PHYSICIAN-ASSISTED SUICIDE AND THE DOCTRINE OF STANDING: DEFICIENCIES OF TRADITIONAL STANDING APPLICATION AND THE CASE FOR ALTERNATIVES

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ABSTRACT

As the practice of physician-assisted suicide has expanded either by plebiscite or by legislation in recent decades, patients, disability rights advocates, and other opponents of assisted suicide have turned to the courts to challenge the proliferation of laws permitting Americans to take their own lives. Though the goal is to obtain judicial injunctions by challenging the constitutionality of such laws, legal advocates face a precursory hurdle: simply getting into court. In March 2024, disability rights advocacy groups challenged a California law that allows doctors to administer life-ending drugs to their terminally ill patients. Though the plaintiffs ultimately failed to state a claim, the case prompted questions about the unique nature of standing to challenge assisted suicide laws. The traditional standing doctrine, elucidated in *Lujan v. Defenders of Wildlife*, fundamentally requires that a plaintiff must suffer an injury-in-fact. Since a conventional Article III standing injury is often some form of economic harm, privacy violation, or the frustration of a property right, it is sensible to maintain the requirement for a particularized injury. But as applied to assisted suicide, it creates a catch twenty-two: only those who have been "injured" by the permissibility of assisted suicide are allowed to challenge such allowances, but anyone who has been affirmatively injured by such laws has died. By categorically eliminating the class of plaintiffs who can properly challenge assisted suicide statutes, the standing requirement fails to fulfill its function if interpreted conventionally. Despite courts' reluctance to depart from *Lujan's* requirements, they sometimes allow more permissive tests in unique situations. Since waiting to challenge assisted suicide laws until a patient experiences harm or death is both morally and procedurally problematic, a solution is necessary. This note will examine the doctrines of organizational,

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associational, third-party, and taxpayer standing, and explore how they might fare in assisted suicide challenges.

INTRODUCTION

Physician-assisted suicide (PAS), the practice of providing fatal doses of drugs to prematurely terminate a person's life, is a highly controversial practice that contravenes 2,400 years of traditional medical ethics and has ignited debates over the proper boundaries of physicians and other healthcare providers, the autonomy of patients, and the risks posed by the practice to the disabled, marginalized, medically under-informed, and other vulnerable populations. As the legalization of PAS has increasingly garnered social approval in recent decades, the judiciary has emerged as a primary forum for challenging this movement. In March 2024, disability rights advocacy groups challenged a California law that allows doctors to administer life-ending drugs to their terminally ill patients.[1] The End of Life Option Act ("the Act") permits Californians to take their own life with the assistance of their physicians when they suffer from certain diseases that, among other conditions, are "incurable and irreversible."[2] When plaintiffs in *United Spinal Association v. California* challenged the constitutionality of the Act, the United States District Court for the Central District of California addressed the thorny issue of who has standing to challenge assisted suicide laws, a topic that has received scant judicial adjudication.[3] Though Judge Fernando Aenlle-Rocha ultimately dismissed the action for failure to state a claim, he briefly addressed the claims for both organizational and individual standing.[4] Ruling that the plaintiffs had successfully pled the former but not the latter,[5] the opinion raised an important question for hopeful plaintiffs: what need opponents of assisted suicide do to successfully plead standing so that they may challenge the merits of these laws?

The nature of the injury-in-fact requirement to confer Article III standing makes it difficult for plaintiffs to plead standing under the conventional doctrine. This is so for two reasons. First, consider the nature of assisted suicide laws. State laws which allow some form of PAS are not mandatory, they are permissive.[6] That is, laws that permit PAS simply *enable* citizens of that state to take part in PAS in accordance with the conditions set forth in the law. Unlike tax laws, property regulations, or criminal codes, assisted suicide laws do not affirmatively "apply" to all citizens, but rather provide a legally sanctioned action for whichever citizens choose to pursue it. Typically, when a plaintiff challenges a mandatory law, it has in some way materially impacted (or "injured") him.[7] But assisted suicide laws only directly "impact", in the strict

1. United Spinal Ass'n v. California, No. 2:23-CV-03107 FLA, 2024 WL 1671167 (C.D. Cal. Mar. 27, 2024).

2. CAL. HEALTH & SAFETY CODE § 443.1(r).

3. *United Spinal Ass'n*, 2024 WL 1671167.

4. *Id* at 3–4.

5. *Id* at 4.

6. *See, e.g.*, End of Life Option Act, CAL. HEALTH & SAFETY CODE § 443.

7. *See, e.g.*, Lujan v. Defenders of Wildlife, 504 U.S. 555, 559 (1992).

sense of the word, individuals who undergo or commit assisted suicide. Presumably, legal and moral opponents of the practice will not undergo or commit assisted suicide. Therefore, the class of plaintiffs to challenge such laws is limited to those who utilize the law and therefore approve of it, explicitly or tacitly. Second, the nature of assisted suicide prevents the individual undergoing PAS from suing after-the-fact (they are deceased) or at least confines the opportunity to a party authorized to bring an action under wrongful death or traditional tort theories.[8] Given the grave and irreversible harm that assisted suicide produces, some mechanism for making pre-enforcement challenges must exist. The loss of human life should not be a pre-requisite for bringing constitutional challenges.

The dilemma, therefore, is that the permissive nature of assisted suicide laws severely restricts the class of plaintiffs who may challenge them and prevents a comprehensive method of bringing actions in a posture that allows opponents to prevent the injury in question. While the traditional standing requirements fail to solve these problems, courts have recognized other forms of standing when the injury-in-fact requirement categorically prevents otherwise-appropriate legal challenges.[9] This Note will explore these four alternative standing doctrines and examine how plaintiffs wishing to challenge assisted suicide laws might navigate their requirements.

I. HISTORICAL AND LEGAL BACKGROUND

For most of human history, the practice of assisted suicide has been morally opposed by physicians and lawmakers alike. This moral stance manifests itself as early as the Ten Commandments.[10] A second fundamental moral precept is articulated in the Hippocratic Oath, promulgated in the fourth century B.C. by Hippocrates, known as the "father of modern medicine."[11] Physicians today widely observe this longstanding Greek medical text, which requires physicians to uphold ethical standards.[12] It states, "I will give no deadly medicine to any one if asked, nor suggest any such counsel."[13] More recently, international agreements and documents demonstrate far-reaching

8. This is an inference, rather than a legal assertion. *See e.g.*, Brigner v. Mount Carmel Health Sys., No. 19AP-500, 2019 WL 6133851 (Oh. Ct. App. Nov. 19, 2019), in which a deceased patient's executor sued the patient's doctor on a wrongful death theory after the doctor administered lethal medication.

9. Litigants have used organizational standing, associational standing, third-party standing, and taxpayer standing to circumvent the traditional standing requirements and bring legal challenges despite themselves not having suffered the requisite injury. *See, e.g.*, NCLU v. N.Y. City Transit Authority, 684 F.3d 286; Nat'l Fed'n of the Blind v. Unites States Dep't of Educ., 407 F. Supp. 3d 524 (2019); Singleton v. Wulff, 428 U.S. 106 (1976); Bowen v. Kendrick, 487 U.S. 589 (1988).

10. The Sixth Commandment states, "Thou shall not kill." *Exodus* 20:13 (King James).

11. Raphael Hulkower, *The History of the Hippocratic Oath: Outdated, Inauthentic, and Yet Still Relevant*, EINSTEIN J. BIOLOGY & MEDICINE 41 (2010).

12. Penn State College of Medicine, *Oath of Modern Hippocrates* (2025), https://students.med.psu.edu/md-students/oath/ [https://web.archive.org/web/20250402043600/https://students.med.psu.edu/md-students/oath/].

13. *The Oath of Hippocrates*, *in* 38 THE HARVARD CLASSICS 3 (Charles W. Eliot ed., 1910).

condemnation of medically assisted suicide.[14] Despite the widespread denunciation of PAS for most of human history, public attitudes in some regions have shifted.[15] The changing morals of the past several decades have produced an analogous change in the law. Over the past thirty years, laws in both some American states and in certain countries have become far more permissive of the practice. In 1994, Oregon became the first U.S. state to legalize assisted suicide in some form, when it passed the Death with Dignity Act, and Netherlands became the first country to legalize the practice upon the passage of their Euthanasia Act in 2002.[16] This increase in social acceptance has created a unique judicial landscape: a historically unlawful practice has quickly gained social momentum in a country whose legal system relies largely on common law and precedent.

