

Physician-Assisted Death: A Selected Annotated Bibliography*

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Physician-assisted death (PAD), which encompasses physician-assisted suicide and physician-administered euthanasia, has long been controversial. However, recent years have seen a trend toward legalizing some form of PAD in the United States and abroad. The author provides an annotated bibliography of sources concerning PAD and the many issues raised by its legalization.

Introduction	32
A Note About Terminology	33
Case Law, Legislation, and Related Resources	35
U.S. Supreme Court Cases	35
States Where Physician-Assisted Suicide Is Legal	39
California	39
Colorado	41
District of Columbia	41
Hawai'i	41
Montana	42
Oregon	43
Vermont	44
Washington	45
Other States	45
Current Awareness Resources	48
Legalizing Physician-Assisted Death	48
General Overviews	48
Support for Legalization	50
Against Legalization	52
Selected Topics in Scholarship on Physician-Assisted Death	53
Abortion and Reproductive Rights	53
Capital Punishment and Prisoners' Rights	54
"Death Tourism"	55
Ethics and Morality	56
Impacts on Vulnerable Populations	57
Practitioner Experiences and Perspectives	62

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Religion and Spirituality	63
The Terminology of Physician-Assisted Death	64
International and Comparative Experiences	64
Bibliographies and Resource Guides	69

Introduction

¶1 Physician-assisted death (PAD) encompasses two means of dying: physician-assisted suicide and physician-administered euthanasia.¹ Physician-assisted suicide involves a physician prescribing life-ending medication to a patient, who then self-administers that medication.² In physician-administered euthanasia, the physician will administer the lethal medication to the patient, such as by injection.³

¶2 In the United States, the question of whether to legalize physician-assisted suicide in particular has long been controversial.⁴ In recent years, however, there has been a drastic shift in public opinion,⁵ with a number of national and state polls conducted since 2012 showing strong and steady support for legalization among a majority of Americans.⁶ This corresponds with a trend of increased legalization of PAD both in the United States and around the world. In the United States, as of 2018, physician-assisted suicide is now legal in seven states and the District of Columbia,⁷ and nearly two dozen states considered relevant legislation that year.⁸

1. L.W. SUMNER, *PHYSICIAN-ASSISTED DEATH: WHAT EVERYONE NEEDS TO KNOW* 34 (2017).

2. *Id.* The broader term “assisted suicide” encompasses when anyone, not just a physician, provides aid or means for another to take his or her own life. *Assisted Suicide*, BLACK’S LAW DICTIONARY (10th ed. 2014).

3. SUMNER, *supra* note 1. Another term for physician-administered euthanasia is physician-assisted euthanasia. See, e.g., Paul T. Menzel, *Advance Directives, Dementia, and Eligibility for Physician-Assisted Death*, 58 N.Y.L. SCH. L. REV. 321, 322 n.2 (2013/2014); Catherine S. Shaffer et al., *A Conceptual Framework for Thinking About Physician-Assisted Death for Persons with a Mental Disorder*, 22 PSYCHOL., PUB. POL’Y & L. 141, 142 n.4 (2016). The broader term “euthanasia” encompasses involvement in the procedure by any third party. *Euthanasia*, BLACK’S LAW DICTIONARY (10th ed. 2014). Some literature will further distinguish between “voluntary,” “involuntary,” and “nonvoluntary” euthanasia, as well as “active” and “passive” euthanasia. Voluntary euthanasia means the patient has consented to the procedure, whereas in involuntary euthanasia the patient can consent but has not done so, and nonvoluntary euthanasia is of an “incompetent, and therefore nonconsenting, person.” *Id.* Active euthanasia is performed with the help of a third party, such as a physician, whereas passive euthanasia refers to withdrawal or refusal of life-sustaining treatment or sustenance. *Id.*

4. Browne Lewis, *A Deliberate Departure: Making Physician-Assisted Suicide Comfortable for Vulnerable Patients*, 70 ARK. L. REV. 1, 5 (2017) (“The physician-assisted suicide battle has been and continues to be fought in the legal court and in the court of public opinion.”).

5. Michael Lipka, *California Legalizes Assisted Suicide Amid Growing Support for Such Laws*, PEW RES. CTR. (Oct. 5, 2015), <http://www.pewresearch.org/fact-tank/2015/10/05/california-legalizes-assisted-suicide-amid-growing-support-for-such-laws/> [<https://perma.cc/NUK7-JXV7>].

6. *Polling on Voter Support for Medical Aid in Dying for Terminally Ill Adults*, COMPASSION & CHOICES (Jan. 18, 2017), <https://compassionandchoices.org/wp-content/uploads/2018/07/FS-Medical-Aid-in-Dying-Survey-Results-FINAL-1.18.17-Approved-for-Public-Distribution.pdf> [<https://perma.cc/KV3J-M7XA>].

7. *State-by-State Guide to Physician-Assisted Suicide*, PROCON.ORG (July 9, 2018), <https://euthanasia.procon.org/view.resource.php?resourceID=000132> [<https://perma.cc/2ACT-U8KA>].

8. *Take Action In Your State*, DEATH WITH DIGNITY NAT’L CTR. (Nov. 12, 2018), <https://www.deathwithdignity.org/take-action/> [<https://perma.cc/8DAM-KWT2>]. This resource uses the term “death with dignity” to refer to physician-assisted suicide. See “A Note About Terminology,” *infra*, for more information on the variety of terms in use to describe physician-assisted death.

Internationally, several countries or territories have already legalized or are considering legalizing physician-assisted suicide, physician-administered euthanasia, or both.⁹

¶3 This bibliography compiles selected secondary and primary materials on PAD. Secondary sources include books, book chapters, law review and law journal articles, bibliographies, websites, and current awareness materials, and are mostly limited to publication dates of 2007–2018.¹⁰ Many of these materials discuss multiple issues within the broader topic of PAD, and I have categorized them by subject based on what I perceive to be their primary themes.

¶4 Most of the included materials focus on the United States, but a number of sources also discuss other countries, and one section is devoted to international experiences with PAD. In addition, PAD is often debated alongside other end-of-life topics, such as withdrawal or refusal of medical treatment,¹¹ palliative care,¹² hospice care,¹³ or the use of advance directives,¹⁴ and some of the scholarship listed in this bibliography concurrently address one or more of these subjects in depth.

A Note About Terminology

¶5 It is impossible to wade into the subject of PAD without addressing terminology. Anyone researching this topic will quickly encounter a number of other terms, including “physician-assisted dying,”¹⁵ “death with dignity” or “dying with dignity,”¹⁶ and “aid in dying” (sometimes preceded by “physician” or “medical”).¹⁷ (Variations for many of these terms exist; for instance, “doctor” or “provider” might appear in lieu of “physician” or “medical,”¹⁸ or “facilitated” may substitute for “assisted.”)¹⁹ Other possibilities (though rarer) include “patient-directed dying” and

9. Ezekiel J. Emanuel et al., *Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe*, 316 JAMA 79, 80 (2016). See “International and Comparative Experiences,” *infra*, for more information on the legal status of physician-assisted death in selected countries.

10. Materials were reviewed for inclusion up through August 2018.

11. A patient can refuse or stop any type of life-extending medication or treatment at any time. *End-of-Life: Options for Care and Choice*, COMPASSION & CHOICES, <https://www.compassionandchoices.org/wp-content/uploads/2018/03/FS-End-of-Life-Options-for-Care-and-Choice-FINAL-4.1.16-Approved-for-Public-Distribution.pdf> [<https://perma.cc/WG4S-DBG7>].

12. Also called “pain and symptom management,” palliative care involves the use of medication or therapies to provide patient comfort. *Id.* A patient seeking palliative care need not be terminally ill. *Id.*

13. Hospice care focuses on providing comfort and care to a patient who has six months or less to live. *Id.*

14. Advance directives document “[a] patient’s medical preferences for care if and when they become incapacitated . . .” Kathryn L. Tucker, *When Dying Takes Too Long: Activism for Social Change to Protect and Expand Choice at the End of Life*, 33 WHITTIER L. REV. 109, 134 (2011).

15. Lawrence O. Gostin & Anna E. Roberts, *Physician-Assisted Dying: A Turning Point?*, 315 JAMA 249, 249 (2016).

16. See, e.g., Kathryn L. Tucker & Fred B. Steele, *Patient Choice at the End of Life: Getting the Language Right*, 28 J. LEGAL MED. 305, 309 (2007); *Terminology of Assisted Dying*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/terminology/> [<https://perma.cc/7FWW-D8M5>].

17. *Terminology of Assisted Dying*, *supra* note 16.

18. See, e.g., Tucker & Steele, *supra* note 16; John M. Burman & Cameron T. Pestinger, *Implementing Provider Aid in Dying in Wyoming*, 17 WYO. L. REV. 1 (2017).

19. See, e.g., Browne C. Lewis, *A Graceful Exit: Redefining Terminal to Expand the Availability of Physician-Facilitated Suicide*, 91 OR. L. REV. 457 (2012).

“hastened death.”²⁰ California’s and Colorado’s statutes legalizing physician-assisted suicide both employ the phrase “end-of-life option.”²¹

¶6 Probably the greatest consistency about the terminology of PAD is the general lack of agreement on standard definitions or usages for many of these phrases. There is no uniformity in word choice among national or state medical associations,²² in the titles or text of the laws in states where physician-assisted suicide is legal,²³ or in the media.²⁴ In fact, in the United States, disputes over what constitutes the proper or most neutral terminology for PAD are possibly just as great as the ongoing debates over its legalization.²⁵ Both proponents and opponents staunchly advocate for different language choices—and for good reason, given that the level of public support for legalization can vary depending on the language used in surveys and polls.²⁶

¶7 The widespread divergence on what constitutes the proper terminology is accompanied by a lack of consistency in the usage of many of those terms when discussing PAD. For instance, some authors and advocacy groups have adopted the specific phrase “physician-assisted death” (or, alternatively, “physician-assisted dying” or “aid in dying”) as a replacement for describing physician-assisted suicide, which has become a particularly controversial term.²⁷ Moreover, in defining these

20. See, e.g., Tucker & Steele, *supra* note 16.

21. *Death with Dignity Acts*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/learn/death-with-dignity-acts/> [<https://perma.cc/X38S-5XQJ>].

22. See *Medical Professional Associations that Recognize Medical Aid-in-Dying*, COMPASSION & CHOICES (Mar. 2, 2018), <https://compassionandchoices.org/wp-content/uploads/2018/06/FS-Medical-Professional-Associations-that-Recognize-Medical-Aid-in-Dying-10.29.18.pdf> [<https://perma.cc/62TM-2GYK>].

23. Oregon, Washington, and the District of Columbia titled their physician-assisted suicide laws as “Death with Dignity Acts,” while California elected “End of Life Option Act” and Colorado “End-of-Life Options Act.” *Death with Dignity Acts*, *supra* note 21. California and Colorado also use the term “aid-in-dying” in the text of their laws. CAL. HEALTH & SAFETY CODE § 443.1(a) (West 2016) (referring to the medication authorized under the act as an “aid-in-dying drug”); COLO. REV. STAT. ANN. § 25-48-102(7) (2017) (defining “medical aid-in-dying”).

24. See Katy Butler, *Aid in Dying or Assisted Suicide? What to Do When Every Phrase is Fraught*, CTR. FOR HEALTH JOURNALISM (Oct. 26, 2015), <https://www.centerforhealthjournalism.org/2015/10/23/aid-dying-or-assisted-suicide-what-do-when-neutral-terms-can%E2%80%99t-be-found> [<https://perma.cc/H637-SVUE>].

25. See, e.g., *id.*; KEVIN L. YUILL, ASSISTED SUICIDE: THE LIBERAL, HUMANIST CASE AGAINST LEGALIZATION 10 (2013) (“Such is the cultural divide on the issue that neither side will even agree on the terms used. In fact, the words themselves have become a key battleground for the two sides of the debate [over legalization].”).

26. Public support for legalization tends to decrease when the word “suicide” is applied in describing physician-assisted suicide in polls and to increase when alternative terminology is used. Arthur G. Svenson, *Death with Dignity’s Emerging Conceit: Could Vacco v. Quill Be Losing Its Appeal?*, 31 U. LA VERNE L. REV. 45, 47 (2009). In a May 2013 Gallup poll, for instance, 70 percent of U.S. adults expressed approval for legalizing physician-assisted suicide when it was described as “end[ing] the patient’s life by some painless means.” That figure dropped to 51 percent when the procedure was instead described as “assist[ing] the patient to commit suicide.” Lydia Saad, *U.S. Support for Euthanasia Hinges on How It’s Described*, GALLUP (May 29, 2013), <http://news.gallup.com/poll/162815/support-euthanasia-hinges-described.aspx> [<https://perma.cc/23U2-YBMM>].

27. Some authors and groups have labeled the term “physician-assisted suicide” biased, insensitive, and more for its inclusion of the word “suicide.” See, e.g., Tucker & Steele, *supra* note 16, at 312 (calling physician-assisted suicide a “pejorative phrase” and a “value-laden term”); *Terminology of Physician-Assisted Dying*, *supra* note 16 (calling the phrase “inaccurate, inappropriate, and biased”); Butler, *supra* note 24 (“‘Suicide’ . . . is not inaccurate, exactly [when using it in the phrase ‘physician-assisted suicide’], but the associations are clinical, judgmental, legalistic, even freighted with the notion of sin.”).

substitutes, some will explicitly differentiate them from physician-administered euthanasia²⁸ even as others use the same phrases to encompass both procedures.²⁹

¶8 In sum, researchers on this topic should be generally aware of the many wording options that exist and their various potential applications. In this bibliography, I use “physician-assisted death” in the title and section introductions and define it as covering the two distinct procedures of physician-assisted suicide and physician-administered euthanasia. In my source annotations, however, I generally attempt to employ authors’ original terminology choices when referring to forms of PAD. This is in recognition of the possibility that given the larger social and political conflicts over the vocabulary and legalization of PAD, some authors may have selected particular terms based on personal motivations or beliefs.

Case Law, Legislation, and Related Resources

U.S. Supreme Court Cases

¶9 The U.S. Supreme Court has directly addressed PAD in several cases, which are listed and summarized below. These are followed by a selection of secondary materials that primarily focus their discussions on one or more of these cases.

Gonzales v. Oregon, 546 U.S. 243 (2006).³⁰

Then attorney general John Ashcroft had issued an interpretive rule under the federal Controlled Substances Act (CSA) prohibiting physicians from prescribing life-ending medication to terminally ill patients, arguing that this was not a “legitimate medical purpose” (p.256) under the CSA. The state of Oregon, which had recently enacted its Death with Dignity Act, was among the plaintiffs that challenged the rule. The U.S. Supreme Court held that the CSA did not authorize the barring of physicians’ prescription of lethal medication when a state legally permitted the practice.

