PREPARED BY THE COURT

ANTHONY PETRO, YOSEF GLASSMAN, M.D., and MANISH PUJARA, R.PH., Plaintiffs, v. GURBIR SINGH GREWAL, Attorney General of the State of New Jersey, Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION – GENERAL EQUITY MERCER COUNTY DOCKET NO. MER-C-53-19 CIVIL ACTION **ORDER**

THIS MATTER having come before the Court, the Hon. Robert Lougy, P.J. Ch., presiding, on the application of Defendant, Gurbir Singh Grewal, Attorney General of the State of New Jersey, represented by Deputy Attorney General Francis X. Baker, appearing, for an order dismissing Plaintiffs' complaint for failure to state a claim upon which relief may be granted; and Plaintiffs Anthony Petro, Yosef Glassman, M.D., and Manish Pujara, R.PH., represented by E. David Smith, Esq., appearing, seeking injunctive relief as specified in their Order to Show Cause; and Plaintiffs having filed opposition to the motion and Defendant having filed a brief that also opposes Plaintiffs' application for injunctive relief; and the Court having granted the application of Margaret Dore, Esq., a self-represented litigant, to appear as

amicus curiae; and the Court having granted the requests of the parties for oral argument; and oral argument having taken place with all parties participating remotely; and the Court having considered the parties' pleadings and arguments; and for the reasons as set forth below; and for good cause shown;

IT IS on this 1st day of April 2020 **ORDERED** that:

1. The application of Defendant for an order granting dismissal of Plaintiffs' Fourth Amended Complaint with prejudice is **GRANTED**.

2. The application of Plaintiffs for an order entering a preliminary injunction is **DENIED**.

3. A copy of this Order shall be deemed filed and served upon receipt from an authorized Judiciary (xxx@njcourts.gov) e-mail account.

/s/ Robert Lougy
ROBERT LOUGY, P.J. Ch.

Pursuant to Rules 1:6-2(f) and 1:7-4, the Court provides the following Statement of Facts and Conclusions of Law:

This matter comes before the Court on Plaintiffs' application for a preliminary injunction and Defendant's motion to dismiss the complaint for failure to state a claim upon which relief may be granted. The Court granted the parties' requests for oral argument. See R. 1:6-2(d) (stating that, upon request of a party in motions involving matters other than discovery or calendaring, request for oral argument "shall be granted as of right."); see also Raspantini v. Arocho, 364 N.J. Super. 528 (App. Div. 2003).

This litigation concerns the constitutionality of the Medical Aid in Dying for the Terminally Ill Act ("the Act"), which Governor Murphy signed into law on April 12, 2019. P.L. 2019, c. 59. It became effective August 1, 2019. Recognizing "New Jersey's long-standing commitment to individual dignity, informed consent, and the fundamental right of competent adults to make health care decisions about whether to have life-prolonging medical or surgical means or procedures provided, withheld, or withdrawn," the Legislature affirmed "the right of a qualified terminally ill patient, protected by appropriate safeguards, to obtain medication that the patient may choose to self-administer in order to bring about the patient's humane and dignified death." N.J.S.A. 26:16-2(a).

The Act enumerates several legislative findings. The Legislature found:

> Statistics from other states that have enacted laws to provide compassionate medical aid in dying for terminally ill patients indicate that the great majority of patients who requested medication under the laws of those states, including more than 90 percent of patients in Oregon since 1998 and between 72 percent and 86 percent of patients in Washington in each year since 2009, were enrolled in hospice care at the time of death, suggesting that those patients had availed themselves of available treatment and comfort care options available to them at the time they requested compassionate medical aid in dying.
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> [N.J.S.A. 26:16-2(b).]

The Legislature identified the components of a "defined and safeguarded process in order to effectuate the purposes of the Act," which will:

> (1) guide health care providers and patient advocates who provide support to dying patients; (2) assist capable, terminally ill patients who request compassionate medical aid in dying; (3) protect vulnerable adults from abuse; and (4) ensure that the process is entirely voluntary on the part of all participants,

> including patients and those health care providers that are providing care to dying patients.
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> [N.J.S.A. 26:16-2(c)].

The statute establishes the following processes. A terminally ill patient who wishes to avail themselves of the Act's provisions must make two oral requests to their attending physician – the physician "who has primary responsibility for the treatment and care of a qualified terminally ill patient and treatment of the patient's illness, disease, or condition," N.J.S.A. 26:16-3 – at least 15 days apart and also submit a formal written request before medication can be prescribed. N.J.S.A. 26:16-10(a). A patient is considered terminally ill if he or she "is in the terminal stage of an irreversibly fatal illness, disease, or condition with a prognosis, based upon reasonable medical certainty, of a life expectancy of six months or less." N.J.S.A. 26:16-3. To make a request, the patient must be a New Jersey adult resident who is "capable and has been determined by the patient's attending physician and a consulting physician to be terminally ill; and has voluntarily expressed a wish to receive a prescription for medication." N.J.S.A. 26:16-4. Further, the request must be "signed and dated by the patient and witnessed by at least two individuals who, in the patient's presence, attest that, to the best of their knowledge and belief, the patient is capable and is acting voluntarily to sign the request." N.J.S.A. 26:16-5.

The attending physician is responsible for ensuring that "all appropriate steps are carried out in accordance with the provisions of [the Act] before writing a prescription for medication that a qualified terminally ill patient may choose to self-administer pursuant to

[the Act.]"[1] N.J.S.A. 26:16-5. Such responsibilities include making initial capability determinations, informing the patient of his/her medical prognosis, "feasible alternatives to taking the medication, including but not limited to concurrent or additional treatment opportunities, palliative care, comfort care, hospice care, and pain control," and "inform[ing] the patient of the patient's opportunity to rescind the request at any time." N.J.S.A. 26:16-6.

The attending physician must refer the individual to a consulting physician. Ibid. An individual is not a "qualified terminally ill patient" until the consulting physician has "examined that patient and the patient's relevant medical records," "confirmed, in writing, the attending physician's diagnosis that the patient is terminally ill," and "verified that the patient is capable, is acting voluntarily, and has made an informed decision to request medication that, if prescribed, the patient may choose to self-administer pursuant to [the Act]." N.J.S.A. 26:16-7.

If the medical opinion of either the attending or consulting physician raises concerns about the patient's capacity, "the physician shall refer the patient to a mental health care professional to determine whether the patient is capable." N.J.S.A. 26:16-8. Once that referral is made, "the attending physician shall not write a prescription for medication that the patient may choose to self-administer pursuant to [the Act] unless the attending physician has been notified in writing by the mental health care professional of that individual's determination that the patient is capable." Ibid.

[1] The Act defines "self administer" as "a qualified terminally ill patient's act of physically administering, to the patient's own self, medication that has been prescribed pursuant to [the Act]."

