February 14, 2020

Hon. William C. Smith, Jr.
Maryland Senate Committee on Judicial Proceedings
Miller Senate Office Bldg., 2 East Wing
11 Bladen St.
Annapolis, MD 21401

Re: S.B. 701, End-of-Life Option Act (Richard E. Israel and Roger "Pip" Moyer Act)

Dear Chairman Smith:

My name is Stephen L. Mikochik. I am a Professor Emeritus of Constitutional Law at Temple Law School in Philadelphia and a visiting professor of Jurisprudence at Ave Maria Law School in Naples, Florida. Before joining the Temple faculty, I was an attorney with the Civil Rights Division, U.S. Department of Justice, where I enforced Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against persons with disabilities in programs receiving federal financial assistance. I have authored several articles on assisted suicide and have presented testimony on the impact proposed end-of-life legislation would have on persons with disabilities.

I write to clear up several misconceptions about S.B. 701:

First, despite claims to the contrary, the Bill is not aimed at avoiding pain at the end of life. Nothing in the criteria it lists for receiving a lethal drug requires the presence of insufferable pain (or for that matter, any pain at all) as a qualifying condition. This is not surprising since "[medical] technology [makes] the administration of pain-relieving drugs sufficient, except for a very few individuals for whom the ineffectiveness of pain control medicines can mean, not pain, but the need for sedation[.]" *Washington v. Glucksberg*, 521 U.S. 702, 791-92(Breyer, J., concurring in the judgements) (relying on the amicus curiae briefs of the National Hospice Organization and the American Medical Association).

Second, despite claims that it does not authorize active euthanasia, Section 5-6A-11, (D)(1), the Bill actually blurs the line between assisted suicide and euthanasia. Though a patient qualifying for a lethal drug must have "the ability to self-administer medication[,]" Section 5-6A-01(P)(5), the term "self-administer" means only the "act of taking medication[.]" Section 5-6A-01(R). "Taking medication" is broad enough to include merely the patient swallowing or ingesting what someone else feeds directly, which would constitute euthanasia not assisted suicide.

Third, despite claiming the opposite, Senate Bill 701 already includes persons with disabilities. People with disabling conditions that can cause death within six months, but only if treatment were removed, are terminal for purposes of the proposed legislation. Section 5-6A-01(S). Thus, their eligibility would not rest "solely" on "disability, or a specific illness[,]" Section 5-6A-04(A)(2); and they could thus receive a lethal prescription.

Fourth, rather than protecting vulnerable people, Senate Bill 701 provides a legislative blueprint for crime. The written form for requesting the lethal drug only requires the attending physician to determine that the patient's condition will, "more likely than not," result in death within six months. Section 5-6A-03(C). Someone financially interested in the patient's death (say, the beneficiary of a life insurance policy) can communicate to the attending physician, if needed on the patient's behalf, the patient's decision to request the lethal drug. Section 5-6A-01(D)(3). The same interested person can be a witness to the patient's written request for the lethal drug, Section 5-6A-03(B)(1)(ii), and can be the agent authorized to procure it from the dispensing pharmacist. Section 5-6A-07(B). That same person can serve if needed as an interpreter for the patient when the patient and attending physician privately discuss whether the patient is feeling coerced or unduly influenced. Section 5-6A-07(A)(5). The same interested person can be the only witness present when the lethal drug is taken, as objective observers are not required. Since the drug commonly used in assisted suicide is water soluble, the interested person can mix it in an unsuspecting patient's drink.

Further, the attending physician is not required to evaluate the patient's competency at the time the lethal drug is taken, even though weeks or months may have passed since the prescription was written. The attending physician can complete the death certificate, Section 5-6A-07(C), on the hearsay of such interested person regarding the circumstances of the patient's death since the physician's presence is not required when the lethal drug is taken. For the death certificate and other record-keeping purposes, and for all "other purposes governed by the laws of the State, whether contractual, civil, criminal, or otherwise," the patient's death must be listed as from natural causes. Section 5-6A-11. Thus, family members may never know that the patient died from a lethal drug rather than from the underlying medical condition. Further, coroners may not routinely investigate deaths certified from natural causes. Thus, no one will have reason to inquire into the circumstances surrounding the patient's death. Finally, even though the patient's insurance policy does not cover death from suicide, the same interested person can still recover if named as a beneficiary since the policy must treat the patient's death as from natural causes. Section 5-6A-12(C).

Maryland's interest, however, "goes beyond protecting the vulnerable from coercion; it extends to protecting disabled and terminally ill people from prejudice, negative and inaccurate stereotypes, and societal indifference." *Glucksberg*, at 732 (citation and internal quotations omitted). When the State safeguards the able-bodied from suicide but facilitates it for the sick and disabled, it signals unmistakably that such people's lives are less worthy of protection. Those who argue instead that dignity is affirmed when such people are given the right to choose to make themselves dead underestimate how devalued they are in society; how internalized such attitudes can become; how attractive the hint to leave can then appear. Finally, those who argue that assisted suicide is no prelude to euthanasia forget that every principle tends

"to expand itself to the limit of its logic," *Glucksberg*, at 733 n. 23 (quoting Justice Cardozo, *The Nature of the Judicial Process* 51 (1932)), and that unwelcome guests who "can't take a hint" are eventually helped to leave.

For all these reasons, I urge your Committee to reject Senate Bill 701.

Respectfully submitted,

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cc: Maryland Senate Committee on Judicial Proceedings