PAS involves the termination of human life via physician prescription and administration of lethal drugs. Proponents of PAS, brandishing phrases like "death with dignity" and "the right to die," reject the idea that preservation of human life is a good in and of itself.[17] Instead, they advocate for the right of patients to decide the manner and timing of their death.[18] Conversely, opponents of PAS recognize that the act of prematurely terminating life disregards the value of human dignity.[19] And while proponents often point to physical suffering as the reason PAS should be legalized,[20] data suggests that physical pain is not the primary reason that individuals seek assisted suicide. According to 2021 data on Washington state's Death with Dignity Act, pain was not among the top five concerns of individuals who underwent assisted suicide.[21] Decreased enjoyment in activities, loss of autonomy, loss of control of bodily functions, burden on others, and loss of dignity all ranked higher than concerns about pain.[22]

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14. S*ee* World Med. Ass'n, *Declaration of Geneva* (1948) ("I will maintain the utmost respect for human life."); World Med. Ass'n, *Statement of Marbella* (1942) ("Physician-assisted suicide, like euthanasia, is unethical and must be condemned by the medical profession.")

15. Data shows that acceptance of assisted suicide among Americans has risen in recent decades. *See* Rachael Yi, *Most Americans Favor Legal Euthanasia*, GALLUP (Aug. 8, 2024) https://news.gallup.com/poll/648215/americans-favor-legal-euthanasia.aspx?utm_source [https://perma.cc/27GH-BB28].

16. OR. REV. STAT. §§ 127.800–127.897 (1994); Agnes van der Heide et al., *End-of-Life Practices in the Netherlands Under the Euthanasia Act*, 356 NEW ENG. J. MED. 1957, 1958 (2007).

17. *See* Len Doyal, *Why Active Euthanasia and Physician Assisted Suicide Should be Legalised*, BRITISH MED. J. 1079 (2001).

18. *Id.*

19. *See, e.g.*, Ryan Anderson, *Physician-Assisted Suicide Betrays Human Dignity and Violates Equality Before the Law*, HERITAGE FOUND. (2015), https://www.heritage.org/health-care-reform/report/physician-assisted-suicide-betrays-human-dignity-and-violates-equality [https://perma.cc/PM2P-PXF3].

20. *See, e.g.*, Lydia Dugdale, *Pros and Cons of Physician Aid in Dying*, 92 YALE J. BIOLOGY & MED. 747, 748 (2019).

21. WASH. ST. DEP'T OF HEALTH, 2021 DEATH WITH DIGNITY ACT REPORT 7 (2022).

22. *Id*.

Many of the concerns about PAS stem from the "slippery slope" problem. Opponents fear that if states legalize the practice in any form, efforts to allow assisted suicide for categories other than those originally intended will face significantly less resistance.[23] For example, proponents of the practice may advocate that PAS should be legalized only for patients who meet certain thresholds and are predicted to have a life expectancy of 6 months or less without life-prolonging care.[24] And while some may sympathize with allowing PAS for those closest to death and those who might be greatly suffering, initial legalization makes it far easier to eventually offer the same lethal option to individuals without terminal illness or grave suffering. Once an action becomes permissible for one reason, and once the bright line is crossed that changes the permissible physician's role from healing or comforting to killing, it becomes exponentially easier to relax the standards and lower the legal requirements.

An examination of the development of PAS laws in other countries evidences this fear. For example, when Belgium first passed legislation permitting assisted suicide, it was limited to adults who experienced "constant and unbearable physical or mental suffering that cannot be alleviated."[25] But since the passage of the 2002 Belgian Euthanasia Act, the country has continuously expanded the legality of the practice. The Belgian Parliament expanded coverage to minors in 2014 and has introduced numerous other draft bills to extend euthanasia to other groups.[26] In the first year after the passage of the 2002 act, assisted suicide accounted for 0.2% of deaths among Belgians.[27] In less than twenty years, it has swelled to 2.4% (as of 2021).[28] Similarly, assisted suicide cases in Canada have increased annually since its legalization in 2016, and now represent nearly 5% of all deaths nationwide.[29]

Though assisted suicide implicates many of the same ethical and moral concerns as a heavily litigated topic like abortion, there exists a dearth of

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23. *See, e.g.*, Eugene Volokh, *The Mechanisms of the Slippery Slope*, 116 HARV. L. REV. 1028, 1058 (2003).

24. *See, e.g.*, CAL. HEALTH & SAFETY CODE § 443.

25. Leticia Mora and Rebecca Reingold, *Child Euthanasia in Belgium,* O'NEILL INST. FOR NAT'L & GLOB. HEALTH LAW GEO. UNIV. (Feb. 10, 2020), https://oneill.law.georgetown.edu/child-euthanasia-in-belgium/#:~:text=In%202002%2C%20Belgium%20formally%20legalized,suffering%20that%20cannot%20be%20alleviated" [https://perma.cc/NMJ2-B6RG].

26. *Euthanasia and Suicide, End of Life, News, Publications*, ALLIANCE VITA (July 6, 2017), https://www.alliancevita.org/en/2017/06/belgium-15-years-after-legalizing-euthanasia/ [https://perma.cc/5A8P-ANGX]. "Since 2002, more than 20 draft bills have been submitted to the Parliament, mostly to extend euthanasia to other categories of individuals or to simplify the legal process." *Id.* Draft bills include proposals to remove validity of advance declaration, reduce the medical delay for doctors to invoke the conscience clause, and restrict the conscience clause altogether. *Id.*

27. Nat'l Libr. Med., *Developments Under Assisted Dying Legislation* 119 DEUTSCHES ÄRZTEBLATT INT'L 829, 829 (2022).

28. *Id.*

29. HEALTH CANADA, FIFTH ANNUAL REPORT ON MEDICAL ASSISTANCE IN DYING IN CANADA 2023 (2024).

judicial pronouncements on the subject.[30] Even medically adjacent issues that have come to the forefront in recent years, such as transgender interventions and COVID-19, have quickly outpaced the level of precedent that exists in the realm of assisted suicide.[31] The Constitution is silent on the issue of assisted suicide, leaving states the authority to determine the legality of the practice for themselves. Specifically, the Fourteenth Amendment has been the constitutional provision on which the legality of laws permitting or forbidding PAS have turned.[32] The most notable case, *Washington v. Glucksberg,*[33] held that the Due Process Clause does not protect any right to assisted suicide. While *Glucksberg* definitively recognized this absence of a constitutional right, questions remain about the legality of the implementation and process of PAS laws at the state level.

A. Jurisprudence on Assisted Suicide

Though assisted suicide challenges have only begun to materialize in recent decades, there have since been several notable judicial decisions. While some of these cases have received widespread attention and scholarship, a fundamental difference separates the legal issues in those cases from the standing question explored here. Specifically, previous cases have mostly contemplated the lawfulness of *banning*, rather than permitting PAS. This distinction is critical because the difficulty of bringing legal actions largely turns on the type of conduct the plaintiff wishes to challenge. While it is relatively easy to establish standing to challenge a law that attaches criminal penalties to conduct, it is far more difficult to establish standing to challenge a law that *removes* such penalties.[34] Though these cases mostly examine the former rather than the latter, they nevertheless provide useful background and helpful context for framing the standing question discussed here.

In 1997, the United State Supreme Court heard its first challenge to an assisted suicide law. Harold Glucksberg, a physician, challenged Washington state's ban against assisted suicide. The Court upheld the ban and held that the Due Process Clause of the Fourteenth Amendment did not protect a right to assisted suicide.[35] Chief Justice William Rehnquist's opinion illuminated the conventional American and common law understanding of assisted suicide as a

30. There have been only four U.S. Supreme Court cases on the issue of assisted suicide. These are Cruzan by Cruzan v. Dir., Missouri Dep't of Health, 497 U.S. 261 (1990); Washington v. Glucksberg, 521 U.S. 702 (1997); Vacco v. Quill, 521 U.S. 793 (1997); and Gonzales v. Oregon, 546 U.S. 243 (2006).

