MEMORANDUM

TO: The New York State Legislature

FROM: Margaret Dore, Esq., MBA, President
Choice is an Illusion, a nonprofit corporation opposed to assisted suicide and euthanasia

RE: Vote "No" on Assisted Suicide and Euthanasia
Bill A. 2383A and S. 3151A

DATE: May 2, 2018

HEARING: May 3, 2018, at 11:00 am

INDEX

I. INTRODUCTION ............................................ 1

II. DEFINITIONS (TRADITIONAL) ........................ 1

III. ASSISTING PERSONS CAN HAVE AN AGENDA ....... 2

IV. PUSHBACK AGAINST ASSISTED SUICIDE ............ 3
    A. This Year, Utah Passed a Bill to Clarify
        That Assisted Suicide Is a Crime ............... 3
    B. Last Year, Alabama Passed an Act Banning
        Assisted Suicide ............................... 3
    C. Two Years Ago, the New Mexico Supreme Court
        Overturned Assisted Suicide .................... 4

V. YEARS OR DECADES TO LIVE ........................... 4
    A. The Bill Will Apply to People With Chronic
        Conditions, Who Have Years or Decades to Live .. 4
    B. Predictions of Life Expectancy Can Be Wrong ...... 6
    C. Treatment Can Lead to Recovery .................... 7
VI. HOW THE BILL WORKS ............................. 7

VII. ELDER ABUSE ................................. 8
   A. Elder Abuse Is Already a Problem in New York; Adult Children Are Common Perpetrators ............................. 8
   B. Elder Abuse Is Rarely Reported, Victims Don’t Want to Report Family Members as Abusers ............................. 9
   C. Elder Abuse Is Sometimes Fatal ............................. 9

VIII. THE BILL ................................. 10
   A. “Even If the Patient Struggled, Who Would Know?” ............................. 10
   B. The Bill Does Not Require Self-Administration ............................. 11
   C. Allowing Someone Else to Administer the Lethal Dose Is Euthanasia as Traditionally Defined ............................. 13
   D. Action Taken in Accordance With the Bill Will Not Be Euthanasia Under the Law ............................. 13

IX. A NEAR COMPLETE LACK OF TRANSPARENCY ............................. 14
   A. Information Collected Under the Bill “Shall Not Constitute a Public Record,” Which Will Insulate the Department of Health From Review ............................. 14
   B. If New York Follows Oregon’s Data Collection Protocol, Patient Identities Will Not Be Recorded in Any Manner, Source Documentation Will Be Destroyed ............................. 16
   C. In Oregon, the Police Officer Assigned to the Case Was Not Able to Get Information from the State; the Decedent’s Death Certificate Was Falsified ............................. 16

X. TRAUMA AND SUICIDE CONTAGION ............................. 18
   A. The Swiss Study: Legal Physician-Assisted Suicide Can Be Traumatic for Family Members ............................. 18
B. My Clients Suffered Trauma in Oregon and Washington State ................. 18

C. Actively Suicidal People Have Contacted Me Seeking “Death With Dignity”........ 19

X. CONCLUSION ......................................................... 20

APPENDIX
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 proposed bill, seeking to create a medical aid in dying act.

"Aid in dying" is a traditional term for active euthanasia and physician-assisted suicide. The term is also misleading in the context of the bill, which is not limited to dying people. Eligible persons will have years or decades to live.

The bill will also create new paths of elder abuse. Other problems will include family trauma and suicide contagion. I urge you to reject this bill.

II. DEFINITIONS (TRADITIONAL)

Assisted suicide occurs when a person provides the means or information for another person to commit suicide, for example, by

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1 I am an elder law/appellate lawyer, licensed to practice law in Washington State since 1986. Please see my CV attached hereto at A-1 to A-4. See also Margaret Dore, “Preventing Abuse and Exploitation: A Personal Shift in Focus; an Article About Guardianship, Elder Abuse and Assisted Suicide,” The Voice of Experience, American Bar Association, Volume 25, No. 4, Winter 2014, attached hereto at A-5 to A-8, also available at http://www.margaretdore.org/p/by-margaret-k.html

2 The bill, 2383-A, is attached hereto at A-101 to A-114.

providing a rope or lethal drug." If the assisting person is a physician, a more precise term is “physician-assisted suicide.”

"Euthanasia" is the direct administration of a lethal agent to cause another person’s death. Euthanasia is also known as “mercy killing.”