Vacco v. Quill, 521 U.S. 793 (1997).

The U.S. Supreme Court held that New York’s law criminalizing assisted suicide did not violate the Equal Protection Clause of the Fourteenth Amendment. The law was applied equally to all state residents, and the state made a rational distinction in banning assisted suicide while still permitting the practice of withdrawing life-sustaining treatment.

28. See, e.g., David Orentlicher, *Aging Populations and Physician Aid in Dying: The Evolution of State Government Policy*, 48 IND. L. REV. 111, 111 n.2 (2014) (excluding euthanasia from the author’s definition of “physician aid in dying,” his chosen term for physician-assisted suicide); Timothy E. Quill & Bernard Sussman, *Physician Assisted Death*, HASTINGS CTR., <https://www.thehastingscenter.org/briefingbook/physician-assisted-death/> [<https://perma.cc/5HLD-EPJ7>] (equating physician-assisted death and physician-assisted suicide, and differentiating both from voluntary active euthanasia); *Terminology of Assisted Dying*, *supra* note 16.

29. See, e.g., SUMNER, *supra* note 1; Menzel, *supra* note 3; Shaffer, *supra* note 3; Maria T. CeloCruz, Note, *Aid-in-Dying: Should We Decriminalize Physician-Assisted Suicide and Physician-Committed Euthanasia?*, 18 AM. J.L. & MED. 369, 369 (1992) (“This Note distinguishes two components of aid-in-dying: physician-assisted suicide and physician-committed voluntary active euthanasia.”). Note that while a few authors conflate physician-assisted suicide and physician-administered euthanasia, both the legal and medical fields do treat them as distinct. Shaffer, *supra* note 3, at 142 n.4.

30. Some scholarship on *Gonzales v. Oregon* focuses primarily on administrative law analysis. I have excluded most of these sources to maintain this bibliography’s central emphasis on materials discussing the law and policy of physician-assisted death.

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

Four physicians, a nonprofit, and three terminally ill patients sued the state of Washington, arguing that its law prohibiting assisted suicide violated the Fourteenth Amendment's Due Process Clause. The U.S. Supreme Court held that the right to assisted suicide was not protected by due process. Such a right was not fundamental, and the ban on assisted suicide was rationally related to the state's interests, including preserving human life, preventing suicide, protecting the integrity of the medical profession, and protecting vulnerable groups.

Chamberlain, Katherine A. "Looking for a 'Good Death': The Elderly Terminally Ill's Right to Die by Physician-Assisted Suicide." *Elder Law Journal* 17, no. 1 (Spring 2009): 61–93.

This student note addresses the inconsistencies in the U.S. Supreme Court's acknowledgment of a constitutional right to refuse unwanted medical treatment but not to choose physician-assisted suicide. Chamberlain makes the case that the Court should acknowledge a constitutional right to the latter based on the right to privacy, due process, and equal protection; the greater weight of patients' "personal interest" (p.72–73) in having this option versus state interests in prohibiting it; and the strength of the protections built into Oregon's Death with Dignity Act.

Critser, Rebecca. "Assisted Suicide: Is the *Cruzan* 'Unqualified State Interest in the Preservation of Human Life' a Legitimate State Interest?" *NAELA Journal* 13, no. 2 (Fall 2017): 71–95.

In this student article, Critser looks closely at one of the state interests identified in *Glucksberg*, that of an "unqualified interest in the preservation of human life," which first arose in the earlier U.S. Supreme Court case of *Cruzan v. Director, Missouri Department of Health*.³¹ She discusses guidelines for identifying a legitimate state interest and evaluates their application in *Glucksberg*, *Cruzan*, and other cases addressing end-of-life care.

Elliott, Michael S. "The Commerce of Physician-Assisted Suicide: Can Congress Regulate a 'Legitimate Medical Purpose?'" *Willamette Law Review* 43, no. 3 (Summer 2007): 399–420.

This student comment uses the Supreme Court's reasoning in *Gonzales* as a starting point to analyze whether Congress may define a "legitimate medical purpose" under the CSA—and, if it may, whether the U.S. Constitution's Commerce Clause or Spending Clause authorizes Congress to preempt physician-assisted suicide laws via regulation of life-ending medication.

Foley, Elizabeth Price. "Constitutional Death." In *The Law of Life and Death*, 152–99. Cambridge, Mass.: Harvard University Press, 2011.

Foley asks whether the constitutional guarantees of liberty and privacy allow for the right to commit suicide or to receive assistance from others in doing so. She traces the evolution of the relationship between the U.S. Constitution and end-of-life issues, including physician-assisted suicide, as reflected in significant court opinions such as *Glucksberg* and *Quill*. Foley concludes that "courts have a difficult time grappling with the relationship between the Constitution and death" (p.199) and proposes that legislatures are best equipped to resolve the issues in this area.

31. 497 U.S. 261 (1990). *Cruzan* was a landmark case involving withdrawal of life-sustaining medical treatment from an incompetent patient. The U.S. Supreme Court upheld a Missouri state requirement of "clear and convincing evidence" of a patient's wish to remove such treatment.

Hansen, Alexa. "Unqualified Interests, Definitive Definitions: *Washington v. Glucksberg* and the Definition of Life." *Hastings Constitutional Law Quarterly* 36, no. 1 (Fall 2008): 163–89.

This student work argues that in *Glucksberg*, the U.S. Supreme Court "neglected to answer what should have been a key question: what is life and when does it end?" (p.163). Hansen proposes that using "whole brain death" (p.164) as a "bright line definition" (p.164) for the end of life would have impacted the Court's analysis in weighing the patient's right to liberty and autonomy against a state's interest in preserving life.

Hassel, Diana. "Sex and Death: *Lawrence's* Liberty and Physician-Assisted Suicide." *University of Pennsylvania Journal of Constitutional Law* 9, no. 4 (April 2007): 1003–32.

Hassel looks at the implications of the U.S. Supreme Court's reasoning about personal liberty in *Lawrence v. Texas*³² (which struck down a Texas sodomy law based on violation of due process) for the developments in debates over liberty and autonomy for the terminally ill following *Glucksberg*. She examines parallels between "doctrinal and political changes" (p.1013) in attitudes toward gay rights leading up to *Lawrence* and similar shifts regarding physician-assisted suicide after *Glucksberg*.

Hilliard, Bryan. "The Politics of Palliative Care and the Ethical Boundaries of Medicine: *Gonzales v. Oregon* as a Cautionary Tale." *Journal of Law, Medicine & Ethics* 35, no. 1 (Spring 2007): 158–74.

Hilliard frames a discussion of *Gonzales's* implications for medical professional ethics and patient care against the "politics of palliative care" referenced in the article's title. According to this concept, concern for the "sanctity of life" (p.166) is paramount and requires keeping patients alive at all costs, and the federal government should regulate physician and patient activity to ensure that this standard is met.

Legault, Melissa. "I Don't Want to Die, But I Am Dying': Reexamining Physician-Assisted Suicide in a New Age of Substantive Due Process." *Arizona Law Review* 60, no. 2 (Summer 2018): 509–37.

This student note contends that *Glucksberg* represented an "interrupt[ion of] the trajectory" (p.512) of substantive due process jurisprudence. This is because cases both preceding and following *Glucksberg* have emphasized "protecting personal autonomy, protecting intimate decisions, and maintaining dignity" (p.513), as opposed to *Glucksberg's* focus on "history and tradition" (p.522), in recognizing fundamental constitutional rights such as abortion and same-sex marriage. Legault proposes a new test for substantive due process that could result in the U.S. Supreme Court's eventual recognition of a fundamental right to physician-assisted suicide.

Levy, Ken. "*Gonzales v. Oregon* and Physician-Assisted Suicide: Ethical and Policy Issues." *Tulsa Law Review* 42, no. 3 (Spring 2007): 699–729.

Levy covers the majority, concurring, and dissenting arguments in *Vacco*, *Glucksberg*, *Gonzales*, and other U.S. Supreme Court cases relating to end-of-life issues. He then analyzes ethical and policy questions related to physician-assisted suicide and questions whether more states should legalize the procedure.

32. 539 U.S. 558 (2003).

Myers, Richard S. "The Constitutionality of Laws Banning Physician Assisted Suicide." *BYU Journal of Public Law* 31, no. 2 (2017): 395–408.

Following the U.S. Supreme Court's recognition of a fundamental right to same-sex marriage in *Obergefell v. Hodges*³³ using an "expansive understanding of substantive due process" (p.395) that "reaffirm[s] [an] autonomy rationale" (p.409), Myers explores the reasons why, given the chance, the U.S. Supreme Court is likely to revisit and eventually overrule its holdings in *Glucksberg* and *Quill*.

Myers, Richard S. "Obergefell and the Future of Substantive Due Process." *Ave Maria Law Review* 14, no. 1 (Fall 2016): 54–70.

Myers compares the two different approaches to substantive due process in *Glucksberg* and *Obergefell*. He explores the implications of *Obergefell*'s "explicit reject[ion] of *Glucksberg*'s methodology" (p.65) and the Court's more recent emphasis on personal autonomy for the future of the *Glucksberg* holding, as well as the possibility that the Court will one day strike down state laws prohibiting assisted suicide.

"Symposium on *Glucksberg* and *Quill* at Ten: Death, Dying, and the Constitution." *Michigan Law Review* 106, no. 8 (June 2008): 1453–1667.

This symposium gathered prominent constitutional law scholars to analyze the constitutional issues that arose out of *Glucksberg* and *Quill* (with a particular focus on the former), as well as the various debates surrounding physician-assisted suicide that came to the fore in the following years. Article topics include an evaluation of the Supreme Court's decision in *Glucksberg*,³⁴ the constitutional law implications of *Glucksberg* and *Quill*,³⁵ the suitability of more states legalizing physician-assisted suicide,³⁶ and medical perspectives on the effectiveness of the safeguards built into Oregon's Death with Dignity Act.³⁷

VanStory, Scarlett. "Death with Dignity Lives On: Why the Right to Physician-Assisted Suicide Is Not 'Dead and Buried' after *Glucksberg* and *Quill*." *Adelphia Law Journal* 18 (2012–2013): 1–27.

This student comment advocates for the U.S. Supreme Court to recognize an expanded constitutional right to physician-assisted suicide, and for that right to be accessible not just to terminally ill patients but also to "incurably ill patients suffering intractable pain" (p.26). VanStory examines the Court's reasoning in *Glucksberg*, *Quill*, and *Gonzales* and analyzes the multiple state interests involving physician-assisted suicide that the Court has articulated. She also looks at the effects of legalized physician-assisted suicide in Oregon and Washington and provides suggestions for states considering future legalization.

33. 135 S. Ct. 2584 (2015). *Obergefell* held that the right to marry for same-sex couples is protected by due process and equal protection under the U.S. Constitution.

34. Erwin Chemerinsky, *Washington v. Glucksberg Was Tragically Wrong*, 106 MICH. L. REV. 1501 (2008).

35. Randy E. Barnett, *Scrutiny Land*, 106 MICH. L. REV. 1479 (2008); Cass R. Sunstein, *Due Process Traditionalism*, 106 MICH. L. REV. 1543 (2008).

36. Kathryn L. Tucker, *In the Laboratory of the States: The Progress of Glucksberg's Invitation to States to Address End-of-Life Choice*, 106 MICH. L. REV. 1593 (2008).

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

States Where Physician-Assisted Suicide Is Legal

¶10 Physician-assisted suicide is currently legal in California, Colorado, Hawai'i, Montana, Oregon, Vermont, Washington, and the District of Columbia.³⁸ Physician-administered euthanasia is illegal throughout the United States.³⁹

¶11 Six states and D.C. have passed laws permitting physician-assisted suicide, while in Montana it is legal via a 2009 state supreme court decision.⁴⁰ Under the existing state laws, a terminally ill, mentally competent patient with six months or less to live, resident in the jurisdiction, and meeting other specific requirements may, under certain conditions, legally request a prescription for and then self-administer lethal medication to hasten his or her death.⁴¹

¶12 In this section, I list references to relevant state laws and cases, scholarship, and government and nongovernment websites, organizing these materials by jurisdiction.

California

¶13 California's End of Life Option Act (ELOA) was signed into law on October 5, 2015, and is modeled mostly on Oregon's Death with Dignity Act.⁴² The impetus for the law's passage derives from the story of Brittany Maynard, a 29-year-old California woman who was diagnosed with incurable brain cancer in 2014 and moved to Oregon to legally access the option of physician-assisted suicide.⁴³ Maynard actively advocated for the passage of a law legalizing physician-assisted suicide in California, working with pro-legalization organizations and taking her case to the state legislature and governor.⁴⁴ Less than three months after her death, the California Senate introduced the bill that ultimately resulted in the ELOA.⁴⁵ Maynard's efforts have been credited with shifting momentum toward more states recently considering the legalization of physician-assisted suicide.⁴⁶

¶14 The ELOA faced immediate court challenges after its passage, and in May 2018, a California district court judge overturned it on grounds of violation of the state constitution.⁴⁷ The state's Fourth District Court of Appeal ultimately reversed that decision in late 2018; however, the new ruling did not address the constitutionality of the ELOA, and future legal challenges are likely.⁴⁸

38. *State-by-State Guide to Physician-Assisted Suicide*, *supra* note 7.

39. *Id.*

40. FAQs, DEATH WITH DIGNITY NAT'L CTR., <https://www.deathwithdignity.org/faqs/> [<https://perma.cc/XN3J-RAKG>].

41. *Id.*

42. Arthur G. Svenson, *Physician-Assisted Dying and the Law in the United States: A Perspective on Three Prospective Futures*, in EUTHANASIA AND ASSISTED SUICIDE: GLOBAL VIEWS ON CHOOSING TO END LIFE 3, 13 (Michael J. Cholbi ed., 2017).

43. *Id.* at 11.

44. *Id.* at 12.

45. *Id.*

46. Lipka, *supra* note 5.

47. *California*, DEATH WITH DIGNITY NAT'L CTR., <https://www.deathwithdignity.org/states/california/> [<https://perma.cc/E29K-67SX>].

48. Brian Melley, *California Court Reverses Ruling Against Assisted Suicide*, ABC NEWS (Nov. 28, 2018), <https://abcnews.go.com/Health/wireStory/california-court-tosses-lawsuit-challenging-assisted-suicide-59473916> [<https://perma.cc/932X-5XTV>].

