

Examining Patient Integrity and Autonomy: Is
Assisted Death a Viable Option for Adolescents in
the United States?

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I. INTRODUCTION

The right to die has always been a contentious issue in the United States.¹ Currently, only three states have a right to die statute and only two more have legalized assisted death through court ruling.² These statutes apply exclusively to adults aged eighteen years or older, and do not afford adolescents the right to die under any circumstance.³ Alternatively, the recent decision by the Belgian Parliament to lift the age restriction on requests for assisted death made the entire world question what it means to grant someone the freedom to die and what safeguards must be in place to prevent abuse of this right.⁴ This article will argue that the United States should

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1. Kate Pickert, *A Brief History of Assisted Suicide*, TIME (Mar. 3, 2009), <http://content.time.com/time/nation/article/0,8599,1882684,00.html>.

2. *Death with Dignity Acts*, DEATH WITH DIGNITY NATIONAL CTR. (2012), <http://www.deathwithdignity.org/acts> (last visited Apr. 6, 2014); see also Erik Eckholm, *New Mexico Judge Affirms Right to 'Aid in Dying'*, N.Y. TIMES, Jan. 14, 2014, at A16, available at www.nytimes.com/2014/01/14/us/new-mexico-judge-affirms-right-to-aid-in-dying.html.

3. *State by State Guide to Physician-Assisted Suicide*, PROCON.ORG, <http://euthanasia.procon.org/view.resource.php?resourceID=000132> (last updated Dec. 13, 2013) [hereinafter ProCon State by State].

4. See *Belgium debates giving children the right to die*, EUROPEAN AFFAIRS (Feb. 20, 2013, 16:45 CET), <http://www.euronews.com/2013/02/20/belgium-debates-giving-children-the-right-to-die/>; Diana Magnay, *Parents Plead to be able to help terminally ill children die*, CNN (Nov. 27, 2013, 3:39PM), <http://www.cnn.com/2013/11/27/world/europe/belgium-euthanasia-for-children-debate/>; Umberto Bacci, *Belgium Closer to Extending Right to Die to Minors*, INT'L BUS. TIMES (June 12, 2013, 12:54 GMT), <http://www.ibtimes.co.uk/belgium-euthanasia-minors-477764>.

mirror the efforts of Belgium and the Netherlands and that states should introduce bills allowing assisted death for terminally ill adolescents.

Part II of this article will define common terms associated with assisted death and the death with dignity movement. Part III will discuss the history of the right to die movement in the United States and the states that currently allow assisted death. Part IV will explore existing United States laws regarding the constitutionality of an individual's right to die, the impact of the reduced age requirement for assisted death in the Netherlands, and Belgium's recent move toward increasing access to assisted death for adolescents. Part V will argue that the United States should reevaluate the decision-making power of the adolescent individual as it relates to his or her autonomy in making health and medical treatment decisions, including the right to die.

II. RELEVANT TERMS AND DEFINITIONS

One of the most confusing aspects of discussions surrounding assisted death involves the misapplication of the terms assisted suicide and euthanasia.⁵ As such, several definitions and distinctions must be clarified.⁶ First, assisted suicide refers to a patient's decision to intentionally and willfully end his or her own life in a manner that requires the assistance of a third-party.⁷ On the other hand, voluntary active euthanasia refers to a patient's decision to receive a lethal dose of a medicine or substance through direct administration by a third party with compassionate intent.⁸ This term is most closely related to physician-assisted suicide, which is defined as a pa-

5. Barbara Supanich, *Ethical Issues Concerning Physician-Assisted Death*, in *HEALTH CARE ETHICS: CRITICAL ISSUES FOR THE 21ST CENTURY* 195, 195 (Eileen E. Morrison & Beth Furlong eds., 3d ed. 2014).

6. *Id.*

7. *Id.* See also *Assisted Suicide*, MERRIAM WEBSTER, <http://www.merriam-webster.com/dictionary/assisted%20suicide> (last visited Apr. 6, 2014) (defining assisted suicide as, "suicide by an individual facilitated by means or information (as a gun or indication of the lethal dosage of a drug) provided by someone else aware of the individual's intent").

