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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF SAN DIEGO**

17 Christy Lynne Donorovich-Odonnell; Elizabeth  
18 Antoinette Melanie Gobertina Wallner; Wolf  
19 Alexander Breiman; and Lynette Carol  
Cederquist, M.D.,

20 Plaintiffs,

21 v.

22 Kamala D. Harris, in her official capacity as the  
23 Attorney General of the State of California;  
Jackie Lacey, in her official capacity as the  
24 District Attorney for the County of Los  
25 Angeles; Ann Marie Schubert, in her official  
26 capacity as the District Attorney for the  
County of Sacramento; and Bonnie Dumanis, in her  
official capacity as the District Attorney for the  
County of San Diego,

27 Defendants.  
28

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/15/2015** at 11:52:22 AM

Clerk of the Superior Court  
By Adam Beason, Deputy Clerk

37-2015-00016404-CU-CR-CTL

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**EXPEDITED SCHEDULING  
REQUESTED**

1 **I. INTRODUCTION**

2 1. This action is brought to vindicate the liberty, autonomy, and privacy rights of  
3 terminally ill persons and their doctors to make compassionate end-of-life decisions without fear  
4 of criminal prosecution.

5 2. "Aid in Dying" refers to the recognized medical practice of offering mentally  
6 competent, terminally ill persons medication that they may choose to take to bring about a quick  
7 and peaceful death.

8 3. Three of the Plaintiffs ("Seriously Ill Plaintiffs") are competent adults who seek  
9 physician assistance to obtain medication so that they have the option of ending their lives  
10 peacefully and with less pain. One of the Plaintiffs ("Physician Plaintiff") is a licensed physician  
11 who, if requested, would participate in Aid in Dying but for the fear of felony charges under  
12 California Penal Code section 401 ("Section 401"), which makes it a crime to "deliberately aid[],  
13 or advise[], or encourage[] another to commit suicide."

14 4. Plaintiffs seek a declaration that Section 401 is unlawful and unconstitutional as  
15 applied to doctors who aid mentally competent, terminally ill patients by providing medication  
16 that the patients can self administer if and when their suffering becomes unbearable, and they  
17 seek an injunction prohibiting Defendants from enforcing Section 401 against such doctors.  
18 Because the Seriously Ill Plaintiffs' medical conditions are worsening, Plaintiffs will seek  
19 preferential treatment for expedited court scheduling.

20 **II. PARTIES**

21 5. Plaintiff Christy Lynne Donorovich-Odonnell is a resident of Santa Clarita,  
22 California. Christy suffers from Stage IV adenocarcinoma of the left lung, which has  
23 metastasized to her brain, liver, spine, and rib. She has been told by her doctors that she has less  
24 than six months to live. Christy is morphine intolerant and cannot benefit from many of the most  
25 common and most effective forms of pain management.

26 6. Plaintiff Elizabeth Antoinette Melanie Gobertina Wallner is a resident of  
27 Sacramento, California. Elizabeth has Stage IV colon cancer, which has metastasized to her liver  
28 and lung.

1           7.       Plaintiff Wolf Alexander Breiman is a resident of Ventura, California. Wolf has  
2 multiple myeloma, or blood cancer.

3           8.       Plaintiff Lynette Carol Cederquist, M.D., is a resident of San Diego, California,  
4 and is licensed to practice medicine in the State of California. She is a clinical professor at a  
5 medical school in California, where she teaches internal medicine. She has board certification in  
6 hospice and palliative medicine and internal medicine. She has served as the co-chair of the San  
7 Diego County Medical Society Bioethics Commission, and served as the scholar-in-residence at  
8 the San Diego Hospice Center for Palliative Studies. Dr. Cederquist treats patients and regularly  
9 advises clients on a variety of end-of-life options. She does not provide Aid in Dying because she  
10 fears prosecution under Section 401. She would like to advise patients about all of their end-of-  
11 life options, including Aid in Dying. If Aid in Dying treatments were lawful in California, she  
12 would be willing to write a prescription for medication to terminally ill, competent adults who, at  
13 their own discretion, could exercise the option to self-administer the drug.