The Act provides broad immunities to persons who participate or refuse to participate in the actions that it authorizes. First, it provides:

> a person shall not be subject to civil or criminal liability or professional disciplinary action, or subject to censure, discipline, suspension, or loss of any licensure, certification, privileges, or membership, for any action taken in compliance with the provisions of [the Act], including being present when a qualified terminally ill patient self-administers medication prescribed pursuant to [the Act], or for the refusal to take any action in furtherance of, or to otherwise participate in, a request for medication pursuant to the provisions of [the Act.]
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> [N.J.S.A. 26:16-17(a)(1).]

Second, "[a]ny action taken in accordance with the provisions of [the Act] shall not constitute patient abuse or neglect, suicide, assisted suicide, mercy killing, euthanasia, or homicide under any law of this State." N.J.S.A. 26:16-17(a)(2). Moreover, "[a] patient's request for, or the provision of, medication in compliance with the provisions of [the Act] shall not constitute abuse or neglect of an elderly person or provide the sole basis for the appointment of a guardian or conservator." N.J.S.A. 26:16-17(a)(3). Finally,

> Any action taken by a health care professional to participate in [the Act] shall be voluntary on the part of that individual. If a health care professional is unable or unwilling to carry out a patient's request under [the Act], and the patient transfers the patient's care to a new health care professional or health care facility, the prior health care professional shall transfer, upon request, a copy of the patient's relevant records to the new health care professional or health care facility.
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> [N.J.S.A. 26:16-17(c).]

Eight days after the Act took effect, this litigation began.

On August 9, 2019, Plaintiff Dr. Glassman filed his first Verified Complaint challenging the constitutionality of the Act, along with an application for an Order to Show

Cause with Temporary Restraints. On August 14, 2019, the court granted Plaintiff injunctive relief, finding merit in Plaintiff's claim alleging a "total lack of regulation."

On August 27, 2019, the Appellate Division dissolved the temporary restraints, finding that "plaintiff failed to establish that injunctive relief was necessary to prevent irreparable harm and preserve the status quo." Def. Ex. B, at 4. "Neither the court nor plaintiff [ ] identified how the absence of [enabling] regulations harmed him, irreparably or otherwise." Ibid. Further, the panel acknowledged that participation by physicians is completely voluntary, and determined that "the administrative function" of transferring records does not "constitute[] a matter of constitutional import, or an act contrary to a physician's professional obligations." Def. Ex. B at 5. Regarding a reasonable probability of success on the merits, the court concluded that "plaintiff does not have standing to assert claims on behalf of other physicians, patients, or interested family members" and the Act did not support the conclusion that "the Legislature intended the implementation of the Act to await formal rulemaking." Def. Ex. B at 7. Lastly, the Appellate Division found that Plaintiffs' right to abstain from the Act "does not outweigh [the rights] of qualified terminally-ill patients who the Legislature has concluded may end their lives as permitted under the Act." Ibid.

Plaintiffs filed their Fourth Amended Complaint on December 31, 2019, challenging the constitutionality of the statute. Defendant then filed this motion to dismiss in compliance with an order dated January 16, 2020, which directed Defendant to file a single, superseding brief in support of its motion to dismiss for failure to state a claim. Over the

objection of Defendant, the Court granted the application of Margaret Dore, appearing as a self-represented litigant, to appear as *amicus curiae*.

In determining whether a plaintiff has failed to state a claim upon which relief can be granted under Rule 4:6-2(e), the Court limits its examination to evaluating the legal sufficiency of the facts alleged on the face of the complaint. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citing Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987)). The Court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (citing DiCristoforo v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). At this preliminary stage of the litigation, the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint; therefore, plaintiffs are entitled to every reasonable inference of fact. Ibid. (citing Indep. Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956)). In short, "the test for determining the adequacy of a pleading [is] whether a cause of action is 'suggested' by the facts." Ibid. (citing Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). "The examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." Ibid.

If the complaint states no basis for relief, dismissal of the complaint is appropriate: "[d]iscovery is intended to lead to facts supporting or opposing a legal theory; it is not designed to lead to formulation of a legal theory." Camden Cty. Energy Recovery Assocs., L.P. v. DEP, 320 N.J. Super. 59, 64 (App. Div. 1999). Thus, "if the complaint states no

claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 107-08 (2019) (citing Rezem Family Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div. 2011); Camden Cty. Energy Recovery, 320 N.J. Super. at 64-65)). The Court may dismiss some of the counts without dismissing the entirety of the case. See Jenkins v. Region Nine Housing, 306 N.J. Super. 258 (App. Div. 1997). However, dismissals "should be granted in only the rarest of instances." Printing Mart-Morristown, 116 N.J. at 772.

Ordinarily, a dismissal for failure to state a claim is without prejudice, and the court has the discretion to permit a plaintiff to amend the complaint to allege additional facts to state a cause of action. Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 116 (App. Div. 2010). Complaints should not be dismissed if the facts suggest a potential cause of action that may be better articulated by an amendment of the complaint. Printing Mart-Morristown, 116 N.J. at 746. However, "our courts have not hesitated to dismiss complaints with prejudice when a constitutional challenge fails to state a claim." Teamsters Local 97 v. State, 434 N.J. Super. 393, 413 (App. Div. 2014).

The Court considers constitutional challenges to legislative enactments in light of the "seemly respect for the act of a co-equal branch of government." N.J. Ass'n on Correction v. Lan, 80 N.J. 199, 218 (1979). As Justice Oliver Wendell Holmes emphasized, "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." Missouri, Kansas, & Texas Ry. Co. v. May, 194 U.S. 267, 270 (1904). "When the Legislature exercises its constitutional authority to make laws,

its actions are afforded highly deferential judicial review." Commc'ns Workers of Am., AFL-CIO v. N.J. Civil Svc. Comm'n, 234 N.J. 483, 514 (2018).

"Every possible presumption favors the validity of an act of the Legislature." New Jersey Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8 (1972). To that end, and because courts exercise "extreme self restraint" in reviewing legislation, ibid., the statute's presumptive validity "can be rebutted only upon a showing that the statute's repugnancy to the Constitution is clear beyond a reasonable doubt." Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 285 (1998); see also, Lewis v. Harris, 188 N.J. 415, 459 (2006) (emphasizing that courts defer to any legislative enactment unless it is "unmistakably shown to run afoul of the Constitution."). Where a statute's constitutionality is "fairly debatable, courts will uphold" the law. Newark Superior Officers Ass'n v. City of Newark, 98 N.J. 212, 227 (1985). Courts do not second-guess the "efficacy or wisdom" of the Legislature's social policy decisions. Brown v. State, 356 N.J. Super. 71, 80 (App. Div. 2002) (internal quotation and citation omitted).

