No. 21-11258

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BERMAN DE PAZ GONZALEZ, INDIVIDUALLY AND AS HEIR AND ON BEHALF OF THE ESTATE OF BERMAN DE PAZ-MARTINEZ; EMERITA MARTINEZ-TORRES, INDIVIDUALLY AND AS HEIR AND ON BEHALF OF THE ESTATE OF BERMAN DE PAZ-MARTINEZ,

Plaintiffs—Appellants,

v.

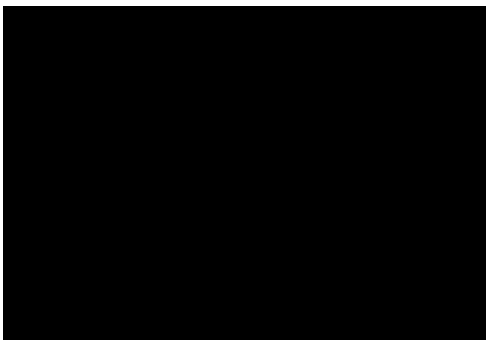
THERESE M. DUANE; ACCLAIM PHYSICIAN GROUP, INCORPORATED; TARRANT COUNTY HOSPITAL DISTRICT, DOING BUSINESS AS JPS HEALTH NETWORK,

Defendants—Appellees.

On Appeal from the United States District Court
for the Northern District of Texas
Case No. 4:20-CV-0072-A, Judge John H. McBryde

BRIEF FOR *AMICUS CURIAE* TEXAS RIGHT TO LIFE IN SUPPORT OF PLAINTIFFS–APPELLANTS

Jillian L. Schumacher



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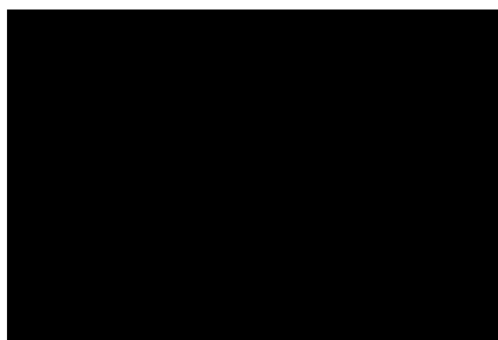

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Appellants:	Berman De Paz Gonzalez, individually and as heir of Berman De Paz Martinez; Emerita Martinez-Torres, individually and as heir of Berman De Paz Martinez
Counsel for Appellants:	William D. Taylor, of Taylor & Taylor Law P.C.; Jackson Davis, of Streck & Davis Law
Appellees:	Therese M. Duane, M.D.; Acclaim Physician Group, Inc.; Tarrant County Hospital District d/b/a JPS Health Network
Counsel for Appellees:	Jordan Matthew Parker, Timothy Derek Carson, and Philip Avery Vickers, of Cantey Hanger, LLP, counsel for Therese M. Duane, M.D. and Acclaim Physician Group, Inc.; Grant David Blaies and Brian Keith Garret, of Blaies & Hightower, LLP, counsel for Tarrant County Hospital District
Amicus Curiae:	Texas Right to Life, a non-profit, tax-exempt organization incorporated in the state of Texas. Texas Right to Life has no parent company, and no publicly held company has 10% or greater ownership in Texas Right to Life.
Counsel for Amicus Curiae:	Emily Cook, of Texas Right to Life; Jillian Schumacher, of Daniels & Tredennick PLCC

Respectfully submitted,

/s/ Jill Schumacher

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INTEREST OF AMICUS CURIAE[1]

Texas Right to Life Committee, Inc. is a nonprofit organization devoted to stopping attacks on innocent human life including elective abortion in Texas. In addition to stopping elective abortion, Texas Right to Life fights for the right to life of individuals who are sick, elderly or living with the presence of a disability. Texas Right to Life offers a patient advocacy and legal team who intervene in disputes regarding the removal of life-sustaining treatment in Texas on patients contrary to surrogate or patient objection. Through these patient advocacy services, Texas Right to Life has assisted numerous families who, just like the De Paz family, have suffered the removal or threatened removal of life-sustaining treatment in Texas hospitals. In 2021, Texas Right to Life helped 100 patients. At the time of filing, Texas Right to Life's 2022 patient numbers have reached 23 cases. Through hands-on, practical knowledge, Texas Right to Life is in a unique place to offer valuable insight regarding a patient's rights and the law surrounding unwanted removal of life-sustaining treatment in Texas.

