
Joint Resolution Opposing Suicide by Physician

Model Legislation & Policy Guide



*Advancing the Human Right to Life
in Culture, Law, and Policy*

INTRODUCTION

Forty-two states currently prohibit suicide, imposing criminal penalties on anyone who helps another end his or her life. However, advocates of suicide by physician are aggressively seeking to overturn these protective laws and replace them with permissive laws legalizing aided suicide and providing little to no protection for vulnerable Americans nearing the end of life. Over the past two years, more than half the states have considered legislative or ballot measures to legalize medicalized suicide.

Electoral, legislative, and legal victories for advocates of physician-assisted suicide include:

November 1994 – Oregon became the first state to legalize suicide by physician.

November 2008 – Washington state voters approved a ballot measure permitting suicide by physician.

March 2009 – A Washington law authorizing aided suicide took effect.

December 2009 – In *Baxter v. State*, the Montana Supreme Court finds “nothing in Montana Supreme Court precedent or Montana statutes indicating that physician ‘aid in dying’ [*i.e.*, physician-enabled suicide] is against public policy.” The court concludes physicians (and perhaps non-physicians) may use the “consent” defense against a charge of homicide when assisting a suicide.¹

May 2013 – Vermont Governor signed bill legalizing physician-assisted suicide.

November 2016 – Colorado voters approved a ballot initiative legalizing assisted suicide; the District of Columbia City Council also votes to legalize the practice of physician-assisted suicide.

June 2017 – Implementation of a suicide law begins in the District of Columbia.

January 2019 – A Hawaii law permitting suicide is enacted.

August 2019 – A New Jersey law permitting suicide takes effect.

September 2019 – A Maine law permitting suicide takes effect.

June 2021 – A New Mexico law permitting suicide takes effect.

January 2022 – Amendments to California’s suicide law take effect, severely reducing informed consent safeguards for patients.

March 2022 – In *Gideonse v. Brown*, Oregon officials settled a legal challenge to the residency requirement in the state suicide statute, agreeing not to enforce the provision and opening the state up for suicide tourism.²

¹ 224 P.3d 1211, 1222 (Mont. 2009).

² No. 3:21-cv-1568 (D. Or. dismissed Mar. 28, 2022).

April 2022 – Vermont amended its suicide statute to permit telemedicine.

Notably, federal courts entered the debate over suicide by physician in 1996 when two appellate courts struck down state laws in New York and Washington prohibiting assisted suicide. The U.S. Supreme Court, however, reversed those decisions in June 1997, holding that aiding in suicide is not a fundamental right under the U.S. Constitution.³ In doing so, the Court also affirmed the states' authority to legislate or regulate in this area.

Undeterred by their earlier failure to have a constitutional right to medicalized suicide recognized by the courts, suicide by physician advocates have more recently challenged prohibitions on medicalized suicide in at least eight other states: Alaska, California, Colorado, Connecticut, Florida, Georgia, Michigan, and Montana. For the most part, these lawsuits have asserted federal or state constitutional rights to aiding in suicide and have largely failed.

For example, the Montana Supreme Court has refused to address the constitutional questions of medicalized suicide. However, the court did construe the public policy underlying Montana law as permitting physicians to use a “consent” defense when providing “aid in dying.” The court distinguished “aid in dying” (suicide advocates’ preferred term to “suicide by physician”) from “mercy killing” and euthanasia and, in doing so, effectively sanctioned an individual’s decision to commit suicide.⁴ It further found “aid in dying” indistinguishable from withholding or withdrawing of life-sustaining treatment,⁵ contradicting the distinction long-recognized by the medical community and the courts.

Medicalized suicide advocates will not be easily deterred by opposition to their agenda, as demonstrated by the dramatic increase in the number of states that considered measures to legalize the practice in 2015 and 2016.

Importantly, most states have already passed laws prohibiting suicide by physician, and some have also passed resolutions or other legislation forming task forces or directing state agencies to consider ways to improve upon end-of-life care, to study pain management, to encourage the use of palliative care, and/or to improve care for the terminally ill and vulnerable. While these measures are commendable and

³ See *Washington v. Glucksberg*, 521 U.S. 702 (1997), *rev’g Compassion in Dying v. State of Washington*, 79 F.3d 790 (9th Cir. 1996) (finding that Washington’s prohibition of assisted suicide does not violate the Due Process Clause of the Fourteenth Amendment); and *Vacco v. Quill*, 521 U.S. 793 (1997), *rev’g* 80 F.3d 716 (2d Cir. 1996) (holding that the New York ban on assisted suicide does not violate the Equal Protection clause of the Fourteenth Amendment).