31. *See generally* Biden v. Missouri, 595 U.S. 87 (2022); Poe v. Labrador, 709 F. Supp. 3d 1169 (2023)

32. Challenges have primarily implicated the Due Process and Equal Protection Clauses. Declining to recognize a constitutional guarantee of "the right to die," the Court has been largely deferential to the states.

33. *See Glucksberg*, 521 U.S. 702.

34. This is because the threat of prosecution under a criminal statute can create a credible threat of injury, which is a key component of standing. *See, e.g.,* Rhode Island Ass'n of Realtors, Inc. v. Whitehouse, 199 F.3d 26 (1999).

35. *See Glucksberg*, 521 U.S. at 706.

moral matter. First, Chief Justice Rehnquist recognized a number of compelling state interests behind laws prohibiting assisted suicide, beginning with the preservation of human life.[36] He further identified "protecting the integrity and ethics of the medical profession" and "protecting vulnerable groups—including the poor, the elderly, and disabled persons—from abuse, neglect, and mistakes" as interests of Washington state.[37] In his majority opinion, Chief Justice Rehnquist held that the Washington state ban on assisted suicide furthered these compelling state interests, and Glucksberg's challenge thus failed to demonstrate that the ban violated the Due Process Clause of the Fourteenth Amendment.[38]

Significantly, the Court also raised the "slippery slope" issue of assisted suicide and acknowledged that recognizing assisted suicide as a legal right would dangerously start down the path to eventually allowing voluntary and involuntary euthanasia.[39] The Court held that assisted suicide was not a fundamental liberty interest as it was not "deeply rooted in this Nation's history."[40] This test, elucidated in *Moore v. East Cleveland*,[41] explained that interests that are not so deeply rooted do not qualify for status as a protected liberty interest. Much of the Court's legal reasoning stemmed from a survey of American history and English common law. This began with the recognition that the practice of assisting the act of suicide has long since been criminal in our country.[42] Justice Rehnquist identified that "opposition to and condemnation of suicide—and, therefore, of assisting suicide—are consistent and enduring themes of our philosophical, legal, and cultural heritages."[43] This finding was further substantiated by the longstanding common law disapproval of assisted suicide. Chief Justice Rehnquist traced these beliefs to William Blackstone and earlier English legal commentators who contemplated suicide's place among the harshest crimes and condemned the practice of aiding in it.[44] This express disapproval provided the foundation for the American colonial view, which likewise imposed heavy punishments for the act of assisting suicide.[45] While the decision in *Glucksberg* rejected a constitutional right to assisted suicide, the Court did not go so far as to enjoin states from passing their own laws permitting the practice. Much like the state of abortion laws following

36. *Id.* at 728.

37. *Id.* at 731.

38. *Id.* at 706.

39. *Id.* at 732 ("Finally, the State may fear that permitting assisted suicide will start it down the path to voluntary and perhaps even involuntary euthanasia.").

40. *Id.* at 703.

41. 431 U.S. 494 (1977).

42. *Glucksberg*, 521 U.S. at 710. ("The States' assisted-suicide bans are not innovations. Rather, they are longstanding expressions of the States' commitment to the protection and preservation of all human life.").

43. *Id.* at 711.

44. *Id.* at 711–12.

45. *Id.* at 712–13.

Dobbs v. Jackson Women's Health Organization,[46] the right to and scope of assisted suicide is left to the states.

The same term, the Supreme Court heard another significant case regarding physician-assisted suicide. In *Vacco v. Quill*, the Court unanimously upheld New York state's ban on physician-assisted suicide and affirmed *Glucksberg's* holding that states have a legitimate interest in the preservation of human life.[47] Also consistent with *Glucksberg*, the court in *Quill* agreed that there is no constitutional "right to die."[48] *Quill's* holding went further than *Glucksberg* in that it struck down additional Fourteenth Amendment arguments against assisted suicide bans. Whereas *Glucksberg* rejected the argument that assisted suicide bans violated the Due Process Clause, *Quill* held that claims appealing to the Equal Protection Clause were equally futile.[49] Again authoring the majority opinion, Chief Justice Rehnquist wrote, "The Equal Protection Clause . . . creates no substantive rights. Instead, it embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly."[50] While *Quill* reaffirmed the general holding of *Glucksberg*, it made a second distinction that was absent in *Glucksberg*. The opinion devoted considerable attention to the issue of intent, both to its conventional role in American criminal law and how it applies to assisted suicide. Chief Justice Rehnquist identified the critical difference between a patient refusing life-saving treatment on one hand and ingesting lethal drugs on the other.[51] Though the two may yield the same end result, death, the elements of causation and intent are completely reversed. Recognizing that "[t]he law has long used actors' intent or purpose to distinguish between two acts that may have the same result,"[52] the court rejected the plaintiffs' claim that the distinction between refusing life-saving treatment and voluntarily ingesting lethal drugs was an arbitrary one.[53] Together with *Glucksberg*, *Quill* unequivocally supported the notion that bans on assisted suicide are legitimate state interests, and held that the "right to die" is not an interest protected by the Fourteenth Amendment.

B. Recent Cases

United Spinal Association v. California, decided earlier this year, is one of the only published cases that addresses the question of standing to challenge assisted suicide laws. The plaintiffs in *United Spinal Ass'n* challenged California's End of Life Option Act (EOLOA), which allows physicians to prescribe life-ending drugs to terminally ill Californians.[54] The EOLOA, signed

46. 597 U.S. 215 (2022).

47. *Quill*, 521 U.S. 793.

48. *Id.*

49. *Id.* at 797.

50. *Id.* at 799.

51. *Id.* at 801.

52. *Id.* at 802.

53. *Id.* at 807.

54. United Spinal Ass'n v. California, No. 2:23-CV-03107 FLA, 2024 WL 1671167, at *2 (C.D. Cal. Mar. 27, 2024).

into law in 2016 and revised in 2022,[55] allows individuals to receive lethal drugs upon written request, provided they are "of sound mind and not under duress, fraud, or undue influence."[56] The act imposes a series of requirements for prescription, which generally seek to establish a voluntary and unimpaired decision made by the patient.[57] The plaintiffs, two individuals with disabilities and four disability rights advocacy groups, challenged the constitutionality of EOLOA, arguing it violates the Fourteenth Amendment of the U.S. Constitution and deprives terminally ill Californians of other protections afforded under California and U.S. law.[58] Defendant State of California filed a motion to dismiss, which was ultimately granted by Judge Fernando Aenlle-Rocha of the Central District of California.[59] In the case, the plaintiffs sought organizational standing because the EOLOA had frustrated its organizational mission. Their mission is to "[empower] those living with disabilities to obtain a better quality of life, advocat[e] for equal protection of the law as to disabled people, and [implement] safeguards to ensure equal access to healthcare."[60] The district court granted organizational standing, recognizing that the plaintiffs had expended considerable resources counteracting the EOLOA.[61] These included investigating risks associated with physician-assisted suicide, funding campaigns and lobbying efforts to eliminate and raise awareness about such risks, issuing press statements opposing physician-assisted suicide, obtaining accreditation for legal and medical education courses specific to the EOLOA, and advocating for individuals placed at increased risk of harm by the EOLOA.[62]

Six years before *United Spinal Ass'n*, a group of physicians and a professional organization similarly objected to California's EOLOA in *People ex rel. Becerra v. Superior Court*.[63] Though the superior court judge enjoined enforcement of the act, the California Court of Appeals reversed the decision, holding that the plaintiffs lacked both third-party standing and public interest standing.[64] The plaintiffs were a group of five physicians and an organization called the American Academy of Medical Ethics. The parties asserted violations of due process, violations of equal protection, and "California constitutional limitations on the power of the Legislature to act in special session."[65] Lacking a patient injured by the EOLOA, the plaintiffs were unable to plead associational standing.[66] The plaintiffs also declined to plead

55. CAL. HEALTH & SAFETY CODE § 443.
56. *Id.* at § 443.3(b)(2), (3).
57. *See generally id.* § 443.
58. *United Spinal Ass'n,* 2024 WL 1671167, at *3–*4.
59. *Id*.
60. *Id*. at 7.
61. *Id*.
62. *Id*.
63. 29 Cal.App.5th 486 (2018).
64. *Id.* at 504.
65. *Id.* at 491.
66. *Id*. at 486.

organizational standing. Instead, they asserted third-party standing.[67] The plaintiffs brought the action to "protect the rights of their patients to be protected by law . . . from being assisted and abetted in committing suicide, from receiving substandard medical care, and from having depression and medical conditions leading to suicide left untreated."[68] The court rejected this theory of third-party standing, holding that "a third party does not have standing to bring a claim asserting a violation of someone else's rights."[69] Though an exception to this general rule applies when a party can sufficiently demonstrate a commonality of interest,[70] the California Court of Appeals held that the plaintiffs failed to make such a showing.[71]

These two cases comprise the small body of litigation on this issue, and the varying degrees of success of the various alternative theories indicate that this question of standing remains an open one. Before exploring these other doctrines in detail, this note will examine the conventional standing doctrine and its applicability to assisted suicide challenges.