[1] This brief is submitted under Federal Rule of Appellate Procedure 29(a) under a motion for leave of the court. Undersigned counsel for amicus curiae certify that this brief was not authored in whole or part by counsel for any of the parties; no party or party's counsel contributed money for the brief; and no one other than amicus and its counsel have contributed money for this brief.

SUMMARY OF ARGUMENT

Amicus Curiae submits this brief in support of the appeal filed by Appellants Berman De Paz Gonzalez and Emerita Martinez-Torres, individually and on behalf of their son, Berman De Paz-Martinez ("De Paz"). The Court should reverse the trial court's decision for four reasons: 1) Removal of life-sustaining treatment without consent implicates a constitutional deprivation of life in regard to all Appellees; 2) Removal of life-sustaining treatment—aka pulling the plug—necessarily involves many health care professionals, not just one rogue doctor; 3) The Appellees misread TADA in a myriad of ways; and 4) The Appellees' actions are a clear violation of De Paz's constitutional rights.

ARGUMENT

Many Americans understand and are abhorred by the very idea of active euthanasia—"the intentional killing of a patient by a physician, as through the physician's administration of a lethal dose of medication."[2] Likewise, the rise of medically-assisted euthanasia in more liberal countries such as Canada and a handful of states is of increasing concern.[3] One form of killing however is flying under the radar: passive euthanasia.[4]

Passive euthanasia is evolving to become a very effective, stealth killer of patients across America. And Texas is no exception. While Texas law purportedly authorizes two ways in which the removal of life support can be removed over a patient or surrogate's objection,[5] each fall short of providing adequate due process before depriving an individual of his or her life. However, in the instant case, the Appellees did not attempt to remove life support in accordance with *either* statutory

[2] "Euthanasia, as this term is used in these Guidelines, refers to the intentional killing of a patient by a physician, as through the physician's administration of a lethal dose of medication. Euthanasia is permitted in some countries and is illegal in the United States." Nancy Berlinger, Bruce Jennings, & Susan M Wolf, *The Hastings Center Guidelines For Decisions on Life-Sustaining Treatment and Care Near the End of Life: Revised and Expanded Second Edition* 204 (New York: Oxford University Press 2013).

[3] *See Manitoba's first medically assisted death in a church was an 'intimate' ceremony*, Broadview, https://broadview.org/medically-assisted-death-church/ (last visited May 26, 2022).

[4] "Physician-assisted suicide (PAS), as this term is used in these Guidelines, refers to a practice currently authorized in two states in the United States that permits terminally ill state residents under certain conditions to obtain from a physician a prescription for a lethal dose of medication for voluntary self-administration. PAC is sometimes referred to as 'assisted suicide,' 'physicians aid-in-dying,' or 'physicians-assisted death.'" Nancy Berlinger et al., The Hastings Center Guidelines 205 (2013).

[5] Tex. Health & Safety Code § 166.046; Tex. Health & Safety Code Chapter 671.

provision. Rather, the Appellees engaged in a series of inexcusable actions culminating in a 21-year-old Hispanic man being euthanized in a Texas hospital.

This case presents an issue of first impression—do the United States Constitution and the Texas Constitution support the intentional, unilateral killing of patients in a healthcare setting? Such a question has been addressed in the context of prisoners, children under the care of the state, and mental health issues, but not for the thousands of patients receiving some form of life-sustaining treatment daily in Texas hospitals.