14          9.       Defendant Kamala Harris is the Attorney General of the State of California and is  
15 named as Defendant in her official capacity. The Attorney General is an elected official and the  
16 chief law enforcement officer of the state. Ms. Harris is responsible for implementing and  
17 enforcing the criminal laws of the State of California.

18          10.       Defendant Jackie Lacey is the District Attorney for the County of Los Angeles,  
19 and is named as a Defendant in her official capacity. The District Attorney is an elected official  
20 and the chief law enforcement officer of the County. She is authorized to initiate prosecutions on  
21 behalf of the People of the State of California, and acts as both a county and state officer in the  
22 exercise of her authority, as provided by California law.

23          11.       Defendant Ann Marie Schubert is the District Attorney for the County of  
24 Sacramento, and is named as a Defendant in her official capacity. The District Attorney is an  
25 elected official and the chief law enforcement officer of the County. She is authorized to initiate  
26 prosecutions on behalf of the People of the State of California, and acts as both a county and state  
27 officer in the exercise of her authority, as provided by California law.

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1 condition. These deaths are not deemed “suicide” under California law, and Section 401 does not  
2 apply to physicians who follow the patient’s direction to withdraw the life-sustaining treatment.

3 19. It is also lawful in California and an accepted medical practice for a terminally ill  
4 patient, whose condition causes intolerable pain unrelieved by medicines, to request terminal  
5 sedation, a procedure in which the physician administers sedatives to render the patient  
6 unconscious until she dies of dehydration or starvation some days or weeks later. These deaths  
7 are not deemed “suicide” under California law, and Section 401 does not apply to physicians who  
8 follow the patient’s direction to sedate her and withdraw nutrition and hydration.

9 20. To the extent that Section 401 is applied to physicians providing Aid in Dying,  
10 Section 401 prohibits a mentally competent, terminally ill person to receive advice regarding Aid  
11 in Dying from a physician, and for a physician to provide and a patient to receive a self-  
12 administered medication that would hasten the person’s impending death and thereby relieve her  
13 of a protracted and painful death while preserving her personal dignity. Although this, too, is an  
14 accepted practice in the broader medical community, Section 401 can be read to treat these  
15 actions as criminal. Indeed, Section 401 appears to make it a felony for a doctor to even counsel  
16 her patients about the existence of such end-of-life options.

17 21. Seriously Ill Plaintiffs are fully competent adults who understand and accept their  
18 terminal prognoses. They desire the option of a peaceful death without suffering, and they want  
19 Aid in Dying to be an option in their end-of-life health care. Although they all want to live, as  
20 they near death because of the ravages of their disease they would seek and receive the option of  
21 Aid in Dying were it not for the criminal penalties for aiders and advisors under Section 401.  
22 Having a prescription for Aid in Dying medication that they could self-administer if their  
23 suffering became too great in the final days would provide great comfort to them and would  
24 alleviate some anxiety related to the dying process.

25 22. Physician Plaintiff encounters and cares for terminally ill persons in her medical  
26 practice, for whom there is no chance of recovery. Some of these patients do not want to linger in  
27 a state of terminal sedation, nor are their lives being supported by medical interventions that  
28 could be withdrawn. Some of those terminally ill, competent persons would choose the option of

1 Aid in Dying. Physician Plaintiff expects to encounter similar patients in the future as she  
2 continues her practice.

3 23. Physician Plaintiff does not consider a patient who has chosen Aid in Dying to  
4 have committed suicide, and she believes that Aid in Dying is a compassionate and ethical choice  
5 in appropriate circumstances. She is uncertain, however, in whether Section 401 would consider  
6 her participation in Aid in Dying to be an unlawful “aiding” of a “suicide.” As a consequence,  
7 she is deterred from providing the option of Aid in Dying even to patients who request it. Were it  
8 not for the fear of prosecution under Section 401, Physician Plaintiff would provide a prescription  
9 for medication for Aid in Dying in appropriate cases. Physician plaintiff would write such a  
10 prescription with the intent to alleviate suffering and to comfort her patients in their last days.

