JOINT RESOLUTION OPPOSING PHYSICIAN-ASSISTED SUICIDE

Model Legislation & Policy Guide

For the 2013 Legislative Year

Changing Law to Protect Human Life, State by State

INTRODUCTION

If the law does not say what you want it to say, simply argue that it does until others believe you.

This was the strategy employed by assisted suicide and euthanasia advocates in an effort to force their agenda on the State of Idaho in 2011. Compassion & Choices, formerly the Hemlock Society, argued that "aid in dying"—a euphemism for physician-assisted suicide[1]—was permitted under Idaho law. The people of Idaho widely disagreed, and enacted a law explicitly prohibiting the practice. Idaho's response was a major victory for life after nearly two decades of advances by suicide advocates:

> ***November 1994*** – Oregon became the first state to permit physician-assisted suicide.
> ***November 2008*** – Washington voters approve a ballot measure permitting physician-assisted suicide.
> ***March 2009*** – New Washington law authorizing assisted suicide takes effect.
> ***December 2009 –***Montana Supreme Court finds "nothing in Montana Supreme Court precedent or Montana statutes indicating that physician 'aid in dying' is against public policy," and concludes physicians (and perhaps non-physicians) may use a "consent" defense against a charge of homicide when aiding a suicide.[2]

Federal courts entered the debate over physician-assisted suicide in 1996 when two appellate courts struck down state laws in New York and Washington prohibiting assisted suicide. The U.S. Supreme Court, however, reversed those decisions in June 1997, holding that assisted suicide is not a fundamental right under the U.S. Constitution.[3] In doing so, the Court also affirmed the states' authority to legislate and regulate in this area.

To date, assisted suicide advocates have challenged ten states' prohibitions on assisted suicide: Alaska, California, Colorado, Connecticut, Florida, Georgia, Michigan, Montana, New York, and Washington. For the most part, these lawsuits have asserted federal or state constitutional rights to assisted suicide and have largely failed. For example, the Montana Supreme Court refused to address the constitutional question of assisted suicide. However, the court did construe public policy underlying Montana law as permitting physicians to use a consent defense when providing "aid in dying." The court further distinguished "aid in dying" (as the preferred

[1] Other euphemisms for physician-assisted suicide include "death with dignity" and "patient-directed dying."
[2] *Baxter v. State*, 224 P.3d 1211, 1222 (Mont. 2009).
[3] *See Washington v. Glucksberg*, 521 U.S. 702 (1997), *rev'g Compassion in Dying v. State of Washington*, 79 F.3d 790 (9th Cir. 1996) (finding that Washington's prohibition of assisted suicide does not violate the Due Process Clause of the Fourteenth Amendment); and *Vacco v. Quill*, 521 U.S. 793 (1997), *rev'g* 80 F.3d 716 (2d Cir. 1996) (holding that the New York ban on assisted suicide does not violate the Equal Protection clause of the Fourteenth Amendment).

term to "physician-assisted suicide") from "mercy killing" and euthanasia and effectively sanctioned a person's decision to commit suicide.[4] It further found "aid in dying" indistinguishable to the withholding or withdrawing of life-sustaining treatment,[5] contradicting the distinction long-recognized by the medical community and the courts.

Assisted suicide advocates will not be easily deterred by opposition to their agenda. In 2012, they introduced legislation to legalize assisted suicide in at least five states: Hawaii, Massachusetts, New York, Pennsylvania, and Vermont. Undoubtedly, they will continue their assault in 2013.

Importantly, most states have already passed laws banning assisted suicide and some have also passed resolutions or other legislation forming task forces or directing state agencies to consider ways to improve upon end-of-life care, to study pain management, to encourage the use of palliative care, and/or to improve hospices and other organizations providing care for the terminally ill and vulnerable. While these measures are commendable and encouraged, careful attention must be paid to their substance and source. Some seemingly reasonable measures can, in reality, simply be a "front" for promoting assisted suicide and euthanasia. For instance, palliative care can be construed to promote "futility care protocols" and "terminal sedation" without life-sustaining care—to include removing antibiotics, nutrition, hydration and other "medical treatments" deemed to be "futile." These measures can also be used as a tool to further ingrain—within the minds of the American people—the notion that some lives are not worth living.

