I. INTRODUCTION

I am an attorney in Washington State where assisted suicide is legal. Our law is based on a similar law in Oregon. Both laws are similar to the initiated measure.

The measure seeks to legalize assisted suicide and euthanasia as those terms are traditionally defined. If enacted, it will apply to people with decades to live; it will encourage elder abuse and financial exploitation, which are already problems in South Dakota. It will allow legal murder.

Don't make Washington and Oregon's mistake. I urge you to reject the initiated measure.

II. DEFINITIONS

Assisted suicide occurs when a person provides the means or information for another person to commit suicide, for example, by providing a gun or lethal drug. If the assisting person is a physician, a more precise term is "physician-assisted suicide."[1]

"Euthanasia" is the direct administration of a lethal agent to cause another person's death.[2] Euthanasia is also known as "mercy killing."[3]

III. ASSISTING PERSONS CAN HAVE AN AGENDA

Persons assisting a suicide can have an agenda. Consider

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[1] See e.g., The American Medical Association Code of Medical Ethics, Opinion 5.7 (defining physician-assisted suicide). Attached hereto at A-5.

[2] Id., Opinion 5.8, "Euthanasia," (lower half of the page).

[3] "Mercy killing" - *The Free Legal Dictionary*, attached hereto at A-6.

Tammy Sawyer, trustee for Thomas Middleton, in Oregon. Two days after his death by assisted suicide, she sold his home and deposited the proceeds into bank accounts for her own benefit.[4]

In other states, reported motives for assisting suicide include: the "thrill" of getting other people to kill themselves; and a desire for sympathy and attention.[5]

IV. PUSHBACK AGAINST ASSISTED SUICIDE

A. This Year, South Dakota Passed a Resolution Opposing Assisted Suicide

This year, the South Dakota Legislature passed Concurrent Resolution 11, opposing physician-assisted suicide.[6] The vote to pass was nearly unanimous.[7]

B. This Year, Alabama Passed an Act Banning Assisted Suicide

This year, Alabama passed the "Assisted Suicide Ban Act," which renders any person who deliberately assists a suicide, guilty of a felony.[8] The Act went into effect on August 1, 2017.

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[4] KTVZ.com, "Sawyer Arraigned on State Fraud Charges," 07/14/11, attached hereto at A-7.

[5] See: Associated Press for Minnesota, "Former nurse helped instruct man on how to commit suicide, court rules," *The Guardian*, 12/28/15 ("he told police he did it 'for the thrill of the chase'") attached hereto at A-9 & A-10, the quote is at A-10; and "Woman in texting suicide wanted sympathy, attention, prosecutor says," *CBS News*, June 6, 2017, attached at A-11.

[6] South Dakota Legislature, Bill History, Senate Concurrent Resolution 11, "Opposing physician-assisted suicide," attached hereto at A-12.

[7] Id.

[8] Margaret Dore, Alabama: Assisted Suicide Ban Act to Go Into Effect," http://www.choiceillusion.org/2017/07/alabama-assisted-suicide-ban-act-to-go.html

C. Last Year, the New Mexico Supreme Court Overturned Assisted Suicide in New Mexico

Last year, the New Mexico Supreme Court overturned a lower court decision recognizing a right to physician aid in dying, meaning physician assisted suicide.[9] Physician-assisted suicide is no longer legal in New Mexico.

V. FEW STATES ALLOW ASSISTED SUICIDE

Oregon and Washington State legalized assisted suicide via ballot measures in 1997 and 2008, respectively. Since then, just three states and the District of Columbia have passed similar laws.[10] In the fine print, these laws also allow euthanasia.

VI. HOW THE MEASURE WORKS

The measure has an application process to obtain the lethal dose. Once the lethal dose is issued by the pharmacy, there is no oversight. No witness, not even a doctor, is required to present at the death.[11]

VII. THE MEASURE APPLIES TO PEOPLE WITH DECADES TO LIVE

The measure applies to people with a "terminal disease," meaning those predicted to have less than six months to live. Such persons may, in fact, have decades to live. This is true for three reasons:

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[9] *Morris v. Brandenburg*, 376 P.3d 836 (2016). (Excerpt attached at A-13)

[10] Vermont, California and Colorado.

[11] See the measure in its entirety, attached hereto at A-101 to A-112.