11 24. Notwithstanding Section 401, California has embraced a public policy of respect  
12 and deference to private medical decisions, which is reflected in the Health Care Decisions Law,  
13 Cal. Probate Code § 4650(a), which creates a process for creating health care directives relating to  
14 what types of treatments an individual would accept or reject in the event she became  
15 incompetent. The Health Care Decisions Law expressly recognizes that the “prolongation of the  
16 process of dying for a person for whom continued health care does not improve the prognosis for  
17 recovery may violate patient dignity and cause unnecessary pain and suffering.” *Id.* § 4650(b).  
18 That law expressly provides that “[d]eath resulting from withholding or withdrawing health care  
19 in accordance with [those procedures] does not for any purpose constitute a suicide or homicide.”  
20 *Id.* § 4656.

21 25. California courts recognize a fundamental right of citizens to make end-of-life  
22 decisions—including the right to refuse life-sustaining treatment or nutrition. *Thor v. Superior*  
23 *Court* (1993) 5 Cal. 4th 725, 732 (recognizing “fundamental right of self-determination to refuse  
24 or demand the withdrawal of medical treatment of any form irrespective of the personal  
25 consequences”); *Bouvia v. Superior Court* (1986) 179 Cal. App. 3d 1127, 1137 (recognizing  
26 “right to refuse any medical treatment,” including “nourishment and hydration”).

27 26. California courts have emphasized that this “freedom of choice” and “right to self-  
28 determine” reflect a patient’s autonomy in judging the quality of life she can expect in the time



1 remaining. *See People v. Adams* (1990) 216 Cal. App. 3d 1431, 1438–39 (recognizing that  
2 prolonged life would be “at the patient’s sole expense . . . , thus inflicting . . . physical torture on  
3 his body”); *Bouvia*, 179 Cal. App. 3d at 1142 (recognizing that the patient’s “quality of life . . .  
4 [was] diminished to the point of hopelessness, uselessness, unenjoyability and frustration”).

5         27. Under the reasoning of these decisions, and their framing of the protected right,  
6 there is no rational and/or meaningful basis to distinguish between withdrawal of treatment to a  
7 terminally ill person and a physician’s provision of Aid in Dying. Both treatment options provide  
8 a terminally ill, competent adult person with the choice of a peaceful and pain free death in the  
9 face of a protracted and agonizing alternative. Both options involve affirmative medical  
10 assistance in carrying out the person’s end-of-life medical care. And both options provide a  
11 patient with the ability to decide for herself whether the inevitable and debilitating pain that she is  
12 suffering is worth enduring when her death is imminent.

13         28. Outside California, Aid in Dying is an accepted medical practice in jurisdictions  
14 such as Oregon, Washington, Vermont, and Montana, and a standard of care has developed  
15 around this end-of-life option, including Clinical Practice Guidelines. In these jurisdictions, such  
16 practices and procedures exist to verify that persons requesting the option of Aid in Dying are  
17 terminally ill adults who are mentally competent to make medical decisions.

18         29. Where Aid in Dying is an available, legitimate option for terminally ill persons,  
19 end-of-life care tends to improve through increased use of hospice care, better pain management,  
20 and other factors.

21         30. Terminally ill persons seek the option of Aid in Dying for a variety of reasons,  
22 including loss of autonomy, loss of dignity, and loss of freedom and ability to enjoy the activities  
23 that made life enjoyable. Other terminally ill persons choose Aid in Dying because other  
24 treatments, such as palliative sedation or withdrawal of life support, are not available to them.  
25 Some persons who are prescribed medications for Aid in Dying never exercise that option, but are  
26 provided peace of mind by having the option to end their pain if it becomes unbearable.

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1 **V. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **(Cal. Code Civ. Proc. §§ 525, 1060 – Declaratory Judgment**  
4 **and Prohibitory Injunction)**

5 31. Plaintiffs incorporate the allegations set forth above and fully re-allege them here.

6 32. Section 401 prohibits the deliberate aiding, advising, or encouraging of “suicide.”  
7 A restrictive reading of Section 401 would exclude the act of a physician providing the option of  
8 Aid in Dying to a mentally competent, terminally ill person who requests such aid. A person’s  
9 decision to seek the option of Aid in Dying is no more a “suicide” than is a person’s decision to  
10 withhold life-sustaining medicine—treatment that does not fall under the scope of Section 401.  
11 Because the Aid in Dying sought by Plaintiffs is, for practical purposes, indistinguishable from  
12 the withholding of life-sustaining treatment, it too must fall outside the scope of Section 401.

