MEMORANDUM

TO: The Minnesota Senate Health, Human Services and Housing Committee.

FROM: Margaret Dore, Esq., MBA. Choice is an Illusion, a nonprofit corporation

RE: Vote "No" SF 1880; No Assisted Suicide/Euthanasia

HEARING: Wednesday, March 16, 2016, noon

MEMO DATE: March 14, 2016

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APPENDIX
I. INTRODUCTION

I am an attorney in Washington State where assisted suicide is legal.1 Our law is based on a similar law in Oregon. Both laws are similar to the proposed bill, SF 1880.2

The proposed bill seeks to legalize physician-assisted suicide and euthanasia as those terms are traditionally defined. The bill calls these practices, "aid in dying." The bill does not, however, require that a patient be dying. Indeed, "eligible" patients may have years or even decades to live.

The bill also legalizes undue influence as that term is traditionally defined. The bill is otherwise stacked against the patient and a recipe for elder abuse. I urge you to vote "No" on SF 1880. Don't be fooled.

II. FACTUAL AND LEGAL BACKGROUND

A. Definitions: Physician-Assisted Suicide; Assisted Suicide; and Euthanasia

The American Medical Association (AMA) defines physician-assisted suicide as occurring when "a physician facilitates a patient's death by providing the necessary means and/or information to enable the patient to perform the life-ending

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1 I am an elder law attorney licensed to practice law in Washington State since 1986. I am also a former Law Clerk to the Washington State Supreme Court and a former Chair of the Elder Law Committee of the American Bar Association Family Law Section. I am president of Choice is an Illusion, a nonprofit corporation opposed to assisted suicide and euthanasia. See www.margaretdore.com and www.choiceillusion.org.

2 SF 1880 is attached in the appendix, at pages A-1 through A-10.
The AMA gives this example:

[A] physician provides sleeping pills and information about the lethal dose, while aware that the patient may commit suicide.4

"Assisted suicide" is a general term in which the assisting person is not necessarily a physician. "Euthanasia," by contrast, is the direct administration of a lethal agent with the intent to cause another person's death.5

B. Withholding or Withdrawing Treatment is Not Assisted Suicide or Euthanasia

Withholding or withdrawing treatment ("pulling the plug") is not assisted suicide or euthanasia if the purpose is to withhold or remove burdensome treatment -- as opposed to an intent to kill the patient. More importantly, the patient does not necessarily die. Consider this quote from an article in Washington state regarding a man removed from a ventilator:

[I]nstead of dying as expected, [he] slowly began to get better.6

C. The AMA Rejects Assisted Suicide and Euthanasia

The AMA rejects assisted suicide and euthanasia, stating

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3 The AMA Code of Medical Ethics, Opinion 2.211, attached at A-23.
4 Id.
5 Opinion 2.21, Euthanasia, attached here to at A-24.
6 Nina Shapiro, "Terminal Uncertainty — Washington's new 'Death with Dignity' law allows doctors to help people commit suicide — once they've determined that the patient has only six months to live. But what if they're wrong?," The Seattle Weekly, January 14, 2009. (Article attached at A-25; quote attached at A-27).
they are:

[F]undamentally incompatible with the physician’s role as healer, would be difficult or impossible to control, and would pose serious societal risks.\(^7\)

D. Elder Abuse is a Pervasive Problem, Which Includes the Neglect, Financial Exploitation and Murder of Older Adults

Nationally, research estimates that “1 in 10 older adults” is a victim of abuse, neglect and/or financial exploitation.\(^8\) The majority of perpetrators are “family members and other trusted individuals.”\(^9\) Perpetrators often start out with small crimes, such as stealing jewelry and blank checks, before moving on to larger items or to coercing victims to sign over deeds to their homes, to change their wills or to liquidate their assets.\(^10\) Victims may even be murdered.\(^11\) Amy Mix, of the AARP Legal Counsel of the Elderly, explains why older people are especially vulnerable:

The elderly are at an at-risk group for a lot of reasons, including, but not limited to

\(^7\) AMA Code of Medical Ethics, Opns 2.211 and 2.21, supra at A-23 and A-24.