8. Supanich, *supra* note 5, at 196.

tient's decision to end his or her life through the use of a prescription, or information regarding a lethal dose of a drug, provided by a physician who is aware of the patient's intent at the time that the prescription is given or the dosage information is disseminated.⁹ The term right to die includes not only the decision of the individual to end his or her life, but also the means by which the end will occur: by application of a lethal agent, by self or a third party, or through withholding or withdrawing a specific potentially life-extending medical therapy.¹⁰ Finally, in order to fall within the classification of right to die, it is imperative that the intent behind these acts be to end life rather than the mere decision to refuse or discontinue what may be life extending therapy; the decision to stop or ignore specific therapies does not carry the necessary intent.¹¹ This article will use the term assisted death to encompass the nuances associated with these terms and to imply that the decision made by a terminally ill individual to receive assistance with death could potentially stand within any of the defined terms associated with carrying out that choice.

III. ASSISTED DEATH IN THE UNITED STATES: PAST AND PRESENT

Historically, ethical guidelines and religious organizations have opposed assisted death.¹² Interestingly, public opinion polls show that while Americans are divided on this issue, two-thirds support assisted death in some form when evaluated on a case-by-case basis.¹³ Support for assisted death

9. See *Assisted Suicide*, MERRIAM WEBSTER, <http://www.merriam-webster.com/medical/physician-assisted+suicide?show=0&t=1393527099> (last visited Apr. 6, 2014).

10. Lara L. Manzione, *Is There a Right to Die?: A Comparative Study of Three Societies (Australia, Netherlands, United States)*, 30 GA. J. INT'L & COMP. L. 443, 445–46 (2002); see also Supanich *supra* note 5, at 196 (explaining that withdrawing or withholding treatment does not qualify as physician assisted death).

11. Supanich, *supra* note 5, at 196 (Explaining that the term assisted death does not encompass the decision not to initiate medical therapies, withdraw medical therapies, or to use high doses of pain-relieving medication for the purpose of palliative care).

12. Supanich, *supra* note 5, at 195.

13. *Id.*

has increased by thirty-three percent since 1948.¹⁴ However, the support is limited based on the terminology used to define the act of assisting death.¹⁵

In recent years, the terms right to die and assisted suicide have somewhat blended to allow the conversation surrounding an individual's decision to end his or her life to focus on the question of whether human beings should have a right to control when they die.¹⁶ When all efforts to reduce pain or alleviate symptoms are exhausted by physicians, supporters argue that even the best palliative care methods are often insufficient to effectively end a patient's suffering.¹⁷ For this reason, supporters of assisted death argue that in order to protect patient autonomy, states must recognize that only an individual knows what constitutes harm to himself and that it should be left to the patient to determine whether a life with severe, unremitting suffering causes more harm than assisted death.¹⁸

Opponents of assisted death do not recognize patient autonomy as either appropriate or a moral justification for choosing assisted death.¹⁹ While opponents recognize that autonomy plays a significant moral role in determining a course of medical treatment, they maintain that the moral value of the choice does not and should not entitle an individual to require assistance from a third party in ending his or her life.²⁰ Disappointingly, this view fails to take into account that terminally ill individuals are often unable to

14. Lydia Saad, *U.S. Support for Euthanasia Hinges on How It's Described: Support is at low ebb on the basis of wording that mentions "suicide"*, GALLUP (May 29, 2013), <http://www.gallup.com/poll/162815/support-euthanasia-hinges-described.aspx>; *see also*, Erik Eckholm, 'Aid in Dying' Movement Takes Hold in Some States, NY TIMES (Feb. 7, 2014), available at http://www.nytimes.com/2014/02/08/us/easing-terminal-patients-path-to-death-legally.html?_r=0 (further explaining the recent trend in assisted death approval and describing the history of the Death with Dignity movement in the U.S.).

15. Eckholm, *supra* note 14; *see also* Saad, *supra* note 14 (Detailing that 70% of persons polled supported assisted death when described as a painless way to end the patient's life versus only 51% supporting assisted death when described as assisting the patient with committing suicide).