13 33. This restricted reading of Section 401, which excludes Aid in Dying from the  
14 scope of the statute, is necessary to avoid conflict with the California Constitution. To the extent  
15 that Section 401 prohibits doctors from providing the option of Aid in Dying to terminally ill,  
16 competent adults, it is unconstitutional.

17 34. Uncertainty in the proper reading of Section 401 casts substantial doubt over the  
18 rights and duties of the parties as they relate to a physician providing the option of Aid in Dying  
19 to a mentally competent, terminally ill person.

20 35. Plaintiffs present an active controversy because the continued threat of prosecution  
21 under Section 401 imposes harms on all Plaintiffs by preventing physicians from providing  
22 appropriate end-of-life care to terminally ill persons—care that could greatly reduce their  
23 suffering and provide needed comfort to the terminally ill persons and their families.

24 36. Pecuniary compensation will not afford adequate relief in this case.

25 37. Plaintiffs seek a declaration that Section 401 cannot and does not apply to  
26 physicians who provide the option of Aid in Dying to terminally ill, competent adult persons who  
27 request such aid. Plaintiffs also seek an injunction prohibiting Defendants from prosecuting  
28



1 physicians who provide advice and write a prescription for medication for Aid in Dying under  
2 those circumstances.

3 **SECOND CAUSE OF ACTION**

4 **(Cal. Const. Art. I, § 1 – Right to Privacy)**

5 38. Plaintiffs incorporate the allegations set forth above and fully re-allege them here.

6 39. As applied, Section 401 impermissibly infringes on Plaintiffs’ fundamental  
7 privacy rights.

8 40. The right to privacy under article 1, section 1, of the California state constitution  
9 protects the citizen’s autonomy, self-determination, and dignity. A person’s decision to terminate  
10 his or her life is the “ultimate exercise of one’s right to privacy.” *Bouvia v. Superior Court*,  
11 (1986) 179 Cal. App. 3d 1127, 1144–45; *see also Thor v. Superior Court* (1993) 5 Cal. 4th 725  
12 (holding that individuals have the right to remove life-sustaining feeding tubes).

13 41. Section 401 violates Plaintiffs’ privacy rights under the California Constitution by  
14 interfering with a person’s basic autonomy in deciding how to confront their own mortality and  
15 choose their own destiny.

16 42. Accordingly, Plaintiffs seek a declaration that Section 401 cannot and does not  
17 apply to physicians who provide Aid in Dying to terminally ill, competent adult persons who  
18 request such aid. Plaintiffs also seek an injunction prohibiting Defendants from prosecuting  
19 physicians who participate in Aid in Dying under those circumstances.

20 **THIRD CAUSE OF ACTION**

21 **(Cal. Const. Art. I, § 1 – Right to Liberty)**

22 43. Plaintiffs incorporate the allegations set forth above and fully re-allege them here.

23 44. As applied, Section 401 is an unconstitutional restriction on Plaintiffs’  
24 fundamental liberty interests.

25 45. Article I, section 1, of the California state constitution provides that “[a]ll people  
26 are by nature free and independent and have inalienable rights . . . [including] enjoying and  
27 defending . . . liberty . . . and pursuing and obtaining . . . happiness.” This basic civil right of  
28 personal autonomy and liberty includes the right of competent adults to control decisions relating

1 to the rendering of their own health care. *See People v. Adams* (1990) 216 Cal. App. 3d 1431,  
2 1438.

3 46. Section 401 violates Plaintiffs' liberty rights under the California Constitution by  
4 prohibiting mentally competent, terminally ill adults from receiving aid from willing physicians  
5 to avoid a protracted and extremely painful death.

6 47. Accordingly, Plaintiffs seek a declaration that Section 401 cannot and does not  
7 apply to physicians who participate in Aid in Dying on behalf of terminally ill, competent adult  
8 persons who request such aid. Plaintiffs also seek an injunction prohibiting Defendants from  
9 prosecuting physicians who participate in Aid in Dying under those circumstances.