I. Removal of life-sustaining treatment without consent implicates a constitutional deprivation of life

While the right to life of unborn babies in their mothers' wombs under the United States Constitution is a constantly debated issue, the right to life of individuals already born is not. Before being killed by a state actor, an individual is entitled to adequate due process under the due-process clause of the United States Constitution and the due-course clause of the Texas Constitution.[6] How De Paz died, and the actions of Tarrant County Hospital District d/b/a JPS Health Network ("JPS"), Acclaim Physician Group, Inc. ("Acclaim"), and Dr. Duane, unquestionably involved his right to life invoking constitutional protections.

[6] *See* U.S. CONST. amend. XIV, § 1; Tex. Const. art. 1, § 19.

Procedural due process expresses the fundamental idea that people, as opposed to things, are at least entitled to be consulted about what is done to them.[7] In addition, when a person cannot be consulted themselves—such as a patient unconscious in a hospital intensive care unit—Texas law requires another to step into the individual's shoes.[8] Here, De Paz's parents were his surrogate decision makers. Not only were De Paz's parents *not* consulted about the hospital and physician's plans for his medical care (to affirmatively *remove* treatment), they were told plans were being made to send him home. There are no factual arguments to support an assertion that due process was even attempted, much less provided. Instead, the Appellees claim they owed no duty at all to De Paz.[9]

A. There is no common law authority to remove life support over a patient or surrogate objection

The intersection between a patient's ability to receive continued medical treatment and a patient's rights is more nuanced than the Appellees would lead this Court to believe. The Appellees argue that a physician or facility can simply decide one day to stop treating a patient and then engage in actions that unilaterally stop such treatment. What the Appellees are describing as "no right to continued medical treatment" is in fact the tort of patient abandonment.

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[7] *See* Laurence H. Tribe, American Constitutional Law § 10-7, at 666 (2d ed. 1988).
[8] Tex. Health & Safety Code § 166.039.
[9] *See* ROA.21-11258.441.

There is no common law authority allowing for the removal of life support without the consent of the patient or the patient's surrogate decision maker. In a similar circumstance, a hospital within the same county as Appellees—Cook Children's Medical Center ("Cook Children's") in Fort Worth—tried to remove life support from a nine-month-old baby girl, T.L., against her mother's wishes.[10] Cook Children's attempted to remove life-sustaining treatment in accordance with Section 166.046 (TADA) and were stopped by a temporary restraining order. In their temporary injunction hearing and during oral argument on appeal, as the Appellees try here, Cook Children's attempted to bolster their argument by alleging that the hospital and physicians had a right *independently* of TADA to unilaterally remove life support from T.L. The Second Court of Appeals—the state appellate court with jurisdiction over the Appellees here—summarily dismissed the hospital's assertion, and their finding is instructive.

Having entered into a physician-patient relationship, obtained informed consent, and initiated the proposed treatment plan, "the physician was prohibited by the common law from abandoning the patient by withdrawing his professional services without affording the patient a reasonable opportunity to retain another physician to continue the form or course of treatment he had initiated."[11] The liability

[10] *T.L. v. Cook Children's Medical Center*, 607 S.W.3d 9 (Tex.App.—Fort Worth 2020).
[11] *T.L.*, 607 S.W.3d at 56 (Tex.App.—Fort Worth 2020) *(*citing *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 766 n.2 (Tex. App.—Austin 2005, no 70 pet.) (op. on reh'g)).

