Nos. 95-1858 and 96-110

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

DENNIS C. VACCO, Attorney General of the State of New York, *et al.*,

Petitioners,

v.

TIMOTHY E. QUILL, M.D., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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STATE OF WASHINGTON, *et al.*,

Petitioners,

v.

HAROLD GLUCKSBERG, M.D., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF *AMICUS CURIAE* ON BEHALF OF MEMBERS OF THE NEW YORK AND WASHINGTON STATE LEGISLATURES IN SUPPORT OF PETITIONERS

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INTEREST OF THE AMICI

Amici curiae are New York and Washington state legislators who strongly support the public policy expressed in their state laws prohibiting assisted suicide and who vigorously oppose efforts to legalize assisted suicide in the legislatures or the courts. *Amici* firmly believe that there is no social, economic or medical need to permit physician-assisted suicide under any circumstances, and that to allow suicide assistance, even for mentally competent, terminally ill adults, would lead to grave abuses and exploitation of the most vulnerable members of our community, as it already has in the Netherlands. *Amici* fully concur with the warning of the New York State Task Force on Life and the Law that creation of a right to suicide "would carry us into new terrain."

> American society has never sanctioned suicide or mercy killing. We believe that the practices would be profoundly dangerous for large segments of the population, especially in light of the widespread failure of American medicine to treat pain adequately or to diagnose and treat depression in many cases. The risks would extend to all individuals who are ill. They would be most severe for those whose autonomy and well-being are already compromised by poverty, lack of access to good medical care, or membership in a stigmatized social group. The risks of legalizing assisted suicide and euthanasia for these individuals, in a health care system and society that cannot effectively protect against the impact of inadequate resources and ingrained social disadvantage, are likely to be extraordinary.

WHEN DEATH IS SOUGHT[:] ASSISTED SUICIDE AND EUTHANASIA IN THE MEDICAL CONTEXT vii-viii (May 1994). This Court should heed their warning and not recognize a right to suicide or suicide assistance.*

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* This Brief is filed with the consent of the parties. Letters of consent have been lodged with the Clerk of the Court.

SUMMARY OF ARGUMENT

In a pair of unprecedented opinions, the Second Circuit and the Ninth Circuit have held that New York and Washington are powerless to prevent mentally competent, terminally ill patients from intentionally ending their lives with the assistance of physicians who are willing to prescribe lethal drugs for them. *Quill v. Vacco,* 80 F.3d 716 (2d Cir. 1996); *Compassion in Dying v. State of Washington,* 79 F.3d 790 (9th Cir. 1996). In recognizing a right to commit suicide with the assistance of third parties, the *en banc* majority in *Compassion in Dying* swept aside a uniform tradition of legal and societal opposition to suicide and assisted suicide that dates back to the earliest days of the common law. Contrary to the Ninth Circuit's opinion, nothing in *Planned Parenthood v. Casey,* 505 U.S. 833 (1992), required or allowed the court of appeals to ignore this history in evaluating plaintiffs' wholly novel constitutional claim.

Compounding this error, both the Ninth Circuit and the Second Circuit seriously misread this Court's decision in *Cruzan v. Director, Missouri Dep't of Health,* 497 U.S. 261 (1990). Both courts attempted to derive an interest in deliberately inducing death, which the law always has treated as a crime, from the interest in refusing unwanted medical treatment, which the law traditionally has protected out of respect for the inviolability of the human person. Disregarding critical distinctions between *intending* a result and *knowing* that a result is likely, and between *causing* death artificially and *allowing* death to occur naturally, the lower courts reasoned that because refusing life-sustaining treatment and intentionally ingesting a fatal dose of drugs both result in a person's death, the right to do the former necessarily entails the right to do the latter. *Quill,* 80 F.3d at 725-31; *Compassion in Dying,* 79 F.3d at 820-24. "But constitutional law does not work that way." *Cruzan,* 497 U.S. at 286.

At the outset, *amici* note that this Court has never held that "a competent person has a constitutionally protected liberty interest" in refusing "life-sustaining medical treatment." *Cruzan,* 497 U.S. at 278, 279. In *Cruzan,* the Court *assumed,* for purposes of deciding the case, that the Constitution "would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition." *Id.* at 279. Nevertheless, the Court cautioned that "the dramatic consequences involved in the refusal of such treatment would inform the inquiry as to whether the deprivation of that interest is constitutionally permissible," *id.*, thereby implying that the State's "interest in the protection and preservation of human life," *id.* at 280, might be sufficient to outweigh the patient's interest in refusing unwanted treatment. That implication was made explicit when the Court said, "We do not think that a State is required to remain neutral in the face of an informed and voluntary decision by a physically able adult to starve to death." *Id.*

Even if it is assumed that a competent person has a constitutionally protected liberty interest in refusing life-sustaining treatment, that interest has its origins in the law of battery and the doctrine of informed consent (*see Cruzan,* 497 U.S. at 269-77) which both define its nature and limit its scope. The interest restricts "governmental power to mandate medical treatment or bar its rejection," *Casey,* 505 U.S. at 857, but does not confer a right to insist upon a particular form of treatment, much less one that will cause, and is intended to cause, the person's death. *See United States v. Rutherford,* 442 U.S. 544 (1979) (FDA had authority to proscribe laetrile, even for terminally ill cancer patients). It is the source and the nature of the interest that determine its ultimate reach. Whether the constitutionally protected interest in refusing unwanted medical treatment extends to life-sustaining treatment, a question this Court need not answer here, that interest clearly has reached its furthest

limit when all treatment—life-sustaining or otherwise—has been withheld or withdrawn.

Beyond their multiple errors in analysis, however, the decisions in both *Compassion in Dying* and *Quill* are, in principle, illimitable. If the right to refuse unwanted medical treatment is the doctrinal source of a right to assistance in committing suicide, it is apparent that the latter right cannot be confined to mentally competent, terminally ill patients, as the Ninth Circuit admitted. *See* 79 F.3d at 816, 831-32 & n.120. The lower court decisions, if affirmed, would plunge the country into a generation of constitutional conflict over the nature and extent of the "right," a conflict which would cause irreparable damage to the Nation, to the American People and to this Court. *Amici* ask the Court not to take this precipitous step.

ARGUMENT

I. THE LIBERTY LANGUAGE OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT PROTECTS ONLY THAT CONDUCT WHICH IS IMPLICIT IN THE CONCEPT OF ORDERED LIBERTY AND WHICH, HISTORICALLY AND TRADITIONALLY, IS CONSIDERED BEYOND THE POWER OF THE STATE TO PROHIBIT.

The Ninth Circuit held that there is "a constitutionally-protected liberty interest in determining the time and manner of one's own death," or, "in common parlance, . . . a right to die." *Compassion in Dying*, 79 F.3d at 793, 799. The court held further that, in the case of mentally competent, terminally ill patients who wish to end their lives by taking a fatal dose of drugs, this liberty interest outweighs the State's "legitimate and countervailing interests, [including] those that relate to the preservation of human life." *Id.* at 793-94. Conceding that there is no "liberty interest in receiving 'aid in killing oneself,' " as such, the court couched the issue in wider terms, whether there is "a right to die," to determine "the

time and manner of one's death" or to "hasten[] one's death," because "it is the end and not the means that defines the liberty interest." *Id.* at 801-02.

The circuit court's phrasing of the issue disregards this Court's admonition that " '[s]ubstantive due process' analysis must begin with a careful description of the asserted right, for '[t]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field.' " *Reno v. Flores,* 507 U.S. 292, 302 (1993) (quoting Justice Stevens' opinion for a unanimous Court in *Collins v. City of Harker Heights, Texas,* 503 U.S. 115, 125 (1992)). In *Cruzan,* this Court declined to answer the broad question as to whether there is a "right to die," focusing instead on the narrower question of whether "a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment." 497 U.S. at 277-78.

Precision in defining the issue is also required here. The issue is not whether there is "a right to die," or "a liberty interest in determining the time and manner of one's death" or in "hastening one's death," *Compassion in Dying,* 79 F.3d at 801-02, but "whether the constitution encompasses a right to commit suicide and, if so, whether it includes a right to assistance." *People v. Kevorkian,* 527 N.W.2d 714, 730 n.47 (Mich. 1994) (rejecting right to suicide), *cert. denied sub nom. Kevorkian v. Michigan,* 115 S.Ct. 1795 (1995), *Hobbins v. Kelley,* 115 S.Ct. 1795 (1995).[1]

This Court has enunciated various standards for evaluating both substantive and procedural due process claims. Due process protects those rights which are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts,* 291 U.S. 97,

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[1] ". . . the common definition of 'suicide' is the intentional killing of oneself by any means, and the temporal proximity of death is irrelevant to the threshold inquiry into whether the constitution encompasses such a right." *Id.* at 725 n.27.

105 (1934). Alternatively, due process secures those rights which are "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if they were sacrificed." *Palko v. Connecticut,* 302 U.S. 319, 325, 326 (1937). In another frequently cited formulation, Justice Powell described fundamental liberties as those liberties which are "deeply rooted in this Nation's history and tradition." *Moore v. City of East Cleveland, Ohio,* 431 U.S. 494, 503 (1977).