A. If South Dakota Follows Oregon's Interpretation of "Terminal Disease," the Measure Will Apply to Young Adults With Insulin Dependent Diabetes

The measure states:

> "Terminal disease," [means] an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.[12]

Oregon's law has a nearly identical definition:

> "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

Or. Rev. Stat. 127.800 s.1.01(12).[13]

In Oregon, this nearly identical definition is interpreted to include chronic conditions such as "diabetes mellitus," better known as diabetes.[14] This is because the six months to live is determined without treatment. Oregon doctor, William Toffler, explains:

> [P]eople with chronic conditions are "terminal" [for the purpose of Oregon's law] if without their medications, they have less than six months to live. This is significant when you consider that a typical insulin-dependent 20 year-old will live less than a month without insulin.[15]

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[12] The initiated measure, § 1(12), attached hereto at A-102.

[13] Copy attached hereto at A-16.

[14] "Diabetes mellitus" is listed as a qualifying terminal disease in Oregon government reports. See Declaration of William Toffler, MD, attached hereto at A-14 to A-15, ¶¶ 2-4, and attached report excerpts at A-17 & A-18.

[15] Toffler Declaration, A-15, ¶ 5.

Dr. Toffler adds:

> Such persons, with insulin, are likely to have decades to live. In fact, most diabetics have a normal life span given appropriate control of their blood sugar.[16]

If the proposed measure is enacted and South Dakota follows Oregon's interpretation of "terminal disease," assisted suicide and euthanasia will be legalized for people with chronic conditions such as insulin dependent diabetes. Such persons can have decades to live.

B. Predictions of Life Expectancy Can Be Wrong

Eligible persons may also have decades to live because predictions of life expectancy can be wrong. This is true due to actual mistakes (the test results got switched) and because predicting life expectancy is not an exact science.[17]

Consider John Norton, diagnosed with ALS at age 18.[18] He was told that he would get progressively worse (be paralyzed) and die in three to five years.[19] Instead, the disease progression stopped on its own.[20] In a 2012 affidavit, at age 74, he states:

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[16] Id., ¶ 6.

[17] Cf. Jessica Firger, "12 million Americans misdiagnosed each year," CBS NEWS, 4/17/14 (attached hereto at A-19); and 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*, 01/14/09. (Excerpts attached hereto at A-20 to A-22).

[18] Affidavit of John Norton, attached hereto at A-23 to A-25.

[19] Id., ¶ 1.

[20] Id., ¶ 4, attached hereto at A-24.

> 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.[21]

C. Treatment Can Lead to Recovery

Consider also Jeanette Hall, who was diagnosed with cancer in 2000 and made a settled decision to use Oregon's law.[22] Her doctor convinced her to be treated instead, which eliminated the cancer.[23] In a recent declaration, she states:

> It has now been 17 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.[24]

VIII. THE MEASURE APPLIES TO OLDER PEOPLE

According to government statistics from Oregon and Washington State, most people who die under their laws are elders, aged 65 or older.[25] This demographic is already an especially at risk group for abuse and financial exploitation. This is true both nationally and in South Dakota.

A. Elder Abuse and Financial Exploitation Are Already a Problem in South Dakota

In 2015, the South Dakota Legislature created the South

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[21] Id., ¶ 5.

[22] Affidavit of Kenneth Stevens, MD, attached at A-26 to A-34; Jeanette Hall discussed at A-26 to A-27; Hall declaration attached at A-33.

[23] Id.

[24] Declaration of Jeanette Hall, ¶4, at A-33.

[25] See: excerpt from Oregon's most recent annual report, at A-34; and excerpt from Washington State's most recent annual report, at A-35.

Dakota Elder Abuse Task Force.[26] The Task Force subsequently issued a final report, citing the following national statistics:

> [A]pproximately one in ten elders living in their homes experience abuse, neglect, or exploitation each year. . . .
>
> [A]pproximately 90% of abusers were known perpetrators, and 66% were adult children or spouses.[27]

The Task Force also cited input from concerned citizens whose family members had been impacted by elder abuse and financial exploitation. The report states:

> Concerned citizens often related that existing legal processes – including powers of attorney, court-appointed guardians/conservators, and joint accounts - had been manipulated to exploit elders. <u>Financial exploitation was the predominant form of elder abuse cited by these sources</u>. (Emphasis added).[28]

B. Elder Abuse and Exploitation Are Sometimes Fatal

In some cases, elder abuse and financial exploitation are fatal. More notorious cases include California's "black widow" murders, in which two elderly women took out life insurance policies on homeless men.[29] Their first victim was 73 year old

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[26] Excerpts from the Task Force's report, dated December 2015, are attached hereto at A-36 to A-42. The entire report can be viewed here: https://dhs.sd.gov/LTSS/docs/Attachment%20J%20South%20Dakota%20Elder%20Abuse%20Task%20Force%20Report(Final).pdf

[27] Task Force Report excerpt, attached hereto at A-39.