16. Pickert, *supra* note 1.

17. Supanich, *supra* note 5, at 197.

18. *Id.*

19. *Id.*

20. *Id.*

perform the required actions to end their own lives and for that reason, must request the help of another.²¹

Due in part to the division between proponents and opponents to assisted death, only four states in the United States have enacted Death with Dignity Laws: Oregon, Washington, Montana, Vermont.²² Also, a judge for the Second District in New Mexico recently held that the choice of a terminally ill patient to request and receive assistance in dying is a fundamental right under the New Mexico Constitution.²³ In 1997, Oregon was the first state to enact a Death with Dignity law.²⁴ Data from Oregon demonstrates that since this law was adopted, its implementation is safe, carried out with the appropriate compassionate intent, and protects its vulnerable citizens by preventing abuse of the law.²⁵ Legislatures look to the results of Oregon's statute for reassurance in passage of their own death with dignity acts.²⁶ In 2008, Washington became the second state to pass its Death with Dignity Act, and even though it took eleven years to progress through the legislature, it was implemented within one year and no credible legal challenges were made against it.²⁷ In 2009, the Montana Supreme Court held that

21. *Id.* (discussing patient integrity and autonomy in regards to the interplay between a supportive environment where patients feel comfortable discussing all options related to their current status and assurance of patient integrity).

22. *Death with Dignity Acts*, *supra* note 2.

23. *See* Eckholm, *supra* note 2 (explaining that assisted death was banned everywhere in the U.S. save Oregon until 2008 and now it is legal in five states including, most recently, New Mexico); *see also* Findings of Fact and Conclusions of Law at 12-13, *Morris v. Brandenburg*, No. D-202-CV 2012-02909 (Jan. 13, 2014), *available at* <https://newmexico.tylerhost.net/ServeDocument.ashx?SID=0730da82-c2ce-4331-9d34-98fe74190124&RID=001664dd-e045-4d6c-b5ce-1294189b0a7a>.

24. DEATH WITH DIGNITY NAT'L CTR, *Death with Dignity Around the U.S.*, <http://www.deathwithdignity.org/advocates/national> (last updated Apr. 6, 2014) [hereinafter *Dignity Around the U.S.*]; *see also* ProCon State by State *supra* note 3 (explaining that a capable, adult resident of Oregon suffering from a terminal illness may make a voluntary written request for medication from a physician for the purpose of committing suicide and that the Controlled Substances Act does not empower the United States Attorney General to prohibit physicians from writing prescriptions for terminally ill patients which are related to physician-assisted suicide).

25. *Dignity Around the U.S.*, *supra* note 24; ProCon State by State *supra* note 3.

26. *Id.*

27. *Death with Dignity: the Laws & How to Access Them*, DEATH WITH DIGNITY NAT'L

Montana's Terminally Ill Act provides terminally ill patients with the right to involve direct physician participation in carrying out their end of life wishes, effectively permitting physician-assisted death in the state.²⁸ Four years later, in 2013, Vermont passed its assisted death statute into law.²⁹

Not surprisingly, many more death with dignity-related bills are drafted each term.³⁰ Currently, Connecticut, Hawaii, Kansas, Massachusetts, New Hampshire, New Jersey, and Pennsylvania have all proposed legislation related to aid in dying.³¹ Generally these bills are based on the existing death with dignity laws in Oregon, Washington, and Vermont.³² One unfortunate consequence of this new wave of legislation, drawing its basis from the original death with dignity acts, is the provision that only persons over the age of eighteen are permitted access to the relief granted by these laws.³³ Adolescents with terminal illnesses, aged fourteen to seventeen years, are precluded from accessing or even requesting assistance with death under the current laws because they are presumed unable to process the weight of the information required to make any medical decisions, let alone the choice to

CTR <http://www.deathwithdignity.org/access-acts> (last visited Apr. 6, 2014) [hereinafter Death with Dignity Access Acts].

28. *Baxter v. State*, 224 P.3d 1211, 1222 (Mont. 2009); *see also Montana*, PATIENTS RIGHTS COUNCIL, <http://www.patientsrightscouncil.org/site/montana/> (last visited Apr. 6, 2014) (describing the path of Assisted Death legislation in Montana and concluding that while no law has been enacted granting the citizens of Montana the right to assisted death, it is permitted under the current Terminally Ill Act); Rita L. Marker, *Montana Supreme Court: Physician Assisted Suicide Is and End-of-Life Option*, STATE COURT DOCKET WATCH 4, 5, 12 (2010), http://www.fed-soc.org/doclib/20100407_SCDWSpring10.pdf (explaining the Montana Supreme Court decision and providing relevant portions of the Terminally Ill Act); MONT. CODE ANN. § 50-9-204 (West 2013).