Regardless of the precise wording, each of these tests requires an examination of our history and traditions to assess whether the right (or interest) being asserted has enjoyed legal and societal protection. *Compare Roe v. Wade,* 410 U.S. 113, 140-41 (1973) (recognizing right to abortion where, in the Court's view, there was no unambiguous tradition of legal and social opposition to abortion in English and American law), *with Bowers v. Hardwick,* 478 U.S. 186, 192-94 & nn. 5-7 (1986) (refusing to recognize fundamental right of adult homosexuals to engage in consensual acts of sodomy where both English and American law clearly prohibited such conduct for centuries). The Court's reliance on historical tradition in *Bowers* coincided with a less expansive view of its authority "to discover new fundamental rights imbedded in the Due Process Clause." 478 U.S. at 194.

As this Brief demonstrates, there has never been a period in English or American history when suicide (or suicide assistance) was regarded as a "fundamental right," a "protected liberty interest" or even a socially tolerated practice. Perhaps anticipating that its historical survey, 79 F.3d at 806-10, would fail to convince this Court that a right to (or an interest in) suicide (or suicide assistance) can be derived from our history and traditions, the Ninth Circuit, citing *Planned Parenthood v. Casey,* concluded that these factors are no longer controlling or even persuasive in evaluating substantive due process claims. 79 F.3d at 804-06. But that conclusion is unwarranted.

First, in reaffirming *Roe,* the Court in *Casey* stressed the importance of the rule of *stare decisis* and the integrity of the Supreme Court as an institution in the constitutional order. 505 U.S. at 845-46, 854-69. Neither consideration lends any support to the establishment of a heretofore unrecognized constitutional right. Moreover, in reaffirming *Roe,* the Court sought to *end* the "national controversy" over whether abortion should remain a protected right, *id.* at 867, not to *begin* an entirely new debate on the nature and extent of a previously unheard of right.[2]

Second, in *Casey,* the Court referred to abortion as "a unique act," and said that "the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law." 505 U.S. at 852. If abortion is a "unique act" and "so unique to the law," then *Casey* cannot be cited in support of a liberty interest in committing suicide, which has no affinity with this Court's decisions "afford[ing] constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing and education," *id.* at 851, which are "deeply rooted in this Nation's history and tradition." *Moore,* 431 U.S. at 503.

Third, in *Casey,* the Court stated that "the essential holding of *Roe* forbids a State from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health." 505 U.S. at 880. But protection of that core interest differs radically from an asserted interest in self-destruction where not health, but death, is the desideratum.

Fourth, in *Roe,* the Court was able to recognize a right to abortion only after holding that the unborn child is not a person within the meaning of the Fourteenth Amendment. 410 U.S. at 156-59. Nothing in *Roe,* how-

[2] The Court's reluctance to state in *Casey* whether *Roe* had been correctly decided as an original matter, 505 U.S. at 869, 871, severely limits the usefulness of looking to either *Roe* or *Casey* as an unexplored source of unenumerated rights.

ever, or in any other decision of this Court remotely suggests that a seriously ill patient, regardless of condition and prognosis, is not a constitutional "person" whose life the State has the right to protect. *See Cruzan,* 497 U.S. at 282 n.10 (recognizing State's interest).

Finally, an examination of *Casey's* analysis of how substantive due process claims are to be reviewed reveals that history and tradition remain critical. "[A]djudication of substantive due process claims may call upon the Court in interpreting the Constitution to exercise that same capacity which by tradition courts always have exercised: reasoned judgment." 505 U.S. at 849. But exercise of that judgment does not allow the Justices "to invalidate state policy choices with which [they] disagree." *Id.* The Court's reliance in *Casey* on Justice Harlan's dissent in *Poe v. Ullman,* 367 U.S. 497, 542 (1961) (Harlan, J., dissenting from dismissal on jurisdictional grounds), *Casey* 505 U.S. at 849-50, makes it clear that in evaluating original claims of constitutional right, recourse to our history and traditions is still necessary. Thus, this Court must decide whether "the asserted right to commit suicide arises from a rational evolution of tradition, or whether recognition of such a right would be a radical departure from historical precepts." *People v. Kevorkian,* 527 N.W.2d at 730.

II. THE COMMON LAW OF ENGLAND, AS RECEIVED BY THE AMERICAN COLONIES, PROHIBITED SUICIDE AND ATTEMPTED SUICIDE.

An understanding of the development of the common law crime of suicide in England is critical to any analysis of the status of suicide in American colonial law.[3] More

[3] Much of what follows in this and the following argument draws upon the research set forth in Thomas J. Marzen, Mary K. O'Dowd, Daniel Crone and Thomas J. Balch, *Suicide: A Constitutional Right?,* 24 DUQUESNE L. REV. 1 (1986) (hereinafter, *Marzen*). Although the Ninth Circuit repeatedly cited the *Marzen* article in its historical survey (79 F.3d at 807-10 & nn. 23-24, 27, 33-37, 39-40,

than 700 years ago, the thirtenth-century commentator Bracton wrote, "Just as a man may commit felony by slaying another so he may do so by slaying himself, the felony is said to be done to himself [*felo de se*]." 2 H. de Bracton (c. 1250), ON THE LAWS AND CUSTOMS OF ENGLAND (S. Thorne trans. 1968) 423 (BRACTON). If the suicide was committed to avoid punishment for a crime he had committed, all of his property—real and personal—was forfeited to the King. *Id.* at 366, 423-24. But if "a man slays himself in weariness of life or because he is unwilling to endure further bodily pain . . . he may have a successor, but his movable goods are confiscated. He does not lose his inheritance, only his movable goods." *Id.* at 424. His heirs could inherit his real property (because he had not committed suicide to avoid punishment for committing a crime) but his personal property was confiscated by the Crown. "The principle that suicide of a sane person, for whatever reason, was a punishable felony was thus introduced into English common law." *Marzen,* 24 DUQUESNE L. REV. at 59. But no penalty applied to the suicide of one who was not sane. "[A] madman bereft of reason[,]" "the deranged, the delirious and the mentally retarded" or "one labouring under a high fever" do not commit felony *de se* "nor do such persons forfeit their inheritance or their chattels, since they are without sense and reason and can no more commit an *injuria* or a felony than a brute animal." BRACTON at 424.

Bracton's contemporaries agreed that suicide was a crime at common law. The commentator known as Brit-

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42-44), it misstated many of its findings and ignored its conclusion that "the weight of authority in the United States, from colonial days through at least the 1970's[,] has demonstrated that the predominant attitude of society and the law has been one of opposition to suicide," *Marzen,* 24 DUQUESNE L. REV. at 100. *See Compassion in Dying,* 85 F.3d 1440, 1445 & n.14 (9th Cir. 1996) (O'Scannlain, J., dissenting from order rejecting request for rehearing *en banc* by the full court).

ton wrote that "where a man is a felon of himself, his chattels shall be adjudged ours [the King's], as the chattels of a felon, but his inheritance shall descend entire to his heirs." I Britton, Bk. I, ch. VIII (F. Nicols trans. 1865) (reprinted 1983 W.W. Gaunt) 39. Fleta, writing near the end of the thirteenth century, provided a fuller treatment of the subject:

> Just as a man may commit felony in slaying another, so he may in slaying himself; for if one who has lately slain a man or has committed some like act whence felonies arise, conscious of his crime and in fear of judgement, slay himself in any fashion, his goods accrue to the Crown nor may he have any other heir than the lord of the fee. But should anyone slay himself in weariness of life or because he is unable to support some bodily pain, he shall have his son for his heir, but his movable goods will be confiscate. Those, too, who cast themselves down from a height or drown themselves likewise have heirs, provided they have committed no felony. Similarly, madmen and those who are frenzied, childish, deranged or are suffering from high fever, although they kill themselves, do not commit felony or forfeit their inheritance or chattels, because they lack sense and reason. Their wives, moreover, should receive their dowers.

Fleta (c. 1290), Bk. I, ch. XXXIV, *"Of Suicides,"* Publications of the Selden Society, Vol. 72, p. 89 (1955).

In 1628, Sir Edward Coke published his classic INSTITUTES. In his THIRD INSTITUTE, Coke classified suicide as a form of murder. *"Felo de se* is a man or woman, which being *compos mentis,* of sound memory, and of the age of discretion, killeth himself, which being lawfully found by the oath of twelve men, all the goods and chattels of the party so offending are forfeited" E. Coke, THIRD INSTSTUTE OF THE LAWS OF ENGLAND 54 (1644 ed.). Like his predecessors, Coke noted an exception for persons who had killed themselves while insane. "If a man lose his memory by the rage of sickness or infirmity,

or otherwise, and kill himself while he is not *compos mentis,* he is not *felo de se*: for as he cannot commit murder upon another, so in that case he cannot commit murder upon himself." *Id.* According to Coke, a *felo de se* forfeited only his goods and chattels *Id.* at 55.

In 1716, the first edition of William Hawkins' A TREATISE OF THE PLEAS OF THE CROWN was published. Noting that "our Laws have always had . . . an Abhorrence of this Crime," Hawkins' analysis of "Homicide against a Man's own Life" largely followed Coke. Wm. Hawkins, 1 A TREATISE OF THE PLEAS OF THE CROWN (1716) 67-68. Hawkins rejected the prevailing "Notion" that anyone who kills himself must be mentally incompetent, *id.* at 67, and condemned the killing of another person with his consent or at his request, as well as suicide pacts. *Id.* at 68.