III. ASSISTING PERSONS CAN HAVE AN AGENDA

Persons assisting a suicide or euthanasia can have an agenda. Consider 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.

In other states, reported motives include: the “thrill” of getting other people to kill themselves; and “wanting to see someone die.”

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5 See e.g., The American Medical Association Code of Medical Ethics, Opinion 5.7 (defining physician-assisted suicide). Attached hereto at A-13.

6 Id., Opinion 5.8, "Euthanasia," (lower half of the page).


9 AP 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-16 & A-17; also available at https://www.theguardian.com/us-news/2015/dec/28/minnesota-suicide-conviction-william-melchert-dinkel-mark-drybrough; Ben Winslow, supra. Doctors too may kill for a thrill, with a New York example being Michael Swango. See e.g.,
Doctors too can have an agenda, for example, to hide malpractice or to obtain an inheritance or other financial gain. An example is Harold Shipman, a doctor in the UK, who killed his patients and also stole from them. One patient, he put himself in her will.

IV. PUSHBACK AGAINST ASSISTED SUICIDE

A. This Year, Utah Passed a Bill to Clarify That Assisted Suicide Is a Crime

This year, Utah amended its manslaughter statute to clarify that assisting suicide is a crime. The bill passed the Utah Legislature by a 2 to 1 margin.

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

Last year, Alabama passed the “Assisted Suicide Ban Act,” which renders any person who deliberately assists a suicide, guilty of a felony. The vote to pass was nearly unanimous.


To view enrolled copy, click here: https://le.utah.gov/~2016/bills/hbillenr/HB0086.pdf

See Utah legislative website.

See Alabama legislative website.
C. Two Years Ago, the New Mexico Supreme Court Overturned Assisted Suicide

Two years ago, the New Mexico Supreme Court overturned a lower court decision recognizing a right to physician aid in dying, meaning physician assisted suicide.\textsuperscript{16} Physician-assisted suicide is no longer legal in New Mexico.

V. YEARS OR DECADES TO LIVE

The bill applies to people with a "terminal illness or condition."\textsuperscript{17} Such persons may have years or decades to live. This is true for three reasons.

A. The Bill Will Apply to People With Chronic Conditions, Who Have Years or Decades to Live

A statute adopted from another jurisdiction is presumed to carry the construction given by the other jurisdiction. This rule applies when the statute from the other jurisdiction and the new statute are identical or nearly identical. Consider, Sun Valley Land and Minerals, Inc. v. Burt, 123 Idaho 862, 868, 853 P.2d 607 (1993), which states:

\textit{Idaho code § 55-606, describing a bona fide purchaser, was adopted from a nearly identical section of the California Civil code, therefore it is presumed to carry the construction given by the jurisdiction from which the statute was taken.} (Emphasis added).


\textsuperscript{17} See e.g., the bill § 2899-f.1(a)(stating that the attending physician shall make a determination of whether a patient has a "terminal illness or condition").
Here, the bill applies to people with a "terminal illness or condition," which is defined as follows:

"Terminal illness or condition" means an incurable and irreversible illness or condition that has been medically confirmed and will, within reasonable medical judgment, produce death within six months. (Emphasis added).\(^{18}\)

This definition is based on Oregon's law, which has nearly identical language, as follows:

"Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months. (Emphasis added).\(^{19}\)

In Oregon, this nearly identical language is construed to include chronic conditions, such as insulin dependent diabetes. Moreover, such persons can have years or decades to live. Oregon doctor, William Toffler, explains:

In Oregon, chronic conditions such as insulin dependent diabetes are sufficient for assisted suicide, if, without treatment, the patient has less than six months to live.

This is significant when you consider that, without insulin, a typical insulin dependent 20 year old will live less than a month.\(^{20}\)

He adds:

Such persons, with insulin, are likely to

\(^{18}\) The bill, § 2899-d.17.

\(^{19}\) Or. Rev. Stat. 127.800 s.1.01(12), attached hereto at A-29.

\(^{20}\) Declaration of William Toffler, MD, ¶¶ 5-6, attached at A-26 to A-31.
have decades to live. In fact, most insulin dependent diabetics have a normal life span given appropriate control of their blood sugar.\textsuperscript{21}

With this situation, the bill’s definition of “terminal illness or condition,” which is nearly identical to Oregon’s law, will most likely be construed to apply to people with chronic conditions such as diabetes. As noted by Dr. Toffler, such persons can have years or decades to live.