To assist legislators and policymakers in the fight against assisted suicide and euthanasia, Americans United for Life (AUL) has developed a "Joint Resolution Opposing Physician-Assisted Suicide." This resolution reaffirms the state's position opposing assisted suicide and more specifically physician-assisted suicide. It is a proactive measure that informs decision makers and counters any momentum achieved by those asserting that suicide and death are America's answers to illness, disease, disability, or suffering.

For more information and drafting assistance, please contact AUL's Legislative Coordinator at (202) 741-4907 or Legislation@AUL.org.

DENISE M. BURKE, ESQ.
Vice President of Legal Affairs
Americans United for Life

[4] *Baxter v. State*, 224 P.3d 1211, 1219 (Mont. 2009).
[5] *Id.* at 1218-19.

JOINT RESOLUTION OPPOSING PHYSICIAN-ASSISTED SUICIDE

JOINT RESOLUTION No. _____
By Representatives/Senators _____

WHEREAS, [*Insert name of State*] has an "unqualified interest in the preservation of human life" and this "State's prohibition on assisted suicide, like all homicide laws, both reflects and advances its commitment to this;"[6]

WHEREAS, neither this State's constitution nor the U.S. Constitution contains a right to assisted suicide and, thus, no individual has the right to authorize another to kill him or her in violation of federal and state criminal laws;[7]

WHEREAS, suicide is not a typical reaction to an acute problem or life circumstance, and many individuals who contemplate suicide, including the terminally ill, suffer from treatable mental disorders, most commonly clinical depression, which frequently goes undiagnosed and untreated by physicians;[8]

WHEREAS, in Oregon, 46 percent of patients seeking assisted suicide changed their minds when their physicians intervened and appropriately addressed suicidal ideations by treating their pain, depression, and/or other medical problems;[9]

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[6] *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997).
[7] *See id.* at 735 (upholding Washington's ban on assisted suicide and finding there is no constitutional right to assisted suicide under the Due Process Clause of the Fourteenth Amendment); *Vacco v. Quill*, 521 U.S. 793, 808-09 (1997) (upholding New York's statute prohibiting assisted suicide as consistent with the U.S. Constitution in that it did not violate the Equal Protection Clause of the Fourteenth Amendment); *Sampson v. State*, 31 P.3d 88, 95 (Alaska 2000) (finding Alaska's manslaughter statute prohibiting assisted suicide constitutional in that it does not infringe upon their constitutional rights to privacy, liberty, and equal protection); *Donaldson v. Lungren*, 2 Cal. App. 4th 1614, 4 Cal. Rptr. 2d 59, 63-5 (Cal. Ct. App. 1992) (finding no constitutional right to assisted suicide under the California Constitution); and *Krischer v. McIver*, 697 So. 2d 97, 104 (Fla. 1997) (upholding the constitutionality of Florida's statute prohibiting assisted suicide).
[8] New York State Task Force on Life and the Law, WHEN DEATH IS SOUGHT: ASSISTED SUICIDE AND EUTHANASIA IN THE MEDICAL CONTEXT 77-82 (May 1994) *available at* http://www.health.state.ny.us/nysdoh/provider/death.htm (last visited Sept. 27, 2012).
[9] Linda Ganzini et al., *Physicians' Experiences with the Oregon Death with Dignity Act*, 342 NEW ENG. J. MED. 557, 557 (2000).

WHEREAS, palliative care continues to improve and is nearly always successful in relieving pain and allowing a person to die naturally, comfortably and in a dignified manner without a change in the law;[10]

WHEREAS, the experiences in Oregon and the Netherlands explicitly demonstrate that palliative care options deteriorate with the legalization of physician-assisted suicide;[11]

WHEREAS, [*Insert name of State*] rejects abuses of palliative care through "futility care" protocols and the use of "terminal sedation" without life-sustaining care as seen in the Liverpool Care Pathway;[12]

WHEREAS, a physician's recommendation for assisted suicide relies on the physician's judgment—to include prejudices and negative perceptions—that a patient's life is not worth living, ultimately contributing to the use of "futility care" protocols and euthanasia;[13]

WHEREAS, [*Insert name of State*] rejects the "sliding-scale approach" which claims certain "qualities of life" are not worthy of equal legal protections;[14]

WHEREAS, the legalization of assisted suicide sends a message that suicide is a socially-acceptable response to aging, terminal illness, disabilities, and depression, and subsequently imposes a "duty to die";

WHEREAS, the medical profession as a whole opposes physician-assisted suicide because it is contrary to the medical profession's role as healer and undermines the physician-patient relationship;[15]

WHEREAS, assisted suicide is significantly less expensive than other care options and Oregon's experience demonstrates that cost constraints can create financial incentives to limit care and offer assisted suicide;[16]

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[10] Herbert Hendin & Kathleen Foley, *Physician-Assisted Suicide in Oregon: A Medical Perspective*, 106 MICH. L. REV. 1613, 1634-35 (2008).