In 1736, Sir Matthew Hale's work, HISTORY OF THE PLEAS OF THE CROWN, was published. Like Hawkins, Hale reflected Coke's views on the criminality of suicide at common law. M. Hale, 1 HISTORY OF THE PLEAS OF THE CROWN, Ch. XXXI, "*Concerning homicide and first of self-killing or* felo de se," (1736) at 411-12. In accord with the earlier commentators, Hale stated, "If he lose his memory by sickness, infirmity, or accident, and kills himself he is not *felo de se,* neither can he be said to commit murder upon himself or any other." *Id.* at 412. But Hale doubted whether every suicide could be treated as an insane act. *Id.*

In 1803, Sir Edward East published his PLEAS OF THE CROWN. East described anyone "who wilfully . . . causes his own death" as a "*felo de se.*" E. East, 1 PLEAS OF THE CROWN (1803), ch. V, § 5, at 219 (1972 reprint). Calling suicide "an heinous offence," East said that "he who voluntarily kills himself is with respect to the public as criminal as one who kills another. It is equally an offence against the fundamental law of society, which is protection." *Id.*

Sir William Blackstone summarized the law of *felo de se* in his classic eighteenth century commentaries. Characterizing suicide as "[s]elf-murder," Blackstone reiterated the common law's condemnation of suicide as "among the highest crimes, making it a peculiar species of felony, a felony committed on one's self." 4 Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 189 (1769). Like Hawkins and Hale, Blackstone criticized the tendency of coroner's juries to find "that the very act of suicide is an evidence of insanity; as if every man who acts contrary to reason, had no reason at all: for the same argument would prove every other criminal *non compos,* as well as the self-murderer." *Id.* Blackstone noted that the punishment for suicide at common law was forfeiture of all of the suicide's personal property and ignominious burial in the public way. *Id.* at 190. These punishments were threatened in the hope that a potential suicide's "care for either his own reputation, or the welfare of his family, would be some motive to restrain him from so desperate and wicked an act." *Id.* Nevertheless, Blackstone recommended that the severity of the law be tempered by the power of the sovereign "to execute mercy in judgment." *Id.*

The condemnation of suicide at common law was not limited to the commentators; it was also expressed by the courts. In a case decided more than 400 years ago, an English court described the "quality of the offence" committed by the suicide as "a degree of murder." *Hales v. Petit,* 1 Plowd, 253, 261, 75 Eng. Rep. 387, 399-400 (Queen's Bench 1561-1562). English courts treated both assisted suicide and suicide pacts as forms of homicide.[4]

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[4] *See Vaux's Case,* 4 Co. Rep. 44a, 76 Eng. Rep. 992 (1591); *Rex v. Dyson,* Russ. & Ry. 523, 168 Eng. Rep. 930 (1823); *Regina v. Alison,* 8 Car. & P. 418, 173 Eng. Rep. 557 (1838); *Regina v. Jessop,* 16 Cox Cr. Cas. 204 (1887); *Regina v. Stormonth,* 61 J.P. 729 (1897); *Rex v. Abbott,* 67 J.P. 151 (1903). *See also Regina v. Gaylor,* 1 Dears. & B. 288, 169 Eng. Rep. 1011 (1857).

And at common law, *attempted* suicide was a misdemeanor, punishable by fine and imprisonment.[5]

The sparse records available indicate that this was also the law in colonial America. At least nine of the original thirteen colonies prohibited, and in some cases punished, suicide and attempted suicide,[6] though the common law

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[5] *See Regina v. Moore*, 3 Car. & K. 319, 175 Eng. Rep. 571 (1852); *Regina v. Doody*, 6 Cox. Crim. Cas. 463 (1854); *Regina v. Burgess*, 9 Cox Crim. Cas. 247, 169 Eng. Rep. 1387 (1862); *Rex v. Mann*, 2 K.B. 107, 83 L.J.K.B. 648 (1914). In its survey of English law, the Ninth Circuit minimized the clear condemnation of suicide (by the mentally competent) enunciated by Bracton and Coke, 79 F.3d at 808-09, relegated Blackstone to an obscure footnote, *id.* at 809 n.38, ignored the other great commentators who unequivocally condemned suicide as criminal and overlooked at least a dozen English cases expressing the law's (*and* society's) disapproval of suicide. Although, in the case of *completed* suicides, juries may have been reluctant to return a verdict that would result in a property forfeiture that would punish only innocent survivors, the guilty verdicts returned against persons who *attempted* suicide, *assisted* suicide or *survived* suicide pacts strongly suggest that English juries experienced no comparable difficulty in applying the law where no forfeiture was at stake.

[6] *Connecticut:* 2 Z. Swift, A SYSTEM OF LAWS OF THE STATE OF CONNECTICUT 304 (n.p. 1796) (reprinted 1972) (noting early instances of ignominious burials); Booth, Woodruff, Mather, Baldwin & Turrill, *Preface* to CONN. GEN. STAT. at vi (1875) (noting State's adoption of common law of England).

Georgia: Life Ass'n of America v. Waller, 57 Ga. 533, 536 (1876) (suicide "a species of crime or wickedness—something wrong; a kind of self-murder" at common law).

Maryland: Pope v. State, 396 A.2d 1054, 1072-74 (Md. 1978) (adoption of common law); Note, *Criminal Liability of Participants in Suicide:* State v. Williams, 5 MD. L. REV. 324, 325-26 (1941) (reporting unappealed trial court decision treating suicide as a common law crime).

Massachusetts: THE GENERAL LAWS AND LIBERTIES OF MASSACHUSETTS COLONY (1672), *reprinted in* THE COLONIAL LAWS OF MASSACHUSETTS 137 (W. Whitmore ed. 1887) (statute mandating ignominious burial for suicide).

North Carolina: State v. Willis, 121 S.E.2d 854 (N.C. 1961) (suicide a criminal act at common law, attempted suicide punishable

penalties generally were abolished after the Revolution.[7] The penalties were abolished, not because society no longer regarded suicide as a wrong (much less as a right), but because of an awareness that punishment could not reach the suicide and a moral sense that it was unfair to punish the suicide's innocent survivors. *See Cruzan*, 497 U.S. at 294 (Scalia, J., concurring).

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as a misdemeanor). *See also* N.C. Laws, ch. XXXI, § VI (1715), *reprinted in* 1 THE FIRST LAWS OF THE STATE OF NORTH CAROLINA 18 (John D. Cushing ed. 1984) (adopting common law).

Pennsylvania: Connecticut Mut. Life Ins. Co. v. Groom, 86 Pa. 92, 97 (1878) (describing suicide as "the crime of self-murder"); *Commonwealth v. Wright*, 11 Pa. D. 144 (Ct. Quarter Sess., Phil. County 1902) (criticizing practice of indicting persons "for the common law offence of attempting to commit suicide"); *Elwood v. New England Mut. Life Ins. Co.*, 158 A. 257, 259 (Pa. 1931) (classifying attempted suicide as "a crime infamous at common law," and a successful suicide as "a species of felony").

Rhode Island: THE EARLIEST ACTS AND LAWS OF THE COLONY OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, 1647-1719, at 19, 59 (John D. Cushing ed. 1977) (adopting common law punishments for suicide).

South Carolina: S.C. Acts, No. 253, § VI (Apr. 9, 1706), *reprinted in* 1 THE EARLIEST PRINTED LAWS OF SOUTH CAROLINA, 1692-1734, at 192 (John D. Cushing ed. 1978), (recognizing criminality of suicide at common law).

Virginia: A. Scott, CRIMINAL LAW IN COLONIAL VIRGINIA 108 n.198, 198-99 nn.15-16 (1930) (noting instances of ignominious burial and forfeiture of property).

[7] *See, e.g.*, DEL. CONST. art. 1, § 15 (1792); MD. CONST., Declaration of Rights § 24 (1776); N.H. CONST. pt. 2, art. 89 (adopted 1789); N.J. CONST. of 1776, art. 17; N.C. Laws, ch. XXXI (1787), *reprinted in* 2 THE FIRST LAWS OF THE STATE OF NORTH CAROLINA 626 (John D. Cushing ed. 1984); an Act to reform the penal Laws, § 53 (1798), *reprinted in* 2 THE FIRST LAWS OF THE STATE OF RHODE ISLAND 604 (John D. Cushing ed. 1983); Act of Mar. 14, 1848 (Criminal Code), tit. II, ch. XI, §§ 23, 25, 1847-48 Va. Laws 124. Contrary to the understanding of the Ninth Circuit, 79 F.3d at 809, the abolition of common law penalties did *not* mean that suicide had been decriminalized. *See Potts v. Barrett Div., Allied Chem. & Dye Corp.*, 138 A.2d 574, 580 (N.J. Super. 1958); *State v. Willis*, 121 S.E.2d 854 (N.C. 1961); *Wackwitz v. Roy*, 418 S.E.2d 861, 864 (Va. 1992).

III. ALTHOUGH THE PENALTIES FOR SUICIDE AND ATTEMPTED SUICIDE ULTIMATELY FELL INTO DISFAVOR IN AMERICAN LAW, THE STATES HAVE RETAINED A STRONG AND COMPELLING INTEREST IN THE PRESERVATION OF HUMAN LIFE AND IN THE PREVENTION OF SUICIDE.