\textbf{B. Predictions of Life Expectancy Can Be Wrong}

Eligible persons may also have years or 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.\textsuperscript{22}

Consider John Norton, who was diagnosed with ALS (Lou Gehrig’s disease) at age 18.\textsuperscript{23} He was told that he would get progressively worse (be paralyzed) and die in three to five years.\textsuperscript{24} Instead, the disease progression stopped on its own.\textsuperscript{25} In a 2012 affidavit, at age 74, he states:

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\textsuperscript{21} Toffler Declaration at A-27, ¶ 6, second sentence.
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\textsuperscript{23} Affidavit of John Norton, attached hereto at A-36 to A-38.
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\textsuperscript{24} Id., ¶ 1.
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\textsuperscript{25} Id., ¶ 14.
\end{flushleft}
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

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.27 Her doctor convinced her to be treated instead.28 In a 2017 declaration, she states:

> It has now been 17 years since my diagnosis. If [my doctor] had believed in assisted suicide, I would be dead.29

VI. HOW THE BILL WORKS

The bill has an application process to obtain the lethal dose, which includes a lethal dose request form.30 Once the lethal dose is issued by the pharmacy, there is no oversight.31 No witness, not even a doctor, is required to be present at the death.32

26 Id., § 5.
27 Affidavit of Kenneth Stevens, MD, attached at A-39 to A-41; Jeanette Hall discussed at A-39 to A-40; Hall declaration attached at A-42.
28 Id.
29 Declaration of Jeanette Hall, ¶4, at A-42.
30 The bill, § 2899-k.
31 See the bill in its entirety, attached hereto at A-101 to A-114.
32 Id.
VII. ELDER ABUSE

According to statistics from Oregon, most people who die under its law are elders, aged 65 or older. In New York State, this demographic is already an at risk group. Enacting the proposed bill will make the situation worse. See below.

A. Elder Abuse Is Already a Problem in New York; Adult Children Are Common Perpetrators

Elder abuse is a problem throughout the United States, including New York State. Philanthropist, Brooke Astor, is arguably New York’s most prominent victim. Her son, Anthony Marshall, plundered millions from her estate.

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35 Carole Fleck, “Brooke Astor’s Grandson Tells Senate Panel of Financial Abuse,” AARP Bulletin Today, 02/05/2015 (“The grandson of socialite Brooke Astor, who blew the whistle on his father for plundering millions from his grandmother’s estate, told the Senate panel Wednesday that his grandmother’s greatest legacy may be the national attention focused on elder financial abuse.”) At https://blog.aarp.org/2015/02/05/brooke-astors-grandson-tells-senate-panel-of-financial-abuse

Perpetrators are often family members. They typically start out with small crimes, such as stealing jewelry and blank checks, before moving on to larger items or to coercing victims to change their wills or to liquidate their assets. Amy Mix, of the AARP Legal Counsel of the Elderly, states:

[Perpetrators] are family members, lots are friends, often people who befriend a senior through church .... 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.

B. Elder Abuse Is Rarely Reported; Victims Don’t Want to Report Family Members as Abusers

The vast majority of elder abuse cases are not reported to the authorities. 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.

C. Elder Abuse Is Sometimes Fatal

In some cases, elder abuse is fatal. More notorious cases

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37 MetLife Mature Market Institute, supra.
38 Id.
40 Adult Protective Service Materials
include California’s “black widow” murders, in which two women took out life insurance policies on homeless men. Their first victim was 73 year old Paul Vados, whose death was staged to look like a hit and run accident. The women collected $589,124.93.

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.

VIII. THE BILL

A. “Even If the Patient Struggled, Who Would Know?”

The bill has no oversight over administration of the lethal dose. In addition, the drugs used are water and alcohol soluble, such that they can be injected into a sleeping or restrained person without consent. Alex Schadenberg, Executive Director for the Euthanasia Prevention Coalition, puts it this way:


Rutterschmidt, at 652-3.

Id. at 652.


See the bill in its entirety, attached hereto at A-101.