[28] Id., attached hereto at A-41.

[29] See *People v. Rutterschmidt*, 55 Cal.4th 650 (2012) and https://en.wikipedia.org/wiki/Black_Widow_Murders

Paul Vados, whose death was staged to look like a hit and run accident.[30] The women collected $589,124.93.[31]

Consider also, *People v. Stuart* in which an adult child killed her mother with a pillow, allowing the child to inherit. The Court observed:

> Financial considerations [are] an all too common motivation for killing someone.[32]

C. Elder Abuse Is Rarely Reported

The vast majority of elder abuse cases are not reported to the authorities.[33] Reasons include:

> Many [victims] are simply too embarrassed or frightened to ask for help. They may be reluctant to press charges against the abuser, especially if the abuser is a family member.[34]

IX. THE MEASURE CREATES THE PERFECT CRIME

A. "Even If a Patient Struggled, Who Would Know?"

The measure has no oversight over administration of the lethal dose.[35] In addition, the drugs used are water and alcohol

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30 *Rutterschmidt*, at 652-3.

31 Id. at 652.

32 67 Cal.Rptr.3d 129, 143 (2007).

33 See South Dakota Elder Abuse Task Force Final Report and Recommendations, December 2015, Summary of Findings, p. 1, attached at A-39 (describing studies).

34 Adult Protective Service Materials, at A-43

35 See the measure in its entirety, attached hereto at A-101 to A-112.

soluble, such that they can be injected into a sleeping or restrained person without consent.[36] Alex Schadenberg, Executive Director for the Euthanasia Prevention Coalition, puts it this way:

> With assisted suicide laws in Washington and Oregon [and with the initiated measure], 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. Even if a patient struggled, "who would know?" (Emphasis added).[37]

B. The Death Certificate Will List a Terminal Disease as the Cause of Death, Which Will Prevent Prosecution for Murder

The initiated measure states:

> The attending physician may sign the patient's death certificate which shall list the underlying terminal disease as the cause of death. (Emphasis added).[38]

The significance of requiring a terminal disease to be listed as the cause of death is that it creates a legal inability to prosecute. The official legal cause of death is a terminal disease (not murder) as a matter of law.

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[36] The drugs used include Secobarbital, Pentobarbital and Phenobarbital, which are water and/or alcohol soluble. See excerpt from Oregon's and Washington's most recent annual reports, attached hereto at A-44 & A-45 (listing these drugs). See also http://www.drugs.com/pr/seconal-sodium.html, http://www.drugs.com/pro/nembutal.html and https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2977013

[37] Alex Schadenberg, Letter to the Editor, "Elder abuse a growing problem," *The Advocate*, Official Publication of the Idaho State Bar, October 2010, page 14, available at http://www.margaretdore.com/info/October_Letters.pdf

[38] The initiated measure, § 4, last sentence, attached hereto at A-105.

X. THE MEASURE'S TRANSPARENCY IS NOT ASSURED

A. If South Dakota Follows Washington State, There Will Be an Official Legal Cover up

The measure states:

> "... the patient's death certificate ... shall list the underlying terminal disease as the cause of death." [and] "Any action taken in accordance with this Act does not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law." (Emphasis added).[39]

In Washington State, nearly identical language is interpreted 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. Washington State's death certificate instructions for medical examiners, coroners and prosecuting attorneys, state:

> "... the patient's death certificate ... shall list the underlying terminal disease as the cause of death." [and] "Actions taken in accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide under the law." (Emphasis added).
>
> If you know the decedent used [Washington's] Death with Dignity Act, 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.

[39] Id. and § 18, first ¶, attached hereto at A-109.

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

3. The cause of death section may not contain any language that indicates that [the law] was used, such as:

   a. Suicide
   b. Assisted suicide
   c. Physician-assisted suicide
   d. Death with Dignity
   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.)[40]

If South Dakota enacts the proposed measure and follows Washington State, there will be an official legal cover up.