The common law penalties for suicide were abandoned after the Revolutionary War, and attempted suicide was seldom prohibited[8] and more rarely punised.[9] Nevertheless, suicide was regarded as "*malum in se*" and was often referred to as a "crime," a "wrongful

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[8] At one time or another, eight States prohibited attempted suicide: *Minnesota*: MINN. PENAL CODE, §§ 143, 147 (1885), *codified as* MINN. GEN. STAT. §§ 6428, 6432 (1894), *recodified as* MINN. REV. LAWS, § 4870, *repealed by* an Act of Apr. 20, 1911, ch. 293, § 1, 1911 Minn. Laws 409, 409; *Nevada*: Crimes & Punishments Act of 1911, § 115, *codified as* NEV. REV. LAWS § 6380 (1912), *repealed by* an Act of Mar. 25, 1913, ch. 238, § 1, 1913 NEV. STAT. 362, 362; Act of Mar. 4, 1957, ch. 35, § 1, 1956-57 NEV. STAT. 59, 59-60, *repealed by* an Act of Mar. 31, 1961, ch. 256, § 1, 1961 Nev. Stat. 416, 416; *New Jersey*: Act of May 9, 1957, ch. 34, § 1, 1 N.J. Laws 63, 67 (1957), *codified as* N.J. REV. STAT. § 2A:170-25.6 (Supp. 1967), *repealed by* an Act of Act of Feb. 16, 1972, ch. 450, § 3, 1971 N.J. Laws 1934; *New York*: Act of July 26, 1881, ch. 676, §§ 174, 178, 1881 N.Y. Laws (Vol. 3 Penal Code) at 42-43, *repealed by* an Act of May 5, 1919, ch. 414, § 1, 1919 N.Y. Laws 1193, 1193; *North Dakota*: G. Hand, REV. CODES OF THE TERRITORY OF DAKOTA, PENAL CODE §§ 230, 236 (1877), *repealed by* an Act of Mar. 4, 1967, ch. 108, § 1, 1967 N.D. Sess. Laws 215, 300; *Oklahoma*: Okla. Terr. Stat. 2076 (1890), *repealed by* an Act of Jan. 30, 1976, ch. 6, § 2, 1976 Okla. Sess. Laws 7; *South Dakota*: G. Hand, REV. CODES OF THE TERRITORY OF DAKOTA, PENAL CODE §§ 230, 236 (1877), *recodified as* S.D. CODE, § 13.1903 (1939), *repealed by* an Act of Feb. 17, 1968, ch. 31, § 1, § 13.1901, 1968 S.D. Sess. Laws 47, 47; *Washington*: CRIM. CODE, ch. 249, § 134, 1909 Wash. Laws 11th Sess. 890, 929, codified at REM. & BAL. CODE § 2386 (1910), *repealed by* WASH. CRIM. CODE, 1975, ch. 260, § 9A.92.010(213)-(217) Wash. Laws 817, 866, *codified as* REV. WASH. CODE § 9A.92.010(213)-(217) (1977).

[9] Three courts held that attempted suicide could be charged as a common law crime. *See State v. Carney*, 55 A. 44 (N.J. 1903); *State v. Lafayette*, 188 A. 918 (N.J. Common Pleas 1937); *State v. Willis*, 121 S.E.2d 854 (N.C. 1961).

act," a "grave public wrong," or an act of "moral turpitude," even though it was no longer punishable.[10] Indeed, in a case decided 120 years ago, this Court characterized suicide as "self-murder," and referred to the suicide of a sane person as "an act of criminal self-destruction." *Bigelow v. Berkshire Life Ins. Co.*, 93 U.S. 284, 286 (1876).

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[10] *See, e.g., McMahan v. State*, 53 So. 89, 90-91 (Ala. 1910); *Pennsylvania Mut. Life Ins. Co. v. Cobbs*, 123 So. 94, 97 (Ala. App. 1929); *Life Ass'n of America v. Waller*, 57 Ga. 533, 536 (1876); *Grand Lodge of Illinois, Indep. Order of Mut. Aid v. Wieting*, 48 N.E. 59, 61-62 (Ill. 1897); *Dickerson v. Northwestern Mut. Life Ins. Co.*, 65 N.E. 694, 696 (Ill. 1902); *Wallace v. State*, 116 N.E.2d 100, 101 (Ind. 1953); *Brown v. Metropolitan Life Ins. Co.*, 7 N.W.2d 21, 24 (Iowa 1943); *Manhattan Life. Ins. Co. v. Beard*, 66 S.W. 35, 37 (Ky. 1902); *Dugan v. Commonwealth*, 333 S.W.2d 755, 756 (Ky. 1960); *Commonwealth v. Mink*, 123 Mass. 422, 426, 428-29 (1877); *Bohaker v. Travelers Ins. Co.*, 102 N.W. 342, 344 (Mass. 1913); *Hale v. Life Indem. & Inv. Co.*, 63 N.W. 1108, 1108 (Minn. 1895); *Shipman v. Protected Home Circle*, 67 N.E. 83, 85 (N.Y. 1903); *Benard v. Protected Home Circle*, 146 N.Y.S. 232, 235 (App. Div. 1914); *State v. Willis*, 121 S.E.2d 854, 855-57 (N.C. 1961); *Wyckoff v. Mut. Life Ins. Co. of N.Y.*, 147 P.2d 227, 229 (Or. 1944); *Elwood v. New England Mut. Life Ins. Co.*, 158 A. 257, 258-59 (Pa. 1931); *State v. Levelle*, 13 S.E. 319, 321 (S.C. 1891), *overruled on other grounds, State v. Torrence*, 406 S.E.2d 315 (S.C. 1991); *Phadenhauer v. Germania Life Ins. Co.*, 54 Tenn. (7 Heisk.) 567, 576 (1872); *State ex rel. Swann v. Pack*, 527 S.W.2d 99, 113 (Tenn. 1975), *cert. denied*, 424 U.S. 954 (1975); *Plunkett v. Supreme Conclave, Improved Order of Heptasophs*, 55 S.E. 9, 10-11 (Va. 1906); *Patterson v. Natural Premium Mut. Life Ins. Co.*, 75 N.W. 980, 983 (Wis. 1898).

In its highly selective use of historical materials, the Ninth Circuit ignored twenty-two decisions from sixteen American jurisdictions (most of which were cited in *Marzen*) condemning suicide and, instead, focused on one, isolated New Jersey Supreme Court decision from 1901 which, in *dicta*, appeared to excuse suicide, at least in some instances. *See Compassion in Dying*, 79 F.3d at 809-10 (quoting *Campbell v. Supreme Conclave Improved Order Heptasophs*, 49 A. 550, 553 (N.J.L. 1901)). The court failed to note that later New Jersey opinions expressly rejected *Campbell's* approbation of suicide. *See State v. Carney*, 55 A. 44 (N.J. 1903); *Potts v. Barrett Div., Allied Chem. & Dye Corp.*, 138 A.2d 574, 580 (N.J. Super. 1958).

Regardless of the status of suicide itself, most States prohibited *assisted* suicide. By the time that the Fourteenth Amendment was approved in 1868, at least twenty-one of the then thirty-seven States, including eighteen of the thirty ratifying States, banned assisted suicide, either as a statutory[11] or common law offense.[12] Whatever may have been the common law ra-

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[11] *Arkansas:* Act of Feb. 16, 1838, *printed as* ARK. REV. STAT. ch. XLIV, div. III, art. II, § 4, at 240 (1838); *Florida:* Act of Aug. 6, 1868, ch. 1637 (No. 13), subchap. 3, § 9, 1868 Fla. Laws 61, 64; *Kansas:* KAN. TERR. STAT. ch. 48, § 8 (1855); *Minnesota:* MINN. TERR. REV. STAT. ch. 100, § 9, at 493 (1851); *Mississippi:* Act of Feb. 15, 1839, ch. 66, tit. 3, § 7, 1839 Miss. Laws 102, 112, *codified as* MISS. CODE ch. 64, art. 12, tit. 3, § 7, at 958 (Hutchinson 1849); *Missouri:* Act of Mar. 20, 1835, art. II, *codified as* MO. REV. STAT. CRIMES & PUNISHMENTS, art. II, § 8, at 168 (1835); *New York:* 2 N.Y. REV. STAT. pt. IV, ch. I, tit. I, art. 1, § 7 at 661 (1829); *Oregon:* OR. GEN. LAWS 1845-1864 (Deady 1866), CODE OF CRIM. PROC. § 508 at 528; *South Carolina:* 1 THE EARLIEST PRINTED LAWS OF SOUTH CAROLINA 1692-1734, at 190 (John D. Cushing ed. 1978) (statute condemning suicide as a felony and, by implication, *assisted* suicide); *Wisconsin:* REVISED STAT. OF THE STATE OF WIS. ch. 133, § 9 (Albany, N.Y. 1849), *codified as* REV. STAT. OF WIS. ch. 164, § 9 (1858).

[12] *Alabama:* Alabama adopted the common law of crimes, including the law of homicide. ALA. DIGEST, tit. 17, ch. 1, § 45, at 214 (H. Toulmin ed. 1823); PENAL CODE, No. 138, ch. 3, § 2, 1840-41 ALA. ACTS 122 (*codified as* Supplement to AIKEN'S DIGEST PENAL CODE, ch. 3, § 2, at 210 (A. Meek ed. 1836-41)). For the modern statutory codification of common law crimes, *see* ALA. CODE § 13A-6-3 (1994) and *Commentary.* Since "[e]very murder at common law is murder under our statutes," *McMahan v. State,* 53 So. 89, 90 (Ala. 1910), suicide was a felony even though no punishment could be attached. *Id.* at 90-91 ("intentional self-destruction" is "felo de se"). Accordingly, *assisted* suicide would have been criminal, also. *See also Crook v. State,* 160 So.2d 884, 893 (Ala. 1963): "Suicide is murder at Common Law. . . . An agreement compassing it is a criminal conspiracy. If one of the conspirators dies . . . the survivor—if he contributed to the suicide whether present or not—can legitimately be tried for murder."