elements of a patient-abandonment claim are (1) the unilateral severance of the physician–patient relationship by the physician, (2) without reasonable notice or without providing adequate alternative medical care, (3) at a time when there is the necessity of continuing medical attention.[12] Dr. Duane, along with staff at JPS, unilaterally severed the physician-patient relationship. De Paz's parents were not notified that JPS and Dr. Duane would cease caring for him, and they clearly did not provide time or options for alternative care. Additionally, there is no argument that De Paz was in need of continuing medical attention. Here, not only was Dr. Duane's conduct *not* in accordance with Texas law, but she also clearly committed the tort of patient abandonment. There is simply no mechanism for which a hospital or physician can cease caring for a patient in the way JPS and Dr. Duane did to De Paz. The Second Court of Appeals noted at length this reality: "Nevertheless, our sister court observed that the physician's right to withdraw did not encompass circumstances in which continuity of care could not be maintained and the termination of care would result in injury to or death of the patient:

> *A physician is never justified in withdrawing from a case he has once undertaken at a critical stage when his place cannot be supplied.* To withdraw means voluntarily to refuse to continue his services. If he is ever justified in so withdrawing when it is apparent that to do so must result in injury it can only be where the patient obstinately refuses to follow the treatment

[12] *Id*. at 56.

> prescribed. It is a fact honorable to the profession that the question never seems to have been directly presented."[13]

The Second Court of Appeals went on: "First, when asked to provide this court with any Texas authority extending the right to withdraw implied by the abandonment tort to the circumstances of this particular case, CCMC conceded that it could find no such decision. Neither have we found such a decision. Absent such authority, the hospital nevertheless asks us to simultaneously extend the right to withdraw where it has never before been extended and to conclude that such extension has always been the common law of this state. This we cannot do."[14] Like the Appellees here try to do, the hospital also attempted to liken and define passive euthanasia as patient abandonment. The court distinctively rejected such a notion: "**Simply put, no Texas court has ever held that an attending physician has a common law right to unilaterally withdraw from a physician–patient relationship with a terminally ill patient by discontinuing life-sustaining treatment over the objection of the patient—to quite literally terminate the private contractual relationship by causing the death of the other contracting party.**"[15]

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[13] *Id*.
[14] *Id*. at 58.
[15] *Id* (emphasis added).

The issue regarding whether hospitals or physicians possessed an independent right to remove life support was fully briefed, had the benefit of oral argument, and was argued as recently as 2020. Throughout the proceedings, the hospital could offer no case law in which to support the idea that the hospital or physicians could simply remove life support on their own. The answer simply is, no, a hospital or physician does not possess any common law rights to remove life support without consent.

1. Appellees rely on cases that are factually and clinically inapplicable to De Paz

The Appellees cite three cases in support of their contention that Appellants' case centers around continued medical treatment. First, the Appellees cite an opinion from the Tenth Circuit dealing with treatment of babies born with spina bifida.[16] The *Johnson* case is factually distinct from the facts presented in the instant case. First, the Oklahoma hospital and physician actions complained of were *recommendations*. Ultimately, the parents consented. It is undisputed that De Paz's parents did not consent to removal of his life support. Secondly, the *Johnson* case involved whether to *initiate life-sustaining measures* in the first place. De Paz was already being provided life-sustaining treatment, and the act of removal of such treatment is distinctively different—and raises more complex issues—than whether to begin treatment.

[16] *Johnson ex rel. Johnson v. Thompson*, 971 F.2d 1487 (10th Cir. 1992). *See also* ROA.21-11258.427.

Next, the Appellees turn to cases regarding access to experimental drugs not approved by the FDA.[17] As explained below, the use of a ventilator to help a patient breathe is not experimental treatment and is irrelevant to the instant case. Additionally, the Appellees turn to the repeated, but often misunderstood, term of futility.[18]

2. De Paz's treatment was not futile

The accepted definition of medical futility is defined as "interventions that are unlikely to produce any significant benefit for the patient."[19] A ventilator is used when a patient's lungs cannot move enough oxygen on their own, helping a patient who has trouble breathing to breathe. When provided to De Paz, the ventilator successfully did its job by helping De Paz to breathe. The ventilator was not futile––the ventilation support was working exactly as intended. Thus, the cases the Appellees rely on for the proposition that the patient no longer stood to benefit from the proposed treatment are inapplicable here. Not only had De Paz already been provided the treatment, but he was clearly significantly benefiting from that treatment—by breathing.