CAL. HEALTH & SAFETY CODE §§ 443–443.22 (West 2016)—End of Life Option Act. California Department of Public Health Center for Health Statistics and Informatics. *End of Life Option Act*. <https://www.cdph.ca.gov/Programs/CHSI/Pages/End-of-Life-Option-Act-.aspx> [<https://perma.cc/7ZC5-KDBF>].

The Medical Board of California. *End of Life Option Act—Effective June 9, 2016*. http://www.mbc.ca.gov/Licensees/Physicians_and_Surgeons/End_of_Life_.aspx [<https://perma.cc/SM8Z-SW79>].

Benassini, Michael. “A Proposal for Proper Procedure: The Aid-in-Dying Process for Californians with Disabilities.” *U.C. Davis Law Review* 51, no. 4 (April 2018): 1717–50.

This student note argues for the insufficiency of the California Department of Developmental Services’ emergency regulations, adopted in response to the End of Life Option Act’s passage, that limit access to legal aid-in-dying procedures for California “residential patients”⁴⁹ with developmental disabilities.

Economou, Elias Ross. “What About Families? A Different Perspective on Physician Assisted Suicide in California.” *Whittier Journal of Child and Family Advocacy* 7, no. 2 (Spring 2008): 253–76.

Adding a little-discussed perspective to the legal literature on physician-assisted death, this student work looks at the “familial ramifications” (p.254) of legalizing physician-assisted suicide, labeling the families of terminally ill patients who might access the procedure as “the most overlooked interest group” (p.255) in the debates. Economou also includes perspectives on physician-assisted suicide from physicians and medical associations, a history of related case law, and coverage of earlier attempts to legalize physician-assisted suicide in California.

Mikochik, Stephen L. “Unwelcome Guests: Disabled People and the New Eugenics.” *University of St. Thomas Law Journal* 13, no. 1 (Fall 2016): 88–99.

This article is written mostly in the form of a letter to California governor Jerry Brown following the 2015 passage of California bill A.B. 15, which became the End of Life Option Act. Mikochik critiques the bill’s provisions, particularly as to how they might affect individuals with disabilities, and ultimately urges Brown to veto the bill.

Sung, Christine. “Deciding with Dignity: The Terminally Ill Patient’s Right to Information About the California End of Life Option Act.” *Hastings Constitutional Law Quarterly* 44, no. 1 (Fall 2016): 89–113.

A “conscience clause” in the California End of Life Option Act permits physicians to decline either to provide their patients with information about patients’ rights under the Act or to refer their patients to a physician who will provide that information.⁵⁰ Sung’s note assesses whether this clause violates California patients’ right to privacy under the state constitution or the doctrine of informed consent.

49. Benassini more fully defines a residential patient as “an individual with a developmental disability who lives, and receives various support services, in a residential developmental center operated by the California Department of Developmental Services.” Michael Benassini, *A Proposal for Proper Procedure: The Aid-in-Dying Process for Californians with Disabilities*, 51 U.C. DAVIS L. REV. 1717, 1720 n. 10 (2018).

50. Christine Sung, Note, *Deciding with Dignity: The Terminally Ill Patient’s Right to Information About the California End of Life Option Act*, 44 HASTINGS CONST. L.Q. 89, 90–91 (2016).

Thyden, Amanda M. “Death with Dignity and Assistance: A Critique of the Self-Administration Requirement in California’s End of Life Option Act.” *Chapman Law Review* 20, no. 2 (Spring 2017): 421–45.

This student note evaluates California’s requirement that terminally ill patients be able to self-administer life-ending prescription medication. Thyden believes that this requirement is overly broad and ambiguous, limiting, and altogether unnecessary in practice, and argues in favor of its removal from the law.

Colorado

¶15 Colorado voters passed Proposition 106, Access to Medical Aid in Dying, on November 8, 2016, by 65 percent to 35 percent.⁵¹ The state’s End of Life Options Act became law on December 16, 2016.⁵²

COLO. REV. STAT. §§ 25-48-101 to -123—Colorado End-of-Life Options Act (2017). Colorado Department of Public Health & Environment. *Medical Aid in Dying*. <https://www.colorado.gov/pacific/cdphe/medical-aid-dying> [<https://perma.cc/R6LW-6KB2>].

District of Columbia

¶16 The District of Columbia Council approved a physician-assisted suicide bill on November 15, 2016, and the D.C. mayor signed the bill on December 20, 2016.⁵³ The D.C. Death with Dignity Act went into effect on February 18, 2017.⁵⁴ There have been U.S. congressional attempts to repeal the Act, including the introduction of resolutions disapproving of the law and via policy riders in government funding bills, but such efforts have so far failed.⁵⁵

D.C. CODE §§ 7-661.01 to .17 (2018)—Physician-Assisted Death.

DC Health. *Death with Dignity Act of 2016*. <https://dchealth.dc.gov/page/death-dignity-act-2016> [<https://perma.cc/98JT-CKSY>].

Hawai‘i

¶17 Hawai‘i is the most recent state to legalize physician-assisted suicide. On April 5, 2018, the state governor signed the Our Care, Our Choice Act into law.⁵⁶ The Act took effect on January 1, 2019.⁵⁷

H.B. No. 2739 H.D. 1, 29th Leg. (Haw. 2018)—Our Care, Our Choice Act.

51. *Colorado*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/states/colorado/> [<https://perma.cc/AZF6-WHNK>].

52. *Id.*

53. *District of Columbia*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/states/district-of-columbia/> [<https://perma.cc/5ELW-4582>].

54. *Id.*

55. *Senate Appropriations Committee Praised for Leaving D.C. Death with Dignity Law Intact*, COMPASSION & CHOICES (June 22, 2018), <https://compassionandchoices.org/news/senate-appropriations-committee-praised-leaving-d-c-death-dignity-act-intact/> [<https://perma.cc/AL8C-ET48>]. For more on the U.S. Congress’s role in the governance of the District of Columbia, see *D.C. Home Rule*, COUNCIL OF D.C., <http://dccouncil.us/pages/dc-home-rule> [<https://perma.cc/8Y45-FED3>].

56. *Hawai‘i*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/states/hawaii/> [<https://perma.cc/3FJB-2DL2>].

57. *Id.*

Tucker, Kathryn L. "Aid in Dying: An End of Life-Option Governed by Best Practices." *Journal of Health & Biomedical Law* 8, no. 1 (Spring 2012): 9–26.

This article, published prior to the legalization of physician-assisted death in Hawai'i, looks at whether medical care standards and best practices in the state might previously have been sufficient to make aid in dying available to state residents without legislative action.

Montana

¶18 Physician-assisted suicide has been legal in Montana since 2009 via a state supreme court decision, *Baxter v. Montana*.⁵⁸ State legislative efforts to overturn *Baxter* have failed to date,⁵⁹ but at the same time, post-*Baxter* attempts to pass a law affirmatively permitting physician-assisted suicide in the state have also not come to fruition.⁶⁰

Baxter v. Montana, 224 P.3d 1211 (Mont. 2009).

A terminally ill patient, four physicians, and the nonprofit Compassion & Choices challenged the constitutionality of Montana's statutes allowing for prosecution of physicians who assist patients with dying under certain circumstances, arguing that the state constitution permitted aid-in-dying based on the rights to privacy and dignity. The Montana Supreme Court found that physician aid-in-dying was not against state public policy and that a patient's consent to aid-in-dying shielded a participating physician from liability.

Saunders, William L. "Assisted Suicide: Montana Supreme Court Avoids State Constitutional Issue; Holds Consent Defense Available for Homicide Prosecution." *Engage: The Journal of the Federalist Society Practice Groups* 11, no. 2 (September 2010): 114–18. <https://fedsoc.org/commentary/publications/assisted-suicide-montana-supreme-court-avoids-state-constitutional-issue-holds-consent-defense-available-for-homicide-prosecution> [<https://perma.cc/G5AT-UW4T>].

Saunders summarizes the history of *Baxter* and U.S. Supreme Court treatment of right-to-die issues, including assisted suicide, and contrasts *Baxter* with decisions from other state courts addressing assisted suicide. He then analyzes the *Baxter* holding with particular emphasis on the public policy concerns that it raises.

Tucker, Kathryn L. "Privacy and Dignity at the End of Life: Protecting the Right of Montanans to Choose Aid in Dying." *Montana Law Review* 68, no. 2 (Summer 2007): 317–33.

This article, published two years prior to *Baxter*, catalogs the reasons that the Montana Supreme Court would have eventually been likely to hand down such a decision. For support, Tucker examines Montana case law on the state constitution's right to privacy and points to the success of Oregon's Death with Dignity Act, increased social acceptance of aid-in-dying, and Montana's support of pain management and end-of-life care.

58. *Montana*, DEATH WITH DIGNITY NAT'L CTR., <https://www.deathwithdignity.org/states/montana/> [<https://perma.cc/HV24-T6YU>].

59. In March 2017, for instance, the Montana House rejected a bill that would have allowed for prosecution of doctors who participate in an assisted suicide and would have made patient consent unavailable as a defense. Tripp Baltz, *Montana House Scuttles Bill Allowing Aid-in-Dying Prosecution of Doctors*, BLOOMBERG BNA HEALTH L. & BUS., Mar. 2, 2017 (available on Bloomberg Law).

60. *Montana*, *supra* note 58.

Oregon

¶19 Oregon was the first state to legalize physician-assisted suicide. On November 8, 1994, Oregon voters approved the Death with Dignity Act (DWDA) initiative by a margin of 51 percent to 49 percent.⁶¹ A court challenge to the Act's implementation resulted in a temporary injunction that was lifted on October 27, 1997.⁶² A November 1997 ballot measure asked voters to repeal the initiative but failed by 20 percent of the vote.⁶³ The provisions of Oregon's DWDA have provided a model for other state laws that have since legalized physician-assisted suicide.⁶⁴

OR. REV. STAT. §§ 127.800 to .995 (2017)—Oregon Death with Dignity Act.

DuVivier, K.K. "Fast-Food Government and Physician-Assisted Death: The Role of Direct Democracy in Federalism." *Oregon Law Review* 86, no. 4 (Winter 2007): 895–972.

This article focuses on how the citizen initiative process in the states "contribut[es] to one of the goals of federalism . . . by fostering innovation by allowing the states to serve as . . . laboratories" (p.899). The author highlights the passage of Oregon's DWDA as an example of how the citizen initiative process can promote social reform.

End of Life Choices Oregon. <http://eolcoregon.org/> [<https://perma.cc/86TL-5Z8G>].

Hiscox, Wendy E. "Physician-Assisted Suicide in Oregon: The 'Death with Dignity' Data." *Medical Law International* 8, no. 3 (September 2007): 197–220.

Hiscox examines empirical data on physician-assisted suicide in Oregon gathered from 1997–2006, and identifies evidence that the safeguards written into Oregon's DWDA are falling short in their goal of preventing patient abuse.

Jackson, Ann. "The Inevitable—Death: Oregon's End-of-Life Choices." *Willamette Law Review* 45, no. 1 (Fall 2008): 137–60.

Noting that hospice patients are a majority of those who have used Oregon's DWDA, Jackson seeks to illuminate the experience of physician-assisted death in Oregon from the perspective of hospice care. She first provides a history of the law's passage and a deep dive into its provisions and requirements, and legal challenges to the Act. She also reviews the demographics of patients who died after accessing the DWDA, comparing them to patients who died in hospice and patients who did not use the law but died of the same diseases as hospice patients.

LaFrance, Arthur. "Physician Assisted Death: From Rhetoric to Reality in Oregon." *Wyoming Law Review* 8, no. 1 (2008): 333–46.

This article consists of a transcript of lectures delivered by bioethics professor LaFrance 10 years after the passage of Oregon's DWDA. LaFrance provides an overview of the law's requirements and statistics on how it has been used. He also addresses criticisms of the practice of physician-assisted death and considers potential challenges to the validity of the DWDA in the wake of *Gonzales v. Oregon*.

61. *Frequently Asked Questions: About the Death with Dignity Act*, OR. HEALTH AUTH., <https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Pages/faqs.aspx> [<https://perma.cc/3PAT-XL9G>].

62. *Id.*

63. *Id.*

64. Svenson, *supra* note 42, at 9–10, 13.

McMurry, Glen R. "An Unconstitutional Death: The Oregon Death with Dignity Act's Prohibition Against Self-Administered Lethal Injection." *University of Dayton Law Review* 32, no. 3 (Spring 2007): 441–59.

This student comment, observing that the Oregon DWDA's prohibition on administering life-ending medication via lethal injection essentially requires eligible patients to be able to swallow the medication, argues that such a restriction is unconstitutionally discriminatory against terminally ill patients who would be physically incapable of doing so but who otherwise meet the requirements of the law.

Oregon Health Authority. *Death with Dignity Act*. <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/index.aspx> [<https://perma.cc/ER4E-3H7A>].

Page, Andrew R. "What's the Cost of Living in Oregon These Days?—A Fresh Look at the Need for Judicial Protections in the Death with Dignity Act." *Regent University Law Review* 22, no. 1 (Fall 2009): 233–57.

This student work argues that Oregon's DWDA lacks adequate safeguards to prevent potential abuse of senior citizens with terminal illnesses and puts forth reasons that the law's existing requirements of capacity, terminal disease, and voluntary choice may not be met in practice. Page advocates for the establishment of a judicial review process to be completed before a patient can obtain life-ending medication in Oregon.

Vermont

¶20 Vermont was the third state to legalize physician-assisted suicide and the first to do so using the legislative process.⁶⁵ The Vermont Patient Choice and Control at the End of Life Act (PCEOL) was signed into law on May 20, 2013, and was mostly modeled on Oregon's law, with the exception of the inclusion of a provision that would "sunset" Oregon-style safeguards against abuse on July 1, 2016.⁶⁶ In May 2015, that sunset provision was removed by state Senate Bill 108.⁶⁷

VT. STAT. ANN. tit. 18, §§ 5281–5293 (2018)—Patient Choice at End of Life.

Vermont Department of Health. *Patient Choice and Control at End of Life*. <http://www.healthvermont.gov/systems/patient-choice-and-control-end-life> [<https://perma.cc/Q6FB-UU58>].

Tucker, Kathryn L. "Vermont's Patient Choice at End of Life Act: A Historic 'Next Generation' Law Governing Aid in Dying." *Vermont Law Review* 38, no. 3 (Spring 2014): 687–99.