29. VT. STAT. ANN. tit. 18, § 5289 (2013) (provision regarding the protection of patient choice at end of life).

30. *Id.*; *See also* Rita L. Marker, *Assisted Suicide: Not for Adults Only?*, PATIENTS RIGHTS COUNCIL, <http://www.patientsrightscouncil.org/site/not-for-adults-only/> (last visited Apr. 6, 2014) (Discussing the failure of Right to Die legislation in Wisconsin and Illinois and the lack of support for Iowa's model Aid-in-dying Act).

31. Dignity Around the U.S., *supra* note 24.

32. *Id.* (providing a summary of current assisted death-related legislation throughout the U.S.).

33. Death with Dignity Access Acts, *supra* note 27 (describing the eligibility requirements for accessing assisted death in Oregon, Washington, and Vermont); *See also* OR. REV. STAT. 127.800 §1.01 et seq. (2013); WASH. REV. CODE. § 70.245.010 (2013); VT. STAT. ANN. tit. 18 §§ 5283, 5289 (2013).

end their own lives.³⁴ While the increasing number of death with dignity bills introduced each term encourages proponents of assisted death, they fail to recognize that the current laws also need to be reevaluated to incorporate the adolescent right to assisted death.³⁵ However, social norms and political climates are changing in a way that may ultimately lead to acceptance of such a right.³⁶

IV. CONSTITUTIONALITY OF THE RIGHT TO DIE IN THE UNITED STATES AND THE IMPACT OF INTERNATIONAL LEGISLATION THAT INCREASES ACCESS

On June 26, 1997, the United States Supreme Court held that an individual does not have a fundamental Constitutional right to end his or her life.³⁷ However, four months later, Oregon enacted its Death with Dignity Act, the first law of its kind in the United States, which allows terminally ill adult residents of Oregon to receive assistance in death from a physician by means of a lethal prescription.³⁸ Seventeen years later on February 13, 2014, Belgium's Parliament passed a bill making it legal for terminally ill

34. Rhonda Gay Hartman, *Adolescent Decisional Autonomy for Medical Care: Physician Perceptions and Practices*, 8 U. CHI. L. SCH. ROUNDTABLE 87, 88 (2001) (comparing adult decision-making capability with that of the adolescent).

35. *Death with Dignity Access Acts*, *supra* note 2 (describing the eligibility requirements for accessing assisted death in Oregon, Washington, and Vermont); *See also* OR. REV. STAT., *supra* note 33; WASH. REV. CODE, *supra* note 33; VT. STAT. ANN. *supra* note 33.

36. *See* Dignity Around the U.S., *supra* note 24 (explaining that the Death with Dignity movement is gaining strength and that public opinion seems to be shifting toward acceptance of assisted death).

37. *Washington v. Glucksberg*, 521 U.S. 702, 702-703 (1997) (rejecting a substantive due process challenge to a Washington state law which prohibited assisted death by a group of terminally ill plaintiffs who alleged that they were denied liberty without due process when prohibited by the statute to seek or receive assistance with death. The Court held that the Washington statute on its face did not violate due process); *accord* *Vacco v. Quill*, 521 U.S. 793, 793-794 (1997) (Plaintiff challenged the constitutionality of the New York State's ban on physician-assisted suicide which permitted patients to refuse lifesaving treatment on their own, but made it a crime for physicians to provide terminally ill patients with assistance in death.); *see also* JOHN E. NOWAK AND RONALD D. ROTUNDA, *PRINCIPLES OF CONSTITUTIONAL LAW* 519 (3d ed. 2007) (explaining the evolution of right to die cases in the Supreme Court).

