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COURT DENIES TERMINALLY ILL PATIENTS ACCESS TO EXPERIMENTAL DRUGS

(Abigail Alliance v. von Eschenbach)

Today, the full U.S. Court of Appeals for the District of Columbia Circuit ruled 8-2 that terminally ill patients do not have a constitutional right to access life-saving drugs that are being tested by the Food and Drug Administration (FDA) in clinical trials, even though it already has been established that the experimental drugs are safe to use. The ruling by the court, written by Judge Thomas Griffith, reversed an earlier 2-1 decision in favor of the Washington Legal Foundation (WLF) and its client, the Abigail Alliance for Better Access to Developmental Drugs, that there is a fundamental right of access to such life-saving drugs.

"We're obviously disappointed by the court's ruling, but we believe that the strong dissent by Judge Judith Rogers, joined by Chief Judge Douglas Ginsburg, will carry the day when we take the case to the Supreme Court," said Paul Kamenar, WLF's Senior Executive Counsel. If the decision is not overturned, an FDA bureaucrat can continue to slam the door in the face of a dying cancer patient. "We think the dissenting opinion summed it up best: 'Denying a terminally ill patient her only chance to survive without even a strict showing of government necessity [for denying access to the drugs] presupposes a dangerous brand of paternalism,'" Kamenar added.

WLF has long been in the forefront of challenging FDA regulations and policies that restrict patients' right to life-saving drugs. WLF's client, the Abigail Alliance, was founded in 2001 by Frank Burroughs whose daughter, Abigail, died of cancer in 2001 because she was denied access to drugs that her oncologist believed could save or prolong her life.

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For further information, contact Paul Kamenar, WLF Senior Executive Counsel at (202) 588-0302. WLF's brief and other case documents are available on WLF's web site, www.wlf.org.