Written prior to the removal of the 2016 sunset provision, this article reviews key aspects of the two phases of the Vermont Patient Choice at the End of Life Act as it was originally passed in 2013. It also compares aid-in-dying practices in the states of Washington, Montana, and Hawai'i.

65. *Id.* at 10.

66. *Id.*

67. *Vermont*, DEATH WITH DIGNITY NAT'L CTR., <https://www.deathwithdignity.org/states/vermont/> [<https://perma.cc/47B3-H6H7>].

Washington

¶21 Influenced by the successful passage of legislation in Oregon, Washington was the second state to legalize physician-assisted suicide when voters approved initiative I-1000 on November 4, 2008.⁶⁸ On March 5, 2009, the Washington Death with Dignity Act took effect.⁶⁹ Its wording replicates almost all of that used in the Oregon law.⁷⁰

WASH. REV. CODE §§ 70.245.010 to .903 (2017)—Washington Death with Dignity Act.

Washington State Department of Health. *Death with Dignity Act*. <http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/DeathwithDignityAct> [<https://perma.cc/E6GF-V9YG>].

Magnuson, Jared B. “Let Your Conscience Be Your Guide: Comparing and Contrasting Washington’s Death with Dignity Act and Pharmacy Regulations After the Ninth Circuit’s Decision in *Stormans, Inc. v. Wiesman*.” *Georgia Law Review* 52, no. 2 (Winter 2018): 613–50.

In its 2015 decision in *Stormans, Inc. v. Wiesman*,⁷¹ the Ninth Circuit held that pharmacists were required to dispense emergency contraception under Washington State’s pharmacy regulations even if they have religious objections to doing so.⁷² By contrast, Washington’s Death with Dignity Act allows healthcare providers to opt out of dispensing life-ending medication or indeed participating in any other part of the process allowed by the law.⁷³ This student note explores the “inconsistencies in [these] laws regarding the protection of religious liberty and conscience” (p.617).

Other States

¶22 As of the publication of this bibliography, physician-assisted suicide is illegal in at least 39 states.⁷⁴ This section of the bibliography includes a selection of recent state court cases addressing challenges to existing state laws criminalizing physician assistance with dying, followed by secondary sources discussing legalization efforts or advocating for or against legalization in some of the states.

Morris v. Brandenburg, 376 P.3d 836 (N.M. 2016).

Plaintiffs, including a patient diagnosed with uterine cancer and a doctor, sought a declaratory judgment that New Mexico’s statute criminalizing assisted suicide could not be used to prosecute physician aid in dying and that the statute itself was unconstitutional. The trial court ruled that the law at issue did apply to physician aid in dying, but that the state constitution provided a fundamental right to physician aid in dying. The Court of Appeals, in a divided opinion, overturned the

68. *Washington Death with Dignity Act: A History*, DEATH WITH DIGNITY NAT’L CTR., <https://www.deathwithdignity.org/washington-death-with-dignity-act-history/> [<https://perma.cc/2KCE-TQ6C>].

69. *Id.*

70. Svenson, *supra* note 42, at 9.

71. 794 F.3d 1064 (9th Cir. 2015).

72. Jared B. Magnuson, Note, *Let Your Conscience Be Your Guide: Comparing and Contrasting Washington’s Death with Dignity Act and Pharmacy Regulations After the Ninth Circuit’s Decision in Stormans, Inc. v. Wiesman*, 52 GA. L. REV. 613, 613 (2018).

73. *Id.* at 616–17.

74. *State-by-State Guide to Physician-Assisted Suicide*, *supra* note 7 (noting that 36 states’ laws explicitly outlaw assisted suicide, that 3 states prohibit it by common law, and that in 4 other states the law is silent or unclear on the matter).

trial court's ruling on the question of constitutional rights. The Supreme Court of New Mexico affirmed, finding that state law criminalizing physician aid in dying did not violate physicians' due process rights.

Myers v. Schneiderman, 85 N.E.3d 57 (N.Y. 2017).

Plaintiffs had sought a declaratory injunction against prosecution of physicians who assist with suicide in violation of New York State's criminal laws. A New York appellate court ruled that New York laws provided a basis to prosecute physicians who assist with suicide and that these laws did not contravene the state constitution. On appeal to the state's highest court, the plaintiffs also asked for a ruling declaring a constitutional right to aid in dying, which they sought to distinguish from assisted suicide. The N.Y. Court of Appeals ruled that no such constitutional right exists, that New York's assisted suicide laws did not violate equal protection or due process, and that state laws criminalizing assisted suicide still applied to physicians.

Burman, John M., and Cameron T. Pestinger. "Implementing Provider Aid in Dying in Wyoming." *Wyoming Law Review* 17, no. 1 (2017): 1–21.

Burman and Pestinger argue that while a 2012 amendment to the Wyoming state constitution means that Wyoming adults may already legally choose provider aid in dying, this right should still be codified in state law. They provide proposed legislation for the state legislature's consideration.

Leppert, Kelsey. "From Karen Ann Quinlan to Brittany Maynard: Advanced Health Care Directives and the Road to Aid-in-Dying Legislation in Iowa." *Drake Law Review Discourse* 65 (January 2016): 1–27. <https://lawreviewdrake.files.wordpress.com/2016/02/leppert-final-uploaded.pdf> [<https://perma.cc/NDY4-A9EJ>].

This student note covers U.S. Supreme Court jurisprudence on, and current legal treatment in the state of Iowa of, end-of-life decisions, including the right to refuse medical treatment and aid in dying. Leppert makes the case for Iowa's historical progressiveness regarding certain civil rights issues and advocates for the passage of an aid-in-dying law in Iowa modeled on those in Oregon, Washington, and California.

Orlando, Stephen J. "The Doctor Will See You for the Last Time Now: Physician-Assisted Suicide in Massachusetts." *Suffolk University Law Review* 46, no. 1 (2013): 243–61.

In 2012, Massachusetts voters defeated a bill to legalize physician-assisted suicide. This student note covers the history of legislation on physician-assisted suicide in the United States and the history of the 2012 Massachusetts bill in particular, reviewing and responding to the various objections of the bill's opponents. Orlando also speculates on the possibility of the legalization of euthanasia and physician-assisted suicide for minors in the United States.

"Symposium: Aid-in-Dying Legislation in Connecticut." *Quinnipiac Law Review* 34, no. 4 (2016): 609–800.

In addition to reviewing the status of aid-in-dying legislative efforts in Connecticut,⁷⁵ this symposium issue's articles address Catholic perspectives on various end-of-life options,⁷⁶ conversations on disability and end-of-life choices,⁷⁷

75. Tim Appleton et al., *Legislative Panel: Aid-in-Dying Legislation in Connecticut*, 34 QUINNIPAC L. REV. 647 (2016).

76. Janeane Lubin-Szafranski & Gregory J. Pepe, *Catholic Doctrine and Aid in Dying*, 34 QUINNIPAC L. REV. 667 (2016).

77. Lynette Cederquist & Ellen Waldman, *Palliative Care and End-of-Life Options*, 34 QUINNIPAC L. REV. 627 (2016).

and issues related to the availability of medication used for aid in dying.⁷⁸

“Symposium: Establishing New Rights: A Look at Aid in Dying.” *New Mexico Law Review* 48, no. 2 (Symposium 2018): 233–329.

This symposium’s article topics include a critique of the New Mexico Supreme Court’s decision in *Morris v. Brandenburg*;⁷⁹ a history of attempts to legalize aid in dying in the United States through litigation, legislation, or other means;⁸⁰ state civil rights jurisprudence in New Mexico;⁸¹ the likelihood of greater expansion of civil rights under state constitutions, rather than the U.S. Constitution;⁸² and the flaws inherent in courts following *Glucksberg*’s approach to substantive due process.⁸³

Tucker, Kathryn L. “Give Me Liberty at My Death: Expanding End-of-Life Choice in Massachusetts.” *New York Law School Law Review* 58, no. 2 (2013/14): 259–76.

Tucker writes that legalization of aid in dying may not be necessary in a state such as Massachusetts. She examines relevant state criminal laws and laws pertaining to medical autonomy and end-of-life care, and compares aid-in-dying practices in those states where it is currently legal. Tucker concludes that Massachusetts professional medical practice standards likely permit physicians to prescribe aid-in-dying drugs without being subject to criminal prosecution.

Tucker, Kathryn L., and Christine Salmi. “End-of-Life Care in Idaho: Law, Medicine, Policy, and Geography.” *The Crit: A Critical Studies Journal* 3, no. 2 (Summer 2010): 1–19.

Tucker and Salmi compare Idaho legislation governing end-of-life care with the relevant law in the bordering states of Oregon, Washington, and Montana, and advocate for the legalization of aid in dying in Idaho “by incorporating this intervention into medical practice subject to standard of care” (p.3).

Wingfield, Katherine Ann, and Carl S. Hacker. “Physician-Assisted Suicide: An Assessment and Comparison of Statutory Approaches Among the States.” *Seton Hall Legislative Journal* 32, no. 1 (2007): 13–64.

A detailed matrix lists all state statutes that either explicitly or implicitly legalize or criminalize physician-assisted suicide or assisted suicide generally. It is followed by a discussion of the similarities and differences among them. While the laws in some states have changed since this article’s publication, it is still an excellent starting point for state-by-state research on the topic.

78. Taimie Bryant, *Aid in Dying: The Availability of Ideal Medication for Use in “Right to Die” Jurisdictions in the United States*, 34 QUINNIPIAC L. REV. 705 (2016).

79. Paola V. Jaime Saenz, *Morris v. Brandenburg: Departing from Federal Precedent to Declare Physician Assisted Suicide a Fundamental Right Under New Mexico’s Constitution*, 48 N.M. L. REV. 233 (2018); Kathryn L. Tucker, *A Nadir of State Constitutional Jurisprudence: Failing to Protect Terminally Ill Patients’ Choice for a More Peaceful Death in New Mexico*, 48 N.M. L. REV. 315 (2018).

80. Thaddeus Mason Pope, *Legal History of Medical Aid in Dying: Physician Assisted Death in U.S. Courts and Legislatures*, 48 N.M. L. REV. 267 (2018).

81. Linda M. Vanzi et al., *State Constitutional Litigation in New Mexico: All Shield and No Sword*, 48 N.M. L. REV. 302 (2018).

82. Erwin Chemerinsky, *State Constitutions as the Future for Civil Rights*, 48 N.M. L. REV. 259 (2018).

83. Laura Schauer Ives, *The Decisions We Are (or Are Not) Free to Make, for Now*, 48 N.M. L. REV. 324 (2018).

Current Awareness Resources

Bloomberg BNA Health Law and Business News (recently superseding BNA Health Care Policy Report and BNA Health Law Reporter).

Users can find in-depth news articles and legal analysis on recent state legislative or judicial developments related to physician-assisted death. The most useful search terms for locating more recent pieces appear to be “assisted suicide” or “physician-assisted suicide”/“doctor-assisted suicide,” “aid in dying,” or “death with dignity.”

Compassion & Choices. <https://www.compassionandchoices.org/> [<https://perma.cc/36JF-4DTM>].

Compassion & Choices, formerly known as the Hemlock Society, is an advocacy nonprofit “committed to improving care and expanding choice at the end of life,”⁸⁴ including working to expand access to legal medical aid in dying throughout the United States. Its website offers up-to-date press releases on relevant legislative and court updates, as well as helpful fact sheets on various end-of-life issues.

Death with Dignity National Center. <https://www.deathwithdignity.org/> [<https://perma.cc/X9DR-A63V>].

The Death with Dignity National Center is a nonprofit organization promoting the adoption of state laws modeled on Oregon’s Death with Dignity Act. This website includes information on current state laws permitting physician-assisted death and resources on how to access those laws, as well as legislative activity updates from other states. A large educational section contains information for assisted dying advocates, healthcare providers, and patients and families; information on religious perspectives on assisted dying; and a number of resource lists for further reading and research.

Patients Rights Council. <http://www.patientsrightscouncil.org/> [<https://perma.cc/H3YG-6BZZ>].

The nonprofit Patients Rights Council was formerly known as the International Task Force on Euthanasia and Assisted Suicide. Much of this website is somewhat clunky in appearance, and some portions are not kept current, but the pages covering state legislative developments regarding physician-assisted dying are consistently up to date. Users can browse a general newsfeed or locate news links by jurisdiction. The site also maintains an annually updated list of states whose legislatures have considered bills legalizing physician-assisted death in a given year, dating back to 1994.

Legalizing Physician-Assisted Death

General Overviews

¶23 The materials in this section provide neutral overviews of the legal arguments for and against legalizing physician-assisted death or information about the background behind various legalization efforts in the states.

Cassity, Shelly A. “To Die or Not to Die: The History and Future of Assisted Suicide Laws in the U.S.” *Journal of Law & Family Studies* 11, no. 2 (2009): 467–75. Also appears in *Utah Law Review*, 2009, no. 2: 515–23.

84. *About Compassion & Choices*, COMPASSION & CHOICES, <https://www.compassionandchoices.org/who-we-are/> [<https://perma.cc/JFV8-K5B6>].

This brief student note provides a history of relevant laws on suicide and assisted suicide in the United States from the colonial period to the twentieth century, as well as an overview of the legalization of assisted suicide in Oregon, Washington, and Montana and an analysis of the future of assisted suicide laws in the United States. Cassity concludes by summarizing the potential downfalls in both legalizing and not legalizing assisted suicide.

Jackson, Emily, and John Keown. *Debating Euthanasia*. Vol. 3, *Debating Law*. Oxford: Hart, 2012.

The first half of this book consists of Jackson's arguments in favor of legalizing euthanasia and assisted suicide under limited circumstances. In the second half, Keown contends that decriminalizing either procedure is ethically impermissible and would pose special dangers for vulnerable populations. Throughout their respective sections, the authors each respond to the perspectives of their coauthor and to other arguments that have been advanced on either side of the debate.

Lopes, Giza. *Dying with Dignity: A Legal Approach to Assisted Death*. Santa Barbara: Praeger, 2015.

This book offers a comparative examination of the development of laws decriminalizing assisted death in the United States and in Europe. Lopes traces a path from the first euthanasia bills proposed in the early twentieth century to the more recent legalization of physician-assisted suicide in several states. Next, she contrasts the history of assisted death laws and practices in Switzerland with those in the Netherlands, Belgium, and Luxembourg. Finally, Lopes assesses the involvement of members of the medical profession in assisted death.

Stefan, Susan. *Rational Suicide, Irrational Laws: Examining Current Approaches to Suicide in Policy and Law*. New York: Oxford University Press, 2016.