\(^9\) Id.


\(^11\) Id., p. 24.
diminished capacity, isolation from family and other caregivers, lack of sophistication when it comes to purchasing property, financing, or using computers . . . .

We had a senior victim who had given her life savings away to some scammer who told her that she’d won the lottery and would have to pay the taxes ahead of time . . . . The scammer found the victim using information in her husband’s obituary. 12

E. Victims Do Not Report

Elder abuse is prevalent in part because victims do not report. 13 “One study estimated that only 1 in 14 cases ever comes to the attention of the authorities.” 14 In another study, it was 1 out of 25 cases. 15 Reasons for the lack of reporting include victim embarrassment and a reluctance to get family members into trouble. 16

III. BILL OVERVIEW

The bill is a deceptively written act in which words do not have their normal meanings. The bill has an application process to obtain the lethal dose, which includes a written lethal dose


14 Id.

15 Id.

16 Minnesota Elder Justice Center, supra. (Attached at A-12).
request form. Once the lethal dose is issued by the pharmacy, there is no required oversight. The death certificate is required to list a terminal disease as the cause of death.

IV. BILL HIGHLIGHTS

A. Patients May Have Years, Even Decades, to Live

The bill applies to persons diagnosed with a "terminal illness." Such persons may have years, even decades, to live. This is due to the following reasons:

1. If Minnesota follows Oregon's interpretation of "terminal disease," assisted suicide and euthanasia will be legalized for people with chronic conditions such as insulin dependent diabetes.

The bill states:

"Terminal illness" means the final stage of an incurable and irreversible medical condition that an attending physician anticipates, within reasonable medical judgment, will produce a patient's death within six months. 18

Oregon's law has a similar definition of "terminal disease," as follows:

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical

17 The bill applies to a "qualified patient," which is defined in part as having a "terminal illness." SF 1880, § 1, Subd. 2(r), lines 3.5 to 3.6. (Attached at A-3).

18 SF 1880, § 1, Subd. 2(t), at lines 3.9 to 3.11. (Attached at A-3).
judgment, produce death within six months.\textsuperscript{19}

In Oregon, this similar definition is interpreted to include chronic conditions such as "chronic lower respiratory disease" and "diabetes mellitus" (diabetes).\textsuperscript{20} Oregon doctor William Toffler explains:

Persons with these conditions are considered terminal if they are dependent on their medications, such as insulin, to live.\textsuperscript{21}

If Minnesota enacts the proposed bill and follows Oregon's interpretation of terminal disease, assisted suicide and euthanasia will be legalized for people with chronic conditions such as insulin dependent diabetes.

2. Doctor predictions of life expectancy can be wrong

Patients may also have years to live because doctor predictions of life expectancy can be wrong. This is due to misdiagnosis and the fact that predicting life expectancy is not an exact science.\textsuperscript{22} Consider John Norton, who was diagnosed with

\textsuperscript{19} Or. Rev. Stat. 127.800 s.1.01(12), attached hereto at A-32.

\textsuperscript{20} See Oregon government report attached hereto at A-38 and A-39 (listing "chronic lower respiratory disease" and "diabetes mellitus" as "underlying illness[es]" for the purpose of assisted suicide). The entire report is attached hereto at A-33 to A-39.

\textsuperscript{21} Published Letter to the Editor, William Toffler MD, New Haven Register, February 24, 2014, \textsuperscript{12}. (My private copy is attached hereto at A-40. I verified the accuracy of the content with Dr. Toffler).

\textsuperscript{22} See Jessica Firger, "12 million Americans misdiagnosed each year," CBS NEWS, 4/17/14 (attached at A-41); and Nina Shapiro, supra at footnote 6.
ALS (Lou Gehrig's disease) at age 18.23 He was told that he would get progressively worse (be paralyzed) and die in three to five years.24 Instead, the disease progression stopped on its own.25 In a 2012 affidavit, at age 74, he states:

If assisted suicide or euthanasia had been available to me in the 1950's, I would have missed the bulk of my life and my life yet to come.26