C. The Traditional Standing Doctrine and Its Inadequacy as Applied to Assisted Suicide

The doctrine of standing plays several critical roles in the American legal system. First, it performs a necessary gatekeeping function and reinforces the efficiency of the judiciary.[72] Without a strict requirement governing who can bring civil actions, the floodgates of litigation would open.[73] Second, it bolsters the legitimacy of civil claims by ensuring the class of litigants is limited to those who have a sufficient and personal stake in the outcome of the case. Justice Kavanaugh explains, "[b]y requiring the plaintiff to show an injury in fact, Article III standing screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action."[74] Third and arguably most critically, it upholds the separation of powers balance

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67. *Id*. at 499.

68. *Id.* at 494.

69. *Id.* at 499 (citing Brenner v. Universal Health Servs. of Ranchero Springs, Inc., 12 Cal.App.5th 589, 605 (2017)).

70. *Id.* at 499–500. The California Court of Appeals cited the test elucidated in *Yelp Inc. v. Superior Court*, 17 Cal.App.5th 1, 7 (2017):

> However, an exception to this general rule applies when "(1) the litigant suffers a distinct and palpable injury in fact, thus giving him or her a concrete interest in the outcome of the dispute; (2) the litigant has a close relationship to the third party such that the two share a common interest; and (3) there is some hindrance to the third party's ability to protect his or her own interests."

71. *Id.* at 500.

72. *See, e.g.*, Luke Meier, *Using Tort Law to Understand the Causation Prong of Standing*, 80 FORDHAM L. REV. 1241 (2011).

73. "[A] consistent strain in the last decade's standing jurisprudence calls for judges to serve in a central but nevertheless limited standing gatekeeping role that still gives statutory frameworks a central role in standing analysis." William W. Buzbee, *Standing and the Statutory Universe*, 247 DUKE ENV'T L.& POL'Y F. 249 (2001).

74. FDA v. All. for Hippocratic Med., 602 U.S. 367, 368 (2024).

by performing a check on the judiciary.[75] Standing vindicates the separation of powers structure guaranteed by the Constitution because it limits the courts to resolving only cases and controversies ripe for judicial review.[76] The judiciary is confined to settling only the specific disputes before it and is thus prevented from usurping the role of the Executive via broadly applicable lawmaking.[77] In *Lujan v. Defenders of Wildlife*, the Supreme Court recognized a three-prong requirement governing standing that has since become the "traditional" test for establishing standing.[78] The Court held that a plaintiff must demonstrate (1) an injury in fact, (2) that is fairly traceable to the defendant's conduct, and (3) which is likely to be redressed by a favorable decision.[79] The injury in fact must be both actual or imminent, and concrete or particularized.[80] An actual or imminent injury is one that the plaintiff has either directly sustained or is in immediate danger of sustaining as a result of the challenged conduct.[81] A particularized injury must "affect the plaintiff in a personal and individual way."[82] Mere indignation and affront are not sufficient to confer Article III standing.[83]

While the traditional standing doctrine rests on the injury-in-fact prong, this requirement is sometimes waived for a separate class of actions: pre-enforcement challenges. Pre-enforcement challenges are claims against a purportedly unconstitutional statute that have not yet caused injury to the plaintiff but may do so in the future. Whereas a *post*-enforcement challenge occurs when an aggrieved party challenges a statute enforced against them, a pre-enforcement challenge "arises when an impacted party strikes first, attacking the statute by asserting a credible threat that the law will be enforced against them in the future."[84] The Supreme Court first recognized the legitimacy of pre-enforcement challenges in 1887,[85] and has heard numerous such cases in the decades since.[86]

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75. Of the various doctrines the Supreme Court has developed to uphold the cases-and-controversies requirement, Justice Sandra Day O'Connor has referred to standing as "perhaps the most important of these doctrines." Allen v. Wright, 468 U.S. 737, 750 (1984).

76. U.S. CONST. art. III, § 2, cl. 1.

77. "[S]tanding prevents Congress from enacting laws enabling individuals to assume the President's power of "tak[ing] Care that the laws [are] faithfully executed." F. Andrew Hessick, *The Separation-of-Powers Theory of Standing*, 95 N.C. L. REV. 673, 675 (2017) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 576–77 (1992)).

78. 504 U.S. 555, 560–61 (1992). References to the "traditional" or "conventional" standing doctrine throughout this note refer to *Lujan's* three-part test.

79. *Id*.

80. *Id.* at 560

81. Moore v. Bryant, 205 F. Supp. 3d 834, 850 (2016).

82. *Lujan*, 504 U.S. at 560 n.1.

83. Brintley v. Aeroquip Credit Union, 936 F.3d 489, 494 (2019).

84. Alexander Gouzoules, *The Success of Pre-Enforcement Challenges to Antidiscrimination Laws*, 572 COL. HUM. RTS. L. REV. (2024).

85. *See* Mugler v. Kansas, 123 U.S. 623 (1887).

86. *See, e.g.*, Pierce v. Society of Sisters, 268 U.S. 510 (1925); Steffel v. Thompson, 415 U.S. 452 (1974).

The traditional standing requirements pose a natural obstacle to cases involving challenges to laws that authorize assisted suicide. Specifically, the first prong of the *Lujan* test manifests a post-enforcement framework: if applied to assisted suicide, it would likely require that the pleaded injury be some product or result of the drugs permitted by the assisted suicide law (an *ex-post* injury). This would only confer standing on the individual ingesting the drugs, for only that person is directly "injured", in the post-enforcement sense of the word. The logical continuation of this line is that (if the drugs have their intended effect) the only individual authorized to bring an action has already lost his life, and challenges to the assisted suicide law are limited to the umbrella of traditional tort theories (for example, wrongful death actions). Assuming a patient is not determined to be injured unless that person underwent physician-assisted suicide, named plaintiffs would be few in number and confined to those with authority to bring tort claims on behalf of the decedent.[87]

The first prong of the traditional standing requirement thus presents a unique impediment to assisted suicide litigation. This issue is not present in conventional challenges to standing because most "injuries" do not result in death. A conventional Article III standing injury might be some form of economic harm, a privacy violation, or the frustration of a property right.[88] Therefore, it is sensible to maintain the requirement for a particularized injury. But as applied to assisted suicide, it creates a catch twenty-two: the only parties injured by such laws are the ones who have ended their lives. Such plaintiffs will not challenge the laws because they wish (or wished) to take advantage of them. Opponents of the laws, however, will not partake in PAS and therefore lack a grievance sufficient to have their day in court. Furthermore, unlike a financial harm or loss of property, injuries to victims of assisted suicide are not redressable. The human life cannot be "paid back". Thus, the redressability purpose of the injury requirement is difficult to logically support. If it is not physically possible for a plaintiff to receive recompense, an after-the-fact suit requirement serves little purpose.

Finally, it is worth noting that this already-narrow window of permissible challenges is further restricted by state laws providing prosecutorial immunity for physicians who perform assisted suicide. While this difficulty does not specifically pertain to *Lujan's* injury requirement, it creates another categorical barrier for prospective plaintiffs. For example, Washington state's Death with Dignity Act broadly provides that "[a] person shall not be subject to civil or criminal liability or professional disciplinary action for participating in [the Death with Dignity Act]."[89] More specifically, it protects doctors from any possible professional liability arising from assisted suicide procedures: "A professional organization or association, or health care provider, may not

87. The aim of this paper is not to explore the nuances of traditional tort or wrongful death actions, but insofar as those laws permit only a certain class of people to bring suit on behalf of the deceased, it would severely limit the class of authorized plaintiffs.