This book provides information on the history and legal status of assisted suicide in the United States and internationally. It addresses a slew of legal and policy considerations pertaining to suicide, suicide prevention, and assisted suicide—including constitutional law issues, mental illness, and involvement in assisted suicide by medical and psychiatric professionals. The appendices include a "Model State 'Assisted' Suicide Statute," which is offered as an alternative to current state laws permitting the practice and as a suggestion for states that might be considering its legalization.

Sumner, L.W. *Physician Assisted Death: What Everyone Needs to Know*. New York: Oxford University Press, 2017.

The chapters in this volume are presented in the form of frequently asked questions on physician-assisted death and other end-of-life issues. Sumner covers relevant terminology, the legal and ethical cases for and against physician-assisted dying, and what law reform centering on legalizing forms of physician-assisted death might look like and how it might occur (e.g., via the legislature, courts, or voter referenda).

Svenson, Arthur G. "Physician-Assisted Dying and the Law in the United States: A Perspective on Three Prospective Futures." In *Euthanasia and Assisted Suicide: Global Views on Choosing to End Life*, edited by Michael J. Cholbi, 3–28. Santa Barbara: Praeger, 2017.

The author discusses three potential paths toward expanded legalization of physician-assisted dying in the United States: state laws, state courts, and the U.S. Supreme Court. First, he examines the effect of the passage of Oregon's Death with Dignity Act and the later passage of similar laws in Vermont and California. Next, he looks at examples of successful court challenges to state laws criminal-

izing physician-assisted dying and analyzes the issues involved with “judicially driven legalization” (p.18). Finally, he evaluates the likelihood of the Supreme Court some day overturning its decisions in *Glucksberg* and *Vacco*.

Tucker, Kathryn L. “When Dying Takes Too Long: Activism for Social Change to Protect and Expand Choice at the End of Life.” *Whittier Law Review* 33, no. 1 (Fall 2011): 109–60.

Tucker reviews various methods that have been used to address the legality of end-of-life options and aid in dying. These include the citizen initiatives that led to the passage of the Oregon and Washington Death with Dignity Acts; federal and state laws that prohibit physician-assisted suicide or that deal with other end-of-life issues such as pain management, patient counseling, and advance directives; and litigation efforts. She also covers the aid-in-dying terminology battles and advocates for professional medical standards to govern aid in dying if a state’s laws do not explicitly permit or forbid the practice.

Support for Legalization

¶24 The works in this section advocate in favor of legalizing physician-assisted death in more states or for expanding the provisions of existing legislation.

Ball, Howard. *At Liberty to Die: The Battle for Death with Dignity in America*. New York: New York University Press, 2012.

Ball’s central premise is that the U.S. Constitution provides for the freedom of terminally ill patients to choose physician-assisted death. He details the history of relevant U.S. Supreme Court cases and of efforts to legalize physician-assisted death in the United States, either through the courts or through passage of state legislation.

Bryant, David. “The Need for Legalization and Regulation of Aid-in-Dying and End-of-Life Procedures in the United States.” *Quinnipiac Health Law Journal* 18, no. 2 (2015): 287–324.

This student note summarizes the legal status of physician-assisted suicide in the United States and abroad and observes the increasing acceptance of legalized end-of-life procedures in most jurisdictions. He advocates for the establishment of federal laws and uniform regulations governing both physician-assisted suicide and euthanasia in the United States, arguing that doing so would better respect patient autonomy and protect patients from potential abuse.

Mason, Emily R. “Ignoring It Will Not Make It Go Away: Guidelines for Statutory Regulation of Physician-Assisted Death.” *New England Law Review* 45, no. 1 (Fall 2010): 139–66.

This student note argues for express statutory regulation of physician-assisted death, even in states such as Montana where legalization may come via court decision, to best protect patient rights and vulnerable patients. Mason examines existing legislation authorizing physician-assisted death in Oregon and Washington and in other countries, and proposes a statutory framework for the regulation of physician-assisted death in the rest of the states.

Porter, Jennifer. “Who Lives? Who Dies? Who Decides?” *Georgetown Journal of Law & Public Policy* 14, no. 2 (Summer 2016): 599–614.

This student note examines the different means of legalization of physician-assisted suicide in the states thus far, from ballot measures to court decisions to laws passed by state legislatures. Porter advocates for the third option as the most effective means for states to exercise their sovereignty and create a right to physician-assisted suicide out of respect for patient autonomy.

Reynolds, Lindsay. "Losing the Quality of Life: The Move Toward Society's Understanding and Acceptance of Physician Aid-in-Dying and the Death with Dignity Act." *New England Law Review* 48, no. 2 (Winter 2014): 343–70.

This student note contends that religious opposition, confusion over the provisions in Death with Dignity Acts, and fears over "slippery slopes" have been the main obstacles to more widespread legalization of physician aid in dying in the United States. Reynolds argues that not only should physician aid in dying be legalized, it should also be extended to patients who are not terminally ill. She also explores how the law of wills and trusts could possibly be applied to typical concerns over legalized physician aid in dying.

Shibata, Benjamin. "An Ethical Analysis of Euthanasia and Physician-Assisted Suicide: Rejecting Euthanasia and Accepting Physician Assisted Suicide with Palliative Care." *Journal of Legal Medicine* 37, nos. 1–2 (January-June 2017): 155–66.

Shibata evaluates the ethical and moral permissibility of euthanasia and physician-assisted suicide via the medical principles of autonomy, nonmaleficence, beneficence, and justice, as well as the patient rights versus physician obligations implicated by assisted dying. He also suggests that existing laws include a requirement that a patient seeking to access physician-assisted suicide consult with a palliative care physician, in order to provide certain patients with additional options for care and comfort.

Silverman, Alexi. "Physician-Assisted Suicide: Removing Residency Requirements in the U.S. to Comport with an International Right to Health." *San Diego International Law Journal* 19, no. 1 (2017): 193–224.

In this student comment, Silverman advocates for amendments to U.S. state laws permitting physician-assisted suicide that would make the procedure accessible to nonstate residents. Such potential changes, she argues, have bases in constitutionality, morality, and a right to health (the latter having been recognized in international jurisdictions).

Smith, Stephen W. "Some Realism About End of Life: The Current Prohibition and the Euthanasia Underground." *American Journal of Law & Medicine* 33, no. 1 (2007): 55–95.

Smith asks whether current prohibitions against both physician-assisted suicide and euthanasia are actually effective in reducing or eliminating these practices, or whether legalization would better stem instances of abuse. He evaluates multiple arguments against legalization that arise from both patient- and healthcare provider-centered perspectives, such as the efficacy of current medical ethics standards, patient autonomy, and consequences for both patients and physicians stemming from the lack of regulation.

Sumner, L.W. *Assisted Death: A Study in Ethics and Law*. Oxford: Oxford University Press, 2011.

Part 1 covers a number of ethical considerations on assisted death, while part 2 looks at the legal status of euthanasia and assisted suicide in several jurisdictions, both in the United States and overseas, that prohibit or regulate those practices. Sumner lays out a model policy for jurisdictions that may consider legalizing at least one of the two forms of assisted death, while responding to arguments opposing legalization and questions regarding its impact.

White, Christina. "Physician Aid-in-Dying." *Houston Law Review* 53, no. 2 (2015): 595–629.

This student comment advocates for the legalization of physician aid in dying throughout the United States, whether through a U.S. Supreme Court decision finding a constitutional right to aid in dying or via actions by state legislatures or courts. It summarizes U.S. Supreme Court case law relevant to physician aid in dying and the relevant laws or decisions in Oregon, Washington, Vermont, and Montana.

Whitefield, Ashley. "End of Life Care: Why Living Wills Are Ineffective and Why Death with Dignity Acts Are a More Effective Approach." *Annals of Health Law Advance Directive* 22 (Spring 2013): 32–43.

This student article contends that living will⁸⁵ statutes, which have been adopted in most states, are ineffective compared to Death with Dignity Acts in providing terminally ill patients with control over their end-of-life care. Whitefield outlines the "inefficiencies" (p.35) of living wills and discusses how Death with Dignity Acts comparatively allow the terminally ill to exercise more autonomous end-of-life decision making.

Against Legalization

Gorsuch, Neil M. "A Reply to Raymond Tallis on the Legalization of Assisted Suicide and Euthanasia." *Journal of Legal Medicine* 28, no. 3 (July-September 2007): 327–32.

Gorsuch responds to a review by physician Raymond Tallis of Gorsuch's 2006 book *The Future of Assisted Suicide and Euthanasia*. Tallis wrote in this review that legalization of physician-assisted suicide benefits society overall and reduces human suffering, and that any associated slippery slope concerns can be avoided. To Gorsuch, these are broad assumptions that do not tell the whole story of the impact of legal assisted suicide on patients and society.

Klothen, Kenneth. "Tinkering with the Legal Status Quo on Physician Assisted Suicide: A Minimalist Approach." *Rutgers Journal of Law and Religion* 14, no. 2 (2013): 361–87.

While Klothen supports the idea of a moral right to physician-assisted suicide, he is against its widespread legalization, which he believes would lead to an undesirable increase in its use. He offers suggestions for how to protect physicians from criminal prosecution in states where it is still illegal, such as the creation of defenses of consent, compassion, and medical necessity.

Smith, Wesley J. "Assisted Suicide: Bad Medicine and Even Worse Public Policy." *Thomas M. Cooley Law Review* 24, no. 1 (2007): 99–122.

Smith believes that legalized assisted suicide and euthanasia are societal ills. He draws upon extensive studies and data from the Netherlands to support his view, and argues that statistics on the use and impact of assisted suicide in Oregon are unreliable and cannot form a basis to claim that legalized assisted suicide is safe. He is also concerned with potential economic pressures on both doctors and patients and possible abuse of elderly and disabled patients.

85. A living will is a type of advance directive. *Advance Directive: Creating a Living Will and Health Care Power of Attorney*, AARP, <https://www.aarp.org/caregiving/financial-legal/info-2017/living-will-power-of-attorney.html> [<https://perma.cc/GZ5N-NWHZ>].

Stern, Ruth C., and J. Herbie DiFonzo. "Terminal Ambiguity: Law, Ethics and Policy in the Assisted Dying Debate." *Boston University Public Interest Law Journal* 17, no. 1 (Fall 2007): 99–140.

The authors argue against legalized assisted dying, as "however humanely practiced, [it] is [still] the taking of life" (p.139). They instead promote the improvement of palliative care options to alleviate end-of-life health burdens and greater involvement by medical professionals in efforts to improve care for dying patients.

Wagner, William, John S. Kane, and Geoffrey Gismondi. "Physician-Assisted Killing Laws, Constitutional Authority, and the Conscience of a Nation: *Two Worldviews*." *Thomas M. Cooley Law Review* 24, no. 1 (2007): 123–68.

The "two worldviews" of the title refer to (1) a "divinely revealed . . . [and] inviolable objective standard that killing a human being is always wrong" (p.134), which is reflected in state laws that prohibit assisted suicide; and (2) a "subjective, morally relative worldview" (p.133) that life has value only in some circumstances, which the authors claim is personified by Oregon's Death with Dignity Act and favored by proponents of legalizing assisted suicide. The authors cover the legislative history of the Controlled Substances Act (CSA) and its amendments as well as the impact and limitations of the Supreme Court's decision in *Gonzales v. Oregon*, and contend that Congress could amend the CSA to preempt state laws that permit assisted suicide. They conclude by reflecting on the potential dangers to society of legalizing assisted suicide.

Selected Topics in Scholarship on Physician-Assisted Death

Abortion and Reproductive Rights

¶25 Some legal scholarship has linked the movement to legalize physician-assisted death in the United States to the ongoing debates over abortion rights. Patient autonomy, the right to privacy, and the preservation of life are a few of the topics that are raised regarding both issues in the works listed below.

Busscher, David. "Linking Assisted Suicide and Abortion: Life, Death, and Choice." *Elder Law Journal* 23, no. 1 (2015): 123–49.

Busscher sees the "same fundamental tension" (p.127) in the issues of both abortion and assisted suicide: namely "individual choice in what is done to one's body, even if that involves terminating a life, versus state interest in preserving life or potential life" (p.127). Based on this connection, he argues in this student note against further legalization of assisted suicide and for banning it where it is currently legal.

Gentry, Sarah M. "The Right to Die with Dignity: Death, Your Body, and Privacy." *George Mason University Civil Rights Law Journal* 28, no. 2 (Spring 2018): 203–39.

This student comment asserts that the U.S. Supreme Court erred in *Glucksberg* and that the right to choose assisted death should be protected in the same manner as the right to choose an abortion. Gentry writes that the U.S. Supreme Court should apply the same analytical framework used in *Roe v. Wade*⁸⁶ to assisted death in finding that the right to privacy afforded by the Fourteenth Amendment's Due Process Clause protects the right to choose assisted dying.

86. 410 U.S. 113 (1973). *Roe* held that "[t]he right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy," but "this right is not unqualified and must be considered against important state interests in regulation." *Id.* at 153–54.

Kim, Phillip. "Navigating the Maze of End-of-Life Decisions Regarding the Rejection of Life Sustaining Treatment, Medical Futility, Physician-Assisted Death, and Abortion." *SMU Science and Technology Law Review* 14, no. 1 (Fall 2010): 127–57.

This student comment examines the four end-of-life issues listed in the title in relation to each other. Kim explores the legal and policy background and current state of the law relevant to each, primarily through the lens of the constitutional right to personal autonomy.

Lindgren, Yvonne. "From Rights to Dignity: Drawing Lessons from Aid in Dying and Reproductive Rights." *Utah Law Review* 5 (2016): 779–829.

Lindgren contrasts the more widespread legalization of aid in dying in recent years with the similarly increasing common passage of greater abortion restrictions in some states. Her article "consider[s] the extent to which these two movements trace opposing trajectories between healthcare and rights framings" (p.783).

Price, Richard S., and Thomas M. Keck, "Movement Litigation and Unilateral Disarmament: Abortion and the Right to Die." *Law & Social Inquiry* 40, no. 4 (Fall 2015): 880–907.

Some social progress has been achieved not through legislation but primarily through court victories, which has given rise to a "backlash critique" (p.881) that such change not only is "democratically illegitimate" (p.880) but also instigates greater political mobilization by opponents of certain social movements. The authors review litigious and legislative activity in the abortion and assisted suicide movements to explore what the role of the judicial system can and should be in effecting social change.