38. OR. REV. STAT., *supra* note 33; *See also* *Death with Dignity Act*, OREGON DEPT. OF PUB. HEALTH, *available at* <https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/index.aspx> (last visited Apr. 6, 2014).

children and adolescents to request and receive assistance with death.³⁹ This recent decision by the Belgian Parliament to remove existing age restrictions on assisted death and expand adolescent autonomy to end-of-life decision-making has sparked a conversation surrounding the rights and capacity of terminally ill adolescents in deciding to end their lives.⁴⁰

In two concurrently published decisions, the United States Supreme Court placed the decision of whether to allow terminally ill citizens to seek assisted death firmly with the states.⁴¹ Under the rulings, a patient's right to refuse or withdraw medical treatment must be balanced against relevant state interests.⁴² Those relevant state interests include ensuring the integrity of the medical profession, protecting vulnerable citizens, and maintaining and preserving life, which includes the prevention of suicide.⁴³ Only five of fifty states have decided that the individual's interest in prevention of harm by means of assisted death outweighs the state's interest in preservation of life.⁴⁴ However, these states fail to address the issue of extending the protected interests of the patient to include the prevention of harm to adoles-

39. Duncan Crawford, *Belgium's parliament votes through child euthanasia*, BBC NEWS EUROPE (Feb. 13, 2014), <http://www.bbc.com/news/world-europe-26181615>.

40. Meghan Daum, *Belgium's humane stance on dying kids*, L.A. TIMES (Feb. 20, 2014), <http://www.latimes.com/opinion/commentary/la-oe-0220-daum-belgium-euthanasia-children-20140220,0,6107150.column#axzz2uT0ZO7Ge> (detailing the international headlines surrounding Belgium's decision to enact the law including "Belgium on Verge of OK to Kill Sick Children" and accusations that this law would be akin to the initiative in Nazi Germany that systematically euthanized severely disabled children in order to promote racial purification).

41. *Washington*, 521 U.S. at 735; *Vacco*, 521 U.S. at 808-809 (explaining that there is no fundamental right to commit suicide and therefore, the statutory distinction between allowing a patient to refuse or withdraw medical therapy/treatment and prohibiting a patient from receiving assistance in death is subject only to the rational basis test); accord JOHN E. NOWAK AND RONALD D. ROTUNDA, *supra* note 37, at 519.

42. *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 283-284 (1990) (holding that the state's interest must be considered and balanced in any decision to withdraw life-sustaining medical treatment); accord JOHN E. NOWAK AND RONALD D. ROTUNDA, *supra* note 37, at 519.

43. *In re Fiori*, 673 A.2d 905, 910 (Pa. Super. Ct. 1996); see also Michele M. Hughes, *State Interests*, 77 C.J.S. *Right to Die* § 7 (Dec. 2013), available at WestlawNext.

44. *Death with Dignity Acts*, *supra* note 2; see also Eckholm, *supra* note 2 (explaining that assisted death was banned everywhere in the U.S. save Oregon until 2008 and now it is legal in five states including, most recently, New Mexico); see also Findings of Fact and Conclusions of Law at 12-13, *Morris v. Brandenburg*, *supra* note 23.

cents.⁴⁵

In 2002, the Netherlands enacted the Termination of Life on Request and Assisted Suicide (Review Procedures) Act.⁴⁶ This act codified the practice of physician-assisted death which, up to that point, had been tolerated by the public and the law for the past three decades, and provided an exception for minors over the age of twelve.⁴⁷ This exception allows terminally ill minors experiencing both lasting and unbearable suffering to voluntarily request assistance in death.⁴⁸ Minors older than twelve but younger than sixteen must have consent from a parent or guardian and their decision must be informed.⁴⁹ The decision to seek assisted death by minors aged sixteen or seventeen years old does not require parental consent, but parents are required to be involved in the adolescent's decision-making process.⁵⁰

Similar to current United States laws regarding assisted death, Belgium passed a law in 2002 that decriminalized euthanasia for terminally ill adults over the age of eighteen.⁵¹ However, Belgium's Parliament recently voted to lift the age restriction on requests for assisted death and extend the right

45. See *Death with Dignity Access Acts*, *supra* note 27 (describing the eligibility requirements for accessing assisted death in Oregon, Washington, and Vermont); see also OR. REV. STAT. 127.800 § 1.01 et seq. (2013); WASH. REV. CODE. § 70.245.010 (2013); VT. STAT. ANN. tit. 18, §§ 5283, 5289 (2013).

46. GOV'T OF THE NETHERLANDS, *Euthanasia*, <http://www.government.nl/issues/euthanasia/euthanasia-assisted-suicide-and-non-resuscitation-on-request> (last visited Apr. 6, 2014); see also RIGHT TO DIE-NL, *About NVVE*, <http://www.nvve.nl/about-nvve> (last visited Apr. 6, 2014).