⁴ *Baxter v. State*, 224 P.3d at 1219.

⁵ *Id.* at 1218–19.

encouraged, careful attention must be paid to their actual text and the context of their consideration and passage. A seemingly reasonable measure can, in reality, simply be a “front” for promoting suicide by physician and euthanasia.

For instance, palliative care can be construed to promote “futility care protocols” and “terminal sedation” without life-sustaining care including the removal of antibiotics, nutrition, hydration, and other “medical treatments” deemed to be “futile.” These measures can also be used as a tool to further ingrain—within the minds of the American people—the notion that some lives are not worth living.

To assist legislators and policymakers in the fight against medicalized suicide and euthanasia, Americans United for Life (AUL) has developed a *Joint Resolution Opposing Suicide by Physician*. This resolution reaffirms the state’s opposition to aided suicide, specifically suicide by physician. It is a proactive measure that informs decision-makers and counters any momentum achieved by those asserting that suicide and death are America’s answers to illness, disease, disability, or suffering.

For more information on AUL’s *Joint Resolution Opposing Suicide By Physician*, or for drafting assistance, please contact AUL’s Legislative Team at Legislation@aul.org.

JOINT RESOLUTION OPPOSING SUICIDE BY PHYSICIAN

JOINT RESOLUTION No. _____

By Representatives/Senators _____

WHEREAS, [Insert name of State] has an “unqualified interest in the preservation of human life,” and this State’s “prohibition on assisted suicide, like all homicide laws, both reflects and advances its commitment to this;”⁶

WHEREAS, neither this State’s constitution nor the U.S. Constitution contains a right to assisted suicide and, thus, no individual has the right to authorize another to kill him or her in violation of federal and state criminal laws;⁷

WHEREAS, suicide is not a typical reaction to an acute problem or life circumstance, and many individuals who contemplate suicide, including the terminally ill, suffer from treatable mental disorders, most commonly clinical depression, which frequently goes undiagnosed and untreated by physicians;⁸

WHEREAS, in Oregon, forty-six (46) percent of patients seeking medicalized suicide changed their minds when their physicians intervened and appropriately addressed suicidal ideations by treating their pain, depression, and/or other medical problems;⁹

WHEREAS, palliative care continues to improve and is nearly always successful in relieving pain and allowing a person to die naturally, comfortably, and in a dignified manner without a change in the law;¹⁰

⁶ *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997).

⁷ See *id.* at 735 (upholding Washington’s ban on assisted suicide and finding there is no constitutional right to assisted suicide under the Due Process Clause of the Fourteenth Amendment); *Vacco v. Quill*, 521 U.S. 793, 808–09 (1997) (upholding New York’s statute prohibiting assisted suicide as consistent with the U.S. Constitution in that it did not violate the Equal Protection Clause of the Fourteenth Amendment); *Sampson v. State*, 31 P.3d 88, 95 (Alaska 2000) (finding Alaska’s manslaughter statute prohibiting assisted suicide constitutional in that it does not infringe upon their constitutional rights to privacy, liberty, and equal protection); *Donaldson v. Lungren*, 2 Cal. App. 4th 1614, 4 Cal. Rptr. 2d 59, 63–5 (Cal. Ct. App. 1992) (finding no constitutional right to assisted suicide under the California Constitution); *Krischer v. McIver*, 697 So. 2d 97, 104 (Fla. 1997) (upholding the constitutionality of Florida’s statute prohibiting assisted suicide).

⁸ New York State Task Force on Life and the Law, WHEN DEATH IS SOUGHT: ASSISTED SUICIDE AND EUTHANASIA IN THE MEDICAL CONTEXT 77–82 (May 1994) <http://www.health.state.ny.us/nysdoh/provider/death.htm>.

⁹ Linda Ganzini et al., *Physicians’ Experiences with the Oregon Death with Dignity Act*, 342 NEW ENG. J. MED. 557, 557 (2000).

¹⁰ Herbert Hendin & Kathleen Foley, *Physician-Assisted Suicide in Oregon: A Medical Perspective*, 106 MICH. L. REV. 1613, 1634–35 (2008).

