

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

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JOHN JAY HOOKER,)
DR. W. BARTON CAMPBELL, M.D.,)
DR. JEFFREY A. SOSMAN, M.D.,)
and DR. ROBERT BALLARD, M.D.,)

Plaintiffs,)

VS.)

Cause of Action No: 15-0615-II

HERBERT SLATERY III,)
in his official capacity as Tennessee)
Attorney General;)
WILLIAM E. HASLAM, in his official)
capacity as Governor of Tennessee;)
and GLENN FUNK,)
in his official capacity as District)
Attorney for Davidson County,)
Tennessee,)

Defendants.)

VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF
AND EXPEDITED HEARING

Come now John Jay Hooker, Dr. W. Barton Campbell, M.D., Dr. Jeffrey A. Sosman, M.D., and Dr. Robert Ballard, M.D., (collectively "Plaintiffs") and bring this action to vindicate the liberty, autonomy, and privacy rights of competent, terminally ill persons and their doctors to make compassionate end-of-life decisions without fear of criminal prosecution. This action is brought against Herbert Slatery, III, in his official capacity as Tennessee Attorney General, William E. Haslam, in his official capacity as Governor of Tennessee, and Glenn Funk, in his official capacity as District Attorney for Davidson County, Tennessee, (collectively "Defendants"), and would show unto the Court that:

1. Plaintiff, John Jay Hooker, a Tennessee resident with advanced, terminal cancer (“Plaintiff Hooker”) submits that the Tennessee Constitution affords him the right to have the option of receiving aid-in-dying. Dr. W. Barton Campbell, in his individual capacity as a physician (“Plaintiff Campbell”), Dr. Jeffrey A. Sosman, in his individual capacity as a physician (“Plaintiff Sosman”), Dr. Robert Ballard, in his individual capacity as a physician (“Plaintiff Ballard”) (collectively, “Physician Plaintiffs,” each in their individual capacity and/or with the assistance of other competent physicians), have the ability to provide Plaintiff Hooker with aid-in-dying.

2. Aid-in-dying, as discussed more thoroughly below, is the recognized medical practice that allows mentally competent, terminally ill adult patients to request from their physician a prescription for life-ending medication, which the person may self-administer if and when he or she chooses to bring about a quick and peaceful death.

3. *Inter alia*, this action specifically alleges that Tenn. Code Ann. § 39-13-216 (“Assisted Suicide Statute”)¹ is violative of the Tennessee Constitution and should be declared void as it applies to aid-in-dying.²

¹ Tenn. Code Ann. § 39-13-216. Assisted suicide:

(a) A person commits the offense of assisted suicide who:

(1) Intentionally provides another person with the means by which such person directly and intentionally brings about such person's own death; or

(2) Intentionally participates in a physical act by which another person directly and intentionally brings about such person's own death; and

(3) Provides the means or participates in the physical act with:

(A) Actual knowledge that the other person intends to bring about such person's own death; and

(B) The clear intent that the other person bring about such person's own death.

(b) It is not an offense under this section to:

(1) Withhold or withdraw medical care as defined by § 32-11-103;

(2) Prescribe, dispense, or administer medications or perform medical procedures calculated or intended to relieve another person's pain or discomfort but not calculated or intended to cause death, even if the medications or medical procedures may hasten or increase the risk of death; or

(3) Fail to prevent another from bringing about that person's own death.

(c) This section shall not in any way affect, impair, impede, or otherwise limit or render invalid the rights, privileges, and policies set forth in the Tennessee Right to Natural Death Act, compiled in title 32, chapter 11; the provisions for

the durable power of attorney for health care, compiled in title 34, chapter 6, part 2; or the do not resuscitate (DNR) regulations of the Tennessee board for licensing health care facilities issued pursuant to § 68-11-224.

(d) A cause of action for injunctive relief may be maintained against any person who is reasonably believed about to violate or who is in the course of violating subsection (a), by any person who is:

- (1) The spouse, parent, child, or sibling of the person who would bring about such person's own death;
- (2) Entitled to inherit from the person who would bring about such person's own death;
- (3) A health care provider or former health care provider of the person who would bring about such person's own death; or
- (4) A public official with appropriate jurisdiction to prosecute or enforce the laws of this state.

(e) A cause of action for civil damages against any person who violates or attempts to violate subsection (a) may be maintained by any person given standing by subsection (d) for compensatory damages and exemplary damages, whether or not the plaintiff consented to or had prior knowledge of the violation or attempt. Any compensatory damages awarded shall be paid as provided by law, but exemplary damages shall be paid over to the department of revenue for deposit in the criminal injuries compensation fund, pursuant to § 40-24-107.

(f) Reasonable attorney's fees shall be awarded to the prevailing plaintiff in a civil action brought pursuant to this section. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, the court shall award reasonable attorney's fees to the defendant.

(g) Assisted suicide is a Class D felony.

² The following provisions of the Tennessee Constitution constitute the basis for many of the rights asserted in this Complaint:

Art. 1, § 1. That all power is inherent in the people, and all free governments are founded on the authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.

Art. 1, § 2. That government being instituted for the common benefit, the doctrine of nonresistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

Art. 1, § 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship.

Art. 1, § 7. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not be granted.

Art. 1, § 8. That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.

Art. 1, § 19. That the printing press shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. But in prosecutions for the publication of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other criminal cases.

Art. 1, § 27. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner prescribed by law.