B. Albeit its provisions do not provide sufficient due process, the Texas Advanced Directives Act is the exclusive means by which removal of

[17] *Abigail All. for Better Access to Developmental Drugs v. von Eschenbach*, 495 F.3d 695, 710 n.18 (D.C. Cir. 2007) (en banc). *See also* ROA.21-11258.427.
[18] *Vacco v. Quill*, 521 U.S. 793, 801 (1997). *See also* ROA.21-11258.425.
[19] *Futility*, UW Medicine, https://depts.washington.edu/bhdept/ethics-medicine/bioethics-topics/detail/65 (last visited June 1, 2022).

life support can be removed without consent or contrary to the expressed wishes of a patient or their surrogate

The Texas Advanced Directives Act ("TADA") refers to the entirety of Chapter 166 of the Texas Health and Safety Code. Generally, Chapter 166 provides guardrails to ensure patient or surrogate decision-making is respected as it relates to healthcare decision making. However, towards the end of Chapter 166, the statute provides a scheme for health care facilities and providers to ignore those treatment decisions and impose their own decisions that are directly at odds with the treatment decisions made by or on behalf of a patient.[20]

TADA provides that if a physician decides not to comply with a treatment decision made by a patient or a surrogate, an attending physician can ask the hospital ethics committee to convene and review the conflicting treatment decisions. The surrogate or patient will be given 48 hours' notice of the ethics committee meeting.[21] The surrogate is entitled to attend the meeting. The amount of support a surrogate is allowed to bring differs from facility to facility, and some hospitals attempt to prevent the family's counsel from attending. The committee is made up of roughly 10-12 members, almost all of whom are employed by the hospital (occasionally, the hospital may allow one or two "outside" individuals to serve on the ethics committee). The committee hears from the attending physician who requested the

[20] Tex. Health & Safety Code § 166.046.
[21] Tex. Health & Safety Code § 166.046(b)(2).

meeting, hears from the surrogate, and then deliberates to come to their binding decision.

If the dispute is over continued provision of life-sustaining treatment—such as a ventilator use, dialysis or blood pressure medications—then the provision commonly referred to as "the Ten Day Rule" kicks in. If the committee decides to agree with the physician's decision, then the hospital and physician are only obligated under the statute to continue providing such treatment for the next ten calendar days. At the end of those ten days, the hospital and physician can remove life support over the family's objections. This removal almost always results in the patient's death. While the imposition of TADA is not squarely at issue in this case, as the Appellees do not even purport to have followed TADA, a quick discussion about the statute's lack of sufficient due process is necessary.

First, a person must have sufficient notice of the nature of the proceeding where their fundamental and vested rights are involved. Notice must reasonably convey the nature, manner, and timing of the action to be taken or the decision to be made, and it must afford a reasonable time for those interested to make their appearance with due regard to "the practicalities and peculiarities" of the case.[22] A mere 48 hours' notice regarding the fate of an individual with complex medical

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[22] *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314–15 (1950) (citing *Grannis v. Ordean*, 234 U.S. 385, 397, 34 S. Ct. 779, 784 (1914)).

needs is clearly not enough time to understand that an irreversible decision is being removed from the surrogate's control, and to undertake a myriad of actions necessary for a sufficient defense such as finding counsel, securing alternative second opinions, working through insurance issues to name just a few.