Capital Punishment and Prisoners' Rights

¶26 A more recent topic in legal scholarship is the connection between patient access to physician-assisted death and the rights of prisoners who have been sentenced to death. Issues that have been explored in this area include the treatment of both prisoners' and patients' dignity in death,⁸⁷ and the relationship between the right to physician-assisted death and the right of death row prisoners to request expedited executions.⁸⁸

Loveland, Kristen. "Death and Its Dignities." *New York University Law Review* 91, no. 5 (November 2016): 1279–1315.

In this note, Loveland explores the concept of dignity in constitutional law and compares its treatment in assisted suicide versus death penalty jurisprudence, finding an emphasis on individual dignity in the former and on society's dignity in the latter. She suggests ways for these two areas to incorporate the other's notion of dignity.

Pormeister, K., M. Finley, and J.J. Rohack. "Physician Assisted Suicide as a Means of Mercy: A Comparative Analysis of the Possible Legal Implications in Europe and the United States." *Virginia Journal of Social Policy & the Law* 24, no. 1 (2017): 1–23.

In 2014, the Belgian Court of Appeal granted the request of a prisoner who had

87. Kristen Loveland, Note, *Death and Its Dignities*, 91 N.Y.U. L. REV. 1279 (2016).

88. Meredith Martin Rountree, *Criminals Get All the Rights: The Sociolegal Construction of Different Rights to Die*, 105 J. CRIM. L. & CRIMINOLOGY 149 (2015).

been sentenced to life in prison to access physician-assisted suicide (though the request was never carried out).⁸⁹ The authors explore the potential effects of opening up the right to physician-assisted suicide in this fashion in both Europe and the United States, including what it would mean for “the right to die in the wider catalogue of human/fundamental rights, and the role of death as a punishment carried out by the custodial state” (p.4).

Rountree, Meredith Martin. “Criminals Get All the Rights: The Sociolegal Construction of Different Rights to Die.” *Journal of Criminal Law and Criminology* 105, no. 1 (Winter 2015): 149–202.

Rountree studies the phenomenon of death row prisoners seeking to hasten their executions, comparing and contrasting courts’ treatment of this population’s “right to die” with that right as it is understood in a medical context. Exploring various reasons for “the disparity in how the law treats . . . desires to die” (p.187), she concludes that there has been a “marginalization” (p.202) of death row prisoners in this regard and presents a case for a change to the legal standard for adjudicating prisoners’ requests for speedier executions.

Walthour, Melanie. “Competently, Knowingly, and Voluntarily Dying with Dignity: Why States That Allow Defendants to Volunteer for Execution Should Allow Terminally Ill Patients to Die in a Dignified and Humane Manner.” *Arizona Summit Law Review* 9, no. 2 (Spring 2016): 437–75.

This student work draws parallels between patient use of physician-assisted suicide and death row inmates’ willing abandonment of their appeals in order to move forward with their executions. Walthour argues that both are examples of individuals willingly expediting their deaths and proposes that the many states that already permit the latter also pass death with dignity laws legalizing physician-assisted suicide.

“Death Tourism”

¶27 One phenomenon related to physician-assisted death is that of individuals traveling abroad to seek assistance with dying when their home jurisdictions do not permit it. The following materials address some of the issues associated with such activity, which is variously called “death tourism,”⁹⁰ suicide tourism,⁹¹ or “travel for assisted suicide.”⁹²

Cohen, I. Glenn. “Medical Tourism and Ending Life: Travel for Assisted Suicide and Abortion.” In *Patients with Passports: Medical Tourism, Law and Ethics*, 315–70. New York: Oxford University Press, 2015.

The author establishes that international law does not prohibit a home country from criminalizing travel by its citizens for the purposes of obtaining legalized assisted suicide or abortion abroad. He then evaluates whether a home country should criminalize this type of travel or the speech of doctors who may advise patients to travel abroad for these purposes.

89. K. Pormeister et al., *Physician Assisted Suicide as a Means of Mercy: A Comparative Analysis of the Possible Legal Implications in Europe and the United States*, 24 VA. J. SOC. POL’Y & L. 1, 3–4 (2017).

90. Alexander R. Safyan, *A Call for International Regulation of the Thriving “Industry” of Death Tourism*, 33 LOY. L.A. INT’L & COMP. L. REV. 287, 288 (2011).

91. Hadeel Al-Alosi, *A Time to Fly and a Time to Die: Suicide Tourism and Assisted Dying in Australia Considered*, 17 MARQ. BENEFITS & SOC. WELFARE L. REV. 257, 259 (2016).

92. I. Glenn Cohen, *Traveling for Assisted Suicide, in EUTHANASIA AND ASSISTED SUICIDE: GLOBAL VIEWS ON CHOOSING TO END LIFE* 373, 374 (Michael J. Cholbi ed., 2017).

Cohen, I. Glenn. "Traveling for Assisted Suicide." In *Euthanasia and Assisted Suicide: Global Views on Choosing to End Life*, edited by Michael J. Cholbi, 373–91. Santa Barbara: Praeger, 2017.

Adapted from several of Cohen's previous works on the same subject, this book chapter provides an overview of medical tourism generally and suicide tourism in more detail. Cohen covers how international law, domestic law, and EU law have treated (and should treat) suicide tourism, with a particular focus on examples from the United Kingdom.

Safyan, Alexander R. "A Call for International Regulation of the Thriving 'Industry' of Death Tourism." *Loyola of Los Angeles International and Comparative Law Review* 33, no. 2 (Winter 2011): 287–319.

This student note compares the legalization of assisted suicide and euthanasia in the United Kingdom, the United States, the Netherlands, and Switzerland. Safyan evaluates the potential of each jurisdiction as a "death tourism destination" (p.293) and argues that death tourism requires some type of regulation, preferably via nonbinding legal instruments such as a United Nations General Assembly recommendation.

Srinivas, Rohith. "Exploring the Potential for American Death Tourism." *Michigan State University Journal of Medicine and Law* 13, no. 1 (Winter 2009): 91–122.

This student work considers the feasibility of two possible means by which the federal government or state governments could stop travel by Americans to undergo legal assisted suicide or euthanasia in other jurisdictions. One is to impose restrictions on travel for such purposes; the other is to pass laws banning Americans from accessing these procedures in jurisdictions where they are legal.

Ethics and Morality

Kamisar, Yale. "Are the Distinctions Drawn in the Debate about End-of-Life Decision Making 'Principled'? If Not, How Much Does It Matter?" *Journal of Law, Medicine & Ethics* 40, no. 1 (Spring 2012): 66–84.

Kamisar is concerned with the validity of lines that have been demarcated within certain end-of-life issues. Comparing and contrasting arguments on all sides by ethicists, physicians, and the courts, he addresses the different legal treatment for physician-assisted suicide and the withdrawal of life-sustaining treatment; whether proponents of legal physician-assisted suicide can truly also be against euthanasia; why physician-assisted suicide should be limited only to terminally ill patients; and the effect of the U.S. Supreme Court's embrace of the "principle of double effect"⁹³ on the debates surrounding physician-assisted suicide, palliative care, and terminal sedation.

Orentlicher, David. "Aging Populations and Physician Aid in Dying: The Evolution of State Government Policy." *Indiana Law Review* 48, no. 1 (2014): 111–23.

Within the recent trend of more states moving to legalize physician aid in dying for the terminally ill, Orentlicher observes a weakening of the distinction between physician aid in dying and the traditionally more accepted option of withdrawal of life-sustaining treatment. He discusses the implications of this change on the public's moral views on end-of-life choices that hasten death.

93. According to the "principle of double effect," it would be morally acceptable for a physician to administer large doses of painkillers to a patient with the sole goal of relieving his or her pain, even if doing so also eventually results in the patient's death. Yale Kamisar, *Are the Distinctions Drawn in the Debate about End-of-Life Decision Making 'Principled'? If Not, How Much Does It Matter?*, 40 J.L. MED. & ETHICS 66, 76 (2012).

Stern, Ruth C., and J. Herbie DiFonzo. "Stopping for Death: Re-Framing Our Perspective on the End of Life." *University of Florida Journal of Law and Public Policy* 20, no. 3 (December 2009): 387–437.

The authors seek to go beyond the debates surrounding legalization of assisted suicide by "reflect[ing] upon . . . the conditions at ground zero in the assisted suicide debate: the quality of life of those near death, as well as their expectations for care and how a reasonable society might fulfill them" (p.391). Topics addressed include the physical, emotional, and mental suffering of patients; factors that might lead certain patients to decide to access or reject assisted dying; the role and importance of doctor-patient communication in end-of-life decision making; the rising cost of healthcare; and perceived shortcomings in existing laws, such as Oregon's Death with Dignity Act, in confronting some of these issues.

Impacts on Vulnerable Populations

¶28 A frequent topic in scholarship on physician-assisted death is how legalization might affect members of typically vulnerable communities, including the poor, the elderly, minors, and patients with disabilities or mental illness (especially dementia). Commonly discussed issues include the possibility of coercion of or influence over such individuals,⁹⁴ the implications that arise if a patient lacks the competence to make a fully informed decision in selecting physician-assisted death,⁹⁵ and insufficient access to the option for certain groups.⁹⁶

Battin, Margaret P. "Physician-Assisted Dying and the Slippery Slope: The Challenge of Empirical Evidence." *Willamette Law Review* 45, no. 1 (Fall 2008): 91–136.

Battin participated in the publication of a 2007 study that used data from Oregon and the Netherlands to "consider whether there is evidence of disparate impact on people in vulnerable groups" (p.100) when it comes to the availability of physician-assisted dying in those jurisdictions. In this article, Battin summarizes the methodology and results of the 2007 study and addresses objections to it that later arose.

Bollman, Cyndi. "A Dignified Death? Don't Forget About the Physically Disabled and Those Not Terminally Ill: An Analysis of Physician-Assisted Suicide Laws." *Southern Illinois University Law Journal* 34, no. 2 (Winter 2010): 395–415.

This student comment argues for amending Oregon's and Washington's Death with Dignity Acts to make them accessible to (1) individuals with physical disabilities who may be physically unable to self-administer the medication; and (2) those who do not have terminal illnesses but still may endure great physical or mental suffering.

Chhikara, Neelam. "Extending the Practice of Physician-Assisted Suicide to Competent Minors." *Family Court Review* 55, no. 3 (July 2017): 430–43.

This student note proposes amending state laws that permit or decriminalize physician-assisted suicide to remove age restrictions on access to physician-assisted suicide. Chhikara outlines ways to establish a terminally ill minor's competency to give informed consent in electing the procedure.

94. See, e.g., Anne Marie Su, *Physician Assisted Suicide: Debunking the Myths Surrounding the Elderly, Poor, and Disabled*, 10 HASTINGS RACE & POVERTY L.J. 145 (2013).

95. See, e.g., Menzel, *supra* note 3.

96. See, e.g., Neelam Chhikara, *Extending the Practice of Physician-Assisted Suicide to Competent Minors*, 55 FAM. CT. REV. 430 (2017).

Compton-Brown, Anne. "Examining Patient Integrity and Autonomy: Is Assisted Death a Viable Option for Adolescents in the United States?" *Annals of Health Law Advance Directive* 23 (Spring 2014): 86–100.

This student article advocates for the passage of laws in the United States similar to those in Belgium and the Netherlands that make legal assisted death available to certain terminally ill children and adolescents. This is based on the notion that patients in this age group are as capable as adults in exercising personal autonomy with such choices, as long as those laws mirror those in Belgium and the Netherlands by providing procedural safeguards protecting younger patients from coercion.

Crossley, Mary. "Ending-Life Decisions: Some Disability Perspectives." *Georgia State University Law Review* 33, no. 4 (Summer 2017): 893–922.

Crossley elaborates on some disability rights advocates' concerns regarding the legalization of physician-assisted suicide and the right to terminate unwanted medical treatment. These concerns include a history of discrimination by health professionals against the disabled; medicine's "incomplete and skewed understanding" (p.901) of what it means to be disabled; the perception that the disabled are a burden; and the "primacy of autonomy" (p.905) for disabled individuals. With the goal of opening up better understanding of these issues for the nondisabled, Crossley then draws parallels with concerns about racial justice and policing that have been long expressed by the African American community.

Dore, Margaret K. "Death with Dignity': A Recipe for Elder Abuse and Homicide (Albeit Not by Name)." *Marquette Elder's Advisor* 11, no. 2 (Spring 2010): 387–401.

Dore discusses potential shortcomings in Oregon's and Washington's Death with Dignity Acts, including the lack of a requirement that the patient be competent at the time of taking the medication and the possibility that someone other than the patient could administer the lethal dose. She asserts that these and other holes in the laws create the possibility for elder abuse, patient coercion, or even involuntary homicide.

Franklin, Katie. "Physician-Assisted Death, Dementia, and Euthanasia: Using an Advanced Directive to Facilitate the Desires of Those with Impending Memory Loss." *Idaho Law Review* 51, no. 2 (2015): 547–74.

This student article proposes extending the authority of guardians of patients with dementia to making decisions about those patients' end-of-life care, including whether to resort to physician-assisted death, pending the existence of an advance directive laying out that person's wishes.

George, Katrina. "A Woman's Choice? The Gendered Risks of Voluntary Euthanasia and Physician-Assisted Suicide." *Medical Law Review* 15, no. 1 (Spring 2007): 1–33.

George looks at data on women electing to access physician-assisted suicide and euthanasia, asking whether they truly exercised personal choice or whether "oppressive influences" (p.33) were at play. These influences might include "structural inequalities . . . disparities in power . . . [or] social and economic disadvantage and oppressive cultural stereotypes that idealise feminine self-sacrifice and reinforce stereotyped gender roles of passivity and compliance" (p.2–3). She makes the case that increased legalization of physician-assisted suicide and euthanasia might actually threaten, rather than enhance, female patients' autonomy.

Golan, Ofra G. "End-of-Life Care." In *The Law and Ethics of Dementia*, edited by Charles Foster, Jonathan Herring, and Israel Doron, 393–419. Oxford: Hart, 2014.

Golan lays out what various countries' laws say about allowing individuals with dementia to access legal options for physician-assisted death, compared to how those laws actually work in practice. An extensive table summarizes the legal status in nearly 40 countries of euthanasia, assisted suicide, withdrawal of life-sustaining treatment, and advance directives.

Katz, Sydni. "A Minor's Right to Die with Dignity: The Ultimate Act of Love, Compassion, Mercy, and Civil Liberty." *California Western International Law Journal* 48, no. 2 (Spring 2018): 219–46.