4. In the alternative, Plaintiffs allege that the Assisted Suicide Statute does not encompass the conduct of a Tennessee licensed physician providing aid-in-dying to an individual who has requested such aid, because aid-in-dying is not barred when read in conjunction with the exceptions listed in section T.C.A. § 39-13-216 (b)(2) as well as Tenn. Code Ann. § 32-11-101 *et seq.* (“Living Will Statute”) and Tenn. Code Ann. § 34-6-201 *et seq.* (“Durable Power of Attorney Statute”),

5. Plaintiffs state that a physician who provides aid-in-dying to a patient who has requested such aid should not be criminally liable under the Assisted Suicide Statute because their intent is to relieve another person’s pain or discomfort, and to prohibit such aid would violate the Tennessee Constitutional provisions previously cited.

6. Plaintiffs further seek injunctive relief prohibiting Defendants, in their official capacities, as well as their agents, employees, representatives and all those acting in concert with them, from applying or enforcing the Assisted Suicide Statute to penalize or prohibit receiving or providing aid-in-dying.

JURISDICTION AND VENUE

7. This Court has personal jurisdiction over Plaintiffs and Defendants. This Court has jurisdiction of the subject matter of this action pursuant to Tenn. Code Ann. §§ 16-11-101, 16-11-102.

8. Venue is proper in this Court because Plaintiff Hooker resides in Davidson County, and Physician Plaintiffs and Defendants reside in or maintain an office in Davidson

Art. 11, § 16. The declaration of rights hereto prefixed is declared to be a part of the Constitution of the state, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the general powers of the government, and shall forever remain inviolate.

County. Further, this lawsuit is properly subject to jurisdiction of the courts in Davidson County.

PLAINTIFFS

9. Plaintiff Hooker is a fully mentally competent 84-year old lawyer. He was twice the democratic nominee for governor and one of the original founders of Hospital Corporation of America (HCA), which included Drs. Thomas Frist Sr. and Jr., Henry Hooker, and Jack Massey, Chairman of Kentucky Fried Chicken. Thereafter, Hooker became the publisher of the Nashville Banner, the newspaper that had opposed him in his political efforts. He subsequently became chairman of the board of the worldwide news organization, United Press International, the competitor to the Associated Press.³

10. After Hooker graduated from Vanderbilt Law School, he joined Hooker, Hooker & Willis, which firm was counsel for the Nashville Tennessean. As a political candidate and a lawyer, Plaintiff Hooker has dedicated his life to the pursuit of civil rights, forever demanding a strict construction of the Tennessee Constitution that he loves. He faced death threats shortly after the assassination of Martin Luther King, Jr. and Robert Kennedy due to his political message. He was special assistant to Attorney General Robert F. Kennedy, and was instrumental in the decision to bring the landmark voting rights case of *Baker v. Carr*, a Tennessee case which was argued all the way to the United States Supreme Court and resulted in the famous "one person, one vote" legal standard. He has lived by the creed that the people are the sovereign, and has not shirked a self-imposed responsibility to speak truth to power and challenge any perceived abuses of power. Further, Hooker was the

³ The Tennessee Legislature honored Plaintiff Hooker in 2010. A copy of that resolution is attached as Ex. 1 and incorporated herein.

Chairman of a world-wide company known as STP, and was the founder of Performance Systems, an international organization.

11. Plaintiff Hooker was recently diagnosed by multiple physicians as having terminal Stage IV metastatic cancer. Just in the last few weeks, he has also had multiple melanomas removed from his skin. In sum, notwithstanding the potentially life-expanding-experimental treatments, Plaintiff Hooker will in all probability die from his cancer.

12. Plaintiff Hooker asserts that it is the ultimate liberty right under the Tennessee Constitution for competent adults who face a terminal illness to be allowed to die with dignity. This includes a right to obtain and self-administer medication to bring about a peaceful and controlled death. Plaintiff Hooker also believes that as he battles his terminal cancer he should be afforded the comfort of knowing that he has the ability to stop his suffering. Plaintiff Hooker wishes to have the option of aid-in-dying as he battles his own terminal illness, and he seeks with equal fervor the same right for the voiceless, who are unfortunately, similar or in even worse circumstances.

13. Because of his prognosis and his desire to receive aid-in-dying, Plaintiff Hooker has a real, unique, and distinct interest in the provisions of the statute at issue in Tenn. Code Ann. § 39-13-216.

14. Plaintiff Hooker is a Tennessee citizen protected by the rights guaranteed to him under the Tennessee Constitution. For the aforementioned reasons, Plaintiff Hooker has standing to seek a declaratory judgment challenging the constitutionality of the Assisted Suicide Statute. Plaintiff Hooker wants to have the option of aid-in-dying.

15. Plaintiff Hooker's family supports his efforts in this lawsuit, and believes that Plaintiff Hooker should be afforded the benefit of aid-in-dying.

16. Physician Plaintiffs are Tennessee residents and licensed physicians. In the course of their respective practices, Physician Plaintiffs provide medical care to adult patients, whom they know to be mentally competent adults who are terminally ill, and who express the desire to have the option of aid-in-dying.

17. Physician Plaintiffs are willing to consider writing a prescription for medication for aid-in-dying to mentally competent and terminally ill adult patients to ease their suffering and provide comfort but for the exposure to felony criminal prosecution for doing so.

18. In addition, enforcement of the Assisted Suicide Statute deters them from rendering advice regarding aid-in-dying.

19. Physician Plaintiffs in their capacity as physicians bound by an oath, have a real, distinct, and unique interest in provisions of the statute at issue in Tenn. Code Ann. § 39-13-216.

20. For the aforementioned reasons, Physician Plaintiffs have standing to challenge the Constitutionality of Tenn. Code Ann. § 39-13-216, or in the alternative, to seek declaratory judgment as to its scope.