B. If South Dakota Follows Oregon's Interpretation of "Not a Public Record," Information About Deaths Under the Initiated Measure Will Be Insulated from Review, Even by Law Enforcement

The measure charges the Department of Health with issuing an annual report based on information collected pursuant to the measure.[41] The measure also states:

> Notwithstanding any other provision of law, the information collected is not a public record and may not be made available for inspection by the public. (Emphasis

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[40] Washington State Department of Health death certificate instructions, attached hereto at A-46.

[41] The measure states:

> The Department of Health shall generate and make available to the public an annual statistical report of information collected under this section.

§ 15, attached hereto at A-108, third ¶.

> added).[42]

Oregon's law has a similar provision, as follows:

> Except as otherwise required by law, the information collected shall not be a public record and may not be made available for inspection by the public. (Emphasis added).[43]

In Oregon, this similar provision is interpreted by the Oregon Health Authority to bar its release of identifying information about individual cases. Oregon's website states:

> [Oregon's Death with Dignity] Act specifically states that information collected is not a public record and is not available for inspection by the public (ORS 127.865 (2)). The protection of confidentiality conferred by the Death with Dignity Act precludes the Oregon Health Authority from releasing information that identifies patients or participants, to the public, media, researchers, students, advocates, or other interested parties. (Emphasis added).[44]

Consider also the experience of Oregon lawyer, Isaac Jackson, regarding a police investigation he requested. Jackson's declaration states:

> The officer's report describes how he determined that the death was under Oregon's assisted suicide law act due to records other than from the State of Oregon. The officer's report also describes that he was unable to get this information from the Oregon Health Authority, which was not willing to confirm

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[42] The measure, § 15, second ¶.

[43] ORS 127.865 s.3.11(2), attached hereto at A-47.

[44] Oregon Data Release Policy, copy attached hereto at A-53.

or deny whether the deceased had used the act. (Emphasis added).[45]

Jackson summarizes:

> Even law enforcement is denied access to information collected by the State of Oregon. (Emphasis added).[46]

If South Dakota enacts the initiated measure and follows Oregon's interpretation of "not a public record," there will be a similar lack of transparency in which even law enforcement will be denied access to identifying information from the state.

C. If South Dakota Follows Oregon's Data Collection Protocol, Patient Identities Will Not Be Recorded in Any Manner; Source Documentation Will Be Destroyed

Oregon's website describes the data collection protocol for its annual reports, as follows:

> The identity of participating physicians is coded, but the identity of individual patients is not recorded in any manner. Approximately one year from the publication of the Annual Report, all source documentation is destroyed. (Emphasis added).[47]

The significance is that Oregon's annual reports are unverifiable. If South Dakota, based on its similar statutory language, follows Oregon, South Dakota's annual reports will also be unverifiable.

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[45] Declaration of Testimony, ¶ 8, September 18, 2012, attached at A-49.

[46] Id., ¶ 2, attached hereto at A-48.

[47] Oregon Health Authority, Frequently Asked Questions, attached at A-56. See also email from Alicia Parkman, Oregon Health Authority, at A-54.

XI. THE MEASURE IS STACKED AGAINST THE INDIVIDUAL

A. Patient Protections Are Illusory

The measure has enumerated patient protections, including that the attending physician "shall" refer the patient to a consulting physician, and that the attending physician "shall" offer the patient an opportunity to rescind the lethal dose request at the end of a fifteen-day waiting period.[48]

The measure, however, also says that the attending physician is merely to ensure that all "appropriate" steps are carried out.[49] In addition, the attending physician is held to an "accordance" standard. The measure states:

> The attending physician shall: . . .
>
> (11) Ensure that all appropriate steps are

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[48] The measure states:

> The attending physician shall: . . .
>
> (4) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is competent and acting voluntarily; . . .
>
> (8) Inform the patient that the patient may rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period . . . . (Emphasis added).

Initiated Measure, § 4, attached hereto at A-104 to A-105.

[49] The measure states:

> The attending physician shall: . . .
>
> (11) Ensure that all appropriate steps are carried out in accordance with this Act . . . . (Emphasis added).

Id.

carried out in accordance with this Act . . . . (Emphasis added).[50]

The measure does not define "accordance."[51] Dictionary definitions include "in the spirit of," meaning "in thought or intention."[52] With these definitions, the attending physician's mere thought or intention to comply is good enough. The purported patient protections are not enforceable.