Further, the meaningful opportunity to be heard is a required step in the due process analysis. "In the context of the Section 166.046 process, it follows that in order to meaningfully object to or otherwise contest an attending physician's refusal to continue life-sustaining treatment, a…patient must have a reasonable opportunity to obtain and present a 'second opinion' in the form of expert medical testimony to refute her terminal or irreversible condition diagnosis, confirm continued life-sustaining treatment as medically appropriate, or otherwise demonstrate a more optimistic survival prognosis."[23]

There is one additional section under TADA that purports to allow a physician to refuse to follow a treatment decision regarding life-sustaining treatment. Section 166.045(c) provides that if an attending physician refuses to comply with a treatment decision, life-sustaining treatment must be provided until a "reasonable opportunity has been afforded for the transfer of the patient…"[24] If a physician does not want to comply with the procedures of Section 166.046, instead utilizing this provision to

[23] *T.L.*, 607 S.W.3d at 127-128 (Tex.App.—Fort Worth 2020).
[24] Tex. Health & Safety Code § 166.045(c).

withdraw treatment absent consent, then he or she is not protected from criminal, civil, or administrative liability. While Appellees do not attempt to argue they pursued removal under Section 166.045, had they done so, they would still have been open to liability for such a decision.

Without repeating here, the Second Court of Appeals opinion in *T.L. v. Cook Children's Medical Center*[25] offers a well-reasoned analysis of the myriad of ways in which TADA fails to provide sufficient due process. However, despite the constitutional infirmities and tenuous authority of TADA, the statute is still the exclusive means by which any hospital or physician can attempt to remove life support over a patient or surrogate's objection.

II. Removal of life-sustaining treatment—aka pulling the plug—necessarily involves *many* health care professionals, not just one rogue doctor

The hospital attempts to shift blame for De Paz's inexcusable death from themselves solely on to Dr. Duane. While Dr. Duane is certainly responsible, she is not the sole responsible party. Attempts to argue otherwise cover up just how much activity goes into the removal of life support. This activity necessarily involves hospital personnel, not just one lone physician hired as an independent contractor.

While colloquially the term "pulling the plug" is used to describe removal of a ventilator, such removal is not simply done by the flip of a switch. When

[25] *T.L.*, 607 S.W.3d 9.

considering many different ways of hospital involvement in the withdrawal of life-sustaining treatment, both institutional-level processes and bedside care are included.[26] As life-sustaining treatment is withdrawn from a patient, the process requires people in different specialties to carry out the removal and cessation of care. The physician would not act alone, as he/she is not well-versed in very specific necessary duties, such as IV medication administration, removal of monitors, and ventilator use. Further, in order for a nurse to administer medication, an order must be in place, the nurse must retrieve the medication from the dispensing system, the medicine must be drawn up appropriately, and the medicine then can be given to the patient. Other non-physician duties would include:

- Preparation of the patient prior to withdrawal, including removing unnecessary lines and devices, cleaning them up, putting on a new gown, and the silencing or disconnecting of monitors.
- Palliative or comfort care, including administration of pain medications, oxygen, and suctioning of the airway, provided by the bedside nurse and respiratory therapist.
- Changing vent settings and subsequently turning vent off after extubation, provided by the respiratory therapist.

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[26] Charles F. von Gunten & David E. Weissman, *Ventilator Withdrawal Protocol*, Palliative Care Network of Wisconsin, https://www.mypcnow.org/fast-fact/ventilator-withdrawal-protocol/ (last visited June 1, 2022).

- Presence of chaplain before, during, and after withdrawal of life-sustaining treatment to provide spiritual and emotional support for the patient and family members.

Withdrawal of life-sustaining treatment, both from an institutional and a bedside care standpoint, requires multiple different medical team members and departments working together to achieve the outcome. Here, the hospital even provided an interpreter to inform the patient's father of Dr. Duane's decision and that removal was imminent.[27]

Quite likely that interpreter was an employee of JPS. Consequently, even if Dr. Duane unilaterally made the decision to withdraw LST, without involving an ethics committee or other providers, it is highly unlikely for Dr. Duane to have acted unilaterally in carrying out De Paz's withdrawal of LST.[28]

III. The Appellees misread TADA in a myriad of ways

A. De Paz's parents were the appropriate surrogate decision makers in this situation, not the hospital or Dr. Duane

The Appellees incorrectly assert that De Paz's parents could only make a decision about life-sustaining treatment under a legal guardianship designation or under a medical power of attorney. The Appellees completely ignore Section

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[27] Appellants' Br. 5.