88. *See, e.g.*, Nat'l Infusion Ctr. Ass'n v. Becerra, 116 F.4th 488 (2024) (economic harm), TransUnion LLC v. Ramirez, 594 U.S. 413 (2021) (privacy injury), and Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139 (2010) (property injury).

89. WASH. REV. CODE § 70.245.190(1)(a) (2023).

subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in [the Death with Dignity Act]."[90] Immunity provisions exacerbate the difficulty of challenging assisted suicide laws and provide another compelling reason for courts to consider more permissive recognition of standing.

By both discarding the mechanism for redressability and categorically eliminating the class of plaintiffs who can properly challenge the statutes, the standing requirement fails to fulfill its function if interpreted conventionally. These doctrinal shortcomings highlight the necessity of using a different framework for determining whether standing is appropriate.

II. ALTERNATIVE STANDING DOCTRINES

Because the traditional standing doctrine fails to fully perform its intended function when applied to assisted suicide challenges, courts should look to alternative standing doctrines to allow pre-enforcement challenges. Failure to do so would effectively give states unchecked power to pass laws undermining the dignity of human life and foreclose the benefit of the judicial system to dissenting citizens. Though the want of relevant litigation leaves unclear the precise pathway into the courtroom, the categorical impediment that would result from strict faithfulness to conventional standing requirements means that an examination of other doctrines is prudent. What is the proper course of action when a traditional test or doctrine is insufficient to perform the task for which it exists? The test cannot be wholly discarded. The appropriate remedy, rather, is to modify the doctrine to align its operation with its intended function. It is also worth pointing out that modification of the standing doctrine should not be taken lightly nor occur frequently. A minor inconvenience for an individual or class of plaintiffs is not sufficient to amend an otherwise uniform and pragmatic test. Consistent and uniform application of the standing test indeed furthers the legitimacy and predictability of the doctrine. But when the conventional requirements as applied to a wholly unique category of legal issues and parties fail to serve their purpose, alterations are in order.

A. Organizational Standing

One way courts have adapted standing requirements to accommodate unique legal claims and classes of plaintiffs is through the theory of organizational standing. Organizational standing is the right of an organization or group to sue in federal court and requires that the organization itself have suffered an injury. Organizational standing does not allow the group to bring claims on behalf of its members but only claims for injuries suffered by the organization itself.[91] Furthermore, it is not a separate *type* of injury but "merely

90. *Id.* § 70.245.190(1)(b).

91. *See, e.g.*, FDA v. All. for Hippocratic Med., 602 U.S. 367, 369 (2024) (citing Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982)) ("Under the Court's precedents, organizations may have standing 'to sue on their own behalf for injuries they have sustained'").

the label assigned to the *capacity* in which the organization contends it has been harmed."[92]

Though it is of a different class, organizational standing maintains similar requirements to the conventional doctrine. Generally, organizational standing has two requirements. The organizational plaintiff must demonstrate that "(1) the defendant's actions have frustrated its mission; and (2) that it has spent resources counteracting that frustration."[93] An organization may sue only if "it was forced to choose between suffering an injury and diverting resources to counteract the injury."[94] The elemental requirement that a plaintiff require an actual and concrete injury remains central.[95] The injury-in-fact element thus prevents a plaintiff from pursuing a solution to a problem that does not materially impair its organization or its mission. In other words, an organization may not manufacture an injury by "simply choosing to spend money fixing a problem that otherwise would not affect the organization."[96] The organization must show that but not for the resources it devoted to counteracting the problem, they would have suffered some other harm. Put another way, an organizational plaintiff may demonstrate an injury by showing that the defendant's actions have "perceptibly impaired" its programs.[97] Again, the distinguishing element of organizational standing is that the organization itself has suffered the injury, not its members. While this injury may come in the form of hindering its mission, programs, or purpose, the injury must be specific to the organization.

Havens Realty Corp. v. Virginia,[98] a 1982 Supreme Court case, birthed the modern organizational standing doctrine. In that case, the plaintiff was a fair housing organization which sued a landlord for violations of the Fair Housing Act (FHA). The Supreme Court recognized organizational standing as a valid avenue into the courtroom and set forth preliminary language defining the theory of the doctrine. Justice Powell authored the earliest application of the organizational standing test, writing: "If, as broadly alleged, petitioners' steering practices have perceptibly impaired HOME's ability to provide housing counseling and referral services—with a consequent drain on the organization's resources—there can be no question that the organization has suffered the requisite injury in fact."[99] The plaintiff's mission was to provide housing counseling and referral services for low and moderate income home seekers.[100]

92. Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity, 878 F.3d 371, 381 (2017).

93. Valle del Sol Inc. v. Whiting, 732 F.3d 1006, 1018 (9th Cir. 2013)

94. La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest, 624 F.3d 1083, 1088 n.4 (9th Cir. 2010).

95. *Elec. Priv. Info. Ctr.,* 878 F.3d at 380 ("The doctrines of informational and organizational standing do not derogate from the elemental requirement that an alleged injury be "concrete and particularized.").

96. East Bay Sanctuary Covenant v. Biden, 993 F.3d 640, 663 (9th Cir. 2021).

97. Ind. State Conf. of Nat'l Ass'n of Colored People v. Lawson, 326 F. Supp. 3d 646, 662 (S.D. Ind. 2015).

98. 455 U.S. 363 (1982).

99. *Id*. at 365.

100. *Id.* at 369.

Agreeing that the mission had been frustrated by the landlord's FHA violations, the Court noted that if a plaintiff can establish that the defendant's conduct has "perceptibly impaired" its ability to pursue its intended ends, the injury-in-fact requirement is satisfied: "[s]uch concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitutes far more than simply a setback to the organization's abstract social interests."[101] The language from *Havens* accurately represents the doctrinal goal of organizational standing. The concept of injury is fundamental to Article III standing and cannot be circumvented. But the form and definition of the injury may deviate from the traditional sort depending on the type of plaintiff and the nature of the action.

B. Viability of Organizational Standing

The main advantage of organizational standing as applied to assisted suicide is that a valid claim is not conditional upon the death of an assisted suicide victim. If the plaintiff demonstrates that its mission or programs were frustrated, no member of the organization need have received fatal drugs. While this potentially enables an altogether new class of plaintiffs to bring actions, the other side of this coin is restrictive. Though death is not necessary to confer standing, it is also not sufficient. And while the goal of these alternative doctrines are to allow *preemptive* challenges, it would be suboptimal to foreclose the possibility of ex-post litigation. Fortunately, this is a minor trade-off. Judicial allowance of organization standing is unlikely to have any bearing on the previously referenced traditional tort theory and wrongful death actions. The upshot of this framework is that much of organizational standing's potential for success is contingent upon the existence of anti-PAS organizations and the specificity of their missions. Legal groups or general advocacy organizations capable of bringing other claims are likely excluded by organizational standing unless they can show the sufficiently specific frustration. Indeed, the Court's recent jurisprudence surrounding organizational standing reveals that the problem for these groups is not about waiting for harm to patients but establishing a legally sufficient organizational injury.

The major disadvantage of organizational standing, then, is not the fact that death of a PAS patient is insufficient, but the close scrutiny with which courts will look at purported organizational injuries. Justice Kavanaugh's discussion of *Havens* in *FDA v. Alliance for Hippocratic Medicine* provides a useful illustration of the high bar plaintiffs must meet when identifying an organizational injury.[102] In that case, the plaintiffs were medical organizations that challenged the Food and Drug Administration's approval of the abortion pile mifepristone.[103] The organizations pled several specific injuries. They cited costs incurred to oppose the FDA's actions, studies conducted to educate their members about mifepristone's risks, and other resources they expended to

101. *Id*. at 379.