Katz believes that state laws allowing physician-assisted suicide should be accessible to terminally ill minors of any age. She draws on psychology research addressing "the cognitive development of children, their ability to make rational decisions, and their view of death" (p.230), as well as case law addressing the "mature minor doctrine" that allows children under 18 to make their own healthcare decisions if they have full understanding of the "risks, consequences, and nature of treatment" (p.236). She also examines the Belgian and Dutch right-to-die laws that open up access to legal physician-assisted suicide or euthanasia to certain minors, proposing that their provisions in this respect be a model for existing state laws.

Lewis, Browne. "A Deliberate Departure: Making Physician-Assisted Suicide Comfortable for Vulnerable Patients." *Arkansas Law Review* 70, no. 1 (2017): 1–55.

Lewis addresses ethical issues stemming from loopholes or lack of proper safeguards in state laws permitting physician-assisted suicide. These mainly impact patients who are "included but not protected" (p.34)—i.e., those terminally ill patients in certain groups who may meet all requirements to access physician-assisted suicide, but who may be at risk of abuse under the laws' current structures. These may include the elderly and disabled, the mentally ill, low-income patients, patients of color, and individuals excluded from accessing legal physician-assisted suicide (such as minors and patients who are ill but not terminally so). Lewis proposes amending existing laws to better protect certain categories of patients and to open up access to legal physician-assisted suicide for others.

Lewis, Browne C. "A Graceful Exit: Redefining Terminal to Expand the Availability of Physician-Facilitated Suicide." *Oregon Law Review* 91, no. 2 (Winter 2012): 457–93.

Lewis covers how existing state laws attempt to address concerns over the potential impacts of legal physician-facilitated suicide on vulnerable groups, such as the poor and the elderly. She also discusses items that the laws do not address but should, such as death tourism, the question of what happens to unused medication obtained under the laws, and the issue of "doctor shopping" (p.482) (finding a physician willing to sign off on a patient's competency to choose physician-facilitated suicide). Lewis also advocates for the expansion of existing laws to make the procedure available to individuals with incurable brain disorders or who have terminal illnesses with a life expectancy beyond six months.

Menzel, Paul T. "Advance Directives, Dementia, and Eligibility for Physician-Assisted Death." *New York Law School Law Review* 58, no. 2 (2013/14): 321–45.

Menzel recommends allowing patients, while they are still competent, to create advance directives that would allow them to elect physician-assisted death in

the event of severe dementia. He addresses common concerns about the use of advance directives for patients with the condition and proposes guidelines for when they should be used and followed.

Mitchell, John B. “Physician-Assisted Suicide and Dementia: The Impossibility of a Workable Regulatory Regime.” *Oregon Law Review* 88, no. 4 (Winter 2009): 1085–1137.

Mitchell addresses “the impossibility of a legal regime that can acceptably regulate PAS [physician-assisted suicide] and dementia” (p.1092). This impossibility lies in the fact that individuals with dementia will generally lack mental competence and the abilities to remember or evaluate information, all of which are needed to make a truly fully informed and autonomous decision. Mitchell also outlines why living wills that may be created prior to the onset of dementia might not provide sufficient protections for these patients.

Not Dead Yet. <http://www.notdeadyet.org> [<https://perma.cc/2X6K-YVWZ>].

Not Dead Yet is a disability rights group that actively opposes legalized assisted suicide and euthanasia, calling these procedures “deadly forms of discrimination against old, ill and disabled people.”⁹⁷ A regularly updated blog updates readers on the group’s legislative and advocacy activities, which are far-ranging and include op-eds and newspaper articles, amicus brief filings, legislative testimony on proposed state bills, and comments on proposed regulations. Readers can also access a “Disability Rights Toolkit for Advocacy Against Legalization of Assisted Suicide,” which provides guidance for engaging in further advocacy on the issue.

Ouellette, Alicia. “Context Matters: Disability, the End of Life, and Why the Conversation Is Still So Difficult.” *New York Law School Law Review* 58, no. 2 (2013/14): 371–89.

Ouellette seeks to illuminate the “disconnect” (p.374) between disability rights advocates who oppose choice-in-dying laws and those who favor such laws, a conflict that exists despite both sides’ common goal of “ensuring respect for all persons at the end of life” (p.375). She examines the experience of patients with disabilities in the U.S. healthcare system and the reasons why many disabled distrust it, and recommends strategies for choice-in-dying advocates to work with the disability community to reach common ground.

Penn, Jonathan. “Life, Liberty, and the Pursuit of Death of the Inconvenient Other.” *Marquette Elder’s Advisor* 11, no. 1 (Fall 2009): 165–80.

This article approaches the possibility of expanded legalization of physician-assisted suicide in the United States from the Older Americans Act of 1965’s requirements that the federal government promote the well-being of older Americans. Penn draws parallels between the growth of the abortion rights and pro-physician-assisted suicide movements, finding an overall trend of a “diminished view of the sanctity of life” (p.170) and expressing concern that the federal government and the states will be motivated to legalize physician-assisted suicide to avoid financial support of the country’s growing elderly population.

Player, Candice T. “Death with Dignity and Mental Disorder.” *Arizona Law Review* 60, no. 1 (Spring 2018): 115–61.

Player proposes that laws permitting physician-assisted dying should cover not just the terminally ill but also competent psychiatric patients with mental disorders such as depression. She extends familiar moral arguments for permitting

97. *Who We Are*, NOT DEAD YET, <http://notdeadyet.org/about> [<https://perma.cc/X4RL-53L2>].

physician-assisted dying to cover at least some categories of competent, mentally ill patients, and also responds to common objections to doing so. Player highlights the protections and procedures built into Oregon's Death with Dignity Act as a potential template for expanding state laws accordingly.

Schwartz, Lara. "Advocates of Dignity Can Do Better than Death." *Savannah Law Review* 3, no. 1 (2016): 185–206.

Schwartz believes that death with dignity laws actually "equate disability with indignity" (p.197), and that these laws do not expand but rather limit end-of-life choices. For example, they do not guarantee access to nondeath alternatives such as palliative or hospice care, and may actually encourage those with disabilities to end their lives rather than pursue more expensive life-prolonging options. Schwartz looks to the disability rights movement as an essential partner in crafting death with dignity laws.

Shechtman, Benjamin L. "Freedom and Compassion for All: The Physically Incapacitated Have a Human Right to Assisted Death." *Temple International & Comparative Law Journal* 24, no. 2 (Fall 2010): 507–37.

This student comment approaches advocating legalization of various forms of assisted death from the premise that there is a "fundamentally unfair aspect of the otherwise reasonable proscription of assisted suicide" (p.509). That is, an able-bodied individual generally has the capacity to commit suicide, whereas someone who is disabled may not have that same capacity even though he or she evinces both competence and free will. The author argues that the right of the disabled or incapacitated to assisted death is a human right based on personal autonomy.

Stillman, Adam. "Moving the Needle: A Call to Change Age Restrictions in American Physician-Assisted Suicide Laws." *Southern California Interdisciplinary Law Journal* 26, no. 1 (Fall 2016): 275–98.

This student note argues for passage of a law in the United States permitting terminally ill children under 18 to legally access physician-assisted suicide, provided a physician has deemed the minor patient competent. Stillman looks at examples of European laws with limited age restrictions on accessing physician-assisted suicide and explores the implications of *Glucksberg* and other case law on any right minors may have to die with dignity. He highlights U.S. case law providing that minors have the right to challenge commitment to mental institutions and argues that children under 18 could meet the threshold of the requirements of different standards of competence to elect the option of physician-assisted suicide.

Su, Anne Marie. "Physician Assisted Suicide: Debunking the Myths Surrounding the Elderly, Poor, and Disabled." *Hastings Race and Poverty Law Journal* 10, no. 1 (Winter 2013): 145–76.

This student work examines empirical evidence of the impact of Oregon's and Washington's Death with Dignity Acts, finding that their safeguards sufficiently protect against any real risk of coercion of vulnerable individuals. Su argues that the lack of legal access to physician-assisted suicide in most of the country actually poses more harm to vulnerable individuals by denying them autonomy over their personal medical decisions. A detailed chart delineates substantive similarities and differences between Oregon's and Washington's death with dignity laws.

Tucker, Kathryn L. "Building Bridges Between the Civil Rights Movements of People with Disabilities and Those with Terminal Illness." *University of Pittsburgh Law Review* 78, no. 3 (Spring 2017): 329–50.

Tucker advances the argument that the disability rights movement in the United States (which has traditionally opposed legalized aid in dying) and the pro-aid-

in-dying movement have enough common ground (such as support for the right to personal autonomy) that the former should reconsider its position to support legalization of aid in dying.

Practitioner Experiences and Perspectives

¶29 Much of the literature on physician-assisted death emphasizes the needs and rights of patients. This section lists materials focusing on the experiences or perspectives of medical and mental health professionals who might be involved with patient care at various stages in the process.

¶30 A 2016 online survey of U.S. physicians showed that 57 percent supported legalization of physician-assisted suicide, an increase from 54 percent in 2014 and 46 percent in 2010.⁹⁸ However, the American Medical Association and the American Nurses Association officially oppose physician and nurse participation in the process.⁹⁹ The American Psychological Association takes a neutral stance.¹⁰⁰

Darr, Kurt. "Physician-Assisted Suicide: Legal and Ethical Considerations." *Journal of Health Law* 40, no. 1 (Winter 2007): 29–63.

Darr is primarily concerned with the issues that physicians and healthcare organizations face surrounding their participation in physician-assisted suicide. Among the topics covered in this article are the role of Dr. Jack Kevorkian¹⁰¹ in bringing physician-assisted suicide to the forefront of society's consciousness and a comparison of the law and impact in Oregon and the Netherlands, with a particular focus on physicians' experiences in both jurisdictions.

Johnson, Shara M., et al. "What Patient and Psychologist Characteristics Are Important in Competency for Physician-Assisted Suicide Evaluations?" *Psychology, Public Policy, and Law* 21, no. 4 (November 2015): 420–31.

State laws permitting physician-assisted suicide may require mental health professionals to determine whether a patient seeking out the process is sufficiently competent to make an informed decision. The authors review past studies on

98. *Physician-Assisted Death: Where Do You Stand?*, MEDSCAPE (Jan. 12, 2017), <https://www.medscape.com/viewarticle/874341> [<https://perma.cc/X24C-XEG2>].

99. *Decisions Near the End of Life H-140.966*, AM. MED. ASS'N, <https://policysearch.ama-assn.org/policyfinder/detail/Decisions%20Near%20the%20End%20of%20Life?uri=%2FAMADoc%2FHOD.xml-0-497.xml> [<https://perma.cc/C53B-H7KG>] ("Physicians must not perform euthanasia or participate in assisted suicide. . . . [T]he societal risks of involving physicians in interventions to cause patients' deaths is too great to condone euthanasia or physician-assisted suicide at this time."); *Position Statement: Euthanasia, Assisted Suicide, and Aid in Dying*, AM. NURSES ASS'N (Apr. 24, 2013), https://www.nursingworld.org/~4ae33e/globalassets/docs/ana/euthanasia-assisted-suicideaid-in-dying_ps042513.pdf [<https://perma.cc/XGX2-FM33>] ("The American Nurses Association (ANA) prohibits nurses' participation in assisted suicide and euthanasia because these acts are in direct violation of *Code of Ethics for Nurses with Interpretive Statements* (ANA, 2001 . . .), the ethical traditions and goals of the profession, and its covenant with society.").

100. *Resolution on Assisted Dying and Justification*, AM. PSYCH. ASS'N (Aug. 2017), <https://www.apa.org/about/policy/assisted-dying-resolution.aspx> [<https://perma.cc/SB9J-U9GM>] (stating that "the American Psychological Association take[s] a position that neither endorses nor opposes assisted dying at this time," but also advocating for ways in which the Association "will assist in preparing the profession to address the issue of assisted dying," such as by advocating for further research into the issue, for better end-of-life care, and for policies aimed at reducing patient suffering).

101. Dr. Kevorkian, an advocate for physician-assisted suicide in the 1990s, assisted more than 100 patients with ending their lives and was eventually convicted of murder. Ann M. Murphy, *Aid in Dying: United States and Around the World*, in *BEYOND ELDER LAW: NEW DIRECTIONS IN LAW AND AGING* 199, 201 (Israel Doron & Ann M. Soden eds., 2012).

mental health professionals' perspectives on physician-assisted suicide and summarize their own study surveying over 200 licensed psychologists from Oregon and Montana. The study asked what factors psychologists most prioritize in determining a patient's competence and sought to evaluate how psychologists' personal attitudes toward physician-assisted suicide may impact that determination.

Murphy, Sean. "Legalization of Assisted Suicide and Euthanasia: Foundational Issues and Implications." *BYU Journal of Public Law* 31, no. 2 (2017): 333–94.

Against the backdrop of the history and impact of Canada's legalization of assisted suicide and euthanasia in 2016, Murphy emphasizes the experiences and perspectives of Canadian physicians with religious or conscience-based objections to participating in physician-assisted death and the related "broader implications for law and fundamental freedoms" (p.335).

Quill, Timothy E. "Physicians Should 'Assist in Suicide' When It Is Appropriate." *Journal of Law, Medicine & Ethics* 40, no. 1 (Spring 2012): 57–65.

Quill, a physician and palliative care consultant who was a lead plaintiff in *Vacco v. Quill*, emphasizes the importance of ensuring quality palliative or hospice care for terminally ill patients before selecting "last resort options" (p.59), such as refusing medical treatment, palliative sedation, or physician-assisted death. He discusses the ethical implications for physicians involved with such options and the need for these practices to be open and legal.

Shaffer, Catherine S., Alana N. Cook, and Deborah A. Connolly. "A Conceptual Framework for Thinking about Physician-Assisted Death for Persons with a Mental Disorder." *Psychology, Public Policy, and Law* 22, no. 2 (May 2016): 141–57.

The authors observe the recent increase in the number of jurisdictions around the world extending access to physician-assisted death for individuals with a mental disorder. They review the development of this trend and develop a series of questions for consideration in evaluating whether physician-assisted death should be available to these individuals. Each question is accompanied by a background note and information for further discussion.

Religion and Spirituality

Fulginiti, Adam. "The Soul and Its Impact on Life and Death Choices: A Constitutional Study of Abortion, the Right to Die, and Other Bioethical Dilemmas." *Rutgers Journal of Law & Religion* 11, no. 2 (Spring 2010): 459–94.

This student note is concerned with how assisted suicide, the withdrawal of life-sustaining treatment, and the right to abortion intersect with "the concept of the soul" (p. 460), which the author calls "a fundamental aspect of human existence . . . [that] can provide society with a broader understanding of the events that occur at both the beginning and end of life" (p.460). Regarding forms of dying, Fulginiti compares legal and religious (Christian and Catholic) definitions of death and justifications for permitting or denying these options from both perspectives.