47. GOV'T OF THE NETHERLANDS, *supra* note 46; see also CARE, *Euthanasia: Country Comparison*, <http://www.care.org.uk/advocacy/end-of-life/euthanasia-country-comparison> (2010).

48. GOV'T OF THE NETHERLANDS *supra* note 46; see also David Jolly, *Push for the Right to Die Grows in the Netherlands*, N.Y. TIMES (Apr. 2, 2012), available at http://www.nytimes.com/2012/04/03/health/push-for-the-right-to-die-grows-in-the-netherlands.html?_r=0; see also PATIENTS RIGHTS COUNCIL, *Background about Euthanasia in the Netherlands*, <http://www.patientsrightscouncil.org/site/holland-background/>.

49. GOV'T OF THE NETHERLANDS, *supra* note 46; see also CARE *supra* note 47 (stating that each case under consideration for euthanasia must have a second medical opinion.); see also PATIENT RIGHTS COUNCIL, *supra* note 48 (explaining that a patient who requests euthanasia must be given alternatives and adequate time to consider the alternative courses of treatment or non-treatment).

50. GOV'T OF THE NETHERLANDS, *supra* note 46.

51. Crawford, *supra* note 39.

to terminally ill children and adolescents who (1) make a voluntary and deliberate decision which demonstrates consciousness of the choice being made; (2) have approval from both parents or guardians and the adolescent's medical team; and (3) are in unrelenting pain and suffering due to the unavailability of treatment to combat their suffering.⁵² These procedural measures provide strict guidelines for the practice of assisted death that help prevent abuse of the practice and provide terminally ill adolescents the opportunity to exercise much needed autonomy when it comes to medical decision-making.⁵³

Unfortunately, the image securely planted in the minds of the American public is that assisted death only occurs in terminally ill elderly patients who, after many good years, are allowed to peacefully slip away by their voluntary decision to seek assisted death.⁵⁴ Any discussion surrounding extending end-of-life decision-making autonomy to adolescents causes alarm, discomfort, and often outrage.⁵⁵ This scenario is precisely what makes the newly minted Belgian law so important; while its impact on the number of children choosing to terminate their lives rather than spend their last days suffering excruciating pain may be minimal due to the procedural safeguards in place, it has effectively removed the muzzle from the unthinkable subject of extending the right to assisted death to adolescents and placed it

52. *Id.*; see also Daum, *supra* note 40 (explaining that, due to the new law, in order for children and adolescents in Belgium to qualify for assisted death they must be suffering from unmanageable pain as determined by a physician, receive approval from parents and the medical team, undergo psychological evaluation, be close to death, and must repeatedly make voluntarily requests to demonstrate their ability to understand what they are requesting).

53. See Daum, *supra* note 40; see also Hartman, *supra* note 34, at 88.

54. Marker, *supra* note 30, at 1.

55. Daum, *supra* note 40 (discussing that the public outrage over Belgium's decision to lift age restrictions on assisted death has brought to the forefront arguments comparing Belgian physicians and lawmakers to Nazis); see also Marker, *supra* note 30, at 1 (stating that the mere question of extension of assisted death eligibility to adolescents might brand the questioner a vehement opponent using 'emotionally charged fear tactics' but neglecting to mention that the questioner could conversely be accused of advocating for infanticide and other less than flattering ideals).

at the forefront of the American consciousness.⁵⁶

V. ADOLESCENT AUTONOMY AND END-OF-LIFE DECISION-MAKING – TIME FOR A CHANGE

Proponents of assisted death advocate for a competency exception to the general rule against assisted death.⁵⁷ This exception requires that a patient be at the end of his or her life, experiencing relentless suffering, having undergone all possible palliative treatment measures, and voluntarily and repeatedly requested aid from a physician or loved ones in assisting or hastening his or her death.⁵⁸ So long as these factors are in place, the patient should be permitted to receive such assistance.⁵⁹ If appropriate procedural safeguards similar to those within Belgium’s assisted death statute are implemented, it seems that there is no valid reason why this exception should not be applied to adolescents in the United States.⁶⁰

American adolescents are traditionally regarded as minors by law and are thereby considered legally disabled.⁶¹ Under this designation, individuals suffering from terminal illnesses presumptively lack the capacity for medical decision-making.⁶² The current legal presumption is that adolescents lack the capacity to make medical decisions regarding treatment at the end

56. See Daum, *supra* note 40 (stating that Belgium’s new law is procedurally safe, well-reasoned, supported by a majority of the Belgium citizenry, and an important catalyst to conversations regarding adolescent right to assisted death in the U.S. and elsewhere).