102. FDA v. All. for Hippocratic Med., 602 U.S. 367, 393–96 (2024).

103. *Id*. at 367.

draft petitions and lead public advocacy.[104] These injuries were not sufficient. The Court rejected these claims, stating that "an organization that has not suffered a concrete injury caused by a defendant's actions cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action."[105] The Court also rejected the medical associations' argument that the FDA "'impaired' their 'ability to provide services and achieve their organizational missions.'"[106] Justice Kavanaugh drew a distinction between an organizational injury that satisfies injury-in-fact, causation, and redressability on its own, and an organizational claim based on "the 'intensity of the litigant's interest' or because of strong opposition to the government's conduct."[107]

Justice Kavanaugh first explained that *Havens* did *not* stand for the proposition that an organization's diversion of resources in response to a defendant's actions is sufficient to confer standing.[108] Rather, the plaintiff in that case (an issue advocacy organization that provided housing counseling services) was able to succeed because the defendant's actions "directly affected and interfered with [the plaintiff's] core business activities," and not merely because they incurred atypical costs.[109] Finally, the Court suggested that while *Havens* remains good law, the case covered a rather narrow situation that they were unwilling to expand: "*Havens* was an unusual case, and this Court has been careful not to extend the *Havens* holding beyond its context. So too here."[110] While this last declaration does not necessarily inject confidence into hopeful advocates of organizational standing, case law has at least provided a coherent definition of the doctrine, and the Court has elucidated the specific showings a plaintiff must make to succeed on this theory.

C. Associational Standing

A related but distinct type of standing is associational standing. Unlike organizational standing, associational standing does not require an injury to the group itself. Rather, it permits the organization sue on behalf of its members who have sustained injuries. The doctrine of associational standing permits an organization to sue to redress its members' injuries when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."[111] This test is intended to maintain *Lujan*'s basic framework by ensuring that the association has a sufficient stake in the

104. *Id*. at 394.

105. *Id*.

106. *Id*.

107. *Id*. (citing Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 486 (1982)).

108. *Id.* at 395.

109. *Id.*

110. *Id*. at 396.

111. Hunt v. Wash. State Advert. Comm'n, 432 U.S. 333, 343 (1977).

controversy. Group such as unions, trade associations, and environmental organizations have all invoked standing under this doctrine.[112]

D. Viability of Associational Standing

At first glance, associational standing evades the difficulty of organizational standing. The association need not suffer any independent injury, so plaintiffs are not limited to associations that have suffered some injury themselves. On the other hand, standing once again requires an individual have directly suffered from the defendant's conduct, specifically, the administration of the fatal drugs. If a member of the association dies from ingesting lethal medication allowed by assisted suicide laws, the association has authority to bring a claim on that individual's behalf.[113] This solves one problem: while the individual may not have sued because he wished to take advantage of the laws, an association (that *is* opposed to the law) may instead bring the claim. However, it's unlikely that many individuals who use assisted suicide and therefore presumably support assisted suicide laws would belong to associations that both oppose the laws and are well positioned to bring a legal challenge on behalf of the member. More importantly, though, associational standing fails to solve the second and more fundamental problem of restricting challenges to ex-post litigation. Once again, the desired outcome is to create an authorized form of *pre*-enforcement challenge. "Winning" the right to bring suit serves little purpose if the patient has still suffered the harm the organization seeks to prevent. Plaintiffs may succeed insofar as they prevent similar future injuries or deaths, but that is of little avail to the dead patient. The ideal solution to the standing conundrum is one that allows *ex ante* litigation, so that plaintiffs may prevent the unjust execution of the laws and no patients need to die to permit a legal claim.

Existing case law involving associational standing applied to assisted suicide challenges is insufficient to predict the success of this theory going forward. In *United Spinal Ass'n*, the Court declined to rule on whether the plaintiffs had associational standing because they had sufficiently pled organizational standing.[114] While associational standing may provide a minor advantage over traditional standing requirements, it likely fails to provide a reliable mechanism for pre-enforcement challenges.

E. Third-Party Standing

Though they have distinct requirements, organizational and associational standing are different flavors of the same category. Both require that the party bringing the claim be the same party that suffered the injury, whether itself or

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112. *See, e.g.,* Int'l Union v. Brock, 477 U.S. 274 (1986); Sierra Club v. Morton, 405 U.S. 727 (1972).

113. *See Hunt*, 432 U.S. at 343.

114. United Spinal Ass'n v. California, No. 2:23-CV-03107 FLA, 2024 WL 1671167, at *8 (C.D. Cal. Mar. 27, 2024) ("Because the Organizational Plaintiffs have pleaded sufficiently direct standing, the court does not address whether United Spinal Association possesses associational standing on behalf of its members.").

via its members. Third-party standing is an altogether different form of standing that may provide a categorical solution to pre- versus post-enforcement conundrum. This doctrine allows a plaintiff to bring a claim on behalf of an entirely different party (a "third party"). No association by membership is required, nor is any direct injury to the party bringing suit. At first, this doctrine seems at odds with the generally accepted rule of the American legal system that litigants must assert their own legal rights.[115] Third-party standing thus exists as a rather narrow exception that maintains the rationale for the conventional standing requirements and makes allowances only in certain situations where the injured party faces some barrier to bringing its claim. In *Kowalski v Tesmer*, the Supreme Court elucidated the two showings a third party must make to earn third-party standing.[116] First, the party asserting the right must have a "'close' relationship with the person who possesses the right," and second, there must exist some "'hindrance' to the possessor's ability to protect his own interests."[117] Though these are strict criteria, the courts have not always applied the doctrine consistently.[118] In *Kowalski*, Justice Rehnquist conceded that the Court has been "quite forgiving with these criteria in certain circumstances."[119] Notably, there have been several situations in which the Court has "allowed standing to litigate the rights of third parties when enforcement of the challenged restriction *against the litigant* would result indirectly in the violation of third parties' rights."[120] In other words, third-party standing purportedly allows only a narrow class of cases, but courts have been willing to lower this bar under various circumstances. These "exceptions to the exception" indicate the problem with third-party standing: the doctrine is unclear, inconsistently applied, and therefore difficult to predict. In this sense, third-party standing functions as the converse of organizational standing. The latter allows only a narrow window of challenges, but courts have explicitly laid out the requirements necessary to make a successful showing. Third-party standing, on the other hand, seems to offer broader availability but lacks the coherence and clarity of the organizational standing doctrine. *June Medical Services v. Russo*, a case before the Supreme Court in 2020, illustrates the incoherence that plagues third-party standing.[121] In that case, physicians challenged a Louisiana law that required doctors who performed abortions to have admitting privileges.[122] Central to the debate was whether the doctors had

115. *See* Warth v. Seldin, 422 U.S. 490, 499 (1975). The Supreme Court held: "[E]ven when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, this Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."

116. Kowalski v. Tesmer, 543 U.S. 125, 130 (2004).

117. *Id.* at 130.

118. *See* Curtis A. Bradley & Ernest A. Young, *Unpacking Third-Party Standing*, 131 YALE. L.J. 1, 1 (2021) ("[T]he Court does not seem to apply that test consistently, and commentators have long critiqued the third-party standing doctrine as incoherent.")

119. *Kowalski*, 543 U.S. at 125.

120. *Id.*

121. June Med. Servs. v. Russo, 591 U.S. 299 (2020).

122. *Id.*

third-party standing to assert the abortion rights of their clients. While a majority of justices found third-party standing for the doctors, the court split on the proper third-party standing test and was unable to reach a majority opinion on the proper doctrinal approach.[123] Though the plurality acknowledged the existence of some "rule," they sidestepped it by holding that it was "hardly absolute."[124] The plurality further failed to demonstrate if or how the plaintiffs had met the *Kowalski* relationship-plus-obstacle test.[125] Justices Thomas and Alito wrote separate dissents in which they alluded to a "our prudential third-party standing doctrine"[126] and "our established test for third-party standing," respectively.[127] The fractured legal reasoning in *June Medical Services* is demonstrative of the incompleteness of the doctrine, and the practical challenges of applying it.