3. Treatment can lead to recovery

Patients may also have years to live because treatment can lead to recovery. Consider Oregon resident, Jeanette Hall, who was diagnosed with cancer in 2000 and made a settled decision to use Oregon's law.27 Her doctor convinced her to be treated instead.28 In a 2012 affidavit, she states:

This last July, it was 12 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.29

B. Someone Else is Allowed to Administer the Lethal Dose to the Patient

Generally accepted medical practice allows a doctor, or a

24 Id., ¶ 1.
25 Id., ¶ 4.
26 Id., ¶ 5.
28 Id.
29 Aff of Jeanette Hall, ¶4, at A-53. She is alive today, 15 years later.
person acting under the direction of a doctor, to administer
prescription drugs to a patient. Common examples include
parents who administer prescription drugs to their children and
adult children who administer prescription drugs to their
parents.

The bill implies that only the patient is allowed to
administer the lethal dose. This interpretation is contrary to
generally accepted medical practice as set forth above. This
interpretation is also contrary to the bill’s definition of
“self-administer,” which paradoxically allows someone else to
administer the lethal dose to the patient. The bill states:

“Self-administer” means a qualified patient’s
act of ingest ing [the lethal dose].
(Emphasis added).

The bill does not define “ingesting.” Dictionary
definitions include:

[T]o take (food, drugs, etc.) into the body,
as by swallowing, inhaling, or absorbing.”

With this definition, someone else putting the lethal dose in the

30 Declaration of Dr. Kenneth Stevens, MD, 01/06/16, at A-56, ¶¶ 9-10.
31 Id.
32 See, for example, SF 1880, § 1, Subd. 2(c), stating that a patient “may”
self-administer the lethal dose to bring about the patient’s own death.
33 SF 1880, § 1, Subd. 2(s), attached hereto at A-3, line 3.8.
34 See SF 1880 in its entirety, attached at A-1 through A-10.
35 See definition of “ingest” attached hereto at A-13.
patient’s mouth qualifies as proper administration because the patient will be "swallowing" the lethal dose, i.e., "ingesting" it. Someone else placing a medication patch on the patient’s arm will qualify because the patient will be "absorbing" the lethal dose, i.e., "ingesting" it. Gas administration will similarly qualify because the patient will be "inhaling" the lethal dose, i.e., "ingesting" it.

With self-administer defined as mere ingesting, someone else is allowed to administer the lethal dose to the patient. Patients are not necessarily in control of their fate.

C. Allowing Someone Else to Administer the Lethal Dose is Euthanasia as that Term is Traditionally Defined

The bill says that euthanasia is not authorized, as follows:

Nothing in this section authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, assisting a suicide, or any other active euthanasia.36

Allowing someone else to administer the lethal dose to a patient, however, is euthanasia under generally accepted medical terminology. The AMA Code of Ethics, Opinion 2.21, states:

Euthanasia is the administration of a lethal agent by another person to a patient . . .
(Emphasis added.)37

36 SF 1880, § 1, Subd. 17(a), attached hereto at A-10, lines 10.7 to 10.9.
37 See AMA Opinion 2.21 attached hereto at A-24.
The bill authorizes euthanasia as that term is traditionally defined.

D. **There is No Oversight Over Administration of the Lethal Dose**

If for the purpose of argument, the bill does not allow euthanasia, patients are still at risk to the actions of other people. This is because the bill does not require a doctor or even a witness to be present when the lethal dose is administered.\(^{38}\) There is a complete lack of oversight at the death.\(^{39}\)

Without oversight, the opportunity is created for someone else to administer the lethal dose to the patient; the drugs are water and alcohol soluble, such that they can be injected into a sleeping or restrained person.\(^{40}\) Even if the patient struggled, who would know? Alex Schadenberg, chair for the Euthanasia Prevention Coalition, International, elaborates:

> With assisted suicide laws in Washington and Oregon [and with the Minnesota bill], perpetrators can . . . take a "legal" route, by getting an elder to sign a lethal dose request. *Once the prescription is filled, there is no supervision over administration.* . . . [If a patient struggled, "who would

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\(^{38}\) See SF 1880 in its entirety, attached hereto at A-1 to A-10.

\(^{39}\) Id.

know?” (Emphasis added.)

