



**In re: Legalization of Physician-Assisted Suicide
(S.6471-Savino/A.4321-Paulin)**

Memorandum of Opposition

Bill S.6471-Savino/A.4321-Paulin 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?

Every human life truly does have value and worth, and a terminal illness does not render a person's life worthless. Physician-assisted suicide represents a complete abdication of our moral responsibility to persons 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. When 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 a difficult course of treatment that included surgery, radiation, chemotherapy, and a clinical trial for an experimental drug, Hanson outlived his prognosis by more than three years and became a nationwide voice of opposition to assisted suicide prior to his death in 2017.¹ Under an assisted-suicide law, a patient in Hansen’s situation might choose to take his own life based upon an incorrect prognosis; in so doing, that patient would miss the opportunity to extend his life—or even recover altogether—by continuing to fight his illness. This possibility is deeply troubling.

Second, 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. The availability of these resources is a welcome alternative to this bill’s cynical approach to the very real suffering—and the very real disabilities—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 to help terminally ill persons end their lives, a truly compassionate society should offer them treatment, pain management, and support.

2. New York’s laws against assisted suicide have been upheld by multiple courts.

Both the New York Court of Appeals and the Supreme Court of the United States have ruled that New York’s existing laws against assisted suicide are constitutional.

On September 7, 2017, the New York Court of Appeals released its decision in *Myers v. Schneiderman*, 2017 NY Slip Op. 06412. In *Myers*, the plaintiffs sought to establish a “right” to physician-assisted suicide under the Constitution of the State of New York. In a 5-0 decision, the Court of Appeals ruled that the Constitution of the State of New York does not guarantee a fundamental right to assisted suicide. *Myers*, slip op. at 10. The Court of Appeals reasoned as follows:

The State may rationally seek to prevent the distribution of prescriptions for lethal dosages of drugs that could, upon fulfillment, be deliberately or accidentally misused. The State also has a significant interest in preserving life and preventing suicide, a serious public health problem... [The] State’s interests in prohibiting assisted suicide include: “prohibiting intentional killing and preserving life; preventing suicide; maintaining physicians’ roles as their patients’ healers; protecting vulnerable people

¹ See https://world.wng.org/2018/01/jj_hanson_anti_suicide_activist_dies_at_36, last accessed February 5, 2021.

from indifference, prejudice, and psychological and financial pressure to end their lives; and avoiding a possible slide towards euthanasia.”

Myers, slip op. at 12, citing *Vacco v. Quill*, 521 US 793, 808-809 (1997). Furthermore, the Supreme Court of the United States upheld New York’s assisted suicide ban in 1997; in *Vacco v. Quill*, 521 U.S. 793 (1997), a unanimous Court found that New York’s ban on assisted suicide was both rational and constitutional.

3. 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 (OMH) operates a Suicide Prevention Center. The Center’s website declares that “New York State is committed to preventing suicides.”² In addition, the Office of Mental Health’s website encourages suicidal persons to call the National Suicide Prevention Lifeline for help.³

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.

4. The proposed bill would place unreasonable burdens upon physicians and would irreparably damage 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 prescribe lethal drugs to their patients, even if their patients wish to commit suicide.

Furthermore, under the proposed bill, neither an attending physician nor a consulting physician is required to refer a patient that requests assisted suicide for a mental health evaluation unless that

² See <http://www.preventsuicideny.org>, last accessed February 5, 2021.

³ See https://www.omh.ny.gov/omhweb/suicide_prevention, last accessed February 5, 2021.

physician believes that the patient “may lack capacity” to make an informed decision. *See* proposed Public Health Law §§ 2899-f(1)(c) and 2899-i(1). 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 leaving the question of whether a terminally ill patient needs a mental health evaluation to the discretion of physicians, 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.

5. New York 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.*). 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.

6. The proposed bill would motivate both insurers and patients to choose physician-assisted suicide as a cost-saving measure, and could influence 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.⁴ 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.

While the proposed legislation would prohibit insurers from presenting information about physician-assisted suicide to patients who have not requested such information, it would not prevent insurers from declining to cover life-saving or life-extending treatments. Such an action by an insurer could leave terminally-ill patients with limited options other than physician-assisted suicide.

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

⁴ *See* <http://abcnews.go.com/Health/story?id=5517492>, last accessed February 5, 2021.