Physician Plaintiffs further have standing to assert a claim on behalf of their current and future patients.

DEFENDANTS

21. Defendant Herbert Slatery, III (“Defendant Slatery”) is the Attorney General and Reporter of the State of Tennessee, and is named as a defendant in his professional capacity. Pursuant to Tenn. Code Ann. § 8-6-109 and Art. XI, § 5 of the Tennessee Constitution, it is the duty of Defendant Slatery to see that the laws of the State are uniformly and adequately enforced, and to defend the constitutionality and validity of any statutes with

statewide applicability. Defendant Slatery also has the authority to challenge laws of the State that he believes to be unconstitutional.

22. Defendant William E. Haslam (“Defendant Haslam”) is the Governor of the State of Tennessee and is named as a defendant in his professional capacity. It is the duty of Defendant Haslam to see that the laws of the State are uniformly and adequately enforced.

23. Defendant Glenn Funk (“Defendant Funk”) is the District Attorney General for Davidson County and is named as a defendant in his official capacity. Pursuant to Tenn. Code Ann. § 8-7-103, Defendant Funk, an elected official, is authorized under the laws of this State to prosecute any criminal case for alleged violations of the Tennessee criminal code.

GENERAL BACKGROUND

24. End-of-life care has always been a difficult subject to address politically and legally. Over the past 30 years, medical practices, treatment, and ethics have changed dramatically, particularly with respect to end-of-life care. Today’s medical practices often prolong life at the expense of increased pain and suffering for the patient and the family members. The need for uniform guidelines in providing end-of-life care has necessitated the development of appropriate standards for end-of-life care and treatment, informed by clinician practices, patient needs, and authoritative literature.

25. In addition to these standards, physicians have the necessary training to assess their patients' competence to make life and death decisions related to their medical care.

26. A treatment option for terminally ill patients is aid-in-dying. Aid-in-dying is a nationally recognized term for the medical practice of providing a mentally competent and terminally ill, suffering adult patient with a prescription for medication that the patient may at his or her discretion choose to self administer in order to bring about a peaceful death if

and when the patient chooses. If that person decides to use aid-in-dying medication, the recognized cause of death for that patient is the underlying terminal illness. Aid-in-dying medications are self administered by the patient. This practice should not be confused with euthanasia, in which the physician administers the medication.

27. Over the past two decades, an increasing number of states and jurisdictions have authorized aid-in-dying through ballot initiatives, legislation and/or judicial decisions. In the last year, proposed legislation to authorize the practice has been introduced in over 20 states.

28. A number of American medical bodies – including the American Public Health Association, the American Medical Women’s Association and American College of Legal Medicine – have adopted policies in support of the practice.

29. A 2013 Gallup poll found that 70% of Americans were in favor of allowing physicians to help terminally ill patients end their life by painless means.

30. A 2013 Pew Research Center report states that 62% of Americans believe that patients should be able to end their life if suffering great pain with no hope of improvement. In a May 2015, Vanderbilt University poll of Tennessee registered voters conducted by the Center for the Study of Democratic Institutions. 53% of those polled agreed that doctors should be allowed to painlessly end the person’s life either upon the person’s family’s request. Another 12% of respondents believe that a person with an incurable disease should be allowed to end their life by any means they desire. This indicates that virtually 2/3 of these local respondents support aid-in-dying.

31. In sum, evolving medical standards and public views national and local tend to support aid-in-dying.

32. When aid-in-dying is an openly available practice, end-of-life care for all terminally ill patients improves through better pain treatment, earlier and increased referrals to hospice and better dialogues between physicians and their terminally ill patients about end-of-life care and decisions.

33. When aid-in-dying is available, patients who choose it are often dying of cancer or other debilitating illnesses. Patients choose aid-in-dying for a wide range of reasons, including but not limited to the loss of autonomy, loss of ability to engage in activities that make life enjoyable or tolerable, progressive and inexorable loss of control of bodily functions and integrity, and the physical pain, anxiety and/or panic occasioned by terminal illness such as cancer.

34. Patients who obtain medication for aid-in-dying often do not ultimately ingest the medication but are very comforted to simply have the option.

35. Further, Tennessee's own Assisted Suicide Statute excepts from criminality the administration of total sedation and the withdrawal of life support in certain circumstances, illustrating the state's desire to allow for pain-easing, end-of-life care for terminally ill patients.

36. A growing number of legal and medical professionals recognize a fundamental difference between suicide and aid-in-dying.

37. For example, the American Psychological Association and state Psychological Associations have recognized that "the reasoning on which a terminally ill person (whose judgments are not impaired by mental disorders) bases a decision to end his or her life is

fundamentally different from the reasoning a clinically depressed person uses to justify suicide.”⁴

38. In 1997 the New Mexico Psychological Association (the “NMPHA”) filed an *amicus* brief in a case similar to this one, in which a New Mexico court held that the State’s constitutional guarantee of fundamental rights protected a mentally competent and terminally ill adult patient’s right to a peaceful and controlled death. In that brief, the NMPH discussed the critical difference between suicide and aid-in-dying, and urged the court to find the New Mexico statute prohibiting assisting suicide did not reach the conduct of a physician providing aid-in-dying.⁵

39. Many medical and legal professionals recognize that the choice of a dying patient for a peaceful death through aid-in-dying is not suicide, just as withholding or withdrawal of treatment is not homicide, and palliative sedation is not homicide. Some courts have taken the position that if the intent of the physician is to ease suffering, then even if the result is a hastened death, this is not a prohibited practice. The current Tennessee statute prohibiting assisted suicide also excepts this practice.