E. The Death Certificate Is Required to List a Terminal Illness as the Cause of Death

The bill requires that a death via the lethal dose be reported on the death certificate as a “terminal illness.” The bill states:

The attending physician may sign the qualified patient's death certificate that shall list the underlying terminal illness as the cause of death. (Emphasis added.)

The significance is a legal inability to prosecute criminal behavior, for example, in the case of an outright murder for the money. The cause of death, as a matter of law, is a terminal illness.

F. If Minnesota Follows Washington State, the Death Certificate Will Not Even Hint That the Actual Cause of Death was Assisted Suicide or Euthanasia

As noted above, the bill requires the death certificate to list a terminal illness as the cause of death. The bill also states:

Nothing in this section authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, assisting a suicide, or any other


42 SF 1880, § 1, Subd. 10(b), attached hereto at A-7, lines 7.22 to 7.23.
active euthanasia. In Washington State, similar language is interpreted by the Washington State Department of Health to require the death certificate to list a natural death — without even a hint that the actual cause of death was assisted suicide or euthanasia. The Department's "Death Certificate Instructions for Medical Examiners, Coroners and Prosecuting Attorneys," states:

Washington's [law] states that "...the patient's death certificate ... shall list the underlying terminal disease as the cause of death." The [law] also states that, "Actions taken in accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide under the law."

If you know the decedent used [Washington's law], you must comply with the strict requirements of the law when completing the death record:

1. The underlying terminal disease must be listed as the cause of death.

2. The manner of death must be marked as "Natural."

3. The cause of death section may not contain any language that indicates that [Washington's law] was used, such as:
   a. Suicide
   b. Assisted suicide
   c. Physician-assisted suicide
   d. Death with Dignity

43 SF 1880, § 1, Subd. 17(a), attached hereto at A-10, lines 10.7 to 10.9.
e. I-1000 [Washington’s law was passed by I-1000]
f. Mercy killing
g. Euthanasia
h. Secobarbital or Seconal
i. Pentobarbital or Nembutal (Emphasis added.)

If Minnesota enacts the proposed bill and follows Washington’s example, death certificates will not even hint that the actual cause of death was assisted suicide or euthanasia. The significance is a lack of transparency.

G. The Bill Legalizes Undue Influence as That Term Is Traditionally Defined and Sidesteps Minnesota’s Slayer’s Statute

Undue influence is a traditional concept used in probate law to invalidate a will. Undue influence means:

[I]nfluence by which a person is induced to act otherwise than by [his or her] own free will or without adequate attention to the consequences.

Whether undue influence exists is generally determined by a “we know it when we see it” or “stink” test based on a number of non-exclusive factors. In Minnesota, these factors include “active participation by the alleged influencer in preparing the will.” Other states have similar criteria. Consider, for example, Burns v. Kabboul, 595 A.2d 1153, 1163 (Pa. Super. Ct.

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44 A copy of the Washington State Department of Health death certificate instruction is attached hereto at A-58.
45 In Re Estate of Torgerson, 711 N.W.2nd 545 (2006).
46 Undue influence definition, attached at A-15.
47 Torgerson, supra at 551.
1991), which states:

It will weigh heavily against the proponent [of the will] on the issue of undue influence when the proponent was . . . present at [its] dictation.

There is also Minnesota’s slayer’s statute, which prohibits an heir or will beneficiary from inheriting from a person that he or she intentionally killed.\(^48\) Remember also that “eligible” patients may have years, even decades, to live.

1. **The patient’s heir is allowed to actively participate in obtaining the patient’s death**

The bill allows the patient’s heir to actively participate in the lethal dose request process to obtain the patient’s death (and thereby inherit). Indeed, an heir is specifically allowed to be one of two witnesses on the patient’s lethal dose request form.\(^49\)

2. **The bill allows the patient to have compromised health, a factor traditionally used to support a finding of undue influence**

Under the bill, a “terminal illness” creates “eligibility” for the lethal dose. In the context of a will, by contrast, a terminal illness is an indicator of compromised health, which

\(^{48}\) M.S.A. § 524.2-803, “Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations; emergency order. (Attached hereto at A-14)

\(^{49}\) See SF 1880, § 1, Subd. 4(b) (allowing one of two witnesses on the lethal dose request form to be an heir “entitled to any portion of the estate of the patient upon the patient’s death, under any will or by operation of law”). (Attached at A-3 & 4, lines 3.33 to 4.1).
supports a finding of undue influence.50 Once again, the bill allows a factor normally used to prove undue influence as that term is traditionally defined.