I. Plaintiffs Lack Standing to Challenge the Act.

To challenge the Act, Plaintiffs must first establish standing, which refers to a litigant's "'ability or entitlement to maintain an action before the court.'" Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 80 (App. Div. 2001) (quoting N.J. Citizen Action v. Riveria Motel Corp., 296 N.J. Super. 402, 409 (App. Div. 1997)). Defendant acknowledges that New Jersey has a much more liberal standing doctrine than federal case law, see People For Open Gov't v. Roberts, 397 N.J. Super. 502, 509 (App. Div. 2008), but argues that Plaintiffs fail to meet even this low threshold. Under this state's general principles of standing, a party

"must present a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision." In re Camden Cty., 170 N.J. 439, 449 (2002). As the Appellate Division explained:

> The "essential purpose" of the standing doctrine in New Jersey is to "assure that the invocation and exercise of judicial power in a given case are appropriate. Further, the relationship of plaintiffs to the subject matter of the litigation and to other parties must be such to generate confidence in the ability of the judicial process to get to the truth of the matter and in the integrity and soundness of the final adjudication."
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> [Triffin, 343 N.J. Super. at 80 (quoting State Chamber of Commerce v. Election Law Enf't Comm'n, 82 N.J. 57, 69 (1980).]

The "standing rules serve to preclude actions initiated by persons whose relation to the dispute may be described as 'total strangers or casual interlopers,' a threshold we have described as 'fairly low.'" People For Open Gov't, 397 N.J. Super. at 509 (quoting Triffin, 343 N.J. Super. at 81). "'[I]n cases of great public interest, any 'slight additional private interest' will be sufficient to afford standing.'" Id. at 510 (quoting Salorio v. Glaser, 82 N.J. 482, 491 (1980)). A religious duty qualifies as a "sufficient additional interest to warrant consideration of the merits." Right to Choose v. Byrne, 91 N.J. 287, 313 (1982). Further, "when a plaintiff suffers direct impairment of constitutional rights, that plaintiff may also assert the rights of third parties who find it difficult to bring their own claims." Stubaus v. Whitman, 339 N.J. Super. 38, 51 (App. Div. 2001).

Defendant first argues that Plaintiffs lack standing to bring claims on behalf of themselves or others as they lack a sufficient stake in the matter because the Act only applies to the patients and providers that elect to participate. N.J.S.A. 26:16-2(c)(4); N.J.S.A. 26:16-

17(c). Defendant argues that Plaintiffs cannot demonstrate any harm – and thus lack standing – because they choose not to participate in the Act and, thus, the outcome of this litigation does not affect them. Both Dr. Glassman and Mr. Pujara have elected not to participate, and Defendant argues that the separate regulatory obligation to transfer a qualifying patient's medical records does not amount to participation under the Act. Further, Defendant argues that patient participation is also voluntary and therefore Mr. Petro, although terminally ill, will not suffer any harm if the Act remains in effect.

In response, Plaintiffs argue that they have standing to assert claims on behalf of themselves and others. Plaintiffs allege that their religious duty qualifies as a sufficient additional interest and that they may assert claims on behalf of others who may find it difficult to bring their own claims to court. Plaintiffs contend that important constitutional issues would be forever foreclosed if the courts deny them standing. Plaintiffs also argue that Mr. Petro should have standing regardless of a demonstration of a likelihood of harm because making such a showing would require taking an unreasonable risk of irreparable harm.

The Court finds that Plaintiffs lack standing to bring a claim against the Act because its enforcement, and this Court's determination, does not harm or affect them in any cognizable way. The Appellate Division has already opined that Plaintiffs lack the ability to bring claims on behalf of third parties, and this Court agrees. More fundamentally, and regardless of what this Court concludes regarding the constitutionality of the Act, Plaintiffs suffer no harm. Nothing in the Act requires Plaintiffs to participate as patients, physicians, or pharmacists. Mr. Petro, regardless of his terminal illness, has not attempted to become

qualified under the Act nor does he allege that he plans to; Dr. Glassman is not required to offer or prescribe the medication to any of his patients and nothing compels him to serve as a consulting physician; Mr. Pujara is not obligated as a pharmacist to fill any prescription for medication. Their deeply felt religious, ethical, or professional objections to the Act do not suffice to establish standing, even under New Jersey's liberal standard. Because Plaintiffs cannot demonstrate "a substantial likelihood that the party will suffer harm in the event of an unfavorable decision," the Court denies their claims for lack of standing. In re Camden Cty., 170 N.J. at 449.

Given this conclusion, the Court could stop its analysis here. The Court will nevertheless address the merits of Plaintiffs' claims to demonstrate that, even were a court to conclude that they have standing, they fail to state a claim upon which relief may be granted. The Court acknowledges that Plaintiffs seek injunctive relief and that, while lack of standing is one factor in consideration of their likelihood of success on the merits, the merits of their substantive claims are another.

Overlooking their lack of standing to bring these claims, Plaintiffs' complaint fails to state a claim upon which relief may be granted. They enunciate policy considerations and objections, but such commentary is, without the demonstration of constitutional infirmity, better directed toward a legislative audience, not a judicial one.

II. Plaintiffs' Claim that the Act violates Article 1, Paragraph 1 of the New Jersey Constitution Fails as a Matter of Law.

Plaintiffs' first count alleges that the Act violates the right to enjoy and defend life under Article I, Paragraph 1 of the New Jersey Constitution, which states: "All persons are

by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." "Fundamental rights are those which are 'explicitly or implicitly guaranteed by the Constitution.'" Barone v. Dep't of Human Servs., 107 N.J. 355, 365 (1987). Plaintiffs quote In re Quinlan, where the New Jersey Supreme Court acknowledged the State's interest in the preservation of life, "which has an undoubted constitutional foundation." 70 N.J. 10, 19 (1976). Plaintiffs argue that, while the Court in Quinlan permitted the discontinuation of life-sustaining treatment, it also recognized "a real distinction between the self-infliction of deadly harm and a self-determination against artificial life support…." Id. at 43.