40. Suicide precipitates a premature death of a life of otherwise indefinite duration; often motivated by treatable depression. In such cases, mental illness can impair the individual’s judgment. Aid-in-dying, in stark contrast, allows mentally competent and terminally ill adult patients who face impending death due to the progression of terminal illness to make a rational, informed, autonomous choice. Rather than destroying himself or herself, this choice is a final autonomous act of a patient who chooses to avoid the final

⁴ American Psychological Association, “Terminal Illness and Hastened Death Requests: The Important Role of the Mental Health Professional” 1 (1997), *quoted in* Brief of Amicus Curiae Coalition of Mental Health Professionals in Support of Respondents at 17, *Gonzales v. Oregon*, No. 04-623, 2004 U.S. Briefs 623.

⁵ See Brief of Amicus New Mexico Psychological Association in Support of the Plaintiffs, *Morris v. New Mexico*, 2014 N.M. No. D-202-CV 2012-02909 (Dec. 10, 2 2014).

ravages of disease in the face of impending death, thereby avoiding unnecessary suffering and preserving the coherence and integrity of the life the patient has lived. A physician's assistance in this regard is still premised on the compassionate intent to ease suffering.

41. The decision to bring this lawsuit was not lightly taken and was made in response to the growing recognition for the need for open discussion regarding end of life care and options, non-profit organizations formed across the country. Plaintiff Hooker verily believes that the leading organization in ensuring patient directed care at the end of life is Compassion & Choices. Compassion & Choices supports Plaintiff Hooker's efforts in this state as consistent with its mission to ensure that terminally ill adults have the most peaceful death possible.

TENNESSEE'S ASSISTED SUICIDE STATUTE AND AID-IN-DYING

42. The Assisted Suicide Statute provides in pertinent part that assisting suicide consists of intentionally providing another person with the means by which that person directly and intentionally takes his own life.

43. Whoever assists suicide is guilty of a Class D felony.

44. Terminal illness may progress in various ways and end-of-life treatment and treatment options vary dramatically among terminally ill patients. For the purpose of this Complaint, Plaintiffs draw attention to the following end-of-life scenarios:

A. Patient A, on a life-prolonging intervention, such as a ventilator or feeding tube, can direct withdrawal of the intervention or, if mentally incapacitated, others may be empowered to direct the withdrawal of the intervention, thereby precipitating death. Withdrawing life support does, in fact, assist in suicide; however, such an act is excepted from the Assisted Suicide Statute;

B. Patient B, with refractory pain, can request terminal sedation (also called sedation to unconsciousness), whereby his or her doctor induces an unconscious state via IV medication and withholds fluid/nutrition. The patient is maintained in this state until death ensues whether by lack of nutrition or due to the amount of medication needed to keep the patient comfortable. Terminal sedation does, in fact, assist in suicide; however, such an act is excepted from the Assisted Suicide Statute because it is “calculated or intended to relieve another person's pain or discomfort but not calculated or intended to cause death....”

C. Patient C, who is terminally ill, is not on life support and thus does not have the option to withdraw life support and is otherwise ineligible for terminal sedation because he or she does not fit the medical criteria. This patient is thereby forced to endure the pain and indignity required to reach the state whereby he or she is *allowed* death by starvation or sedation. This patient and his or her family may find the patient's dying process lengthy and unbearable; yet, even though death is sure to result, the patient has no means to precipitate that death via certain and humane means. Aid-in-dying should be an option for such a patient; yet, the Assisted Suicide Statute prevents patients from obtaining the compassionate medical care they deserve because of uncertainty regarding its application.

45. Plaintiff Hooker understands his own diagnosis, and is fully competent and of sound mind, and understands that he will almost certainly face the dilemma of hypothetical Patient C above.

46. Further, Plaintiff Hooker, within the last year, recently witnessed the death of one of his closest friends from the ravages of terminal cancer. His friend was sedated and

unconscious for several days before his body succumbed to the disease. The effect of that painful experience on family and friends adds impetus to Plaintiff Hooker's desire to challenge the laws that prevent a peaceful and pain free death.

47. In the course of their current medical practices, Physician Plaintiffs regularly encounter terminally ill patients who have no chance of recovery and for whom medicine cannot offer any hope other than some degree of symptomatic relief. In some cases, even symptomatic relief is impossible to achieve without the use of terminal sedation, a practice where the physician administers medications to render the patient unconscious, while nutrition and hydration are withheld until death occurs.

48. Even though terminal sedation may hasten or increase the risk of death, terminal sedation is excepted from prosecution under the Assisted Suicide Statute. The only choice available to such patients is prolonged and unrelieved anguish on the one hand or total loss of consciousness and personal autonomy on the other. At times, though death is imminent, the later scenario is not an option because the patient does not want to linger in a state of unconsciousness.

49. Faced with this reality, some terminally ill patients would seek the option of aid-in-dying.

50. In the course of their current medical practices, Physician Plaintiffs have encountered patients described in scenarios A-C described above.

51. In some cases, providing aid-in-dying is, in the professional judgment of Physician Plaintiffs, a medically and ethically appropriate course of treatment.

52. Plaintiff Hooker alleges in the instant circumstance, the professional judgment of the Physician Plaintiffs is that access to aid-in-dying is a medically and ethically appropriate option for Plaintiff Hooker as well as those patients in Category C who are destined for an

imminent and likely painful death and who, due to present legislation, have no choice but to suffer indeterminately. Further, Plaintiff Hooker asserts that the physicians' inability to legally provide this available method to relieve suffering forces physicians into a situation where the medical and ethical advice they would give may be in conflict with the current law.