The drugs used include Secobarbital, Pentobarbital and Phenobarbital, which are water and/or alcohol soluble. See excerpts from Oregon’s and Washington’s annual reports, attached hereto at A-44 & A-45 (listing these drugs). See also http://www.drugs.com/pr/secobarbital sodium.html, http://www.drugs.com/pr/pentobarbital.html and https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2977013
Way:

With assisted suicide laws in Washington and Oregon [and with the proposed 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. Even if a patient struggled, “who would know?” (Emphasis added).47

B. The Bill Does Not Require Self-Administration

It is well accepted that a

legislative act is to be construed as a whole, and all parts of an act are to be read and construed together to determine the legislative intent.48

Here, the bill states that another person “shall not” administer the lethal dose to the patient.49 The bill, however, also says that the attending physician

may personally, or by referral to another physician, prescribe or order appropriate medication . . . . (Emphasis added).50

The bill does not define “appropriate.” Dictionary definitions


49 The bill states:

A health care professional or other person shall not administer the medication [lethal dose] to the patient. (Emphasis added).

§ 2899-f.3., p. 5, lines 3-4, attached hereto at A-106.

50 The bill, § 2899-f.2., p. 4, lines 49-54, attached hereto at A-105.
Suitable for a particular person, condition, occasion, or place; fitting.

In context of administering medication, a patient’s physical condition and other factors can result in a determination that self-administration is not appropriate. Dr. Toffler, explains:

If a patient has trouble swallowing, it may be appropriate for a doctor to prescribe or order medication to be administered via injection.

Depending on the medication, administration through a existing drip line or feeding tube may also be appropriate, for example, if the patient is sleeping and I don’t want to disturb her.

Here, the lethal dose is a "medication," which "shall not" be administered by another person, but which is also to be "appropriate" for the patient. With this situation and given the rule quoted above, that a legislative act must be construed as a whole, with "all parts . . . to be read and construed together," the seemingly absolute requirement of self-administration is not, in fact, absolute if the attending physician determines that self-administration is not appropriate.

In short, the bill allows someone else to administer the lethal dose if the attending physician determines that self-administration is not appropriate.

51 http://www.dictionary.com/browse/appropriate
C. Allowing Someone Else to Administer the Lethal Dose Is Euthanasia as Traditionally Defined

The American Medical Association Code of Medical Ethics, Opinion 5.8, states:

Euthanasia is the administration of a lethal agent by another person .... (Emphasis added).\(^{53}\)

D. Action Taken in Accordance With the Bill Is Not Euthanasia For Any Purpose Under the Law

The bill states:

Action taken in accordance with this article shall not be construed for any purpose to constitute suicide, assisted suicide, attempted suicide, promoting a suicide attempt, euthanasia, mercy killing, or homicide under the law, including as an accomplice or accessory or otherwise. (Emphasis added).\(^{54}\)

The bill does not define "accordance."\(^{55}\) Dictionary definitions of accordance include "in the spirit of," which means "in thought or intention."\(^{56}\)

With this language, direct action to euthanize a person under the bill will not be construed as euthanasia, as long as the person effecting the death had a thought or intention to

\(^{53}\) Opinion 5.8 is attached hereto at A-13 (lower half of the page)

\(^{54}\) § 2899-n.1. (b), p. 10, lines 10-14, attached hereto at A-112.

\(^{55}\) See the bill in its entirety, attached hereto at A-101 to A-114.

\(^{56}\) See definitions attached hereto at A-46 and A-47.
comply with the bill. Euthanasia, as traditionally defined is allowed. Legally, such deaths will not be euthanasia for any purpose.

IX. A NEAR COMPLETE LACK OF TRANSPARENCY

A. Information Collected Under the Bill “Shall Not Constitute a Public Record,” Which Will Insulate the Department of Health From Review

The bill charges the Department of Health with issuing an annual report based on information collected pursuant to the bill. The bill also states that the information shall not constitute a public record, except that information “may” be disclosed to a government agency and/or law enforcement. The bill states:

The information collected under this subdivision shall not constitute a public record available for public inspection and shall be confidential and collected and maintained in a manner that protects the privacy of the patient, his or her family, and any health care provider acting in connection with such patient under this article, except that such information may be disclosed to a governmental agency as authorized or required by law relating to professional discipline, protection of public health or law enforcement. (Emphasis added).57

Oregon’s law has a similar, albeit shorter provision, as follows:

57 The bill, § 2899-q.1., p. 11, lines 9-17, attached hereto at A-114.
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).  

