 307, 321 (1982). Petitioners do not have a liberty interest in assisted suicide. However, even if this Court finds a liberty interest in assisted suicide, it does not outweigh Froessel's asserted interests. Therefore, Froessel's statutes prohibiting assisted suicide do

not violate the Due Process Clause.

A. Physician Assisted Suicide Is Not A Fundamental Right Protected By The Due Process Clause

There is no liberty interest in physician assisted suicide. Quill v. Vacco, 80 F.3d 716, 724 (2d Cir. 1996). To determine if a liberty interest exists, courts look to whether the interest is deeply rooted in this nation's history and tradition or whether that interest is implicit in the concept of ordered liberty. Moore v. City of East Cleveland, 431 U.S. 494, 503 (1976); Palko v. Connecticut, 302 U.S. 319, 325 (1937). Accordingly, this Court is hesitant to expand the fundamental rights of the Due Process Clause when no historical or traditional support exists. Bowers v. Hardwick, 478 U.S. 186, 194 (1986). Thus, the historical approach is the most appropriate method to utilize. In contrast, Petitioners will argue that the best test is whether the right is implicit in the concept of ordered liberty. However, this Court held, "the Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution." Id. Hence, it follows that the most accurate way to determine if a liberty interest exists is through an examination of history, not through the concept of ordered liberty.

Physician assisted suicide is not deeply rooted in this nation's history or traditions. Quill, 80 F.3d at 724. Accordingly, at common law, suicide was a criminal offense, with stigmatizing consequences. Id. (citing Thomas J. Marzen et al., Suicide a Constitutional Right?, 24 Duq. L. Rev. 1, 56-67 (1985)). Additionally, the Michigan Supreme Court held, "it would be an impermissibly radical departure from existing tradition, and from the principles that underlie that tradition, to declare that there is such a fundamental right protected by the Due Process Clause." Michigan v. Kevorkian, 527 N.W.2d 714, 733 (1994). Thus, due to a lack of historical and traditional foundation, Dr. Wallace is not constitutionally protected to assist Ms. McGregor in committing suicide.

Additionally, although Froessel recognizes a right to the refusal of unwanted medical treatment, this right does not equate with a liberty interest in physician assisted suicide. Accordingly, in Cruzan, this Court found that a liberty interest exists in the refusal of unwanted medical treatment but did not extend the decision to other cases concerning medical treatment. Cruzan v. Director, Mo. Dep't of Health, 497 U.S. 261, 277-78 (1990). Furthermore, refusing unwanted medical treatment permits life to run its natural course, while suicide is an affirmative step taken to end a life. Kevorkian, 527 N.W.2d at 728. Alternatively, Petitioners will argue that there is no distinction between refusing medical treatment and physician assisted suicide. However, more than forty states have adopted living will statutes permitting the refusal of medical treatment, whereas thirty-two states still make physician assisted suicide a crime. (R. at 5.). Thus, Ms. McGregor is free to refuse life sustaining treatment because she has signed a living will, but Dr. Wallace cannot legally end Ms. McGregor's life.

Additionally, federal courts should not interfere with a state's power to prevent suicide. Specifically, "American law has always accorded the state the power to prevent suicide, by force if necessary." Cruzan, 497 U.S. at 293 (Scalia, J. concurring). Thus, Froessel's citizens can decide whether assisted suicide should be prohibited through the election of public officials. Therefore, no liberty interest exists in assisted suicide.

B. Even If A Liberty Interest Is Found To Exist In Physician Assisted Suicide, Froessel's Interest In Preserving Life, Preventing Suicide, And Avoiding The Influence Of Third Parties Outweighs That Liberty Interest.

This Court should find that because no liberty interest in physician assisted suicide exists, the examination ends here. It is only after a liberty interest is identified, that a court must balance that liberty

interest against state interests. Youngberg, 457 U.S. at 320. Even if this Court finds a liberty interest in physician assisted suicide, the state's interests in preserving life, preventing suicide, and avoiding the influence of third parties outweigh that liberty interest.

