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Introduction

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INTRODUCTION

On September 23, 2017, the New Mexico Law Review and the University of New Mexico School of Law hosted a symposium, *Establishing New Rights: A Look at Aid in Dying*. The Symposium brought together national scholars, judges, and local experts to explore the ramifications of creating new rights through state constitutional interpretation, with a particular emphasis on the right to die.

As state legislatures and supreme courts throughout the country confront the controversial subject of aid in dying, the question arises as to what is the role of the judiciary when the state constitution is vague about civil rights. The New Mexico Supreme Court was one of the latest to address this issue in the 2016 aid in dying case, *Morris v. Brandenburg*.

The Symposium explored aid in dying from medical and legal perspectives, the background of *Morris*, and how other states have tried or succeeded in legalizing aid in dying. The day kicked off with a presentation from Dr. Katherine Morris, Associate Professor of Surgery, University of Oklahoma and Stephenson Cancer Center, one of the named plaintiffs in *Morris*, and continued with several presentations and panels, including a presentation from Justice Charles Daniels of the New Mexico Supreme Court. The Symposium capped off with the New Mexico Law Review announcing its dedication of this Issue to Professor Emeritus Robert Schwartz. The video footage of the Symposium can be accessed at <http://nmlr.unm.edu/special-content/Symposium.html>.

This Issue collects essays and articles from many speakers of the Symposium. The authors include local practitioners to renowned national scholars and practitioners. The first article, *Morris v. Brandenburg: Departing from Federal Precedent to Declare Physician Assisted Suicide a Fundamental Right Under New Mexico's Constitution*, comes from Paola V. Jaime Saenz, a local practitioner and recent University of New Mexico School of Law alumni. In her article, Ms. Jaime Saenz sets the stage of aid in dying in New Mexico and how the New Mexico state courts progressed in *Morris*.

The second article, *State Constitutions as the Future for Civil Rights* is a transcription of the keynote address delivered by Erwin Chemerinsky, renowned constitutional law scholar and Dean of Berkeley Law at the University of California. Dean Chemerinsky's keynote address artfully brings together both themes of the Symposium: physician aid in dying and state constitutions.

The third article, *Legal History of Medical Aid in Dying: Physician Assisted Death in U.S. Courts and Legislatures*, is written by Professor Thaddeus Mason Pope of Mitchell Hamline School of Law, a national expert in the law surrounding physician aid in dying. Professor Pope's article closely follows his presentation, which gives a pioneering, first-of-its-kind overview of all legal attempts and challenges to physician aid in dying laws.

Next, panelists Andrew G. Schultz of Rodey, Dickason, Sloan, Akin & Robb, P.A. and Chief Judge Linda Vanzi of the New Mexico Court of Appeals, along with local practitioner Melanie B. Stambaugh, provide an essay focusing on New Mexico's civil rights jurisprudence. *State Constitutional Litigation in New Mexico: All Shield and No Sword* delves into the reasons New Mexico courts have not interpreted our state constitution to provide for additional protections for individual civil rights violations in the same way they have for criminal rights.

The following essay, *A Nadir of State Constitutional Jurisprudence: Failing to Protect Terminally Ill Patients' Choice for a More Peaceful Death in New Mexico*, is provided by presenter Kathryn L. Tucker, who served as lead counsel in the landmark United States Supreme Court cases *Washington v. Glucksberg* and *Vacco v. Quill*, as well as plaintiff's counsel in *Morris*. In her essay, Ms. Tucker criticizes the New Mexico Supreme Court's decision in *Morris* for failing to depart from federal precedent and extend the state constitution to protect terminally ill New Mexican citizens' right to die.

The last essay, *The Decisions We Are (or Are Not) Free to Make, for Now*, is from panelist Laura Schauer Ives, a partner at Kennedy, Kennedy, & Ives in Albuquerque, NM and one of the lead plaintiff attorneys in *Morris*. In her essay, Ms. Schauer Ives shares her personal experience with aid in dying, and argues for the need to depart from *Glucksberg*'s emphasis on history and tradition.

We hope you are enriched and invigorated in the articles that follow. Many thanks to the New Mexico Law Review's editorial board, staff, and faculty advisors and the University of New Mexico School of Law in helping to put on this Symposium.

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