[11] *Id*. at 1615-20 (noting only 13% of patients received palliative care consultations after the Oregon law went into effect).

[12] *See id*. at 1634-35; Kate Devlin, *Sentenced to death on the NHS*, TELEGRAPH, September 2, 2009 *at* http://www.telegraph.co.uk/health/healthnews/6127514/Sentenced-to-death-on-the-NHS.html (last visited Sept. 28, 2012).

[13] *See Washington v. Glucksberg*, 521 U.S. at 732 (1997).

[14] *Id.* at 729.

[15] *Id*. at 731; *see also*, American College of Physicians, Ethics Manual, *available at* http://www.acponline.org/running_practice/ethics/manual/ethicman5th.htm#patients (last visited Sept. 28, 2012) ("The College does not support legalization of physician-assisted suicide. After much consideration, the College concluded that making physician-assisted suicide legal raised serious ethical, clinical, and social concerns and that the practice might undermine patient trust and distract from reform in end of life care."); *Royal College of Physicians cannot support legal change on assisted dying – survey results*, May 9, 2006, *available at* http://www.rcplondon.ac.uk/news-media/press-releases/rcp-cannot-support-legal-change-assisted-dying-survey-results (last visited Sept. 28, 2012).

[16] Susan Donaldson James, *Death Drugs Cause Uproar in Oregon, Terminally Ill Denied Drugs for Life, But Can Opt for Suicide,* ABC News, *Aug 6, 2008 available at* http://abcnews.go.com/Health/story?id=5517492&page=1 (last visited Sept. 28, 2012).

WHEREAS, as evidenced in Oregon, the private nature of end-of-life decisions makes it virtually impossible to police a physician's behavior to prevent abuses, making any number of safeguards insufficient;[17] and

WHEREAS, a prohibition on assisted suicide, specifically physician-assisted suicide, is the only way to protect vulnerable citizens from coerced suicide and euthanasia.[18]

NOW THEREFORE, BE IT RESOLVED BY THE [*LEGISLATURE*] OF THE STATE OF [*Insert name of State*]:

Section 1. That the [*Legislature*] strongly opposes and condemns physician-assisted suicide because it has an "unqualified interest in the preservation of human life" and "its assisted-suicide ban insists that all persons' lives, from beginning to end, regardless of physical or mental condition, are under the full protection of the law."[19]

Section 2. That the [*Legislature*] strongly opposes and condemns physician-assisted suicide because anything less than a prohibition leads to foreseeable abuses and eventually to euthanasia by devaluing human life, particularly the lives of the terminally ill, elderly, disabled, and depressed, whose lives are of no less value or quality than any other citizen of this State.

Section 3. That the [*Legislature*] strongly opposes and condemns physician-assisted suicide even for terminally ill, mentally competent adults because assisted suicide eviscerates efforts to prevent the self-destructive act of suicide and hinders progress in effective physician interventions including diagnosing and treating depression, managing pain, and providing hospice care.

Section 4. That the [*Legislature*] strongly opposes and condemns physician-assisted suicide because assisted suicide undermines the integrity and ethics of the medical profession, subverts a physician's role as healer, and compromises the physician-patient relationship. For these reasons and others, the medical community also summarily rejects it.

Section 5. That the Secretary of State of [*Insert name of State*] transmit a copy of this resolution to the Governor, the State Department of Health and Human Services, and the [*Insert name of State*] Medical Association.

[17] Hendin & Foley, *supra* note 10 at 1637-38.
[18] *Glucksberg*, 521 U.S. at 733-34.
[19] *Id*. at 728-29.

More information about assisted suicide laws can be found in *Defending Life 2012: Building a Culture of Life, Deconstructing the Abortion Industry*.

Defending Life 2012 is available online at AUL.org.

For further information regarding this or other AUL policy guides, please contact:

AMERICANS UNITED FOR LIFE
655 15th Street NW, Suite 410
Washington DC 20005
202.289.1478 | Fax 202.289.1473 | Legislation@AUL.org

www.AUL.org