The language of Article I does not establish a constitutional or fundamental right to protect or defend the lives of others, nor, in the absence of any precedent that says otherwise, is the Court persuaded that any such right exists, particularly to the extent it would curtail the rights to privacy of capable terminally ill patients to determine the course of their own medical treatment. Although Quinlan acknowledges the State's interest in the preservation of life, the Court explained that "the State's interest [] weakens and the individual's right to privacy grows as the degree of bodily invasion increases and the prognosis dims. Ultimately there comes a point at which the individual's rights overcome the State interest." Id. at 41. Given the entire of emphasis of the Quinlan holding – protecting Karen Quinlan's right of privacy, a right rooted in "the unwritten constitutional right of privacy [that] exist[s] in the penumbra of specific guarantees of the Bill of Rights" and additionally found in Article I, Paragraph 1 of the State Constitution, id. at 40 – the

Court finds nothing in Quinlan to support the constitutional right that Plaintiffs seek to establish here. First, Quinlan does not constrain or define the scope of permissible legislative enactments; to the contrary, the Court acknowledged that it had to address the medical-legal issues, in part, because of the "paucity of pre-existing legislative and judicial guidance as to the rights and liabilities therein involved." Id. at 42. Second, the Court authorized Ms. Quinlan's father to act in order to vindicate her rights, not to qualify some unstated right of his. Nothing in Quinlan establishes or recognizes an individual constitutional right to defend the lives of others when such persons have the capacity to make their own voluntary decisions. Therefore, the Court dismisses Plaintiffs' first count.

III. Plaintiffs' Second Count Asserting Equal Protection Violations Fails as a Matter of Law.

Plaintiffs' second count alleges that the Act violates federal and state equal protection and due process rights. "The Equal Protection Clause directs that 'all persons similarly circumstanced shall be treated alike.'" Plyler v. Doe, 457 U.S. 202, 216 (1982) (quoting F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920)). "The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." Tigner v. Texas, 310 U.S. 141, 147 (1940). Further, "the initial discretion to determine what is 'different' and what is 'the same' resides in the legislatures of the States." Plyler, 457 U.S. at 216.

Plaintiffs allege that the Act is inconsistent with Quinlan, the Advance Directives Law, and New Jersey's guardianship statute and will lead to disparate treatment. N.J.S.A. 26:16-8 provides that:

> If, in the medical opinion of the attending physician or the consulting physician, a patient requesting medication that the patient may choose to self-administer pursuant to [the Act] may not be capable, the physician shall refer the patient to a mental health care professional to determine whether the patient is capable. A consulting physician who refers a patient to a mental health care professional pursuant to this subsection shall provide written notice of the referral to the attending physician.
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> [Ibid.]

A mental health professional "means a psychiatrist, psychologist, or clinical social worker licensed pursuant to Title 45 of the Revised Statutes." N.J.S.A. 26:16-3. By contrast, the Advance Directives Law provides that only qualified physicians can make capacity determinations. N.J.S.A. 26:2H-60.

Plaintiffs allege that allowing referrals to licensed clinical social workers (LCSWs) for capability determinations may result in lower standards of care, based on factors such as economic considerations, including whether an insurer will pay for more costly life-sustaining treatment instead of inexpensive fatal pharmaceuticals. Further, Plaintiffs contend that fundamental rights are at issue and so strict scrutiny applies. Defendant argues that any constitutional challenge fails because the Act withstands scrutiny under federal equal protection law. None of the Plaintiffs are subject to suspect classification nor is a fundamental right involved, and so only the rational basis test applies. Defendant alleges that Mr. Petro has not articulated an affected right, there are no affected rights because the Act is voluntary, and there is a public need for this legislation.

Because Plaintiffs cannot establish that they possess a fundamental right to defend the lives of others or that they are members of a protected class, the rational basis test applies to their equal protection claims. See Barone, 107 N.J. at 364. Only "a statute that

regulates a 'fundamental right' or 'suspect class' is subject to 'strict scrutiny.'" Id. at 364-65. The rational basis standard is extremely deferential. There is a "strong presumption in favor of constitutionality" and courts are reluctant "to declare a statute void." Id. at 367. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." Ibid. "As long as the classification chosen by the Legislature rationally advances a legitimate governmental objective, it need not be the wisest, the fairest, or the one we would choose." Id. at 370. A statute will only be invalidated under the rational basis test if the classification is "wholly unrelated to the legislative objective" or "arbitrary." Secure Heritage, Inc. v. City of Cape May, 361 N.J. Super. 281, 300 (App. Div. 2003).

Here, the State has a legitimate interest, perhaps even a compelling interest, in establishing a safe and effective procedure for qualified terminally ill patients to experience a humane and dignified death. The Legislature is the proper branch of government to establish guidelines surrounding the public policy and regulations of end-of-life decision-making. In re Farrell, 108 N.J. 335, 341-42 (1987). "It is the type [of] issue which is more suitably addressed in the legislative forum, where fact finding can be less confined and the viewpoints of all interested institutions and disciplines can be presented and synthesized." Id. at 344 (quoting In Re Conroy, 98 N.J. 344-45 (1985)). The Act is rationally related to that interest because it provides a process by which qualified, terminally ill patients can make informed and voluntary end-of-life decisions.

The Legislature has no obligation to enumerate why it provides for different requirements in different statutes. "[A] legislative choice is not subject to courtroom fact

finding and may be based on rational speculation unsupported by evidence or empirical data." Federal Commc'ns Comm'n v. Beach Commc'ns, Inc., 508 U.S. 307, 315 (1993). Additionally, the choices that the Legislature makes in a statute "need not be the best or only method of achieving the legislative purpose." In re C.V.S. Pharm. Wayne, 116 N.J. 490, 498 (1989). The Act does not deny patients equal protection simply because it allows for a LCSW to make a capability determination while the Advances Directives Act does not.[2] The rational basis test sets forth an extremely low bar, and Plaintiffs do not argue that the Act is arbitrary or wholly unrelated to the State's objective. Therefore, the Act comports with federal equal protections.

Plaintiffs also argue that the Act results in disparate treatment based on the inclusion of LCSWs as mental health professionals and based on economic status because some patients may only be able to afford insurance policies that will reimburse treatment options with a maximum opportunity for survival and recovery. However, Plaintiffs' claims here are entirely speculative and no allegations support a conclusion that actual disparate treatment has occurred regarding either capability determinations by LCSWs or economic status.

[2] Plaintiffs argue that "the Act allows the opinion of the less-qualified social worker to supersede the medical opinion of a physician who called the patient's decision making capacity into question . . . ." Pl. Opp. at 34. However, the patient still requires that the attending physician write the prescription after the mental health professional determines capability. N.J.S.A. 26:16-8. Regardless of the mental health professional's conclusion of whether the patient is capable, both the attending and consulting physicians must independently determine that the patient is capable. In other words, neither are constrained to accept the conclusion of the mental health professional, regardless of that professional's expertise, training, or background, and nothing compels them to do so.

Under the New Jersey equal protection analysis, "'[s]tatutes carry a strong presumption in favor of constitutionality, and the proponent of invalidity bears the heavy burden of overcoming that presumption.'" Secure Heritage, 361 N.J. Super. at 300 (quoting Brown v. State, 356 N.J. Super. 71, 79-80 (App. Div. 2002)). The courts use a balancing test to determine "whether there is an appropriate governmental interest suitably furthered by the differential treatment involved." Barone, 107 N.J. at 368 (internal citations omitted). The State's equal protection analysis balances (1) the nature of the affected right, (2) the extent to which the governmental restriction intrudes upon it, and (3) the public need for the restriction. Ibid. (quoting Greenberg v. Kimmelman, 99 N.J. 552, 567 (1985)).