B. Someone Else Is Allowed to Communicate on the Patient's Behalf

The measure uses the word, "competency," which is specially defined to allow other people to communicate on the patient's behalf. The measure states:

> "Competency," [means] in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient's ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available .... (Emphasis added).[53]

Note that the communicating persons are not required to be the patient's designated agent, such as a power of attorney or guardian. They are merely required to be "familiar with the

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50 Id.

51 See the measure in its entirety, attached hereto at A-101 to A-112.

52 See definitions attached hereto at A-57 & A-58, respectively.

53 The measure, § 1(2), attached hereto at A-101.

patient's manner of communicating."[54]

Being familiar with a patient's manner of communicating is a very minimal standard. Consider, for example, a doctor's assistant who is familiar with a patient's "manner of communicating" in Spanish, but she herself does not understand Spanish. That, however, would be good enough for her to communicate on the patient's behalf during the lethal dose request process. The patient would not necessarily be in control of his fate.

C. Someone Else Is Allowed to Administer the Lethal Dose to the Patient

The measure says that a patient may self-administer the lethal dose.[55] There is no language, however, that administration "must" be by self-administration.[56]

The term, "self-administer," is also specially defined to allow someone else to administer the lethal dose to the patient. The measure states:

> "Self-administer," [means] a qualified patient's act of ingesting medication to end the patient's life . . . (Emphasis added).[57]

The measure does not define "ingest." Dictionary definitions include:

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54 Id.

55 Id., §§ 1(6) & (10), & 2, at A-101 & A-102.

56 See the measure in its entirety, attached hereto at A-101 to A-112.

57 Id., § 1(11), attached hereto at A-102.

> [T]o take (food, drugs, etc.) into the body, as by swallowing, inhaling, or absorbing. (Emphasis added).[58]

With these definitions, someone else putting the lethal dose in the patient's mouth qualifies as self-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, similarly, will 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. The patient is not necessarily in control of his or her fate.

XII. EUTHANASIA IS ALLOWED

A. Allowing Someone Else to Administer the Lethal Dose Is Euthanasia as Traditionally Defined

Allowing someone else to administer the lethal dose to a patient is "euthanasia" under generally accepted medical terminology. See, for example, the American Medical Association, Ethics Opinion 5.8, which states:

> Euthanasia is the administration of a lethal agent by another person to a patient . . .

[58] www.yourdictionary.com, attached hereto at A-59.

(Emphasis added).[59]

The measure allows euthanasia as traditionally defined.

B. Euthanasia is Not Prohibited

The measure states:

> Nothing in this Act authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia.[60]

This prohibition is defined away in the next sentence:

> Any action taken in accordance with this Act does not, for any purpose, constitute suicide, assisted suicide, mercy killing [euthanasia], or homicide, under the law. (Emphasis added).[61]

XIII. OTHER CONSIDERATIONS

A. The Swiss Study: Physician-Assisted Suicide Can Be Traumatic for Family Members

A European research study addressed trauma suffered by persons who witnessed legal physician-assisted suicide in Switzerland.[62] The study found that one out of five family members or friends present at an assisted suicide was traumatized. These people,

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[59] Opinion 5.8, Attached hereto at A-5 (lower half of the page).

[60] The measure, § 18, attached hereto at A-109.

[61] Id.

[62] "Death by request in Switzerland: Posttraumatic stress disorder and complicated grief after witnessing assisted suicide," B. Wagner, J. Muller, A. Maercker; *European Psychiatry* 27 (2012) 542-546, available at http://choiceisanillusion.files.wordpress.com/2012/10/family-members-traumatized-eur-psych-2012.pdf (Cover page attached hereto at A-60)

experienced full or sub-threshold PTSD (Post Traumatic Stress Disorder) related to the loss of a close person through assisted suicide.[63]

B. My Clients Suffered Trauma in Oregon and Washington State

I have had two cases where my clients suffered trauma due to legal assisted suicide. In the first case, one side of my client's family wanted her 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 was severely traumatized. The father did not take the lethal dose and died a natural death.

In the other case, my client's father died via the lethal dose at a suicide party. It's not clear, however, that administration of the lethal dose was voluntary. A man who was present told my client that his father had refused to take the lethal dose when it was delivered, stating: "You're not killing me. I'm going to bed." The man also said that my client's father took the lethal dose the next night when he (the father) was already intoxicated on alcohol. The man who told this to my client subsequently changed his story.

My client, although he was not present, was traumatized over the incident, and also by the sudden loss of his father.

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63 Id.

