March 17, 2005

Honorable Ron Wyden
United State Senate
Washington, D.C. 20510

Dear Senator Wyden:

I am writing on behalf of the American Bar Association to express our concerns regarding S.539, the Incapacitated Persons Legal Protection Act of 2005. S.539 addresses an important issue, one to which the Association has given much thought and attention. We urge the Senate to proceed only after careful and appropriate examination of the complex issues of due process in end-of-life medical decisionmaking for incapacitated persons.

The law of guardianship has long addressed the issue of balancing protection for the rights of incapacitated persons with the need to make decisions on their behalf. The ABA has supported adoption of the Uniform Guardianship Act and its updates, has adopted policy recommendations to promote due process protections for decisionmaking for incapacitated persons, and has given special attention to the issue of appropriate due process protections at the state level. We are concerned about the Senate’s voting on S.539 before it has held hearings to examine state due process protections or carefully considered the desirability of a new federal habeas corpus right or other alternative approach. We urge the Senate to carefully examine these issues before it acts on this proposal.

Sincerely,

Robert D. Evans