57. Supanich, *supra* note 5, at 199.

58. See Daum, *supra* note 40 (describing the requirements for adolescents to qualify for consideration of assisted death);

59. See also Hartman, *supra* note 34, at 88 (stating that adolescent decisional autonomy needs to be further examined, that the discussion surrounding the capacity of an adolescent to consent should be supported by empirical evidence, and providing examples of instances where the adolescent’s capacity for autonomy shifts from one extreme to another simply based on the context of the issue or action being addressed).

60. Hartman, *supra* note 34, at 88; see also Daum, *supra* note 40 (explaining the procedural safeguards in place for the provision of child or adolescent assisted death in Belgium).

61. Rhonda Gay Hartman, *Coming of Age: Devising Legislation for Adolescent Medical Decision-Making*, 28 AM. J.L. & MED. 409, 409 (2002).

62. *Id.* (stating that the “Supreme Court has observed that vulnerability impairs minors decision-making capability” and observing that the law regulates decision-making by minors more comprehensively than adults).

of life.⁶³ This presumption disregards the current social norms and laws that provide adolescents with decisional autonomy and allow them to bear the consequences of their choices.⁶⁴ Current developmental research demonstrates that adolescents are capable of taking on the same level of autonomy legally provided to them in family court proceedings and similarly apply it to medical decision-making.⁶⁵ The lack of compelling research in support of the limited autonomy provided to adolescents stems not from any scientific determination, but rather from the outdated notion that the state should act through care and concern to protect adolescents from themselves.⁶⁶ This notion fails to acknowledge the ability of adolescents, especially those suffering from terminal illnesses, to combine their own decision-making abilities with the advice and consent of their parents and physicians, and conclude that the harm of staying alive far outweighs the harm that would be done by requesting or receiving assistance in death.

The procedural safeguards put in place by Belgium and the Netherlands, which provide adolescents with access to assisted death, should be a catalyst to a discussion amongst state legislatures in the United States. For instance, the legalization of assisted suicide for individuals over the age of twelve in the Netherlands in 2002 is instructive, since then only five children have actually received assistance in death because the requirements for approval of such a request are stringent and require the input of parties outside of the child.⁶⁷ In order for a physician to avoid prosecution for committing assisted suicide or euthanasia, all of the requirements in the Dutch

63. Hartman, *supra* note 34, at 89.

64. *Id.* (providing the example of juvenile delinquency and family court proceedings where adolescents are granted decision-making autonomy and stating that “legal recognition of adolescent waiver for fundamental constitutional rights and adolescents’ legal ability to bring personal injury suits against their parents stand in contradistinction to the lack of autonomy afforded adolescents for medical decision making . . . which rests on scant scientific and social evidence”).

65. Hartman, *supra* note 34, at 89.

66. *Id.* at 91 (describing how the state’s decision to act as *parens patriae* dictates that the state act through care and concern to protect adolescents from themselves).

67. Daum, *supra* note 40.

Termination of Life on Request and Assisted Suicide (Review Procedures) Act must be satisfied.⁶⁸ The argument for extending the right to die to its citizens and providing legal protection for physicians who engage in these practices arises out of the need for more patient autonomy – patients should have the right to make decisions about how they die.⁶⁹

Most people in the Netherlands support the practice of assisted death as demonstrated by poll results that show an overwhelming majority believes in patient autonomy and that assisted death should be available to those who want it.⁷⁰ The most controlling procedural safeguard to prevent abuse of assisted death is the requirement that physicians report the cause of death to the municipal coroner and that physicians voluntarily report acts of assisted death to the Euthanasia Commission for review.⁷¹ The Commission, composed of a lawyer, physician, and ethicist, examines each reported case to determine whether the physician complied with the strict requirements of the Dutch Termination of Life on Request and Assisted Suicide (Review Procedures) Act sufficiently to secure immunity from criminal prosecution.⁷² These requirements heighten the accountability of the physician in order to protect the patient while he or she is in a vulnerable state.