F. Viability of Third-Party Standing

Third-party standing presents unique benefits and challenges not found in either organizational or associational standing. The primary benefit of invoking third-party standing is that it may circumvent the post-enforcement litigation conundrum. Unlike organizational and associational standing, litigants who successfully invoke third-party standing may not need to show any kind of personal injury to assert a claim. *Kowalski's* "protect his own interests" language certainly appears to be a lower bar than the traditional injury-in-fact requirement. But the main difficulty, showcased in *June Medical Services*, is that the doctrine remains largely ambiguous.[128] This presents a practical challenge insofar as litigants will have little confidence in their ability to assert third-party standing and will thus be unable to devise effective litigation strategies. Furthermore, the numerous opinions in *June Medical Services* suggest that third-party standing may be difficult to leverage in assisted suicide cases because both issues involve substantive due process arguments.[129] Both abortion and assisted suicide are controversial topics that have incited Fourteenth Amendment debates about whether the U.S. Constitution confers a substantive right to those practices. Similar to abortion, assisted suicide is a legally debated and often politically charged issue. These realities will likely worsen, rather than improve, the obscurity of the third-party standing doctrine should it emerge in an assisted suicide case. Another challenge is proving the close relationship required by *Kowalski*.[130] If interpreted narrowly, third-party standing might become a mere shade of associational standing. For example, if courts interpret a "close relationship" as some kind of organizational membership, organizational plaintiffs will have a difficult time asserting claims

123. *Id.* at 307–08.
124. *Id.* at 318.
125. *Id.* at 316–20.
126. *Id.* at 359.
127. *Id.* at 377.
128. *Id*. at 299.
129. *Id*.
130. Kowalski v. Tesmer, 543 U.S. 125, 130 (2004).

for anyone besides their direct members. This would severely restrict the class of viable plaintiffs and effectively eliminate the benefit of third-party standing (that a plaintiff need not suffer a direct injury).

A second problem threatens the viability of third-party standing. Even if another party is able to assert a claim on behalf of another individual, a judge might dismiss the case on mootness grounds. The mootness doctrine holds that federal courts are "without power to decide questions that cannot affect the rights of litigants in the case before them."[131] Courts have interpreted this to mean that a court's ability to review a case necessarily depends upon the existence of a case or controversy as set forth in Article III of the U.S. Constitution.[132] In the case of third-party standing applied to assisted suicide challenges, such actions would only be ripe for judicial review if both the third-party and the individual themselves challenged the constitutionality of the law, which is unlikely. It is difficult to make the claim that an individual objects to a law if that individual is actively seeking the assisted suicide outcome spelled out in the law. So, whether the third party bringing the claim is a relative, physician, or another person in relationship with the patient, third-party claims may struggle to satisfy the case-or-controversy requirement necessary to get into court.

G. Taxpayer Standing

A lesser explored but possible avenue for assisted suicide challenges is taxpayer standing. The theory of taxpayer standing maintains that payment and eventual appropriation of an individual's tax dollars is adequate to give that individual a stake in the outcome of the litigation they seek.[133] Litigants have used taxpayer standing to claim (with varying degrees of success) that as aggrieved plaintiffs whose tax dollars support the challenged law, they have suffered an injury-in-fact sufficient to give them their day in court. As a categorical doctrine, courts have been reluctant to recognize this as a permissible theory.[134] The Supreme Court outlined its general opposition to the doctrine in *Frothingham v. Mellon*, denying standing to a plaintiff who challenged the appropriation of her tax dollars.[135] Dissatisfied with the Maternity Act of 1921, legislation designed to reduce maternal and infant mortality, the plaintiff claimed injury in the form of unjust use of her tax dollars. Justice George Sutherland rejected her claim, writing:

> [T]he relation of a taxpayer of the United States to the federal government is very different. His interest in the moneys of the treasury . . . is shared with millions of others, is comparatively

131. Defunis v. Odegaard, 416 U.S. 312, 316 (1974).

132. *Id*. (citing Liner v. Jafco, Inc., 375 U.S. 301 (1964)).

133. *See* Frothingham v. Mellon, 262 U.S. 447 (1923).

134. The Supreme Court has declined to make exceptions in, for example, Commerce Clause violations, *see* DaimlerChrysler Corp. v. Cuno, 547 U.S. 332 (2006), and some Establishment Clause challenges, *see* Hein v. Freedom from Religion Found., Inc., 551 U.S. 587 (2007).

135. *Frothingham*, 262 U.S. 447.

> minute and indeterminable, and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity.[136]

Justice Sutherland's forceful language illustrates the relative weakness of the theory. Simply obeying the tax obligations of citizenship fails to set an individual apart from anyone else and is insufficient on its own to establish the standing requirement of a *particularized* injury. While narrow exceptions have since been recognized, this holding has governed the umbrella of taxpayer standing for the last one hundred years.

Notwithstanding judicial opposition to the theory, plaintiffs have been able to carve out exceptions to the rule to successfully demonstrate taxpayer standing. Typically, this requires the plaintiff to demonstrate either some direct personal harm or a specific constitutional violation in addition to the general financial injury suffered by all taxpayers. For example, in *Flast v. Cohen*, the Court recognized taxpayer standing where the plaintiffs established that federal spending in support of religious organizations violated the Establishment Clause of the First Amendment.[137] In that case, the plaintiffs challenged a federal law that appropriated federal funds for instructional materials in religious schools.[138] Finding that the Establishment Clause prohibited such a use of funds, the Court found that a constitutional violation sufficiently satisfied the additional, direct harm necessary to confer taxpayer standing.[139] The key was that the plaintiffs demonstrated a "logical nexus" between their status and their claim for adjudication.[140] The Court held that this nexus was critical for established a sufficient stake in the outcome: "[s]uch inquiries into the nexus between the status asserted by the litigant and the claim he presents are essential to assure that he is a proper and appropriate party to invoke federal judicial power."[141]

Chief Justice Earl Warren authored a two-part test for granting taxpayer standing: "First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked . . . [s]econdly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged."[142] The *Flast* test did not overrule *Frothingham*. Rather, noting that *Frothingham* had generated "confusion [and] considerable criticism," it lowered the bar in situations where a taxpayer attacks a federal statute on constitutional grounds.[143] But while *Flast* outlined a specific pathway to standing, it by no means gave dissenting taxpayers a carte blanche to attack any law involves the use of their dollars.

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136. *Id*. at 487.
137. Flast v. Cohen, 392 U.S. 83 (1968).
138. *Id.*
139. *Id.*
140. *Id.* at 102.
141. *Id*.
142. *Id*.
143. *Id*. at 92.

H. Viability of Taxpayer Standing

There are both positive and negative elements of the doctrine as applied to assisted suicide. First, it's important to understand that courts' sympathy for taxpayer plaintiffs often depends on the challenged law or action. Despite the difficulties of establishing taxpayer standing, plaintiffs have had more success bringing these challenges against state and local authorities than the federal government. Perhaps this is because *Flast's* "logical nexus" is easier to show at the state and local level, where taxes are more varied and draw from a smaller pool of taxpayers.[144] At the state and local level, individual taxpayers represent a larger share of expenditures because the taxpaying pool is significantly smaller than the federal level. On its face, this bodes well for assisted suicide challenges. Like in *United Spinal Ass'n*, assisted suicide legal actions are most likely to arise at the state level.[145] Accordingly, taxpaying plaintiffs will assert unjust appropriations of their state rather than federal dollars. A prominent example of this local partiality is *People of State of Illinois ex rel. McCollum v. Board of Education.*[146] There, the Supreme Court recognized taxpayer standing at the local level where an aggrieved taxpayer challenged his school district's use of local funds to support religious education.[147] Unfortunately, it's plausible that this heightened leeway pertains only to challenges at the local level, and not the state level. In *Coleman v. Miller*, Chief Justice Charles Hughes wrote that:

> While one who asserts the mere right of a citizen and taxpayer of the United States to complain of the alleged invalid outlay of public moneys has no standing to invoke the jurisdiction of the federal courts, the Court has sustained the more immediate and substantial right of a resident taxpayer to invoke the interposition of a court of equity to enjoin an illegal use of moneys by a municipal corporation.[148]

The specification of "municipal corporation[s]" means state law challenges likely do not enjoy this lower bar. While a state taxpayer injury would likely be less attenuated than a federal one, plaintiffs would still need to overcome a lofty hurdle. The other significant advantage of taxpayer standing is that it evades the post-enforcement problem. As a direct form of standing, plaintiffs need not rely on frustration of an organizational mission or a representative connection with an associational member. Nor does it require that some third

144. *See, e.g.*, Illinois *ex rel.* McCollum v. Bd. of Educ., 333 U.S. 203 (1948).