53. Physician Plaintiffs have treated mentally competent and terminally ill adult patients who requested access to aid-in-dying, but Physician Plaintiffs were deterred from providing such treatment by the potential for prosecution under the Assisted Suicide Statute if the patient did ultimately self-administer life-ending medication.

54. Physician Plaintiffs reasonably expect to encounter such patients in the future course of their respective medical practices.

55. The existence and potential application of the Assisted Suicide Statute deters Physician Plaintiffs from providing access to aid-in-dying and thereby prevents Physician Plaintiffs from offering medical care, which, in their professional judgment, would otherwise be humane and medically and ethically appropriate under the circumstances.

56. Plaintiff Hooker wants the option of aid-in-dying should he find his suffering unbearable.

57. Plaintiff Hooker made an oral request for aid-in-dying to his physician on 4/14/15. Plaintiff Hooker also made a witnessed, written request for aid-in-dying in writing on 4/14/15.

58. Physician Plaintiffs have determined that plaintiff Hooker is mentally competent and that his judgment is not compromised by any mental health impairment.

59. Physician Plaintiffs believe that providing plaintiff Hooker with such medication would comfort and relieve the suffering of plaintiff Hooker even if plaintiff Hooker chose not to self-administer the medication.

60. Physician Plaintiffs believe that plaintiff Hooker would be comforted and relieved of suffering if he received medication pursuant to aid-in-dying.

61. Physician Plaintiffs would prescribe plaintiff Hooker the medication for aid-in-dying solely with the intent to relieve plaintiff Hooker's pain caused to his body by the malignant cancer.

62. Plaintiff Hooker wants to live, but being fully cognizant of his impending morality, he would take great comfort in knowing that, whatever course his illness takes, he would be assured he would have the option to not have to suffer needlessly. Such certainty would allow him to more fully live his remaining days.

COUNT ONE: DENIAL OF CONSTITUTIONAL RIGHT TO PRIVACY

63. Paragraphs 1 - 62 are hereby incorporated by reference and made paragraphs 1 - 62 of Count One as if fully set forth therein.

64. The Declaration of Rights of the Tennessee Constitution makes clear that the people themselves – and not the government – are the sovereign.

65. Public policy of this State makes manifest that Tennesseans value privacy generally and autonomy in medical decision-making specifically.

66. Although not expressly stated in the Tennessee Constitution, there exists an individual right to privacy guaranteed under and protected by the liberty clauses in the Tennessee Constitution's Declaration of Rights.

67. The Tennessee Supreme Court has found that the right to privacy arises from the specific provisions of the Tennessee Constitution, including Art. 1, §§ 1, 2, 3, 7, 8, 19 and 27 and Art. XI, §16.

68. Prohibiting aid-in-dying violates Plaintiff Hooker's right, Physician Plaintiffs' rights and their patients' rights to privacy and other fundamental liberties without due process of law as guaranteed by the Tennessee Constitution.

69. Physician Plaintiffs have standing to assert a claim for denial of the right to privacy on behalf of their patients.

70. Barring physicians from providing access to aid-in-dying bears no rational relationship to any legitimate state interest, does not further any important state interest, nor is it the least restrictive means of advancing any compelling state interest.

71. Barring aid-in-dying deprives Plaintiff Hooker, Physician Plaintiffs and their patients of their right to privacy, in violation of the Tennessee Constitution.

COUNT TWO: DENIAL OF DUE PROCESS OF LAW (VAGUENESS)

72. Paragraphs 1 - 71 are hereby incorporated by reference and made paragraphs 1 - 71 of Count Two as if fully set forth therein.

73. When the Assisted Suicide Statute is read in *pari materia* with the Durable Power of Attorney Statute and the Living Will Statute, the words of the statute become hopelessly vague and devoid of certainty that the law demands, and that life and death situations deserve.

74. Because no court has had occasion to thoroughly construe the scope of the (b)(2) exception in the Assisted Suicide Statute, there is substantial uncertainty over the legal rights and responsibilities of the parties as they relate to a physician who wishes to provide access to aid-in-dying to a mentally competent and terminally ill adult individual when the treatment is otherwise medically appropriate and when read in conjunction with the Durable Power of Attorney Statute and the Living Will Statute.

75. For the reasons contained herein, the Assisted Suicide Statute is void for vagueness under Art. I, § 8 of the Tennessee Constitution.

76. Physician Plaintiffs have standing to assert a claim for denial of due process of law on behalf of their patients.

77. Barring aid-in-dying deprives Plaintiff Hooker, Physician Plaintiffs and their patients of their right to due process under the law, in violation of the Tennessee Constitution.

COUNT THREE: DENIAL OF EQUAL PROTECTION OF THE LAWS

78. Paragraphs 1 - 77 are hereby incorporated by reference and made paragraphs 1 – 77 of Count Three as if fully set forth therein.

79. The Tennessee Constitution, including Art. XI, § 8, requires the state to provide every person with the equal protection of the laws.

80. Barring physicians from providing aid-in-dying discriminates against Plaintiff Hooker, as well as other similarly situated terminally ill patients who cannot direct that their life sustaining treatment be withdrawn to hasten death or are ineligible for or do not want terminal sedation, but would rather choose aid-in-dying.

81. Physician Plaintiffs have standing to assert a claim for denial of equal protection on behalf of their patients.

82. Barring aid-in-dying bears no rational relationship to any legitimate state interest, does not further any important state interest, nor is it the least restrictive means of advancing any compelling state interest.

