Albany UPDATE
NEW YORKERS FOR CONSTITUTIONAL FREEDOMS

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In re: Legalization of Physician-Assisted Suicide (S.7579-Savino/A.10059-Paulin)

Memorandum of Opposition

Introduced on May 10, 2016, the above-referenced legislation—euphemistically known as the "Medical Aid in Dying Act"—combines elements of two previously-introduced assisted suicide bills (Bills S.3685-Savino/A.2129-A-Rosenthal and S.5814-A-Bonacic/A.5261-C-Paulin, respectively). This bill would reverse New York's long-standing ban on assisted suicide, and would allow physicians to prescribe lethal drugs to certain terminally ill adults that formally request such drugs. In considering this legislation, Members of the New York State Legislature must answer several fundamental questions. First, do we, as New Yorkers, believe that human life has inherent value and worth? If we do, is it possible to harmonize that belief with a law that allows people to take their own lives, and allows others to assist them in so doing? If we no longer believe that human life has inherent value and worth, what alternative belief system will we use as a foundation for law and public policy? Without satisfactory answers to these questions, no elected official can, in good conscience, support this bill.

Physician-assisted suicide represents a complete abdication of our moral responsibility to persons who are suffering from terminal illnesses. Rather than caring for such persons with the utmost sensitivity and compassion, the sponsors of this bill would have us simply expedite their demise. The State of New York must do better.

1. There is nothing compassionate about physician-assisted suicide.

Advocates of physician-assisted suicide frequently present their legislative agenda as a matter of "compassion" for persons suffering with terminal illnesses. This rhetoric is deeply misleading.

First, the proposed bill could encourage patients to choose physician-assisted suicide based on faulty diagnoses. The proposed legislation would allow an attending physician to prescribe lethal drugs to a patient if the patient's illness—in that physician's medical judgment and in the medical judgment

of a consulting physician—will result in death within six months. These provisions base a life-or-death decision—whether or not to prescribe lethal drugs to a patient—upon a medical prognosis; in so doing, the bill's sponsors presume a nearly omniscient level of predictive capability on the part of the medical community. If this bill were to become law, an incorrect prediction as to life expectancy could result in the assisted suicide of a person who could otherwise have lived for several more years. Furthermore, assisted suicide forecloses the possibility of a full recovery for a person with a terminal diagnosis. For instance, when New York resident J.J. Hanson—a young husband and father—was diagnosed with an aggressive form of brain cancer, physicians told him that he had four months to live. After undergoing surgery, radiation, chemotherapy, and a clinical trial for an experimental drug, Hanson is now cancer-free.[1] Under an assisted-suicide law, a person in Hansen's situation might choose to take his life and miss the opportunity to return to full health. This possibility is deeply troubling.

In addition, this bill presupposes that there is no way to relieve the pain suffered by some terminally ill persons, and that such persons must choose between dying in agony and taking their own lives. However, palliative care provides compassionate, effective, and ethical methods for easing the suffering of terminally ill patients and others. According to the Center to Advance Palliative Care, "[o]ver 1700 hospitals with more than 50 beds have a palliative care team today."[2] The availability of these resources is a welcome alternative to this bill's cynical approach to the very real suffering faced by terminally ill persons.

The rhetoric of "compassion" must not cloud our ability to perceive the truth. Even for a person suffering with a debilitating disease, there are always better options than suicide. Rather than offering such persons "aid in dying," a truly compassionate society should ensure that they receive aid in living.

2. The proposed bill would create an incoherent public policy in which the State of New York would discourage suicide in most circumstances, but facilitate it in others.

Current law and public policy in New York discourage suicide. At present, the New York State Office of Mental Health operates a Suicide Prevention Center; the Center "advances and supports state and local actions to reduce suicide attempts and suicides in New York State and to promote the recovery of persons affected by suicide."[3] In addition, the Office of Mental Health's website encourages suicidal persons to call the National Suicide Prevention Lifeline for help.[4]

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[1] *See* http://www.nj.com/opinion/index.ssf/2016/01/i_was_given_4_months_to_live_assisted_suicide_isnt.html, last accessed March 10, 2016.

[2] *See* http://www.capc.org/about/palliative-care/, last accessed February 7, 2015.

[3] *See* http://www.preventsuicideny.org/#!blank/csgz, last accessed March 10, 2016.

[4] *See* https://www.omh.ny.gov/omhweb/suicide_prevention/, last accessed March 10, 2016.