Connecticut: Connecticut also adopted the common law of crimes. *See* Booth, Woodruff, Mather, Baldwin & Turrill, *Preface to* CONN. GEN. STAT. at vi (1875). Persuading, provoking or counseling

tionale for prohibiting suicide, the States have retained a strong interest in protecting the lives of their citizens. That interest is currently manifested in several ways.

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another to commit suicide was treated as murder. 2 Z. Swift, A DIGEST OF THE LAWS OF THE STATE OF CONNECTICUT 270 (New Haven 1823).

Georgia: A post-Reconstruction case referred to suicide as "something more than self-sought and self-inflicted death. It is a species of crime or wickedness—something wrong; a kind of self-murder." *Life Ass'n of America v. Waller*, 57 Ga. 533, 536 (1876). This language suggests that *assisted* suicide would have been criminal, too.

Kentucky: In 1904, the Kentucky Court of Appeals held that suicide was a common law felony and that one could be charged and convicted for advising or assisting in the commission of a suicide. *Commonwealth v. Hicks*, 82 S.W. 265 (Ky. 1904).

Maryland: From its earliest days, Maryland adopted the common law of crimes. *See Pope v. State*, 396 A.2d 1054, 1072-74 (Md. 1978) (recognizing common law crime of misprision of felony); *Gladden v. State*, 330 A.2d 176 (Md. 1974) (adopting common law "transferred intent" rule); *State v. Buchanan*, 5 H. & J. 317 (1821) (adopting common law crime of conspiracy). Both suicide and assisted suicide were crimes at common law. An unappealed trial court decision in 1940 upheld the conviction of the survivor of a suicide pact for second-degree murder, essentially holding that active assistance in committing suicide is a form of homicide. *See* Note, *Criminal Liability of Participants in Suicide:* State v. Williams, 5 MD. L. REV. 324 (1941).

Massachusetts: Commonwealth v. Bowen, 13 Mass. 356 (1816) (holding that one prisoner who assisted another prisoner in hanging himself in jail could be charged with murder); *Commonwealth v. Mink*, 123 Mass. 422, 429 (1877) (reviewing cases on suicide and attempted suicide and concluding that while not "technically a felony in this Commonwealth," suicide was nevertheless "unlawful and criminal as *malum in se*," and that "any attempt to commit it is likewise unlawful and criminal").

Michigan: From its earliest days as a territory, Michigan adopted the common law of crimes, in addition to particular statutory crimes. *See* CASS CODE OF 1816, Crimes § 58, *reprinted in* 1 MICH. TERR. LAWS 132-33 (1871). For the modern statutory codification of common law crimes, *see* MICH. COMP. LAWS ANN. § 750.505 (West 1991). In an 1876 decision, the Michigan Supreme Court recognized that the suicide of sane person was a crime at common law. *See John Hancock Mut. Life Ins. Co. v. Moore*, 34

First, almost all of the States (forty-six States) forbid assisted suicide, either by an express statute [13] or by ap-

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Mich. 41, 45 (1876). In *People v. Roberts*, 178 N.W. 690 (Mich. 1920), *overruled in part, People v. Kevorkian*, 527 N.W.2d at 733-39, the Michigan Supreme Court upheld a murder conviction of a man who provided poison to his wife who committed suicide. In *Kevorkian*, the Michigan Supreme Court held that assisted suicide was punishable as a common law crime even in the absence of special legislation. *Id.* at 739.

North Carolina: In 1961, the North Carolina Supreme Court, noting that the State had adopted the common law of crimes (*see* N.C. GEN. STAT. § 14-1(1) (1993)), held that attempted suicide was an indictable misdemeanor. *State v. Willis*, 121 S.E.2d 854 (N.C. 1961). The court expressly held that one who "aids and abets another in . . . self-murder is amenable to the law." *Id.* at 856-57. After independence, North Carolina readopted the common law. *See* N.C. LAWS, ch. V, § II (1778), *reprinted in* 1 THE FIRST LAWS OF THE STATE OF NORTH CAROLINA 351 (John D. Cushing ed. 1984).

Pennsylvania: In 1878, the Pennsylvania Supreme Court defined suicides as "the crime of self-murder" in "legal acceptation and in popular use." *Connecticut Mut. Life Ins. Co. v. Groom*, 86 Pa. 92, 97 (1878). As a State that adopted common law crimes, *assisting* suicide would have been a criminal offense.

Tennessee: Tennessee adopted the common law. *See State v. Alley*, 594 S.W.2d 381, 382 (Tenn. 1980). In 1872, the Tennessee Supreme Court referred to suicide "a crime of the highest grade." *Phadenhauer v. Germania Life Ins. Co.*, 54 Tenn. (7 Heisk.) 567, 576 (1872). Thus, *assisted* suicide also would have been unlawful.

Virginia: Virginia adopted the common law of crimes. *See* A. Scott, CRIMINAL LAW IN COLONIAL VIRGINIA 27 (1930); VA. CODE ANN. § 18.2-16 (1996); *Plunkett v. Supreme Conclave, Improved Order of Heptasophs*, 55 S.E. 9, 11 (Va. 1906) (referring to suicide as a "crime"). *See also Wackwitz v. Roy*, 418 S.E.2d 861, 864 (Va. 1992) ("[s]uicide . . . remains a common law crime in Virginia as it does in a number of other common-law states").

[13] Thirty-five States have enacted statutes banning assisted suicide. ALASKA STAT. § 11.41.120(a)(2) (Michie 1989); ARIZ. REV. STAT. ANN. § 13-1103(A)(3) (West Supp. 1995); ARK. CODE ANN. § 5-10-104(a)(2) (Michie 1993); CAL. PENAL CODE § 401 (West 1988); COLO. REV. STAT. § 18-3-104(1)(b) (Supp. 1995); CONN. GEN. STAT. ANN. § 53a-56(a)(2) (West 1994); DEL. CODE ANN. tit. 11, § 645 (1995); FLA. STAT. ANN. § 782.08 (West 1992); GA. CODE ANN. § 16-5-5(b) (1996); ILL. COMP. STAT. ANN. CH. 720,

plication of general homicide or common law principles.[14] Although suicide assistance is not as common as suicide

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§ 5/12-31(a)(2) (Smith-Hurd Supp. 1996); IND. CODE ANN. § 35-42-1-2.5(b) (Michie Supp. 1996); IOWA S.F. 2066, *to be codified as* IOWA CODE § 707A.2 (Supp. 1996); KAN. STAT. ANN. § 21-3406 (1995); KY. REV. STAT. ANN. § 216.302 (Michie 1995); LA. REV. STAT. ANN. § 14:32.12 (West Supp. 1996); ME. REV. STAT. ANN. tit. 17-A, § 204 (West 1983); MINN. STAT. ANN. § 609.215 (West 1987 and Supp. 1996); MISS. CODE ANN. § 97-3-49 (1994); MO. ANN. STAT. § 565.023.1(2) (West Supp. 1996); MONT. CODE ANN. § 45-5-105 (1995); NEB. REV. STAT. ANN. § 28-307 (Michie 1995); N.H. REV. STAT. ANN. § 630.4 (1996); N.J. STAT. ANN. § 2C:11-6 (West 1995); N.M. STAT. ANN. § 30-2-4 (Michie 1994); N.Y. PENAL LAW §§ 120.30, 125.15(3) (McKinney 1987); N.D. CENT. CODE § 12.1-16-04 (Supp. 1995); OKLA. STAT. ANN. tit. 21, §§ 813, 814, 815 (West 1983); OR. REV. STAT. § 163.125(1)(b) (1993) (although Oregon allows physician-assisted suicide under certain circumstances, *see* OR. REV. STAT. § 127.800 *et seq.* (1996), assisted suicide remains generally illegal); PA. CONS. STAT. ANN. tit. 18, § 2505(b) (West 1983); R.I. Pub. Act 96-133, *to be codified as* R.I. GEN. STAT. tit. 11, ch. 60; S.D. CODIFIED LAWS ANN. § 22-16-37 (Michie 1988); TENN. CODE ANN. § 39-13-216 (Supp. 1995); TEX. PENAL CODE ANN. § 22.08 (West 1994); WASH. REV. CODE ANN. § 9A.36.060 (West 1988); WIS. STAT. ANN. § 940.12 (West 1996).

[14] *Idaho:* IDAHO CODE § 18-303 (1987) (adopting common law crimes).

Ohio: Blackburn v. State, 23 Ohio St. 146 (1872) (man convicted of murder for preparing poisonous concoction and giving it to his wife, who drank it intending to kill herself).

South Carolina: State v. Levelle, 13 S.E. 319, 321 (S.C. 1891) ("suicide is an unlawful act, an act *malum in se*, and is a felony"). Since suicide was a felony, *assisted* suicide would have been criminal, also. *See also State v. Jones*, 67 S.E. 160, 162, 165 (S.C. 1910). For the modern statutory codification of common law crimes, *see* S.C. CODE ANN. § 16-1-110 (Law Co-op. Supp. 1995).