Plaintiffs do not clearly identify an affected right. To the extent that they argue the Act restricts rights under Article I, Paragraph 1 of the New Jersey Constitution, the right to "enjoy and defend life" does not extend to third persons. Even if such a right did exist, the Act does not intrude upon it because participation in the Act is voluntary. The Act does not intrude on Plaintiffs' lives simply because they may have to transfer any patients they do not wish to assist or because they may have to inform a physician to contact another pharmacy. The Appellate Division addressed this purported intrusion and found it to be minimal; this Court concurs. Lastly, the Legislature has identified a public need for the legislation. Therefore, the Act survives Plaintiff's equal protection and due process challenge.

IV. Plaintiffs' Third Count Asserting a Private Right of Action under the Advance Directives Act Fails as a Matter of Law.

Plaintiffs' third cause of action fails as a matter of law because the Advance Directives for Health Care Act does not create a private right of action. "New Jersey courts

have been reluctant to infer a statutory private right of action where the Legislature has not expressly provided for such action." R.J. Gaydos Ins. Agency v. Nat'l Consumer Ins. Co., 168 N.J. 255, 271 (2001). To determine if an implied private right of action may be inferred, this Court uses the tripartite test established in Gaydos: "(1) plaintiff is a member of the class for whose special benefit the statute was enacted; (2) there is any evidence that the Legislature intended to create a private right of action under the statute; and (3) it is consistent with the underlying purposes of the legislative scheme to infer the existence of such a remedy." Id. at 271. Although each factor may be given varying weights, "the primary goal has almost invariably been a search for the underlying legislative intent." Id. at 272-73 (quoting Jalowiecki v. Leuc, 182 N.J. Super. 22, 30 (App. Div. 1981)).

Addressing the first prong, Plaintiffs are not members of the class for whose benefit the Advance Directives for Health Care Act was enacted. The Legislature enacted the statute to help patients "control decision about their own health care unless they lack the mental capacity to do so." N.J.S.A. 26:2H-54(a). The Advance Directives for Health Care Act states: "This State recognizes the inherent dignity and value of human life and within this context recognizes the fundamental right of individuals to make health care decisions to have life-prolonging medical or surgical means or procedures provided, withheld, or withdrawn." N.J.S.A. 26:2H-54(b). The Legislature's findings and declarations belie any claim that Plaintiffs are "member[s] of the class for whose special benefit" the Advance Directives for Health Care Act was enacted. Although Plaintiff Petro may be such a patient, his requested relief is inconsistent with the purposes of the legislative scheme. Plaintiff Petro seeks to establish a private right action that would diminish the legislative purpose.

Turning to the second Gaydos prong, Plaintiffs assert no evidence that the Legislature intended the Advance Directives for Health Care Act to create a private cause of action. Finally, the Court concludes that Plaintiffs fail to identify any reason why inferring a private cause of action is consistent with the underlying purposes of the Advance Directives for Health Care Act.

Accordingly, the Court concludes that each of the Gaydos factors weigh against finding an implied private right of action in the Advance Directives for Health Care Act. Therefore, the Court dismisses Plaintiffs' third count for failure to state a claim.

V. Plaintiffs' Fourth Count under the Free Exercise Clause Fails as a Matter of Law.

"As the United States Supreme Court has stated, '[t]he free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.'" McKelvey v. Pierce, 173 N.J. 26, 40 (2002) (quoting Employment Div. v. Smith, 494 U.S. 872, 879 (1990)). The First Amendment of the federal Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const., amend. I. This language protects the "'freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.'" McKelvey, 173 N.J. at 40 (quoting Cantwell v. Connecticut, 310 U.S. 296, 303-04 (1940)). Accordingly, "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion proscribes (or prescribes)." Smith, 494 U.S. at 879 (internal

quotation marks omitted). If the statute is "neutral and of general application, the fact that it incidentally burdens the free exercise of religion does not violate the Free Exercise Clause." S. Jersey Catholic Sch. Teachers Org. v. Saint Teresa of the Infant Jesus Church Elem. Sch., 150 N.J. 575, 597-98 (1997).

Plaintiffs argue that the obligation to transfer records and to find a willing pharmacist constitute an infringement of their rights under the Free Exercise Clause. Defendant counters that the obligation to transfer medical records to another health care professional does not impose a constitutionally significant burden on Plaintiffs' religious rights.

The Act is a neutral law of general applicability because it does not expressly address or relate to religion. Therefore, Plaintiffs must allege that the Act imposes more than incidental burdens on their free exercise of religion. They fail to do so as they have no obligation to participate in Act. The obligation to transfer records is minimally burdensome and, moreover, does not emanate from the Act itself but rather from a separate provision of the State's laws. Accordingly, the Court does not find that Plaintiffs state a viable First Amendment free exercise claim. Plaintiffs' fourth count fails as a matter of law.

VI. Plaintiffs' Fifth Count Alleging a Violation of the Canon of Common Law Fails as a Matter of Law.

Plaintiffs' fifth cause of action alleges that the Act "violates the canon of common law that it is a crime to kill oneself and to aid and abet the death of another." Fourth Am. Compl. at ¶ 59. Defendant responds by stating that legislative actions take priority over common law principles, and the Act provides that any action taken in accordance with the

Act "shall not constitute patient abuse or neglect, suicide, assisted suicide, mercy killing, euthanasia, or homicide under any law of this State." N.J.S.A. 26:16-17.

The Supreme Court has already extinguished Plaintiffs' argument. Its discussion in Farmers Mutual Fire Insurance Co. of Salem v. New Jersey Property-Liability Insurance Guaranty Association is worth quoting at length:

> The common law is the collection of judicially crafted principles—developed in the crucible of the adversarial process—that govern matters that do not fall within the realm occupied by the Legislature. Legislation has primacy over areas formerly within the domain of the common law. Legislation reflects the will of the people as enacted through their elected representatives. Only the Constitution—our organic charter—is paramount to legislative enactments. See United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103, 110 (1801) (Marshall, C.J.) (noting that when "a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the law be constitutional . . . I know of no court which can contest its obligation."). Legislative enactments are never subservient to the common law when the two are in conflict with each other. The saying "equity follows the law" is a recognition that the common law must bow to statutory law. See Letter from Thomas Jefferson to Phillip Mazzei (Nov. 1785), in 4 The Works of Thomas Jefferson 473, 476 (Paul Leicester Ford ed., 1904) (noting that a court of equity "cannot interpose in any case against the express letter and intention of the legislature"). Any other notion is inconsistent with the most basic principles of our democratic form of government.
>
> [215 N.J. 522, 545 (2013).]