83. Barring aid-in-dying deprives Plaintiff Hooker and Physician Plaintiffs' patients who seek aid-in-dying equal protection of the laws, in violation of the Tennessee Constitution.

COUNT FOUR: DENIAL OF INHERENT AND INALIENABLE RIGHTS TO LIBERTY AND HAPPINESS

84. Paragraphs 1 - 83 are hereby incorporated by reference and made paragraphs 1 - 83 of Count Four as if fully set forth therein.

85. The Tennessee Constitution, Art. I, § 1 states “[t]hat all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness....”

86. In addition, Art. I, § 8 states “[t]hat no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.”

87. Further, Art. XI, § 16 of the Tennessee Constitution states that “[t]he declaration of rights hereto prefixed is declared to be a part of the Constitution of this state, and shall **never** be violated on any pretense whatever.” (emphasis added).

88. Art. XI, § 16 also states: “to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is **excepted out** of the general powers of the government, and **shall forever remain inviolate.**” (emphasis added).

89. Art. XI, § 16, specifically deprives the courts and all branches of government of the power to in any way, interfere with the inherent power of the people to live their own lives which includes the right to live or die.

90. If aid-in-dying is a criminal act then the statute violates Plaintiff Hooker’s and Physician Plaintiffs’ patients’ inherent and inalienable right to, *inter alia*, seek safety and happiness as provided for in the Tennessee Constitution.

91. Physician Plaintiffs have standing to assert a claim for denial of inherent rights on behalf of their patients.

92. Barring a physician from providing aid-in-dying bears no rational relationship to any legitimate state interest, nor does it further any important state interest, nor is it the least restrictive means of advancing any compelling state interest.

93. Barring a physician from providing access to aid-in-dying violates the aforementioned provisions of the Tennessee Constitution, and is void and repugnant to the liberty interests and basic inherent and inalienable rights of Plaintiff Hooker and Physician Plaintiffs' patients.

**COUNT FIVE: DECLARATORY JUDGMENT AS TO DEFINITION OF ASSISTED
SUICIDE AS IT RELATES TO AID-IN-DYING**

94. Paragraphs 1- 93 are hereby incorporated by reference and made paragraphs 1 - 93 of Count Five as if fully set forth therein.

95. Because no court has had occasion to thoroughly construe the scope of the (b)(2) exception in the Assisted Suicide Statute, there is substantial uncertainty over the legal rights and responsibilities of the parties as they relate to a physician who wishes to provide access to aid-in-dying to a mentally competent and terminally ill adult individual when the treatment is otherwise medically appropriate and when read in conjunction with the Durable Power of Attorney Statute and the Living Will Statute.

96. These statutes should be interpreted and applied so as to avoid conflict with each other and the Tennessee Constitution.

97. Allowing Defendants to punish or prohibit physicians from providing assistance in dying to mentally competent, terminally ill patients, violates the constitutional rights of Plaintiffs to Privacy, Due Process, Equal Protection, and Freedom of Speech.

98. The potential for prosecution under the Assisted Suicide Statute for providing aid-in-dying harms Physician Plaintiffs in that it impairs their obligation to provide ethical and appropriate medical care to their patients. The potential for prosecution also harms Plaintiff

Hooker in that it impairs his access to an end-of-life option what would bring him comfort and a means to avoid great suffering.

99. Therefore, pursuant to the Declaratory Judgment Act and under fear of serious felony prosecution for providing or receiving aid-in-dying, Plaintiffs request that this court determine the scope and applicability of the Assisted Suicide statute and its exceptions as it relates to aid-in-dying.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief and demand judgment as follows:

(1) A declaration that to the extent that Tenn. Code Ann. § 39-13-216 prohibits a licensed physician from providing aid-in-dying, the application of that statute to such conduct violates the Tennessee Constitution as to privacy;

(2) A declaration that to the extent that Tenn. Code Ann. § 39-13-216, when read together with the Durable Power of Attorney Statute and the Living Will Statute, prohibits a licensed physician from providing aid-in-dying, the application of that statute to such conduct violates the Tennessee Constitution as to due process;

(3) A declaration that to the extent that Tenn. Code Ann. § 39-13-216 prohibits a licensed physician from providing aid-in-dying, the application of that statute to such conduct violates the Tennessee Constitution as to equal protection;

(4) A declaration that to the extent that Tenn. Code Ann. § 39-13-216 prohibits a licensed physician from providing aid-in-dying, the application of that statute to such conduct violates the Tennessee Constitution as to inherent and inalienable rights.

(5) A declaration that aid-in-dying is exempt from prosecution pursuant to Tenn. Code Ann. § 39-13-216 (b)(2).

(6) An order temporarily and permanently enjoining Defendants, their agents, employees, representatives, and all those acting in concert with them, from prosecuting Plaintiff Hooker for seeking or receiving aid-in-dying;

(7) An order temporarily and permanently enjoining Defendants, their agents, employees, representatives, and all those acting in concert with them, from prosecuting Physician Plaintiffs and any other licensed physician for advising about or providing aid-in-dying;

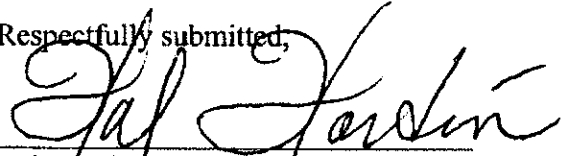
(8) An expedited pretrial and trial schedule in light of Plaintiff Hooker's current terminal condition;

(9) Costs of the suit, including but not limited to attorneys' fees;

(10) Such further relief to which Plaintiffs are entitled;

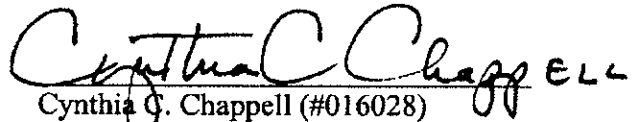
(11) This is the first application for extraordinary relief.