Vermont: VT. STAT. ANN. tit. 1, § 271 (1996) (adopting common law). *See State v. Stanislaw*, 573 A.2d 286, 289 (Vt. 1990) (recognizing common law crimes).

West Virginia: State v. General Daniel Morgan Post No. 548, 107 S.E.2d 353, 357 (W. Va. 1959) (adopting common law crimes). For *Alabama, Maryland, Massachusetts, Michigan, North Carolina* and *Virginia, see* the authorities cited in n.12, *supra*.

itself, the States do enforce their assisted suicide laws.[15] Moreover, suicide assistance is often prosecuted as a form of homicide, independent of any assisted suicide statute, where one person actively assists another in killing himself.[16]

Second, nearly one-half of the States allow both private and public actors to use nondeadly force to thwart suicide attempts.[17] Third, all States provide for the tem-

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[15] *See, e.g., Hinson v. State*, 709 S.W.2d 106 (Ark. App. 1986); *In re Joseph G.*, 667 P.2d 1176 (Cal. 1983); *In re Application of Keddie*, 1990 WESTLAW 96595 (Del. Super. 1990) (noting plea of guilty to promoting a suicide); *State v. Bauer*, 471 N.W.2d 363 (Minn. App. 1991); *Commonwealth v. Swartzentruver*, 389 A.2d 181 (Pa. Super. 1978); *Chanslor v. State*, 697 S.W.2d 393 (Tex. Cr. App. 1985) (noting that defendant could have been charged with assisted suicide in obtaining poison to give to his wife). *See also Wall Street Journal*, May 1, 1996, A18 (reporting man's plea of guilty to attempted manslaughter for assisting his wife in committing suicide).

[16] *See, e.g., People v. Cleaves*, 280 Cal. Rptr. 146 (Ct. App. 1991) (second degree murder); *State v. Marti*, 290 N.W.2d 570 (Ia. 1980) (involuntary manslaughter); *Persampieri v. Commonwealth*, 175 N.E.2d 387 (Mass. 1961) (involuntary manslaughter); *State v. Bier*, 591 P.2d 1115 (Mont. 1979) (negligent homicide); *State v. Sexson*, 869 P.2d 301 (N.M. 1994) (murder); *People v. Duffy*, 595 N.E.2d 814 (N.Y. 1992) (manslaughter).

[17] See ALA. CODE § 13A-3-24(4) (1994); ALASKA STAT. § 11.81.430(a)(4) (Michie Supp. 1989); ARIZ. REV. STAT. ANN. § 13-403(4) (West 1989); ARK. CODE ANN. § 5-2-605(4) (Michie 1993); COLO. REV. STAT. § 18-1-703(1)(d) (West 1990); CONN. GEN. STAT. ANN. § 53a-18(4) (West 1994); DEL. CODE ANN. tit. 11, § 467(e) (1995); HAW. REV. STAT. § 703-308(1) (1985); KY. REV. STAT. § 503.100(1)(a) (Michie 1990); ME. REV. STAT. ANN. tit. 17-A, § 106(6) (West 1983); MINN. STAT. ANN. § 609.06(8) (West 1987); MO. ANN. STAT. § 563.061(5) (West 1979); NEB. REV. STAT. § 28-1412(7) (Michie 1995); N.H. REV. STAT. § 627:6(VI) (1996); N.J. STAT. ANN. § 2C:3-7(e) (West 1995); N.Y. PENAL LAW § 35.10(4) (McKinney 1987); N.D. CENT. CODE § 12.1-05-05(5) (1985); OKLA. STAT. ANN. tit. 21, § 643(6) (West 1996); Or. Rev. Stat. § 161.205(4) (1993); PA. CONS. STAT. ANN. tit. 18, § 508(d) (West 1983); TENN. CODE ANN. § 39-11-613 (1991); TEX. PENAL CODE ANN. § 9.34(a) (West 1994); WIS. STAT. ANN. § 939.48(5) (West 1996).

porary involuntary commitment of individuals who, as a result of mental disease or illness, may harm themselves.[18] Finally, despite occasional instances of jury nullification or discretionary decisions not to prosecute, acts of "mercy-killing" or active voluntary euthanasia always have been considered as homicide. The law does not accept the consent of the victim as a defense to a charge of homicide,[19] nor benevolent motive as an excuse.[20]

In light of this overwhelming legislative and judicial consensus,[21] which the Ninth Circuit largely ignored, it

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[18] *See, e.g.*, N.Y. MENTAL HYG. LAW, § 9.01 *et seq.* (McKinney 1996); WASH. REV. CODE ANN. § 71.05.020 *et seq.* (West 1992).

[19] *See, e.g., Gospodareck v. Stat*, 666 So.2d 835, 842 (Ala. Cr. App. 1993); *People v. Matlock*, 336 P.2d 505 (Cal. 1959); *In re Thomas C.*, 228 Cal. Rptr. 430 (Ct. App. 1986); *Ragan v. State*, 599 So.2d 276 (Fla. Dist. Ct. 1992); *Gentry v. State*, 625 N.E.2d 1268 (Ind. App. 1994); *State v. Cobb*, 625 P.2d 1133, 1135-36 (Kan. 1981); *State v. Ludwig*, 70 Mo. 412, 415 (1879); *State v. Fuller*, 278 N.W.2d 756, 761 (Neb. 1979); *Edinburgh v. State*, 896 P.2d 1176, 1178-80 (Okla. Cr. App. 1995); *State v. Bouse*, 264 P.2d 800, 812 (Or. 1953), *overruled on other grounds, State v. Fischer*, 376 P.2d 418 (Or. 1962), *State v. Brewton*, 395 P.2d 874 (Or. 1964); *Turner v. State*, 108 S.W. 1139, 1141 (Tenn. 1907); *Goodin v. State*, 726 S.W.2d 956, 957-58 (Tex. Cr. App. 1987); *Martin v. Commonwealth*, 37 S.E.2d 43, 47 (Va. 1946). *See also State v. Mays*, 307 S.E.2d 655 (W. Va. 1983).

[20] *People v. Conley*, 411 P.2d 911, 918 (Cal. 1966) ("one who commits euthanasia bears no ill will toward his victim and believes [that] his act is morally justified . . . nonetheless acts with malice if he is able to comprehend that society prohibits his act regardless of his personal belief"); *Gilbert v. State*, 487 So.2d 1185, 1190 (Fla. Dist. Ct. App. 1986), *rev. denied*, 494 So.2d 1150 (Fla. 1986); *Eichner v. Dillon*, 426 N.Y.S.2d 517, 533 (App. Div. 1980), *aff'd as modified sub nom. In re Storar*, 420 N.E.2d 64 (N.Y. 1981). Anecdotal evidence and polling data that some physicians may assist their patients in killing themselves, *Compassion in Dying*, 79 F.3d at 811 & nn.54-59, does not reflect societal acceptance of such conduct, especially where the conduct is difficult to detect and prosecute.

[21] The Model Penal Code prohibits assisted suicide, even though the Code does not criminalize either suicide or attempted suicide. *See* MODEL PENAL CODE § 210.5(2). In their *Comment*, the drafters said that "the interests in the sanctity of life that are represented

cannot plausibly be argued that a right to commit suicide (or suicide assistance) under any circumstances is "deeply rooted in this Nation's history and traditions," *Moore v. City of East Cleveland, Ohio,* 431 U.S. at 503, or that it is "implicit in the concept of ordered liberty," *Palko v. Connecticut,* 302 U.S. at 325. It would be "an impermissibly radical departure from existing tradition, and from the principles that underlie that tradition, to declare that there is such a fundamental right protected by the Due Process Clause." *Kevorkian,* 527 N.W.2d at 733.

IV. BOTH THE SECOND CIRCUIT AND THE NINTH CIRCUIT ERRED IN EQUATING SUICIDE WITH THE REFUSAL OF UNWANTED LIFE-SUSTAINING MEDICAL TREATMENT.

The key error of both the Second Circuit's equal protection analysis and the Ninth Circuit's due process analysis was to equate suicide, a crime at common law, with the refusal of unwanted medical care, a right protected by the common law and the Constitution. *See Quill,* 80 F.3d at 725-31; *Compassion in Dying,* 79 F.3d at 820-24. They are not equivalent.

> [W]hereas suicide involves an affirmative act to end a life, the refusal or cessation of life-sustaining treatment simply permits life to run its course, unencumbered by contrived intervention. Put another way, suicide frustrates the natural course by introducing an outside agent to accelerate death, whereas the refusal or withdrawal of life-sustaining medical treatment allows nature to proceed, i.e., death occurs because of the underlying condition.
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> [P]ersons who opt to discontinue life-sustaining medical treatment are not, in effect, committing suicide. There is a difference between choosing a natural death summoned by an uninvited illness or

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by the criminal homicide laws are threatened by one who expresses a willingness to participate in taking the life of another, even though the act may be accomplished with the consent, or at the request, of the suicide victim." *Id.* at 100.

> calamity, and deliberately seeking to terminate one's life by resorting to death-inducing measures unrelated to the natural process of dying.

People v. Kevorkian, 527 N.W.2d at 728-29.