Even were the Court to accept the premise of Plaintiff's arguments, which it need not and does not, Plaintiffs' claim fails because any enactment of the Legislature takes precedent over common law.

Plaintiffs' claim that the Act violates common law fails as a matter of law.

VII. Plaintiffs' Sixth Count Regarding Disposal of Medication Fails as a Matter of Law.

Plaintiffs argue that the Act's disposal provision violates federal law. However, the Act plainly requires that disposal of the prescribed medication must be consistent with federal guidelines. The relevant provision states:

> Any medication dispensed pursuant to [the Act] that a qualified terminally ill patient chooses not to self-administer shall be disposed of by lawful means, including, but not limited to, disposing of the medication consistent with State and federal guidelines concerning disposal of prescription medications, or surrendering the medication to a prescription medication drop-off receptacle. The patient shall designate a person who shall be responsible for the lawful disposal of the medication.
>
> [N.J.S.A. 26:16-12 (emphasis added).]

Thus, the Act requires disposal of the medication in a manner consistent with state and federal law. Plaintiffs' sixth count fails to state a claim and is dismissed.

VIII. Plaintiffs' Seventh Count for Violation of Physicians and Pharmacists Right to Practice Fails as a Matter of Law.

Plaintiffs Glassman and Pujara allege that the Act violates their rights to practice medicine and pharmacy. Plaintiffs only cite to Quinlan and the Hippocratic Oath to support this assertion. In response, Defendant asserts that Plaintiffs have no fundamental right to practice their profession and the Act does not violate any rights Plaintiffs may have. Participation in the Act is voluntary, and the requirement that non-participating health care providers transfer medical records does not violate Dr. Glassman's right to practice medicine. Defendant further argues that transferring medical records is an administrative task, not considered part of the "practice of medicine."

Additionally, Plaintiffs argue that the Act violates Mr. Pujara's right to practice pharmacy, particularly when read in conjunction with N.J.S.A. 45:14-67.1. That statute applies to pharmacy practice sites, stating that they have "a duty to properly fill lawful prescriptions for prescription drugs or devices that it carries for customers, without undue delay, despite any conflicts of employees to filling a prescription and dispensing a particular prescription drug or device due to sincerely held moral, philosophical or religious beliefs." N.J.S.A. 45:14-67.1(a). If the site does not have a prescription drug in stock to fill a patient's prescription, then the practice site must either offer "(1) to obtain the drug or device under its standard expedited ordering procedures; or (2) to locate a pharmacy that is reasonably accessible to the patient and has the drug or device in stock, and transfer the prescription there in accordance with the pharmacy practice site's standard procedures." N.J.S.A. 45:14-67.1(b). Plaintiffs argue that this requirement violates a pharmacist's creed to do no harm. Lastly, Plaintiffs argue that the Court may not order health care professionals to pursue a course that they believe is inappropriate or unsafe and against their own professional practices and ethics. Couch v. Visiting Home Care Serv. of Ocean County, 329 N.J. Super. 47, 53 (App. Div. 2000).

"A license to practice a profession is not a basic individual right . . . The right to practice medicine itself is granted in the interest of the public and is 'always subject to reasonable regulation in the public interest.'" In re Polk, 90 N.J. 550, 570 (1982) (quoting Jeselsohn Inc. v. Atlantic City, 70 N.J. 238, 242 (1976)). Plaintiffs' ability to practice medicine or pharmacy is not a fundamental right. That ability is subject to reasonable regulation that is created for the public interest, such as the Act in question. Therefore, the

statute does not violate their right to practice. Additionally, Plaintiffs again have no obligations to perform any action under the Act if they believe it is inappropriate or unsafe. Regarding the right to practice pharmacy, Plaintiff objects to the obligations imposed by N.J.S.A. 45:14-67.1, not the Medical Aid in Dying Act. Plaintiffs' allegations regarding N.J.S.A. 45:14-67.1 do not address the constitutionality of the Act itself. Thus, Plaintiffs' seventh count fails to state a claim.

IX. Plaintiffs' Eighth Count for Abrogation of Statutory Duty to Warn Fails as a Matter of Law.

Plaintiffs argue that the Act abrogates the statutory duty to warn if there is imminent danger of an ill patient causing harm to others. Plaintiffs' claim fails because it ignores the plain language of the statute. State v. Hoffman, 149 N.J. 564, 578 (1997) ("When construing a statute, the first consideration is the statute's plain meaning.").

Section 27 of the Act states: "A duty to warn and protect shall not be incurred when a qualified terminally ill patient requests medication that the patient may choose to self-administer in accordance with the provisions of [the Act]." This section does not eliminate the duty to warn if a patient threatens serious or deadly harm to a third person or persons. Rather, the provision provides that the duty to warn does not apply when the patient requests the medication for him or herself. Plaintiffs cannot sustain a challenge to the statute by asserting that it says something that it does not. More fundamentally, however, the Legislature does not violate the Constitution by enacting legislation that modifies, qualifies, or nullifies another statutory enactment. Absent some identified and cognizable constitutional imperative or infirmity, that is the Legislature's prerogative. The statute does

not do what Plaintiffs allege; but, even if it did, they do not allege a constitutional violation. Therefore, the Court dismisses Plaintiffs' eighth count.

X. Plaintiffs' Ninth Count for Failure to Promulgate Regulations Fails as a Matter of Law.

Plaintiffs argue that the Act's language that the six State entities "adopt such rules and regulations as are necessary to implement" required to the agencies to promulgate regulations. Further, Plaintiffs argue that the Appellate Division erred in observing that no agencies determined rule-making was necessary. Plaintiffs allege that the Board of Medical Examiners referred the matter to its Executive Committee for consideration of draft regulations on July 10, 2019, and the Board of Pharmacy resolved to revisit the need for rulemaking on July 24, 2019. By contrast, Defendant argues that the language is permissive, and that the Legislature purposefully used permissive terms such as "may" and "as are necessary."

"Where a statute is clear and unambiguous on its face and admits of only one interpretation, a court must infer the Legislature's intent from the statute's plain meaning." O'Connell v. State, 171 N.J. 484, 488 (2002). "A Court may neither rewrite a plainly-written enactment of the Legislature nor presume that the Legislature intended something other than that expressed by way of the plain language." Ibid. Here, the Act does not require the implementing or enforcing agencies to engage in rulemaking before the Act took effect. The plain language of the Act allows the entities to adopt any regulations as are necessary. It is a legislative grant of authority to the agencies to engage in rulemaking; it is not a directive. Further, the Appellate Division also found "there is no indication that any of the

administrative agencies and organizations identified in the Act determined that rule-making was necessary prior to August 1, 2019." Def. Ex. B. at 6. That the Board of Medical Examiners referred the matter for consideration of draft regulations does not alter that conclusion; what actions the agencies took or did not take in implementing the statute does not go to the statute's constitutionality, as written by the Legislature. The Act does not require rule-making prior to implementation, and Plaintiffs' ninth count is dismissed as a matter of law.