#### 10 **FOURTH CAUSE OF ACTION**

#### 11 **(Cal. Const. Art. I, §2 – Right to Free Speech)**

12 48. Plaintiffs incorporate the allegations set forth above and fully re-allege them here.

13 49. As applied, Section 401 impermissibly abridges the freedom of speech.

14 50. Section 401 of the California Penal Code not only prohibits California physicians  
15 from prescribing medication for Aid in Dying, but it also prohibits them from advising them with  
16 regard to end-of-life options available in other states. Under the plain text of Section 401, it  
17 would be a felony for a doctor to refer a terminally ill person to another physician in a state in  
18 which such treatment is lawful, or even for a doctor to encourage a person to seek such treatment  
19 outside California.

20 51. This limitation on a physician's expression of what, in her professional and moral  
21 judgment, is an appropriate treatment is an unlawful restraint on the freedom of speech in  
22 violation of Article I, Section 2(a) of the California Constitution.

23 52. Accordingly, Plaintiffs seek a declaration that Section 401 cannot and does not  
24 apply to physicians who advise and counsel terminally ill, competent adult persons about Aid in  
25 Dying. Plaintiffs also seek an injunction prohibiting Defendants from prosecuting physicians  
26 who advise or counsel about Aid in Dying under those circumstances.

1 **FIFTH CAUSE OF ACTION**

2 **(Cal. Const. Art I, § 7 – Right to Equal Protection)**

3 53. Plaintiffs incorporate the allegations set forth above and fully re-allege them here.

4 54. As applied, Section 401 results in an impermissible distinction among terminally  
5 ill, competent adults who wish to receive medical assistance to Aid in Dying.

6 55. California law permits its terminally ill, competent adults to request and receive  
7 medical aid and advice in hastening death by withdrawing life-sustaining treatment (including  
8 nutrition and hydration)—active steps taken by medical professionals to hasten death and prevent  
9 prolonged pain. Yet terminally ill, competent adults who cannot avoid suffering in this way are  
10 prevented, by the operation of Section 401, from similarly receiving affirmative medical aid. Both  
11 groups seek to control the circumstances of their inevitable deaths by preventing unnecessary and  
12 extended suffering, often accompanied by uncontrollable pain. But the groups are treated  
13 differently under California law without justification, and the distinction between these groups  
14 cannot withstand any level of scrutiny.

15 56. Moreover, the distinction touches on Plaintiffs’ fundamental rights to privacy and  
16 liberty, warranting a higher level of scrutiny by the Court.

17 57. Plaintiff Christy Donorovich-Odonnell is morphine intolerant and does not want to  
18 linger in a state of terminal sedation. She and others like her have no option for a peaceful and  
19 painless death because Section 401 prevents them from receiving Aid in Dying.

20 58. Accordingly, Plaintiffs seek a declaration that Section 401 cannot and does not  
21 apply to physicians who provide a prescription for Aid in Dying to terminally ill, competent adult  
22 persons who request such aid. Plaintiffs also seek an injunction prohibiting Defendants from  
23 prosecuting physicians who provide Aid in Dying under those circumstances.

24 **VI. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

26 A. Declaring that Section 401 of the California Penal Code does not apply to  
27 physicians who participate in Aid in Dying when the person is a terminally ill, competent adult,  
28

1 or alternatively, that Section 401 is unconstitutional under the California constitution as applied to  
2 physicians providing such care.

3 B. Permanently enjoining Defendant from enforcing Section 401 against physicians  
4 who participate in Aid in Dying when the person is a terminally ill, competent adult.

5 C. The relief requested in this action is sought against the Defendant, the Defendant's  
6 officers, employees, and agents, and against all persons acting in cooperation with the Defendant  
7 or under the Defendant's supervision, direction, or control.

8 D. Expedited scheduling due to Christy Donorovich-Odonnell's medical condition.


9 E. Where appropriate, awarding Plaintiffs their costs, expenses, and reasonable  
10 attorneys' fees.

11 F. Granting such other and further relief as the Court deems just and proper.

12  
13 Dated: May 15, 2015

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