Virtually without exception, state legislators and both state and federal courts have recognized the distinction between directly *causing* death by an affirmative act ending life and *allowing* death to occur by withholding or withdrawing life-sustaining medical treatment. Forty-seven States expressly disapprove of mercy killing, suicide and assisted suicide in either their natural death acts/living will statutes,[22] or their durable power of attorney for

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[22] ALA. CODE § 22-8A-10 (1990); ALASKA STAT. § 18.12.080(f) (Michie 1994); ARIZ. REV. STAT. ANN. § 36-3210 (West. Supp. 1995); ARK. CODE ANN. § 20-17-210(g) (Michie 1991); CAL. HEALTH & SAFETY CODE § 7191.5(g) (West Supp. 1996); COLO. REV. STAT. § 15-18-112(1) (West 1987); FLA. STAT. ANN. § 765.309 (1) (West Supp. 1996); GA. CODE ANN. § 31-32-11(b) (1996); HAW. REV. STAT. § 327D-13 (Supp. 1992); ILL. COMP. STAT. ANN. ch. 755, § 35/9(f) (Smith-Hurd 1992); IND. CODE ANN. § 16-36-4-19 (Michie 1993); IOWA CODE ANN. § 144A.11.6 (West 1989); KAN. STAT. ANN. § 65-28,109 (1992); KY. REV. STAT. ANN. § 311.639 (Michie 1995); LA. REV. STAT. ANN. § 40:1299.58.10(A) (West 1992); ME. REV. STAT. ANN. tit. 18-A, § 5-813(c) (West Supp. 1995); MD. HEALTH-GEN. CODE ANN. § 5-611(c) (1994); MINN. STAT. ANN. § 145B.14 (West Supp. 1996); MISS. CODE ANN. § 41-41-117(2) (1993); MO. ANN. STAT. § 459.055(5) (West 1992); MONT. CODE ANN. § 50-9-205(7) (1995); NEB. REV. STAT. ANN. § 20-412(7) (Michie 1995); NEV. REV. STAT. ANN. § 449.670(2) (Michie 1991); N.H. REV. ANN. § 137-H:13 (1996); N.C. GEN. STAT. § 90-320(b) (1993); N.D. CENT. CODE § 23-06.4-01 (1991); OHIO REV. CODE ANN. § 2133.12(D) (Anderson Supp. 1995); OKLA. STAT. ANN. tit. 63, § 3101.12(G) (West Supp. 1996); PA. CONS. STAT. ANN. tit. 20, § 5402(b) (West Supp. 1996); R.I. GEN. LAWS § 23.4.11-10(f) (Supp. 1995); S.C. CODE ANN. § 44-77-130 (Law. Co-op. Supp. 1996); S.D. CODIFIED LAW ANN. § 32-12D-20 (Michie 1994); TEX. HEALTH & SAFETY CODE ANN. § 672.020 (West 1992); UTAH CODE ANN. § 75-2-1118 (1993); VA. CODE ANN. § 54.1-2990 (Michie 1994); WASH. REV. CODE ANN. § 70.122-100 (West Supp. 1996); W. VA. CODE § 16-30-10 (1995); WIS. STAT. ANN. § 154.11 (6) (West 1989); WYO. STAT. § 35-22-109 (Michie 1994).

health care acts [23] or both.[24]

Moreover, the majority's conclusion in *Compassion in Dying* "that there is no constitutionally permissible distinction between suicide and refusing medical treatment . . . ignores a long line of judicial decisions that recognize the distinction." 85 F.3d at 1444 (O'Scannlain, J., dissenting from order rejecting request for rehearing *en banc* by the full court). In *In re Quinlan,* 355 A.2d 647 (N.J. 1976), *cert. denied sub nom. Garger v. New Jersey,* 429 U.S. 922 (1976), the landmark "right-to-die" case, the New Jersey Supreme Court, in authorizing the parents of Karen Ann Quinlan to remove her from a ventilator, was careful to distinguish withdrawal of life support from homicide and suicide "We would see a real distinction between the self-infliction of deadly harm and a self-determination against artificial life support or radical surgery, in the fact of irreversible, painful and certain imminent death." *Id.* at 665. The court noted further that "there would be no criminal homicide" in removing the ventilator, explaining that "the ensuing death would not be homicide but rather expiration from existing natural causes." *Id.* at 669-70. In *Superintendent of Belchertown State School v. Saikewicz,* 370 N.E.2d 417 (Mass. 1977), the Massachusetts Supreme Judicial Court concurred:

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[23] Act of July 12, 1982, § 3, 63 Del. Laws 821 (1981); IDAHO CODE § 39-152 (Supp. 1996) (DNR orders); ILL. COMP. STAT. ANN. ch. 755, § 40/50 (Smith-Hurd 1992); IND. CODE ANN. §§ 16-36-1-12(c), 16-36-1-13 (Michie 1993), *see also* § 30-5-5-17(b) (Michie Supp. 1996); IOWA CODE ANN. § 144B.12.2 (West Supp. 1996); MASS. GEN. LAWS ANN. ch. 201D, § 12 (West Supp. 1996); MICH. COMP. LAWS ANN. § 700.496(20) (West 1995); N.Y. PUB. HEALTH LAW § 2989(3) (McKinney 1993); N.D. CENT. CODE § 23-06.5-01 (1991); R.I. GEN. LAWS 23-4.10-9(f) (Supp. 1995); WYO. STAT. § 3-5-211 (Michie Supp. 1996).

[24] *See* notes 22 and 23, *supra. See also* CONN. GEN. STAT. ANN. § 19a-575 (West Supp. 1996) (form declaration); N.J. STAT. ANN. § 26:2H-54(d), -(e) (West 1996) (legislative findings); N.M. STAT. ANN. § 24-7A-13(C) (Michie Supp. 1995).

> In the case of the competent adult's refusing medical treatment such an act does not necessarily constitute suicide since (1) in refusing treatment the patient may not have the specific intent to die, and (2) even if he did, to the extent that the cause of death was from natural causes, the patient did not set the death producing agent in motion with the intent of causing his own death.

Id. at 426 n.11. *See also Thor v. Superior Court,* 855 P.2d 375, 385 (Cal. 1993) ("a necessary distinction exists between a person suffering from a life-threatening disease or debilitating injury who rejects medical intervention that only prolongs but never cures the affliction and an individual who deliberately sets in motion a course of events aimed at his or her demise and attempts to enlist the assistance of others); *Fosmire v. Nicoleau,* 551 N.E.2d 77, 82 (N.Y. 1990) ("merely declining medical care, even essential treatment, is not considered a suicidal act"); *In re Colyer,* 660 P.2d 738, 743 (Wash. 1983) ("[a] death which occurs after the removal of life sustaining systems is from natural causes, neither set in motion nor intended by the patient").

Almost every court recognizing a right to refuse medical treatment has expressly distinguished removal of life support from suicide, and has drawn a clear distinction between *allowing* death to occur by passive means (refusing life-sustaining treatment) and *causing* death by active means (killing the patient by a direct act that ends his life).[25] No court, with the exception of those courts

[25] *See also Rasmussen v. Fleming,* 741 P.2d 674, 685 (Ariz. 1987); *Bouvia v. Superior Court,* 225 Cal. Rptr. 297, 306 (Ct. App. 1986) (quadriplegic's "decision to let nature take its course is not equivalent to an election to commit suicide with real parties aiding and abetting therein"); *Bartling v. Superior Court,* 209 Cal. Rptr. 220, 225 (Ct. App. 1984); *Barber v. Superior Court,* 195 Cal. Rptr. 484, 487 (Ct. App. 1983); *McConnell v. Beverly Enterprises, Inc.,* 553 A.2d 596, 605 (Conn. 1989); *In re Guardianship of Browning,* 568 So.2d 4, 14 (Fla. 1990) ("suicide is not an issue when . . . the discontinuance of life support 'in fact will merely result in [the patient's] death, if at all, from natural causes' ") (citing *Satz v.*

whose decisions are under review here, has held otherwise. As these cases demonstrate, suicide cannot be equated with the refusal of medical treatment. They are different in two key respects: First, in the case of removing life-sustaining treatment, there is no intent to end life, but only the knowledge that death may result. Second, regardless of whether there is an intent to end life, the removal of life support is not the actual cause of death; rather, death results from natural causes (*e.g.*, an underlying pathology that renders a patient unable to breathe or eat without mechanical assistance). These distinctions fully justify treating assisted suicide differently from the refusal of unwanted life-sustaining medical treatment. *See FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313-16 (1993). As the New York State Force Report on Life and the Law noted:

> The imposition of life-sustaining medical treatment against a patient's will requires a direct invasion of bodily integrity and, in some cases, the use of physical restraints, both of which are flatly inconsistent

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Perlmutter, 362 So.2d 160, 162 (Fla. Dist. Ct. App. 1978), *aff'd*, 379 So.2d 359 (Fla. 1980); *In re Estate of Longeway*, 549 N.E.2d 292, 296 (Ill. 1989); *In re Lawrance*, 579 N.E.2d 32, 40 n.4 (Ind. 1991); *De Grella by and through Parrent v. Elston*, 858 S.W.2d 698, 707 (Ky. 1993) ("'[m]ercy killing' and 'euthanasia' or any other 'affirmative or deliberate act to end life' are fundamental violations of the common law") (citation omitted); *In re P.V.W.*, 424 So.2d 1015, 1022 (La. 1982); *In re Gardner*, 534 A.2d 947, 955-56 (Me. 1987); *Guardianship of Doe*, 583 N.E.2d 1263, 1270 (Mass. 1992), *cert. denied sub nom. Doe v. Gross*, 505 U.S. 950 (1992); *Brophy v. New England Sinai Hospital, Inc.*, 497 N.E.2d 626, 638 (Mass. 1986); *In re Rosebush*, 491 N.W.2d 633, 636 n.2 (Mich. App. 1992); *McKay v. Bergstedt*, 801 P.2d 617, 627 (Nev. 1990) ("there is a substantial difference between the attitude of a person desiring non-interference with the natural consequences of his or her condition and the individual who desires to terminate his or her life by some deadly means either self-inflicted or through the agency of another"); *In re Farrell*, 529 A.2d 40, 411 (N.J. 1987); *Leach v. Akron General Medical Center*, 68 Ohio Misc. 1, 10 (1980); *In re Fiori*, 673 A.2d 905, 910 (Pa. 1996); *In re Guardianship of Grant*, 747 P.2d 445, 455 (Wash. 1987), *modified*, 757 P.2d 534 (Wash. 1988); *In re L.W.*, 482 N.W.2d 60, 71 (Wis. 1992).