145. There is no federal law authorizing assisted suicide. There has been litigation surrounding the interplay between federal authority and state law, however. In *Gonzales v. Oregon*, the United States Attorney General sought to enjoin state physicians from prescribing lethal medication allowed under Oregon law. 546 U.S. 243 (2006). The Court rejected his argument that the federal Controlled Substances Act entitled him to *Auer* or *Chevron* deference necessary to authorize him to prohibit Oregon doctors from prescribing regulated drugs for use in physician-assisted suicide. *Id.*

146. *McCollum*, 333 U.S. 203.

147. *Id*.

148. Coleman v. Miller, 307 U.S. 433, 445 (1939).

party suffer an injury and face an impediment to bringing the action in court. While the taxpayer faces a high bar for his own claim, dependence on or involvement of another party isn't necessary, which greatly simplifies the task of the plaintiff.

In addition to its status as a relatively untested theory in the realm of assisted suicide challenges, taxpayer standing poses its own unique roadblocks. For example, assisted suicide laws likely don't require or appropriate taxpayer dollars in the same way as cases like *Flast* and *Frothingham*.[149] Since assisted suicide laws are permissive rather than mandatory law, they only apply to individuals who opt in to their procedures. And while recent assisted suicide cases have increased year-to-year,[150] only a small minority of state populations participate in assisted suicide.[151] The tax dollars in *Frothingham* and *Flast* both went towards government-funded services (relief for pregnant mothers and educational materials for religious schools, respectively). California's EOLOA, conversely, is not a "government service" per se, but rather a permissive right for private citizens and organizations. Unlike an explicit sales or property tax, assisted suicide laws are unlikely to impose an additional financial burden on the taxpayers.[152] This difference threatens to undermine the rationale underlying taxpayer standing. The policy justification, that the taxpayer has a right not to have his dollars appropriated for an unjust end, is absent if the law permits private conduct rather than funds public services. The first prong of the *Flast* test the requires a logical link between taxpayer status and the attacked legislative enactment. Arguably, the taxpayer status is missing (or at least irrelevant) if they are not challenging a use of their tax dollars. For this reason, plaintiffs bringing assisted suicide challenges may struggle to establish taxpayer standing.

Another complication lies in the nature of the path to successfully establishing taxpayer standing. Recall that taxpayer standing requires, in addition to the general financial injury suffered by all taxpayers, a direct personal harm or a specific constitutional violation. The constitutional violation route poses a unique obstacle to assisted suicide challenges because many of the actions are trying dispute *the constitutionality of that law*. It's a circular problem: to get a day in court to challenge the constitutionality of a law, the court must deem the law unconstitutional. Fortunately, the *Flast* court seemed aware of this inconsistency and expressed willingness to adjudicate the dispute regardless of the constitutionality: "We have noted that, in deciding the question

149. *See* End of Life Option Act, CAL. HEALTH & SAFETY CODE § 443.

150. Compassion & Choices, *Improvements to California End of Life Option Act Led to 47% Jump in Use in 2022* (Aug. 8, 2023), https://compassionandchoices.org/news/improvements-to-california-end-of-life-option-act-led-to-47-jump-in-use-in-2022/ [https://perma.cc/N7BY-XTJM].

151. CAL. DEPT. PUB. HEALTH, CALIFORNIA 2021 END OF LIFE OPTION ACT DATA REPORT (2022), https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/CDPH_End_of_Life%20_Option_Act_Report_2021_FINAL.pdf [https://perma.cc/E9QD-CY59].

152. In fact, state-funded PAS may even save state money and reduces taxes because it's cheaper to kill a patient with PAS than to provide actual medical care to them.

of standing, it is not relevant that the substantive issues in the litigation might be nonjusticiable."[153]

Finally, the increased willingness of courts to recognize taxpayer standing at the state and local level may be less helpful to assisted suicide challenges due to the want of reliable precedent. Much of the state and local taxpayer standing litigation, including several of the aforementioned cases, has fallen under the umbrella of the Establishment Clause, a constitutional provision which has a rich and varied litigation history.[154] Many of these successful standing cases occurred in the mid-twentieth century before a Supreme Court which had a particularly strict view of the Establishment Clause.[155] While there is the separate issue of the "circular problem" described above, there is a broader obstacle insofar as assisted suicide laws have not been challenged anywhere near as successfully as Establishment Clause violations. In the latter case, the Court has a wealth of jurisprudence to draw from when considering whether to invalidate a particular law. This is not so in the case of assisted suicide. While *Glucksberg* and *Quill* remain good law, the bans-versus-permits distinction discussed in Section I likely means that those cases are insufficient precedent for cases challenging the constitutionality of state laws allowing assisted suicide. This absence of relevant precedent makes it even more difficult for plaintiffs to assert constitutional injuries.

Taxpayer standing applied to assisted suicide challenges remains a largely untested theory. While courts' reluctance to recognize the general doctrine perhaps makes this more difficult than organizational standing, plaintiffs may succeed on this theory if they are able to craft an argument demonstrating a "logical nexus" or otherwise sufficient link between assisted suicide laws and taxpayer interests.

CONCLUSION

The Court's recent jurisprudence has not been kind to alternative standing doctrines, particularly when employed by the pro-life movement. *Alliance for Hippocratic Medicine* is an unfortunately relevant illustration of this difficulty. The plaintiffs, challenging the Food and Drug Administration's approval of the abortion pill mifepristone, were unable to convince a single justice that standing was warranted.[156] Though the plaintiffs pled organizational standing, associational standing, and third-party standing, all claims were ultimately an

153. Flast v. Cohen, 392 U.S. 83, 101 (1968).

154. *See, e.g., id.*; Hein v. Freedom from Religion Found., Inc., 551 U.S. 587 (2007).

155. The Court presided over many religious liberty cases in the mid-1900s. State and local Establishment Clause challenges were particularly common. Arguably the most representative of the Court's jurisprudence in this area was their decision in *Everson v. Board of Education*, where the Court incorporated the Establishment Clause against the states. Though they found no Establishment Clause violation in that case, it laid the foundation for the judicial rejection of many state and local taxpayer-funded religious programs.

156. FDA v. All. For Hippocratic Med., 602 U.S. 367, 367 (2024) (holding that plaintiffs lacked Article III standing to challenge the FDA's approval and regulation of mifepristone.).

exercise in futility.[157] Though this case highlights the Court's skepticism of alternative doctrines, it does not foreclose the possibility of success. In fact, perhaps the advancement of these theories applied to other social issues will help build legitimacy and increase judicial receptivity to departures from traditional requirements in appropriate circumstances.

Among the theories discussed in Section II, organizational standing seems to have the best chance of success in court. Though the sample size is limited, plaintiffs have already gained some traction pleading organizational standing. The court in *United Spinal Ass'n* recognized that the disability rights group successfully pled this theory despite failing on other grounds.[158] The biggest advantage of organizational standing is that it enables pre-enforcement challenges and escapes the need for the occurrence of physical harm. Waiting to challenge laws like California's EOLOA until a patient experiences harm or death is both morally and procedurally problematic. Just as preventative medical care is often more desirable than curative care, organizational standing allows plaintiffs to attack the unconstitutionality of assisted suicide laws before the damage is done.

Standing is a critical doctrine that preserves the efficiency of the judiciary and upholds the separation of powers balance prescribed by the Constitution. And while the American legal system rightly values consistency and predictability, doctrinal modifications are appropriate when traditional rules create adverse consequences or fail to perform their intended functions. Despite courts' hesitancy to deviate from the standard requirements, the nature of physician-assisted suicide and the laws permitting them provide a compelling justification for nontraditional pathways into the courtroom. Uniquely imperfect but offering varying advantages, the doctrines of organizational, associational, third-party, and taxpayer standing provide litigants several viable alternative methods of bringing claims. Successfully leveraging these doctrines may enable plaintiffs to clear the first hurdle and proceed to challenging the merits of assisted suicide laws.

157. Brief for the Respondents at 17, 42, 45, FDA v. All. for Hippocratic Med., 602 U.S. 367 (2024) (Nos. 23-235, 23-236).

158. United Spinal Ass'n v. California, No. 2:23-CV-03107 FLA, 2024 WL 1671167, at *7 (C.D. Cal. Mar. 27, 2024) ("These allegations are sufficient to confer standing, as the Organizational Plaintiffs have pleaded in adequate detail that enforcement of the EOLOA has frustrated their missions of advocating against physician-assisted suicide, and has required re-allocation of resources from their initiatives.").