While assisted death for adolescents in the Netherlands has been legal within the constraints of the law for twelve years, the Belgian law that removes all age restrictions from access to assisted death is quite recent.⁷³ The requirements that must be met before an adolescent may seek assisted death in Belgium function as procedural safeguards that operate to reduce

68. GOV'T OF THE NETHERLANDS, *supra* note 46.

69. PATIENT RIGHTS COUNCIL, *supra* note 45.

70. Jolly, *supra* note 48.

71. *FAQ – Euthanasia in the Netherlands*, RADIO NETHERLANDS WORLDWIDE (Sept. 29, 2009, 11:14AM), <http://www.rnw.nl/english/article/faq---euthanasia-netherlands> (last visited Apr. 6, 2014).

72. *Id.*

73. *Id.*; *see also* Crawford *supra* note 39.

instances of abuse.⁷⁴ According to Belgian polls, seventy-five percent of the public supports expansion of the law that permits assistance in death to persons of any age including children who can prove a capacity for discernment through a series of requests and psychological evaluation.⁷⁵ The psychological evaluation, in addition to the existing requirement that the request for assistance in death be a voluntary, informed decision that is approved by multiple physicians and the parents of the child, serves to shield the child from possible abuse by preventing coercion or uninformed decision-making.

The laws in states that permit assisted death in the United States should be amended to mirror not only the lowered age restrictions of the law in the Netherlands, but also the safeguards within that law. There is seemingly no rationale, aside from the refusal to provide adolescents with decisional autonomy in regards to medical decisions, which would preclude the United States from lifting the current age restriction of eighteen years old for requesting assistance with death.⁷⁶ The distinction drawn in the United States between the ages of seventeen and eighteen dissolves into nothing more than a legal fiction when procedural standards that require a patient, cognizant of his or her voluntary decision to end his or her own life, to be suffering unbearably from a terminal illness are rigorously enforced. The implementation of a committee similar to the Netherland's Euthanasia Committee that would review the physician's determination that assisted death is per-

74. See Daum, *supra* note 40 (explaining the strict requirements for receiving assistance in death in Belgium that preclude abuse).

75. Daum, *supra* note 40.

76. Cf. *States That Allow Same-Sex Marriage*, NAT'L CONF. OF STATE LEGISLATURES, <http://www.ncsl.org/research/human-services/same-sex-marriage-laws.aspx> (last updated Mar. 6, 2014); *State Medical Marijuana Laws*, NAT'L CONF. OF STATE LEGISLATURES, <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (last updated Mar. 27, 2014) (In light of recent progressive legislation involving same-sex marriage and legalization of marijuana it is time to encourage a change in the legislative opinions surrounding assisted death and extend the right to a controlled, death with dignity to adolescents).

missible would serve to further protect citizens.⁷⁷ If the current procedural safeguards remain intact and states are willing to include a review committee, there is no reason why the right to access assisted death could not be expanded to include adolescents in the United States.

VI. CONCLUSION

While the number of states that permit assisted death is still in the single digits, it should not remain that way for long. The right to die movement in the United States has steadily gained traction in the past few years, including recent victories in New Mexico and Montana state courts that allow patients to receive aid in dying according to strict procedures and protocols in place to prevent abuse. The decision made by the Netherlands to provide assistance in death to patients over the age of twelve and the recent decision of Belgium to remove any age restrictions from access to assisted death provide a guide for adolescent medical autonomy in the United States. So long as procedural guidelines are strictly adhered to, there is no reason why the United States should not expand access to assisted death to terminally ill adolescents.

The procedural safeguards surrounding the right to die in the United States continue to prove sufficient to protect patients from abuse of assisted death laws. For this reason, the current age restriction seems to be based on a fictional distinction drawn between one year of life and another. Therefore, the United States should mirror the efforts of Belgium and the Netherlands and that states should introduce bills allowing assisted death for terminally ill adolescents.

^{77.} See *Death with Dignity Access Acts*, *supra* note 2 (explaining that current state laws that allow for assisted death protect the public by allowing the patient to rescind his or her request at any time, which allows the patient to be in full control of the process. The process for procuring a lethal prescription for use in assisted death includes the requirement that the patient make a verbal request for the lethal prescription on two separate occasions, with fifteen days elapsing between the requests, a written request that is witnessed by parties who are not directly affected by the patient's choice, and the patient is able to self-administer the prescribed lethal medication).