[28] *See* Gordon D. Rubenfeld & Stephen W. Crawford, *Principles and practice of withdrawing life-sustaining treatment in the ICU*, in *Managing Death in the Intensive Care Unit* 127-147 (J. Randall Curtis & Gordon D. Rubenfeld ed., 2001); Lisa Marr & David E. Weissman, *Withdrawal of ventilatory support from the dying adult patient*, 2 J Support Oncol 283-288 (2004).

166.039(b)[29] which provides for who can make a treatment decision regarding life-sustaining care in the absence of guardianship or medical power of attorney. The Appellees chose to ignore that the Appellants have the right under Texas law to make treatment decisions for their son.

B. Section 166.046 applies to when a treatment decision is made on behalf of a patient, absent an advance directive

Appellees argue that TADA is only invoked when a physician's decision is at odds with an advance directive executed by the patient. This assertion is also incorrect. A plain reading of the statute clearly says, "...or a health care or treatment decision made…on behalf of a patient…"[30] In the absence of an advance directive executed by De Paz, his parents were his surrogate health care decision makers under Section 166.039(b). Appellees further attempt to argue that the hospital and physician did not have to adhere to De Paz's parents' wishes because *his* wishes were not known. This interpretation is likewise not supported by the plain reading of the statute.

A surrogate decision maker is to make decisions in accordance with the patient's wishes, *if those wishes are known*.[31] The Appellees cite this provision in their opening brief to argue that De Paz's parents could not be effectuating a decision

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[29] Tex. Health & Safety Code § 166.039(b).

[30] "If an attending physician refuses to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient, the physician's refusal shall be reviewed by an ethics or medical committee." Tex. Health & Safety Code § 166.046(a).

[31] Tex. Health & Safety Code § 166.039(c).

with which the hospital had to comply. However, they ignore the qualifier, "*if known.*" If a patient's wishes are not known, then the surrogates—in this case, De Paz's parents—are authorized to make decisions in accordance with their *own* wishes. Further, De Paz's parents were statutorily authorized to make decisions based on *their* wishes. Whether there was an advanced directive or whether De Paz's parents knew of his wishes are irrelevant—neither the hospital nor Dr. Duane had any authority to remove life-sustaining treatment from their son without their consent.

C. The Appellants need not have pled facts regarding De Paz's status as a "qualified patient," as Section 166.046 of TADA applies to *any* patient, regardless of the presence of an irreversible or terminal condition

Appellees routinely argue in their briefing that Section 166.046 applies only to patients who have been deemed terminal or living with an irreversible condition. Their reading of the statute is incorrect. While other sections of the Act clearly place "terminal" or "irreversible" as a qualifier for each section's requirements, Section 166.046 glaringly omits both terms. The reality is that Section 166.046 purports to authorize the removal of life-sustaining treatment on any patient receiving life-sustaining care, regardless of whether they are deemed terminal or have an irreversible condition. In fact, this plain reading of the statute supports Appellees' absurd notion that TADA authorizes unilateral removal of care when the patient is not terminal or does not have an irreversible condition.

IV. The Appellees' actions are a clear violation of De Paz's constitutional rights, and all Appellees are responsible

The actions of JPS, Acclaim, and Dr. Duane are incomprehensible and a violation of De Paz's 14th Amendment rights in the most egregious way. There is no basis to usurp the rights of De Paz's surrogate decision makers, that of his parents. Nothing in the common law gives authority to the Appellees to unilaterally terminate life support from a patient, and even if complied with, TADA does not provide sufficient due process as required by the United States and Texas Constitution. However, as the Appellees did not even attempt to utilize TADA, the Court need not reach the argument of whether TADA possesses sufficient due process in order to find in favor of the Appellants. Dr. Duane, JPS, and Acclaim attempt to cloak their actions under authority that simply does not exist.