1. Froessel's interest in preserving life outweighs Ms. McGregor's interest in assisted suicide.

Froessel's interest in preserving life outweighs Ms. McGregor's interest in assisted suicide. Accordingly, states have an interest in preserving the lives of citizens so they can contribute to society. Alternatively, Petitioners will contend that a state's interest in preserving life should depend on the circumstances. However, in Cruzan, this court found, "a state may properly decline to make judgements about the quality of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life." Cruzan, 497 U.S. at 282. Thus, Froessel's statutes exhibit an unqualified interest in preserving life, and Ms. McGregor's desire to assisted suicide is outweighed by that interest.

State statutes permitting the refusal of unwanted medical treatment do not reduce Froessel's interest in preserving life. Moreover, refusing unwanted medical treatment allows life to run its natural course, while suicide artificially ends life. Accordingly, medical advancements have made it possible to cure life threatening diseases. Likewise, Dr. Bruce indicated that treatment for Ms. McGregor's illness will soon be available. (R. at 4.). To the contrary, Petitioners will claim that the Ninth Circuit appropriately found that a living will is evidence of a state's lack of interest in preserving life. Compassion in Dying v. Washington, 79 F.3d 790, 818-19 (1996). However, competent people refusing to prolong their lives are significantly different from people assisting others to kill themselves. Thus, because of differences between assisted suicide and refusing medical treatment, and because a cure is forthcoming, the state's interest in preserving life outweighs Ms.

McGregor's interest in dying.

2. Froessel's interest in preventing suicide outweighs Ms. McGregor's interest in receiving assisted suicide.

Froessel's interest in preventing suicide outweighs Ms. McGregor's interest in assisted suicide. The Limke Study by the Froessel Department of Health and Hospital Services found that suicide is the second leading cause of death in young people ages fifteen through thirty-four, and one of the top five causes of death for the thirty-five through fifty-four age group. (R. at 23.). Hence, suicide is a disturbing problem in the State of Froessel. Moreover, the Limke study found that fifty-one percent of all suicides are not committed by people suffering from terminal illness but by those suffering treatable mental disorders. (R. at 23.). Therefore, the state should prevent suicide and not permit citizens to kill themselves through physician assisted suicide.

Additionally, doctor involvement in assisted suicide has been regarded as contrary to the Hippocratic Oath. Kevorkian, 527 N.W.2d at 731 n.50. Specifically, a doctor is not supposed to give advice or deadly drugs in order to cause death. Id. (citing STEADMAN'S MEDICAL DICTIONARY 650 (5th Unabridged Lawyers' Ed.)). Therefore, Dr. Wallace has an ethical responsibility as a doctor not to assist Ms. McGregor in committing suicide. Also, a state has an interest in doctors attempting to cure illness and ease pain, not in assisted suicide. Consequently, statutes preventing assisted suicide help to prevent unnecessary deaths. Thus, even if assisted suicide were a liberty interest, Froessel's concern in preserving life outweighs that interest.

3. Froessel's interest in avoiding the influence of third parties outweighs Ms. McGregor's interest in assisted suicide.

Froessel's interest in avoiding the influence of third parties

outweighs Ms. McGregor's interest in assisted suicide. Accordingly, the Ninth Circuit held, "a state may properly assert an interest in prohibiting even altruistic assistance to a person contemplating suicide." Compassion in Dying, 79 F.3d at 825. Furthermore, allowing assisted suicide may increase the frequency of suicide and have a negative affect on the person who assists in the suicide. Id. Hence, the state's interest in avoiding the influence of third parties outweighs a person's interest in receiving assistance to commit suicide.

A state has an interest to ensure that people are not influenced to kill themselves by third parties. Accordingly, the Donaldson court held, "the state's interest must prevail over the individual because of the difficulty, if not the impossibility of evaluating the motives of the assister or determining the presence of undue influence." Donaldson v. Lungren, 4 Cal. Rptr. 2d 59, 63 (Cal. Ct. App. 1992). Thus, people may be pressured into taking their own lives. Specifically, people may take their lives to prevent loved ones from economic despair, or other considerations. Compassion in Dying, 79 F.3d at 826. Alternatively, Petitioners will argue that the state could regulate to "minimize the risk of abuse."(R. at 15.). However, if there is a risk that any citizen will die needlessly, the state needs to prevent that possibility. Therefore, the State's interest in preventing outside influences from taking citizens lives outweighs Ms. McGregor's interest in physician assisted suicide.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the court of appeals and deny declaratory and injunctive relief to Petitioners.

Respectfully submitted,

Lisa J. Ferlazzo & Linda Orndorff