In Oregon, this similar provision is interpreted to bar release of information about individual cases, to everyone, including law enforcement. Oregon’s website states:

[T]he 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 [which oversees Oregon’s Department of Health] from releasing information that identifies patients or participants, to the public, media, researchers, students, advocates, or other interested parties....

Consider also this e-mail from Alicia Parkman, Mortality Research Analyst for the Oregon Health Authority, which states:

We have been contacted by law enforcement . . . in the past, but have not provided identifying information of any type. (Emphasis added).

If New York State enacts the bill and follows Oregon’s interpretation of “not a public record,” there will be a similar lack of transparency in which even law enforcement will have no access to information about individual cases. The bill will

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58 ORS 127.865 s.3.11(2) (Attached hereto at A-48)

59 Oregon Data Release Policy, copy attached hereto at A-62.

60 E-mail from Alicia Parkman to me, 01/04/12, attached hereeto at A-63.
create a government entity above the law.

B. **If New York 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:

> [T]he 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).\textsuperscript{61}

Alicia Parkman, Mortality Research Analyst for the Oregon Health Authority, makes a similar representation as follows:

> To ensure confidentiality, our office does not maintain source information on participants. (Emphasis added).\textsuperscript{62}

The significance is that Oregon’s annual reports are unverifiable. If New York, based on its similar statutory language, follows Oregon, New York’s annual reports will also be unverifiable.

C. **In Oregon, the Police Officer Assigned to the Case Was Not Able to Get Information from the State; the Decedent’s Death Certificate Was Falsified**

In 2010, I had client who wanted to know if his father had died under Oregon’s law. I referred him to an Oregon attorney, ____________________________.

\textsuperscript{61} Oregon Health Authority, Frequently Asked Questions, attached at A-67.

\textsuperscript{62} E-mail from Alicia Parkman to Margaret Dore, 01/04/12, attached at A-63.
Isaac Jackson, who asked the police to investigate. Jackson's declaration states:

2. I write to inform the court regarding a lack of transparency under Oregon's assisted suicide act. **Even law enforcement is denied access to information collected by the State of Oregon. Moreover, according to the current Oregon State website, this lack of access is official Oregon State Policy.**

3. In 2010, I was retained by a client whose father had apparently died under Oregon's law. The client wanted to know whether that was true. I therefore made inquiry on his behalf. **However and unlike other deaths I have investigated, it was difficult to get information. . . .**

6. I . . . received a copy of the decedent's death certificate, which is the official death record in Oregon. A true and correct, but redacted copy, is attached hereto . . . . The "immediate cause of death" is listed as "cancer." The "manner of death" is listed as "Natural."

7. Per my request, a police officer was assigned to the case. Per the officer's confidential report, he did not interview my client, but he did interview people who had witnessed the decedent's death.

8. The officer's report describes how he determined that the death was under Oregon's assisted suicide law 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 or deny whether the deceased had used the act . . . . (Emphasis added). 63

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63 Isaac Jackson, Declaration of Testimony, 09/18/12, at A-57 to A-58.
I also read the officer's report. According to the report, the euthanasia advocacy group, Compassion & Choices, provided the records necessary for the officer to determine that the decedent had, in fact, died under Oregon's law. In Oregon, Compassion & Choices, a non-governmental entity, has displaced the Department of Health as the defacto agency overseeing Oregon's law.

X. TRAUMA AND SUICIDE CONTAGION

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. The study found that one out of five family members or friends present at an assisted suicide was traumatized. These people,

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

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


65 Id.
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.

C. Actively Suicidal People Have Contacted Me Seeking "Death With Dignity"

To date, three physically healthy suicidal men have contacted me to commit suicide or be euthanized legally via "death with dignity." In each case, once they got talking, it came out that they didn't really want to die; they were depressed.

The first one was 50. He had recently suffered a traumatic
event and blamed himself for a friend’s having been injured. The next one was 27. He had previously attempted suicide via carbon monoxide. The last one was in his 30's and from what I could tell, was overwhelmed with events in his life. He contacted me a few months later saying that I had saved his life (by talking to him). Legal assisted suicide encourages other suicide.

IV. CONCLUSION

The bill seeks to legalize euthanasia and assisted suicide for people with years or decades to live. The bill is stacked against the individual with the most obvious problem being a complete lack of oversight at the death. Even if the patient struggled, who would know?

Older people are already murdered for their money. Passage of the proposed bill will make a bad situation worse. I urge you to reject this bill.

Respectfully Submitted,

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