> with society's basic conception of personal dignity. . . . It is this right against intrusion—not a general right to control the timing and manner of death—that forms the basis of the constitutional right to refuse life-sustaining treatment. Restrictions on suicide, by contrast, entail no such intrusions, but simply prevent individuals from intervening in the natural process of dying.

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The decision respondents urge upon this Court not only would overturn the assisted suicide statutes throughout the States, but also would undermine the right of public and private actors to intervene to prevent suicide and jeopardize the authority of public health officials to institutionalize for treatment persons who attempt suicide. Moreover, recognition of a right to suicide assistance could easily lead to the legalization of "homicide by consent." The Ninth Circuit views this possible development with complete equanimity. *Compassion in Dying*, 79 F.3d at 831-32.

Notwithstanding their disclaimers, the right respondents ask this Court to recognize could *not* be limited to mentally competent, terminally ill patients. This is apparent from respondents' reliance upon this Court's abortion jurisprudence and the extensive case law that has developed in support of the right to refuse medical treatment. If abortion jurisprudence is the source of a right to suicide, the States would be powerless to examine the reasons persons would want to kill themselves and then, based on that examination, permit some suicides (the "rational" ones) and forbid others (the irrational ones). *See Casey*, 505 U.S. at 879 ("[the] State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability").

The case law recognizing a right to refuse treatment offers even less reason to believe that a right to suicide (or suicide assistance) could be contained. The right to refuse unwanted medical treatment, including life-sustain-

ing medical treatment, may be exercised *by* persons who are not terminally ill and *for* persons who are not competent. *See* Edward R. Grant and Paul Benjamin Linton, *Relief or Reproach? Euthanasia Rights in the Wake of Measure 16,* 74 OREGON L. REV. 449, 459-61 & nn. 36-39 (1995) (listing cases). A right to assistance in commiting suicide, once established, would inevitably expand to include the incompetent and those who are not terminally ill, as the Ninth Circuit freely acknowledged.[26] *See generally* Grant and Linton, *Relief or Reproach?*, 74 OREGON L. REV. at 516-25 & nn. 293-328.

Only three years ago, the Supreme Court of Canada was asked to legalize the same practice of physician-assisted suicide that respondents urge upon this Court. *See Rodriguez v. British Columbia,* [1993] 3 S.C.R. 519. The Court refused to do so in an opinion that bears careful reading. The prohibition of assisted suicide, the Court stated, "is valid and desirable legislation which fulfills the government's objectives of preserving life and protecting the vulnerable." *Id.* at 590. A "blanket prohibition" of assisted suicide is neither arbitrary nor unfair in the sense of being "unrelated to the state's interest in protecting the vulnerable." *Id.* at 595.

> [The law against assisted suicide] has as its purpose the protection of the vulnerable who might be induced in moments of weakness to commit suicide. This purpose is grounded in the state interest in protecting life and reflects the policy of the state that human life should not be depreciated by allowing life to be taken. This policy finds expression . . . in the provisions of our *Criminal Code* which prohibit

[26] *See Compassion in Dying,* 79 F.3d at 816: "Our conclusion is strongly influenced by, but not limited to, the plight of mentally competent, terminally ill adults. We are influenced as well by the plight of others, such as those whose existence is reduced to a vegetative state or a permanent and irreversible state of unconsciousness." *Id.* at 832 n. 120 ("we should make clear that a decision of a duly-appointed surrogate decision maker is for all legal purposes the decision of the patient himself").

> murder and other violent acts against others notwithstanding the consent of the victim, ...

Id. The Court declined to sanction assisted suicide, even for the terminally ill, because "the active participation by one individual in the death of another is intrinsically morally and legally wrong" and "there is no certainty that abuses can be prevented by anything less than a complete prohibition." *Id.* at 601. "Creating an exception for the terminally ill might . . . frustrate the purpose of the legislation of protecting the vulnerable because adequate guidelines to control abuse are difficult or impossible to develop." *Id.* The law against assisted suicide "may discourage those who consider that life is unbearable at a particular moment, or who perceive themselves to be a burden upon others, from committing suicide." *Id.* at 608.

To confirm the right of the States to preserve and protect human life, and to prevent the abuses that would arise if assisted suicide were legalized, *amici* ask the Court to uphold the New York and Washington statutes banning assisted suicide.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request this Honorable Court to reverse the judgments in Cases 95-1858 and 96-110.

Respectfully submitted,

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November 7, 1996

APPENDIX

Senator Dale M. Volker (Rep.) Chairman, Codes Committee	59th District
Assemblyman Robert C. Wertz (Rep.Conserv.)	6th District
Assemblyman Thomas F. Barraga (Rep.) Ranking Minority Member Education Committee	7th District
Assemblyman John J. Flanagan (Rep.-Conserv.)	9th District
Assemblyman James D. Conte (Rep.) Ranking Minority Member, Governmental Employees Committee	10th District
Assemblyman Philip B. Healey (Rep.) Assembly Deputy Minority Leader	12th District
Assemblyman William Scarborough (Dem.)	29th District
Assemblyman Denis J. Butler (Dem.) Assistant Speaker *Pro Tem*	36th District
Assemblywoman Catherine Nolan (Dem.) Chairwoman, Labor Committee	37th District
Assemblyman Anthony S. Seminerio (Dem.) Majority Whip	38th District
Assemblyman Anthony J. Genovesi (Dem.) Chairman, Oversight, Analysis & Investigation Committee	39th District
Assemblyman Jules Polonetsky (Dem.)	46th District
Assemblywoman Elizabeth A. Connelly (Dem.) Speaker *Pro Tem*	59th District
Assemblyman Eric N. Vitaliano (Dem.) Chairman, Governmental Employees Committee	60th District
Assemblywoman Aurelia Greene (Dem.) Chairwoman, Banks Committee	77th District
Assemblyman Sam Colman (Dem.) Chairman, Majority Program Committee	93rd District
Assemblyman Patrick R. Manning (Rep.Freedom) Ranking Minority Member, Correction Committee	99th District
Assemblyman Robert A. D'Andrea (Rep.)	100th District
Assemblyman James N. Tedisco (Rep.)	103rd District
Assemblyman John J. McEneny (Dem.)	104th District
Assemblyman Robert G. Prentiss (Rep.) Ranking Minority Member, Veterans Affairs Committee	107th District
Assemblyman David R. Townsend, Jr. (Rep.-Conserv.) Ranking Minority Member, Labor Committee	115th District

Assemblyman Bernard J. Mahoney (Rep.)	120th District
Assemblyman Daniel J. Fressenden (Rep.) Ranking Minority Member, Environmental Conservation Committee	125th District
Assemblyman Joseph T. Pillittere (Dem.) Chairman, Tourism, Arts & Sports Development Committee	138th District
Assemblyman David E. Seaman (Rep.)	139th District
Assemblyman Paul A. Tokasz (Dem.) Chairman, Election Law Committee	143rd District
Assemblyman Richard J. Keane (Dem.)	145th District
Assemblyperson Sandra Lee Wirth (Rep.)	148th District

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Senator Alex Duccio (Rep.)	14th District
Rep. Deputy Floor Leader	
Senator Joseph P. Zarelli (Rep.)	18th District
Senator Daniel P. Swecker (Rep.)	20th District
Senator Jim Hargrove (Dem.)	24th District
Senator Bob Oke (Rep.)	26th District
Senator Pam Roach (Rep.)	31st District
Senator Gary Strannigan (Rep.)	38th District
Senator Emilio Cantu (Rep.)	41st District
Senator Jeanine Long (Rep.)	44th District
Representative Mike Sherstad (Rep.)	1st District
Representative Tom Campbell (Rep.)	2nd District
Representative Scott Smith (Rep.)	2nd District
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Representative Larry Sheahan (Rep.)	9th District
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Representative Mark G. Schoesler (Rep.)	9th District
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Representative Joyce Mulliken (Rep.)	13th District
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Representative Mike Carrell (Rep.)	28th District
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Representative Les Thomas (Rep.)	31st District
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Representative Tim Sheldon (Dem.)	35th District
Representative John Koster (Rep.)	39th District
Representative Val Stevens (Rep.)	39th District
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Representative Cheryl Hymes (Rep.)	40th District
Representative Eugene Goldsmith (Rep.)	42nd District
Republican Caucus Vice Chair	
Representative Kathy Lambert (Rep.)	45th District
Representative Bill Backlund (Rep.)	45th District