Respectfully submitted,



Hal Hardin (#003101)
Law Office of Hal Hardin
211 Union Street, Suite 200
Nashville, TN 37201
(615) 369-3377
Attorney for Plaintiffs

-And-

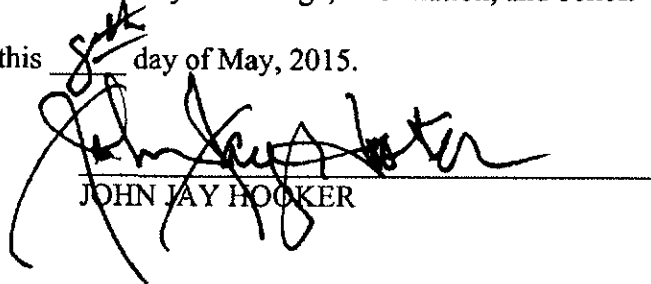


Cynthia C. Chappell (#016028)
Law Office of Cynthia C. Chappell
211 Union Street, Suite 200
Nashville, Tennessee 37201
(615) 620-3272
Attorney for Plaintiffs

DECLARATION OF JOHN JAY HOOKER

I, John Jay Hooker, am of sound mind and do hereby state and declare under penalty of perjury that the above is true to the best of my knowledge, information, and belief.

Executed and declared this 8th day of May, 2015.



JOHN JAY HOOKER

FILED

DECLARATION OF DR. JEFFREY A. SOSMAN, M.D.

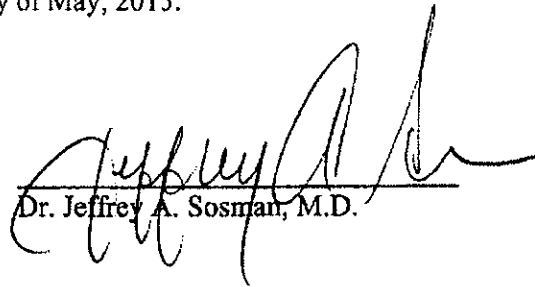
2015 MAY 19 PM 3:27

I, Dr. Jeffrey A. Sosman, M.D., do hereby state and declare under penalty of perjury that the above medical-related information is true to the best of my knowledge, information and belief.

SECRETARY & MASTER
DAVIDSON COUNTY CLERK OF
COURT
D.C. & M.

It is also my professional opinion that Mr. John Jay Hooker, Jr. is mentally competent and capable of making the decisions concerning the medically-related matter referenced in this complaint.

Executed and declared this 6 day of May, 2015.



Dr. Jeffrey A. Sosman, M.D.

FILED

DECLARATION OF DR. BARTON CAMPBELL, M.D.

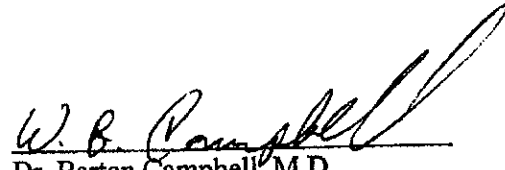
2015 MAY 19 PM 3:27

I, Dr. Barton Campbell, M.D., do hereby state and declare under penalty of perjury that the above medical-related information is true to the best of my knowledge, information and belief.

CLERK MASTER
DAVIDSON COUNTY CHANCERY CT
E.C.C.

It is also my professional opinion that Mr. John Jay Hooker, Jr. is mentally competent and capable of making the decisions concerning the medically-related matter referenced in this complaint.

Executed and declared this 5 day of May, 2015.



Dr. Barton Campbell, M.D.

Hal Hardin
211 Union St.
Suite 200
Nashville 37201

FILED

2015 MAY 19 PM 3:27

DECLARATION OF DR. ROBERT BALLARD, M.D.

I, Dr. Robert Ballard, M.D., do hereby state and declare under penalty of perjury that the above medical-related information is true to the best of my knowledge, information and belief.

It is also my professional opinion that Mr. John Jay Hooker, Jr. is mentally competent and capable of making the decisions concerning the medically-related matter referenced in this complaint.

Executed and declared this 11 day of May, 2015.


Dr. Robert Ballard, M.D.

FILED

SENATE JOINT RESOLUTION 1192

2015 MAY 19 PM 3: 23

By Beavers

CLERK OF THE MASTER
DAVIDSON CO, CHANCERY CT

 D.C. & M.

A RESOLUTION to honor and congratulate John Jay Hooker on the celebration of his 80th birthday.