C. In Oregon, Other Suicides Have Increased with Legalization of Physician-Assisted Suicide

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

> Oregon's assisted suicide act went into effect "in late 1997."[64]
>
> By 2000, Oregon's conventional suicide rate was "increasing significantly."[65]
>
> By 2007, Oregon's conventional suicide rate was 35% above the national average.[66]
>
> By 2010, Oregon's conventional suicide rate was 41% above the national average.[67]
>
> By 2012, Oregon's conventional suicide rate was 42% above the national average.[68]

For a more detailed discussion of suicide contagion in Oregon, see Margaret Dore, "In Oregon, Other Suicides Have

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64 Oregon's assisted suicide report for 2014, first line, at http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year17.pdf

65 *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-61)

66 Report excerpts at A-62 & A-63 (page with quote).

67 Oregon Health Authority Report excerpt, attached at A-64 & A-65 (page with quote).

68 Oregon State Report attached at A-66.

Increased with Legalization of Assisted Suicide."[69]

D. Patients Will No Longer Have a Clear Right to Be Told of Alternatives for Cure

Under current South Dakota law, patients have a right to "informed consent," which includes the right to be apprised of "any reasonable alternative treatment," for example, to cure cancer.[70]

With the initiated measure, patients instead make an "informed decision," defined as follows:

> "Informed decision," [means] a decision . . . that is based on an appreciation of the relevant facts and after being fully informed . . . of . . .
>
> (e) The feasible alternatives, such as, comfort care, hospice care, and pain control. (Emphasis added).[71]

With this definition, patients no longer have a clear right to be told of alternatives for cure. This is due to the rule of statutory construction, *ejusdem generis*, described below:

> [W]here general words . . . precede the enumeration of particular classes of things, [the rule of] . . . *ejusdem generis* . . . requires that the general words . . . be construed as applying only to things of the same general kind as those enumerated. (Emphasis added).[72]

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[69] http://www.choiceillusionsouthdakota.org/2017/06/in-oregon-other-suicides-have-increased_18.html

[70] *Wheeldon v Madison*, 374 N.W.2d 367, 375 (1985), excerpt at A-67.

[71] See initiated measure, §§ 7 and 1(6), attached at A-106 and A-101.

[72] *Crawford v Schulte*, 829 N.W.2d 155, 158 (2013), quote attached at A-68.

With the initiated measure, the general words, "feasible alternatives," precede enumerated words all having to do with death and dying ("comfort care, hospice care, and pain control"). Per the rule, this enumeration limits the general words, "feasible alternatives," to those having to do with death and dying. Patients no longer have a clear right to be told about alternatives for cure.

E. The Felony for Undue Influence Is Illusory

The measure has a felony for "undue influence," which is not defined. The measure merely states:

> A person who coerces or exerts undue influence on a patient to request medication to end the patient's life, or to destroy a rescission of a request, is guilty of a class A felony. (Emphasis added).[73]

The measure also allows conduct normally used to prove undue influence. For example, the measure allows an infirm person with a terminal disease to request the lethal dose.[74] Physical weakness is a factor generally used to prove undue influence.[75]

How do you prove that undue influence occurred when the measure does not define it, and the measure also allows conduct generally used to prove it? You can't. The felony for undue

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[73] Initiated measure, § 24, second ¶, attached hereto at A-111.

[74] See Initiated measure, § 2 (specifying that a person "suffering from a terminal disease" may request the lethal dose). Attached hereto at A-102.

[75] Cf. *Neugebauer v. Neugebauer*, 804 N.W.2d 450, ¶17 (2011)("physical . . . weakness is always material upon the question of undue influence"). Excerpt attached hereto at A-69.

influence is illusory and unenforceable.

IV. CONCLUSION

Elder abuse and financial exploitation are already significant problems in South Dakota. Moreover, they are occurring in the context of existing legal processes, including court-appointed guardians/conservators, which have actual safeguards and transparency.

This is opposed to the initiated measure, in which administration of the lethal dose is allowed to occur in private without a doctor or witness present. Even if a patient struggled, who would know? The death certificate will, regardless, list a terminal disease as the cause of death. This will prevent prosecution for murder. The measure, if enacted, will create the perfect crime.

Passage of the initiated measure will only make a bad situation worse. Enacting the measure will encourage people with years or decades to live to throw away their lives. I urge you to reject the initiated measure seeking to legalize assisted suicide and euthanasia in South Dakota.

Respectfully Submitted,

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