It is appropriate for the State of New York to support and enhance the physical and mental health of its residents through suicide prevention efforts. However, the proposed bill would subvert such efforts by creating a new class of persons—terminally-ill individuals whose physicians believe that they have less than six months to live—for whom suicide is encouraged, not discouraged. How could our state, in good conscience, discourage suicide attempts by some people while facilitating suicide attempts by others? All New Yorkers of goodwill must resist the underlying assumption behind such a policy: That the lives of terminally ill persons are not worth living.

3. The proposed bill would place unreasonable burdens upon physicians, and would do irreparable damage to the physician-patient relationship.

If physician-assisted suicide were legalized in New York, physician-patient relationships would never be the same.

Under an assisted-suicide regime, physicians would be invited to participate in the intentional taking of innocent human life by prescribing lethal drugs. By its very nature, physician-assisted suicide conflicts with a physician's role as healer. The State of New York should not permit doctors to become their patients' executioners, even if their patients wish to commit suicide.

Furthermore, the proposed bill makes the attending physician responsible for determining whether a patient possesses the mental capacity to make an informed decision regarding assisted suicide. *See* proposed Public Health Law § 2899-g(1)(a). Neither an attending physician nor a consulting physician must refer a patient that requests assisted suicide for a mental health evaluation unless that physician believes that the patient "lacks capacity to make an informed decision." Physicians treating terminal illnesses are not likely to be specialists in mental health matters, and decisions about mental health evaluations for patients seeking assisted suicide should not hinge upon those physicians' perspectives on their patients' mental health. By making a physician responsible for determining whether a terminal patient needs a mental health evaluation, the proposed bill could lead to the physician-assisted death of a patient whose decision to take his or her life was made due to undiagnosed and untreated mental illness. This possibility should be unacceptable to all New Yorkers.

4. Existing law strikes the right balance between patient autonomy and the state's interest in protecting human life.

Under N.Y. Penal Law § 125.15, intentionally assisting someone in committing suicide constitutes second-degree manslaughter. Under N.Y. Penal Law § 120.30, intentionally assisting someone in attempting suicide is a class E felony. On the other hand, New York law does allow consenting adults to request "do not resuscitate" orders (see N.Y. Public Health Law § 2960 *et seq*.). Existing New York law recognizes a bright line between allowing an individual to refuse medical treatment and not allowing an individual to act in a manner that affirmatively causes the death of another. That line

should not be crossed. Assisted suicide legislation would cross—or even erase—that line by empowering physicians to prescribe lethal drugs.

In *Vacco v. Quill*, the Supreme Court of the United States unanimously held that New York's ban on assisted suicide was both rational and constitutional. The Court's decision included the following reasoning:

> By permitting everyone to refuse unwanted medical treatment while prohibiting anyone from assisting a suicide, New York law follows a longstanding and rational distinction.
>
> New York's reasons for recognizing and acting on this distinction – including prohibiting intentional killing and preserving life; preventing suicide; maintaining physicians' role as their patients' healers; protecting vulnerable people from indifference, prejudice, and psychological and financial pressure to end their lives; and avoiding a possible slide towards euthanasia—are . . . valid and important public interests.

Vacco v. Quill, 521 U.S. 793, 808 (1997). The Court's reasoning was sound in 1997, and it remains sound today.

5. The proposed bill would motivate both insurers and patients to choose physician-assisted suicide as a cost-saving measure, and would thus pressure patients to choose death over life.

From a social justice perspective, physician-assisted suicide is deeply problematic. In August 2008, ABCNews.com reported the story of Barbara Wagner, a onetime cancer survivor in Oregon.[5] Ms. Wagner, a 64-year-old great-grandmother who resided in low-income housing, learned that her lung cancer had recurred. Her physician prescribed an expensive medication. However, the Oregon Health Plan—Ms. Wagner's state-sponsored insurer—denied coverage. In an incredibly callous letter, the insurer notified Ms. Wagner that assisted suicide—which is legal in Oregon—would be covered. Nothing in the proposed legislation would prevent a similar scenario from occurring in New York. The fact is this: Assisted suicide gives insurers—including Medicaid—a financial incentive to encourage patients away from treatment and toward assisted suicide. If physician-assisted suicide becomes law, New Yorkers can expect that terminally-ill persons—and especially low-income terminally-ill persons—will be steered toward assisted suicide as a cost-saving measure.

New Yorkers for Constitutional Freedoms strongly urges Members of the New York State Legislature to reject all efforts to legalize physician-assisted suicide.

[5] *See* http://abcnews.go.com/Health/story?id=5517492&page=1&singlePage=true, last accessed February 7, 2015.