H. The Felony for Undue Influence is Unenforceable

The bill creates a felony for “undue influence,” a term which is not defined in the bill.51 How do you prove the crime of undue influence when it is not defined and the bill allows conduct normally used to prove it? You can’t. The proposed felony is unenforceable as a matter of law.


The bill does not allow an individual to opt out of its provisions. Consider, for example, an older woman with a house and a bank account, concerned that her unemployed son will push her to assisted-suicide or euthanasia. A possible deterrent is a will provision stating that he will be disinherited if she dies under the proposed bill. Under the proposed bill, any such provision is not valid. The bill states:

Any provision in a contract, will, insurance policy, annuity, or other agreement, whether written or oral, that is entered into on or after [date] that would affect whether a person may make or rescind a request for [assisted suicide or euthanasia] is not

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51 See SF 1880, § 1, Subd. 16(b), attached at A-10, lines 10.3 to 10.6.
valid. (Emphasis added).\textsuperscript{52}

So much for personal choice and control.

V. OTHER CONSIDERATIONS

A. Compassion & Choices' Mission is to Promote Suicide, Assisted Suicide and Euthanasia

The bill's passage is being spearheaded by the suicide advocacy group, Compassion & Choices.

Compassion & Choices was formed in 2004 as the result of a merger/takeover of two other organizations.\textsuperscript{53} One of these organizations was the former Hemlock Society, originally formed by Derek Humphry.\textsuperscript{54}

In 2011, Humphry was the keynote speaker at Compassion & Choices' annual meeting here in Washington State.\textsuperscript{55} He was also in the news as a promoter of mail-order suicide kits.\textsuperscript{56} This was after a depressed 29 year old man used one of the kits to kill

\textsuperscript{52} Id., Subd. 14(a).

\textsuperscript{53} Ian Dowbiggin, A Concise History of Euthanasia 146 (2007) ("In 2003, [the] Hemlock [Society] changed its name to End-of-Life Choices, which merged with Compassion in Dying in 2004, to form Compassion & Choices."). Accord. Compassion & Choices Newsletter attached at A-60 ("Years later, the Hemlock Society would become End of Life Choices and then merge with Compassion in Dying to become Compassion & Choices").

\textsuperscript{54} Id.

\textsuperscript{55} Compassion & Choices Newsletter, regarding Humphry's October 22, 2011 speaking date. (Attached hereto at A-60.)

\textsuperscript{56} See Jack Moran, "Police kick in door in confusion over suicide kit," The Register-Guard, September 21, 2011 (""A spotlight was cast on the mail-order suicide kit business after a 29-year-old Eugene man committed suicide in December using a helium hood kit. The Register-Guard traced the $60 kit to [the company, which] has no website and does no advertising; clients find [the] address through the writings of Humphry." (Emphasis added)
himself.\textsuperscript{57} Compassion & Choices’ newsletter, promoting Humphry’s presentation, references him as “the father of the modern movement for choice.”\textsuperscript{58} Compassion & Choices’ mission is to promote suicide, assisted suicide and euthanasia.

B. Any Study Claiming that Oregon’s Law is Safe, is Invalid

In 2011, the lack of oversight over administration of the lethal dose in Oregon prompted Montana State Senator Jeff Essmann to observe that any studies claiming that Oregon’s law is safe are invalid. He stated:

[All] the protections end after the prescription is written. [The proponents] admitted that the provisions in the Oregon law would permit one person to be alone in that room with the patient. And in that situation, there is no guarantee that that medication is [taken on a voluntary basis].