WHEREAS, the experiences in Oregon and the Netherlands explicitly demonstrate that palliative care options deteriorate with the legalization of suicide by physician;¹¹

WHEREAS, [Insert name of State] rejects abuses of palliative care through “futility care” protocols and the use of “terminal sedation” without life-sustaining care as seen in the Liverpool Care Pathway;¹²

WHEREAS, a physician’s recommendation for assisted suicide relies on the physician’s judgment—to include prejudices and negative perceptions—that a patient’s life is not worth living, ultimately contributing to the use of “futility care” protocols and euthanasia;¹³

WHEREAS, [Insert name of State] rejects the “sliding-scale approach” which claims certain “qualities of life” are not worthy of equal legal protections;¹⁴

WHEREAS, the legalization of assisted suicide sends a message that suicide is a socially acceptable response to aging, terminal illnesses, disabilities, and depression and subsequently imposes a “duty to die”;

WHEREAS, the medical profession as a whole opposes suicide by physician because it is contrary to the medical profession’s role as healer and undermines the physician-patient relationship;¹⁵

WHEREAS, assisted suicide is significantly less expensive than other care options, and Oregon’s experience demonstrates that cost constraints can create financial incentives to limit care and offer assisted suicide;¹⁶

¹¹ *Id.* at 1615-20 (noting only 13 percent of patients received palliative care consultations after the Oregon law went into effect).

¹² *See id.* at 1634-35; Kate Devlin, *Sentenced to Death on the NHS*, TELEGRAPH, (Sept. 2, 2009) <https://www.telegraph.co.uk/news/health/news/6127514/Sentenced-to-death-on-the-NHS.html>.

¹³ *See Washington v. Glucksberg*, 521 U.S. at 732 (1997).

¹⁴ *Id.* at 729.

¹⁵ *Id.* at 731; *see also*, American College of Physicians, Ethics Manual http://www.acponline.org/running_practice/ethics/manual/ethicman5th.htm#patients (last visited October 7, 2022) (“The College does not support legalization of physician-assisted suicide or euthanasia. After much consideration, the College concluded that making physician-assisted suicide legal raised serious ethical, clinical, and social concerns and that the practice might undermine patient trust; distract from reform in end of life care; and be used in vulnerable patients, including those who are poor, are disabled, or are unable to speak for themselves or minority groups who have experienced discrimination.”); *Royal College of Physicians Cannot Support Legal Change On Assisted Dying—Survey Results*, (May 9, 2006) <http://www.rcplondon.ac.uk/news-media/press-releases/rcp-cannot-support-legal-change-assisted-dying-survey-results>.

¹⁶ Susan Donaldson James, *Death Drugs Cause Uproar in Oregon, Terminally Ill Denied Drugs for Life, But Can Opt for Suicide*, ABC News, (Aug 6, 2008) <http://abcnews.go.com/Health/story?id=5517492&page=1>.

WHEREAS, as evidenced in Oregon, the private nature of end-of-life decisions makes it virtually impossible to police a physician's behavior to prevent abuses, making any number of safeguards insufficient;¹⁷ and

WHEREAS, a prohibition on assisted suicide, specifically physician-assisted suicide, is the only way to protect vulnerable citizens from coerced suicide and euthanasia.¹⁸

NOW THEREFORE, BE IT RESOLVED BY THE [LEGISLATURE] OF THE STATE OF [INSERT NAME OF STATE]:

Section 1. That the [Legislature] strongly opposes and condemns suicide by physician because the [Legislature] has an “unqualified interest in the preservation of human life” [and because “its assisted-suicide ban insists that all persons' lives, from beginning to end, regardless of physical or mental condition, are under the full protection of the law.”]¹⁹

Section 2. That the [Legislature] strongly opposes and condemns suicide by physician because anything less than a prohibition leads to foreseeable abuses and eventually to euthanasia by devaluing human life, particularly the lives of the terminally ill, elderly, disabled, and depressed whose lives are of no less value or quality than any other citizen of this State.

Section 3. That the [Legislature] strongly opposes and condemns suicide by physician even for terminally ill, mentally competent adults because assisted suicide eviscerates efforts to prevent the self-destructive act of suicide and hinders progress in effective physician interventions including diagnosing and treating depression, managing pain, and providing palliative and hospice care.

Section 4. That the [Legislature] strongly opposes and condemns suicide by physician because assisted suicide undermines the integrity and ethics of the medical profession, subverts a physician's role as healer, and compromises the physician-patient relationship. For these reasons and others, the medical community summarily rejects it.

Section 5. That the Secretary of State of [Insert name of State] transmit a copy of this resolution to the Governor, the [Insert name of State] [Department of Health and Human Services], and the [Insert name of State] Medical Association.

¹⁷ Hendin & Foley, *supra* note 10 at 1637–38.

¹⁸ *Glucksberg*, 521 U.S. at 733–34.

¹⁹ *Id.* at 728–29.

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