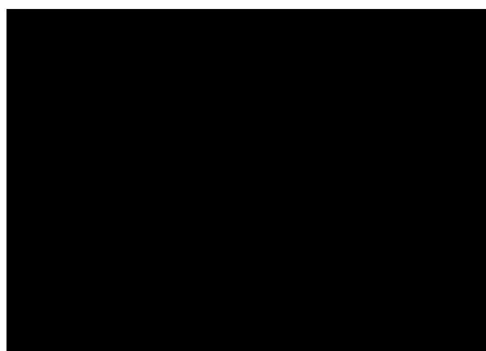
CONCLUSION AND PRAYER

Amicus Curiae urge this Court to grant Appellants' appeal and at a minimum, the Court should allow the constitutional claims against JPS and Acclaim to proceed. Amicus Curiae joins Appellants in urging the Court to reverse the trial court's decision.

Dated: June 1, 2022

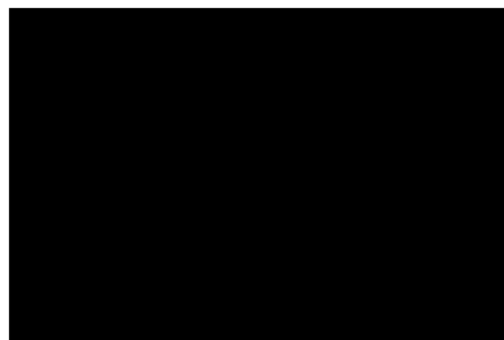
Respectfully Submitted,

By: _/s/ Jill Schumacher_
Jillian L. Schumacher



Counsel for Amicus Curiae
Texas Right to Life

By: _/s/ Emily Cook_
Emily Cook



Counsel for Amicus Curiae
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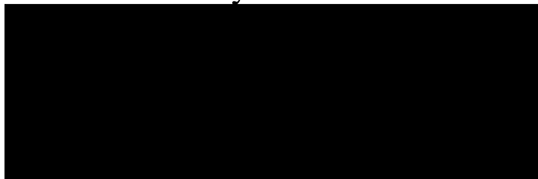
CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2022, a true and correct copy of this Brief of Amicus Curiae was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case, listed below, are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

William D. Taylor



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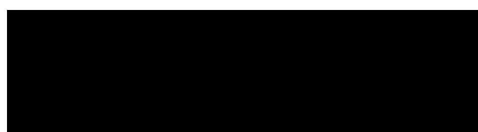

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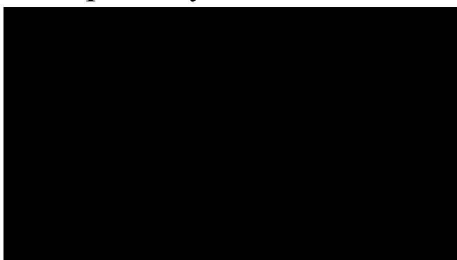

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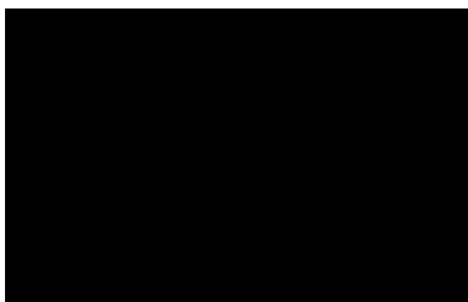

Counsel for Appellees

Dated June 1, 2022

/s/ Jill Schumacher
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the portions of the brief exempted by Fed. R. App. P. 32(f), this brief contains 4466 words based on Microsoft Word 2016.

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font size fourteen (14).

Dated June 1, 2022

/s/ Jill Schumacher
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