So frankly, any of the studies that come out of the state of Oregon’s experience are invalid because no one who administers that drug . . . to that patient is going to be turning themselves in for the commission of a homicide.\textsuperscript{59}

C. The Oregon Health Plan Steers Patients to Suicide

It is well documented that Oregon’s Health Plan (Medicaid)

\textsuperscript{57} Id.

\textsuperscript{58} Compassion & Choices Newsletter, at A-60.

\textsuperscript{59} Hearing Transcript for the Montana Senate Judiciary Committee on SB 167, February 10, 2011, at \url{http://www.margaretmore.com/pdf/senator_essmann_s167_001.pdf}.
steers patients to suicide via coverage incentives. Under the proposed Minnesota bill, private insurance companies and providers will have this same ability. Being steered to suicide is not "choice." Once again, a patient under the bill will not necessarily be in control of his or her fate.

D. In Oregon, Other Suicides Have Increased with Legalization of Physician-Assisted Suicide; the Financial Cost Is "Enormous"

Government reports from Oregon show a positive statistical correlation between the legalization of physician-assisted suicide and an increase in other (conventional) suicides. This statistical correlation is consistent with a suicide contagion in which legalizing physician-assisted suicide encouraged other suicides. Please consider the following:

Oregon's assisted suicide act went into effect "in late 1997." By 2000, Oregon's conventional suicide rate was "increasing significantly." By 2007, Oregon's conventional suicide rate was 35% above the national average.

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60 See Susan Donaldson James, "Death Drugs Cause Uproar in Oregon," ABC News, August 6, 2008 (attached at A-61); KATU TV Web Staff, "Letter noting assisted suicide raises questions," July 30, 2008 (attached at A-6); and Affidavit of Kenneth Stevens, MD (attached at A-46, ¶8 through A-51).


62 See Oregon Health Authority News Release, 09/09/10. ("After decreasing in the 1990s, suicide rates have been increasing significantly since 2000"). (Attached at A-72)

63 Id.
By 2010, Oregon's conventional suicide rate was 41% above the national average.64

There is a significant financial cost associated with these other suicides. One reason is that people who attempt suicide (and fail) can injure themselves or become disabled by the attempt so that costs are incurred to support them. A government report from Oregon states:

"[T]he estimate of total lifetime cost of suicide in Oregon was over 680 million dollars.65"

If Minnesota, with its larger population, legalizes assisted suicide and has the same experience as Oregon, the financial cost could be larger.66

E. Legal Physician-Assisted Suicide Can Be Traumatic for Family Members

In 2012, a research study was released addressing trauma suffered by persons who witnessed a legal assisted suicide in Switzerland.67 The study found that one out of five family members or friends present at an assisted suicide was

65 See report at A-78.
66 Minnesota's estimated population for 2015 is 5,489,594; Oregon's estimated population is 4,028,977. United States Census Bureau at http://www.census.gov/quickfacts/table/PST045215/00.
traumatized. These people, experienced full or sub-threshold PTSD (Post Traumatic Stress Disorder) related to the loss of a close person through assisted suicide. 68

F. My Clients Suffered Trauma Due to Legal Assisted Suicide in Washington State and Oregon

In Washington State and Oregon, I have had two cases where my clients suffered trauma due to legal assisted suicide. In the first case, one side of the family wanted the father to take the lethal dose, while the other side did not. The father spent the last months of his life caught in the middle and torn over whether or not he should kill himself. My client, his adult daughter, was severely traumatized. The father did not take the lethal dose and died a natural death.

In the other case, it is not clear that administration of the lethal dose was voluntary. A man who was present told my client that my client's father had refused to take the lethal dose when it was delivered, stating, "You're not killing me. I'm going to bed," but then he (the father) took it the next night when he was intoxicated on alcohol. My client, although he was not present, was traumatized over the incident, and also by the sudden loss of his father.

68 Id.

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VI. CONCLUSION

The proposed bill creates new paths of elder abuse, including murder, which will be legally sanctioned and hidden from view. If enacted, healthcare care systems will be empowered to steer patients to suicide via coverage incentives and patients and their families will be traumatized. Even if you are for the concept of assisted suicide and euthanasia, not this bill. I urge you to vote "No" on SF 1880.

Respectfully Submitted,

[Signature]

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