XI. Plaintiffs' Tenth Count for Violation of Article X of the U.S. Constitution Fails as a Matter of Law.

Article X forbids states from passing laws that "impair the Obligation of Contracts." "Legislation unconstitutionally impairs a contract when it (1) 'substantially impair[s] a contractual relationship,' (2) 'lack[s] a significant and legitimate public purpose,' and (3) is 'based upon unreasonable conditions and . . . unrelated to appropriate governmental objectives.'" Farmers Mut. Fire Ins. Co. of Salem, 215 N.J. at 546-47 (quoting State Farm Mut. Auto. Ins. Co. v. State, 124 N.J. 32, 64 (1991)).

Plaintiffs allege that the transfer requirements violate the existing contracts and fiduciary duties that physicians and pharmacists have with their patients. Defendant argues that Plaintiff Pujara has not established any contractual relationships with terminally ill patients and that Plaintiff Glassman no longer has a relationship with patients by the time he is transferring records. Plaintiffs contend that the Act impairs their contracts by placing a strain on the patient relationships, but Plaintiffs cannot successfully argue that the Act lacks

a significant and legitimate public purpose or that it is based on unreasonable and unrelated conditions.

The Act is aimed at the legitimate public purpose of helping terminally ill patients achieve a dignified and humane death. N.J.S.A. 26:16-2(a). The Legislature determined that "[t]he public welfare requires a defined and safeguarded process in order to effectuate the purposes of this act" and that "[t]his act is in the public interest and is necessary for the welfare of the State and its residents." N.J.S.A. 26:16-2(c), (d). Further, the voluntary Act does not impose unreasonable conditions unrelated to that objective. The Act is designed to "ensure that the process is entirely voluntary on the part of all participants, including patients and those health care providers that are providing care to dying patients." N.J.S.A. 26:16-2(c)(4). Therefore, Plaintiffs claim that the Act violates the Contracts Clause of the Constitution fails as a matter of law.

XII. Plaintiffs' Eleventh Count for Falsification of Vital Records Fails as a Matter of Law.

Plaintiffs take issue with the Department of Health guidance that states: "the NJDOH Office of Vital Statistics and Registry recommends that providers record the underlying terminal disease as the cause of death and market the manner of death as 'natural.'" Plaintiffs argue that this guidance is a criminal violation of the statute that forbids tampering with public records and information, N.J.S.A. 2C:28-7, and a violation of the statute that prohibits willful falsification of vital statistics, N.J.S.A. 26:8-1. In response, Defendant asserts that the DOH document is merely a recommendation that the agency is entitled to develop, and that the Act itself does not authorize the issuance of death records.

Thus, Plaintiffs' claim pertains solely to the DOH guidance and does not address the language of the statute. Plaintiffs' issue with the DOH guidance does not pertain to the constitutionality of the Act. Therefore, the Court concludes that this claim fails as a matter of law.

XIII. Plaintiffs' Request for a Preliminary Injunction is Denied.

Plaintiffs ask this Court to enjoin the operation of the Act. In order to secure such extraordinary relief, Plaintiffs must demonstrate that (1) the injunctive relief is necessary to prevent irreparable harm; (2) the legal right underlying the Plaintiffs' claim is settled; (3) the material facts are uncontroverted and demonstrate a reasonable probability of ultimate success on the merits; and (4) the relative hardship to the parties favors granting the relief. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). "Each of these factors must be clearly and convincingly demonstrated," Waste Mgmt. of N.J., Inc. v. Union County Utils., 399 N.J. Super. 508, 520 (App. Div. 2008) (citations omitted). "Although it is generally understood that all the Crowe factors must weigh in favor of injunctive relief, a court may take a less rigid view than it would after a final hearing when the interlocutory injunction is merely designed to preserve the status quo." Ibid. (citing Gen. Elec. Co. v. Gem Vacuum Stores, Inc., 36 N.J. Super. 234, 236-37 (App. Div. 1955)). Further, a court must "exercise sound judicial discretion . . . which—when limited to preserving the status quo during the suit's pendency—may permit the court to place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy." Ibid. (citations omitted).

A. Plaintiffs Will Not Suffer Irreparable Harm if an Injunction is Denied.

A plaintiff must first prove by clear and convincing evidence that she will be irreparably harmed in the absence of an injunction, and that the harm is imminent, concrete, and non-speculative. Subcarrier Commc'ns., Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). The likelihood that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm. Delaware River & Bay Auth. v. York Hunter Constr., 344 N.J. Super. 361, 365 (Ch. Div. 2001) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "The availability of adequate monetary damages belies a claim of irreparable injury." Id. at 364-65. "In other words, plaintiff must have no adequate remedy at law." Subcarrier Commc'ns. Inc., 299 N.J. Super. at 638.

Plaintiffs cannot establish an immediate and irreparable harm because participation in the Act is voluntary. All judges to have considered Plaintiffs' claims have concluded that Plaintiffs have failed to establish any constitutional harm; this Court concurs. Further, as Defendant observes, five months have elapsed since the filing of the initial complaint and Plaintiffs have not added any factual allegations of harm since this action has been pending. Therefore, Plaintiffs' application fails the first prong of the Crowe factors test.

B. Plaintiffs Have Not Established a Settled Legal Right.

Second, preliminary injunctive relief such as a temporary restraint should only be granted when the issues raised present a legally settled right. Crowe, 90 N.J. at 133 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 304-05 (E. & A. 1878)). Despite this general rule, an exception exists "where the subject matter of the litigation

would be destroyed or substantially impaired if a preliminary injunction did not issue." Gen. Elec. Co., 36 N.J. Super. at 236.

Here, the issues raised likely do not present a legally settled right. Although the Act now establishes legally settled rights for qualified terminally ill patients, Plaintiffs do not fall within that category. Therefore, Plaintiffs have not established that they have legally settled rights, nor would the subject matter of the litigation be destroyed if the injunction was not issued.