WHEREAS, it is fitting that the members of this General Assembly should pay tribute to those citizens who are celebrating special occasions in their estimable lives; and

WHEREAS, John Jay Hooker will celebrate his 80th birthday on August 24, 2010, a milestone that will be commemorated as yet another precious souvenir of life's rich pageant; and

WHEREAS, born in Nashville on August 24, 1930, John Jay Hooker comes from a long line of distinguished public servants and true American patriots; his father, John Jay Hooker, Sr., was a famous trail lawyer; his grandfather, Henry Williamson, was a signer of the Tennessee Constitution; and his mother, Darthula Hooker June, was a descendent of Governor William Blount, who was a signer of the United States Constitution and the President of the 1796 Tennessee Constitutional Convention; and

WHEREAS, Mr. Hooker attended Palmer Grammar School, graduated from Montgomery Bell Academy, and attended the University of the South at Sewanee for three years; and

WHEREAS, following the patriotic tradition for which the Volunteer State is renowned, John Jay Hooker answered duty's call and served his country with honor as a Line of Duty Investigator with the United States Army from 1953 until 1955; and

WHEREAS, after completing his military service, Mr. Hooker graduated from Vanderbilt University Law School in 1957 and embarked on a long and prestigious career in law and politics; and

WHEREAS, Governor Frank Clement tasked John Jay Hooker in 1958 to investigate Judge Raulston Schoolfield's bribery case and present the findings to the Tennessee House of



Representatives, and after the House voted to impeach, Mr. Hooker was selected to represent them at the trial before the Senate; and

WHEREAS, during the trial, Robert F. Kennedy was called to testify, and from that meeting, the two developed a close personal friendship, which lasted until Mr. Kennedy's death in 1968; and

WHEREAS, beginning in 1958, John Jay Hooker donated his time and tremendous talents as the National Director of Professional Men and Women for the 1960 John Kennedy/Lyndon Johnson presidential campaign in Washington; and

WHEREAS, as a Special Assistant to Robert F. Kennedy, Mr. Hooker was instrumental in involving the Department of Justice in the Tennessee case, *Baker v. Carr*, which eventually became known as the "One-Man-One Vote Case" and which Supreme Court Chief Justice Earl Warren once called the most important case ever decided by the Warren court; and

WHEREAS, stepping into the private sector, John Jay Hooker founded the law firm of Hooker, Hooker, and Willis in Nashville in 1958, became the general counsel for the *Nashville Tennessean* in 1962, became one of the five founders of the Hospital Corporation of America in 1968, and was named Chairman of the Board of the STP Corporation in 1973; and

WHEREAS, an exceptional businessman with a knack for the news industry, Mr. Hooker arranged for the sale of the *Nashville Tennessean* to Gannett Corporation in 1979, put together a syndicate that bought a partial interest in the Newspaper Printing Corporation, became the Publisher of the *Nashville Banner*, and was named Chairman of the United Press International; and

WHEREAS, possessing the rare ability to transform a vision into a dynamic business achievement, Mr. Hooker listened to his entrepreneurial spirit and founded the restaurants Hooker Hamburgers in 1984, and Minnie Pearl's Chicken in 1967, which sold over 3,000 franchises in approximately eighteen months; and

WHEREAS, making his mark on the silver screen, John Jay Hooker played Senator Overman in the 1981 film *Reds*, and one of his best friends and co-star, Warren Beatty, won the Academy Award for Best Director for masterfully directing the critically acclaimed movie; and

WHEREAS, he also played John Phillips in the 1986 TV movie *The Last Days of Frank and Jessie James*, and during filming he traded one of his trademark white hats for his close friend and co-star Johnny Cash's famous black frock coat, which Mr. Hooker can still be seen wearing around Legislative Plaza; and

WHEREAS, Mr. Hooker is a distinguished statesman who has devoted his life to creating a brighter future for the good people of Tennessee and all Americans; he won the Democratic primary for Governor in 1970 and ran an inspiring campaign for the United States Senate in 1976; and

WHEREAS, a principal advisor to former Presidential candidate, Ross Perot, John Jay Hooker played a pivotal role in convincing Mr. Perot to run for the highest office in the land in 1992; and

WHEREAS, in 1994, Mr. Hooker turned his sights to campaign reform efforts across America and donated his legal skills and vast constitutional knowledge to a variety of lawsuits that challenged non-voter and out-of-state campaign contributions; and

WHEREAS, throughout his life, John Jay Hooker has heeded the warning his good friend, Muhammad Ali, once gave him: "Never get in a fight with a man with more to lose than you do," and he now uses that sage advice as motivation to pursue his own goals; and

WHEREAS, a gifted orator, Mr. Hooker often leaves classrooms and lecture halls with audiences in awe of how he skillfully recounted the various stories of his fascinating life; and

WHEREAS, known for his brilliant insights and hallmark expressions, Mr. Hooker often says, "The greatest feeling in life is falling in love, and there is nothing like falling in love with an idea," and he has fallen hopelessly and passionately in love with United States Constitution and the timeless wisdom it contains; and

WHEREAS, throughout his eight glorious decades on this earth, John Jay Hooker has stood as a staunch advocate for the state and federal Constitutions, and today he spends much of his time and energies challenging the constitutionality of various laws and regulations, always endeavoring to ensure and strengthen the integrity, constitutionality, fairness, and effectiveness of Tennessee's and the United States' government and courts; and

WHEREAS, his many personal accomplishments aside, Mr. Hooker is grateful for his four children: Dara, John Blount, Kendall, and Lovell; and his four grandchildren: Jacob, Grace, Nathan, and Anna; and

WHEREAS, John Jay Hooker exemplifies the spirit and allegiance to family, community, and country that are characteristic of a true Tennessean; and

WHEREAS, we wish to grasp this golden opportunity to specially recognize a Tennessee icon and a man of unparalleled principal and honor on this very special occasion; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED SIXTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, that we hereby honor and congratulate John Jay Hooker on the celebration of his 80th birthday, offer our deepest gratitude for his meritorious service to Tennessee and the United States of America, and extend to him our best wishes for much continued success and happiness.

BE IT FURTHER RESOLVED, that an appropriate copy of this resolution be prepared for presentation with this final clause omitted from such copy.