C. Plaintiffs Do Not Have a Reasonable Probability of Success on the Merits of their Claims.

The third element of the Crowe test requires denial of a preliminary injunction if all the material facts are controverted. Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. 299, 305-06 (E. & A. 1878)). To prevail on such an application, a plaintiff must demonstrate a reasonable probability of success on the merits of its claim. Ibid. (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E. & A. 1930)); see also Waste Mgmt., 399 N.J. Super. at 528-29 (finding that "plaintiff failed to demonstrate by clear and convincing evidence a reasonable probability of success because the present state of the law" highly favored defendant's position and material facts advocated by defendants were well-founded). Crowe cautions, however, that this "requirement is tempered by the principle that mere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the status quo." 90 N.J. at 134 (internal citations omitted).

For the reasons discussed above, Plaintiffs do not have a reasonable probability of success on the merits of any of their claims.

D. The Balancing of the Relative Hardships Weighs in Favor of the Public Interest.

Finally, the Crowe test for preliminary injunctive relief requires a balancing of the relative hardships to the parties in granting or denying relief. Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elec. Radio & Mach. Workers of Am., 130 N.J. Eq. 506, 515 (Ch. 1941), modified on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)). The party moving for a temporary restraint or preliminary injunction must demonstrate that "the public interest will not be harmed." See Waste Mgmt., 399 N.J. Super. at 520. In some cases, such as when the public interest is greatly affected, a court may withhold relief despite a substantial showing of irreparable injury to the applicant. Ibid.

If the preliminary injunction is granted, the public interest will be harmed because qualified patients will be unable to utilize their rights granted by the Legislature. Thus, the public interest is greatly affected by this decision. Absent an injunction, Plaintiffs may feel morally opposed to the Act and may have to transfer patients, but they will not suffer actual hardship. The Act is voluntary; Plaintiffs need not participate in the Act's provisions. Therefore, the balance of the relative hardships weighs in favor of the public interest and against imposition of the injunction.

Plaintiffs fail to establish any of the Crowe factors by clear and convincing evidence. Accordingly, the Court denies Plaintiffs' application for injunctive relief.

XIV. The *amicus curiae* does not identify any constitutional infirmity in the Act.

Margaret Dore, Esq., appearing as a self-represented litigant, sought leave to appear as an *amicus curiae*, arguing that the Act violates the single object requirement of the New

Jersey Constitution. Defendant opposed the application, arguing that Dore sought to raise an issue not raised by Plaintiffs.

Rule 1:13-9 governs the Court's consideration of requests for leave to appear as amicus. The rule provides:

> An application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. The court shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall define with specificity the permitted extent of participation by the amicus and shall, where appropriate, fix a briefing schedule.
>
> [Ibid.]

"Traditionally, the role of amicus curiae was to be advisory rather than adverse." In re State ex rel. Essex Cty. Prosecutor's Off., 427 N.J. Super. 1, 5 (Law Div. 2012) (citing Casey v. Male, 63 N.J. Super. 255, 258 (Cty. Ct. 1960)). However, the Third Circuit has held that amicus need not be impartial, and that even when parties are very well represented, amicus "may provide important assistance to the court." Neonatology Assocs., P.A. v. Comm'r, 293 F.3d 128, 132 (3d Cir. 2002). Further, "Rule 1:13-9 has been interpreted as establishing 'a liberal standard for permitting amicus appearances.'" In re State ex rel. Essex Cty. Prosecutor's Off., 427 N.J. Super. at 5 (quoting Pfizer, Inc. v. Dir., Div. of Tax'n, 23 N.J. Tax 421, 424 (Tax 2007)).

It is well-established in this State that an amicus is constrained by the issues advanced by the parties. "'[A]s a general rule, an amicus curiae must accept the case before the court

as presented by the parties and cannot raise issues not raised by the parties.'" State v. O'Driscoll, 215 N.J. 461, 479 (2013) (quoting State v. Lazo, 209 N.J. 9, 25 (2012)); see also State v. J.R., 227 N.J. 393, 421 (2017) ("This Court does not consider arguments that have not been asserted by a party, and are raised for the first time by an amicus curiae."), Fed. Pac. Elec. Co. v. N.J. Dep't of Env'tl Prot., 334 N.J. Super. 323, 345 (App. Div. 2000) ("An *amicus curiae* may not interject new issues, but must accept the issues as framed and presented by the parties.").

Dore asks the Court to declare the statute unconstitutional on grounds not asserted by Plaintiffs, notwithstanding the four amended complaints. On this basis alone, the Court could reject her application. However, because she fails to identify any constitutional infirmity in the Act, the Court will consider the argument here solely for the purposes of completeness.

New Jersey's Constitution constrains the Legislature from grouping unrelated topics in the same piece of legislation. Specifically, it provides: "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title." N.J. Const., art. IV, § VII. The purpose of the constitutional rule is to ensure relatedness in legislative acts. Cambria v. Soaries, 169 N.J. 1, 11 (2000). As Cambria explains:

> All that is required is that the act should not include legislation so incongruous that it could not, by any fair intendment, be considered germane to one general subject. The subject may be as comprehensive as the legislature chooses to make it, provided

> it constitutes, in the constitutional sense, a single subject, and not several.
>
> [Ibid. (quoting N.J. Ass'n on Corr., 80 N.J. at 215).]

Thus, to comport with the constitutional minimum, the statute's provisions must only meet a relatedness test. Id. at 12. The rule is intended to prevent against:

> the extreme, the "pernicious," the incongruous; the manifestly repugnant; the palpable contravention of the constitutional command; fraud or overreaching or misleading of the people; the inadvertent; the "discordant;" or "the intermixing in one and the same act [of] such things as have no proper relation to each other;" or matters which are "uncertain, misleading or deceptive."
>
> [Ibid. (quoting Lan, 80 N.J. at 212).]

The Court now applies this legal standard to amicus' arguments about the Act.

Ms. Dore argues that the Act is misleading because, although it is called the Medical Aid for the Terminally Ill in Dying Act, it allows for euthanasia and is not limited to dying people. Ms. Dore alleges that persons with chronic conditions, such as diabetes, may eventually qualify under the Act. Further, she argues that voluntariness is not assured because patients may have someone communicate on their behalves under N.J.S.A. 26:16-3 and because there is no oversight over self-administration.

The Court finds that the Act meets the relatedness test set forth by the single object rule. The Act and its individual provisions all relate to providing medical aid in dying to the terminally ill. Further, the Court is not persuaded that the Act specifically provides for assisted suicide or euthanasia when Section 15 specifically states: "Nothing in [the Act] shall be construed to: authorize a physician or any other person to end a patient's life by lethal injection, active euthanasia, or mercy killing, or any act that constitutes assisted suicide under

any law of this State . . . ." Therefore, this Court does not find that the Act is unconstitutional under the single object rule.

XV. Conclusion

Plaintiffs' constitutional and other challenges to the Act all fail as a matter of law. Amicus' challenge fares no better. Accordingly, the Court dismisses the complaint with prejudice. Teamsters Local 97, 434 N.J. Super. at 413.