Rubin, Edward. "Assisted Suicide, Morality, and Law: Why Prohibiting Assisted Suicide Violates the Establishment Clause." *Vanderbilt Law Review* 63, no. 3 (April 2010): 761–811.

Rubin argues that laws prohibiting assisted suicide violate the First Amendment's Establishment Clause, as "opposition to assisted suicide aligns with the Christian religion" (p.797) and current laws prohibiting the practice reflect "efforts . . . to impose a religiously based morality on those who would otherwise choose an alternative approach" (p.766). Rubin discusses how suicide has been linked to

different moral systems throughout Western history and demonstrates how current rationales for criminalizing assisted suicide conflict with “proffered secular justifications” (p.797).

Tucker, Kathryn L. “The Campaign to Deny Terminally Ill Patients Information and Choices at the End of Life.” *Journal of Legal Medicine* 30, no. 4 (October-December 2009): 495–514.

Tucker critically addresses the involvement of organizations and institutions on the “Religious Right” (p.495) that have worked to influence U.S. law and policy on end-of-life care, including advocating against further legalization of aid in dying in the states.

The Terminology of Physician-Assisted Death

Svenson, Arthur G. “Death with Dignity’s Emerging Conceit: Could *Vacco v. Quill* Be Losing Its Appeal?” *University of La Verne Law Review* 31, no. 1 (November 2009): 45–66.

The “emerging conceit” of this article’s title refers to an “evolution of terminology” (p.61) in describing physician-assisted dying that explicitly does not mention suicide. Svenson theorizes about the potential impact of this evolution on more state courts striking down state laws outlawing physician-assisted dying, based on equal protection guarantees.

Tucker, Kathryn L., and Fred B. Steele. “Patient Choice at the End of Life: Getting the Language Right.” *Journal of Legal Medicine* 28, no. 3 (2007): 305–25.

Tucker and Steele review the varied terminology used to refer to aid in dying, distinguishing between words and phrases they deem “value-neutral” (p.308) or “[v]alue-laden” (p.308) and discussing why word choice matters in debates over the issue. They also describe how and why Oregon’s Department of Human Services discontinued use of the phrase “physician-assisted suicide” in favor of “Death with Dignity.”

International and Comparative Experiences

¶31 Internationally, some form of physician-assisted death is currently legal via legislation or court decision in Belgium,¹⁰² Canada,¹⁰³ Colombia,¹⁰⁴ Japan,¹⁰⁵ Luxembourg,¹⁰⁶ the Netherlands,¹⁰⁷ Switzerland,¹⁰⁸ and the Australian state of Victoria.¹⁰⁹ The criteria and requirements for legal physician-assisted death vary by jurisdiction.¹¹⁰ For instance, the Netherlands and Belgium permit certain categories of minors to access their laws, whereas other jurisdictions require patients to

102. Emanuel, *supra* note 9.

103. *Id.*

104. *Id.*

105. Jun Hongo, *Euthanasia: The Dilemma of Choice*, JAPAN TIMES, Feb. 15, 2014, <https://www.japantimes.co.jp/life/2014/02/15/general/euthanasia-the-dilemma-of-choice/#.WyhrVIpKjIU> [<https://perma.cc/2F5V-6FFT>].

106. Emanuel, *supra* note 9.

107. *Id.*

108. *Id.*

109. Adam Baidawi, *Euthanasia Law Passes in Australia for First Time*, N.Y. TIMES, Nov. 29, 2017, <https://www.nytimes.com/2017/11/29/world/australia/australia-euthanasia-victoria-assisted-dying.html> [<https://perma.cc/Z899-BSBE>]. Victoria’s law will take effect in 2019. *Id.*

110. Emanuel, *supra* note 9, at 80–81.

be at least 18 years old.¹¹¹ In Switzerland (the first country to decriminalize assisted suicide in 1942), anyone may assist a patient with suicide provided the person assisting has “no selfish motive”; in addition, residents of other countries are permitted to travel there to seek assistance with suicide.¹¹²

¶32 The following materials analyze or compare laws, cases, or the practice and impact of physician-assisted death in countries where physician-assisted death is legal or address the possibility of legalization in other jurisdictions.

Al-Alosi, Hadeel. “A Time to Fly and a Time to Die: Suicide Tourism and Assisted Dying in Australia Considered.” *Marquette Benefits & Social Welfare Law Review* 17, no. 2 (Spring 2016): 257–84.

Al-Alosi notes that some Australian citizens have traveled abroad to take advantage of legal assisted suicide. He covers the history of past attempts to legalize euthanasia and assisted suicide in Australia, as well as Australian assisted suicide case law. He discusses the relevant law in the United Kingdom and the policy on prosecuting assisted suicide cases there; he then considers arguments for and against prosecuting assisted suicide cases in Australia.

Álvarez del Río, Asunción, Julieta Gómez Ávalos, and Isaac González Huerta. “Euthanasia and Assisted Suicide: Attitudes and Policies in Mexico.” In *Euthanasia and Assisted Suicide: Global Views on Choosing to End Life*, edited by Michael J. Cholbi, 45–69. Santa Barbara: Praeger, 2017.

The authors ask whether it might be possible to legalize assisted suicide or euthanasia in Mexico, where special challenges to legalization include the country’s majority Catholic population and high rate of poverty. In addition to exploring possible means of future legalization, they address laws relevant to end-of-life care and medical decision-making and public opinion in Mexico toward physician-assisted dying.

Brown, Stephen. “*Gross v. Switzerland* and Right to Die Jurisprudence in the European Court of Human Rights.” *Chicago-Kent Journal of International and Comparative Law* 14, no. 2 (2014): 1–11.

Brown examines trends in decisions related to assisted suicide and euthanasia that have been issued by the European Court of Human Rights since 2002, finding that “the court is inexorably moving towards acceptance of a universal right to die” (p.1).

Cleary, Carol C. “From ‘Personal Autonomy’ to ‘Death-on-Demand’: Will *Purdy v. DPP* Legalize Assisted Suicide in the United Kingdom?” *Boston College International and Comparative Law Review* 33, no. 2 (Spring 2010): 289–304.

In the United Kingdom, the crime of assisting in a suicide has run up against the recent trend of British citizens traveling to access legal assisted suicide in Switzerland.¹¹³ *Purdy v. DPP* was a 2009 U.K. case arising out of this trend and provided that the country’s director of public prosecutions must clarify whether and when to prosecute those who provide assistance in suicide.¹¹⁴ This student note analyzes the *Purdy* court’s reasoning and the implications of the decision for the future of legalized assisted suicide in the United Kingdom.

111. *Id.* at 80.

112. *Id.*

113. Carol C. Cleary, *From “Personal Autonomy” to “Death-on-Demand”: Will Purdy v. DPP Legalize Assisted Suicide in the United Kingdom?*, 33 B.C. INT’L & COMP. L. REV. 289, 289–90 (2010).

114. *Id.* at 295–96. The DPP issued final guidelines in 2010. Dir. Pub. Prosecutions, *Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide*, CROWN PROSECUTION SERV. (Feb. 2010), http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html [https://perma.cc/KNU4-EKFF].

Cohen, Dana M. "Looking for a Way Out: How to Escape the Assisted Suicide Law in England." *Emory International Law Review* 24, no. 2 (2010): 697–734.

Assisting in a suicide is illegal in England, yet the country's Director of Public Prosecution's (DPP) guidelines for prosecuting such cases are inconsistently applied.¹¹⁵ Reconciling this would require either changing the law to permit assisted suicide or amending the DPP policy to fall in step with existing legal requirements.¹¹⁶ Cohen advocates for the latter option and suggests how to revise the DPP policy "to clarify the law, create consistency, and protect the vulnerable" (p.734).

Cohen-Almagor, Raphael. "The Assisted Dying Bill for England and Wales." In *Euthanasia and Assisted Suicide: Global Views on Choosing to End Life*, edited by Michael J. Cholbi, 29–44. Santa Barbara: Praeger, 2017.

Cohen-Almagor looks at the evolution in public attitudes toward legalization of physician-assisted suicide in the United Kingdom and proposes a set of guidelines for legalization based upon his research on related laws in other countries.

Cohen-Almagor, Raphael. "Euthanasia Policy and Practice in Belgium: Critical Observations and Suggestions for Improvement." *Issues in Law & Medicine* 24, no. 3 (Spring 2009): 187–220.

Cohen-Almagor offers insight into how Belgium's law permitting euthanasia has been applied in practice, based in part on his interviews conducted with Belgian scholars and medical practitioners. He outlines concerns about end-of-life practices in Belgium, especially those that arose following the euthanasia law's passage in 2002, and concludes by offering suggestions on how to improve euthanasia law and practice in the country.

Ebbott, Kristina. "A 'Good Death' Defined by Law: Comparing the Legality of Aid-in-Dying Around the World." *William Mitchell Law Review* 37, no. 1 (2010): 170–205.

This student article provides a thorough historical background of societal attitudes toward aid in dying in the Western world from antiquity to the present, as well as legislative background and information on the effects to date of relevant laws in the Netherlands, Belgium, Luxembourg, Switzerland, Oregon, and Washington State. The author concludes by comparing those features of each jurisdiction's law that she finds more successful.

Griffiths, John, Heleen Weyers, and Maurice Adams. *Euthanasia and Law in Europe*. Oxford: Hart, 2008.

This book covers the history, practice, and effects of various laws governing euthanasia and assisted suicide in Europe. While the Netherlands and Belgium are the main focus, the authors include detailed profiles of the relevant laws in other jurisdictions, including England and Wales, France, Italy, Scandinavia (Norway, Denmark, and Sweden), Spain, and Switzerland.

Hardes, Jennifer. *Law, Immunization and the Right to Die*. Abingdon, UK: Routledge, 2016.

Hardes draws philosophical connections between the two seemingly unrelated subjects of assisted dying and immunization. The latter is fundamentally about shielding the self: medical immunization protects from disease, and political

115. Dana M. Cohen, *Looking for a Way Out: How to Escape the Assisted Suicide Law in England*, 24 EMORY INT'L L. REV. 697, 697–99 (2010).

116. *Id.* at 700.

immunity protects from legal problems. An individual electing the option of assisted dying, she claims, similarly functions as a “closure off from others” (p.8), in that it raises issues of “social and economic norms of privacy, individual self-interest and a desire not to burden, or be burdened by, others” (p.7–8). To Harde, both assisted dying and immunization thus have implications for the relationship between the individual and the wider community. In exploring these ideas in depth, the book focuses on assisted dying case law in countries including Canada and the United Kingdom.

Hoffman, Stephen. “Euthanasia and Physician-Assisted Suicide: A Comparison of E.U. and U.S. Law.” *Syracuse Law Review* 63, no. 3 (2013): 383–97.

This article provides a succinct overview of the laws governing physician-assisted suicide and euthanasia in the United Kingdom, the Netherlands, Switzerland, and selected U.S. states. Hoffman also analyzes physician liability for participating in euthanasia or physician-assisted suicide in various jurisdictions and the common law defense of medical necessity.

Jones, David Albert, Chris Gastmans, and Calum MacKellar, eds. *Euthanasia and Assisted Suicide: Lessons from Belgium*. Vol. 42, *Cambridge Bioethics and Law*. Cambridge: Cambridge University Press, 2017.

This book aims to unify research on legalized euthanasia in Belgium to explore its impact on Belgian society and to provide guidance for other countries that may be considering legalization. The chapters in part 1 discuss the Belgian law and its implementation and compare it to similar laws in Luxembourg, the Netherlands, and the United States. Part 2 relates euthanasia to other end-of-life issues, including palliative care and terminal sedation. Part 3 examines the effect of legal euthanasia on members of vulnerable groups, such as children, the disabled, and those with psychiatric illness or dementia. Part 4 highlights philosophical and bioethical issues that have emerged from Belgium’s legalization of euthanasia. Three appendices contain the text of the Belgian Act on Euthanasia in Dutch, French, and an unofficial English translation.

Lewis, Penney. *Assisted Dying and Legal Change*. Oxford: Oxford University Press, 2007.

Lewis compares various approaches to legalization of assisted suicide and euthanasia in different jurisdictions. These include arguments based on human rights (which have been put forth in the United States, the United Kingdom, and Canada); compassion (the basis for a previous legalization proposal in France); and the “duty-based defence of necessity” (p.76) for those who assist in a patient’s death (the basis for the legalization of euthanasia in the Netherlands). A primary theme of the book is that a legalization approach used in one jurisdiction may not translate well to another.

Lewis, Penney, and Isra Black. “Adherence to the Request Criterion in Jurisdictions Where Assisted Dying Is Lawful? A Review of the Criteria and Evidence in the Netherlands, Belgium, Oregon, and Switzerland.” *Journal of Law, Medicine & Ethics* 41, no. 4 (Winter 2013): 885–98.

Lewis and Black review the various requirements for requesting assistance with dying in four jurisdictions in the United States and Europe where some form of it is legal. They then review research studies, empirical data, and more to evaluate whether these requirements were met, with the goal of establishing the validity of requests for assistance with dying.

Lewy, Guenter. *Assisted Death in Europe and America: Four Regimes and Their Lessons*. Oxford: Oxford University Press, 2011.

Lewy provides an in-depth look at the background and practice of legalized assisted death in the Netherlands, Belgium, Switzerland, and Oregon. He cites comprehensive data and research in offering neutral perspectives on the laws' implementation and societal impact, while also addressing problem areas or issues left unresolved in each jurisdiction.

McLean, Sheila A.M. *Assisted Dying: Reflections on the Need for Law Reform*. New York: Routledge-Cavendish, 2007.

McLean addresses arguments for and against the legalization of assisted dying in the United Kingdom. She summarizes various views on assisted dying in the United Kingdom and previous legislative activity on the issue; she then evaluates distinctions that are often drawn between different forms of assisted dying. She also considers the experience of legalized assisted dying in the Netherlands and Oregon before exploring how legalization might occur in the United Kingdom.

Murphy, Ann. "Aid in Dying: United States and Around the World." In *Beyond Elder Law: New Directions in Law and Aging*, edited by Israel Doron and Ann M. Soden, 199–215. New York: Springer, 2012.

Murphy provides an accessible introduction to the legal developments on aid in dying in the United States and worldwide, positing that the overall debates over aid in dying boil down to "individual autonomy versus societal religious values" (p.214). In addition to summarizing the history and state of the relevant law in jurisdictions where aid in dying has been legalized, she outlines significant cases from countries where aid in dying is still criminalized and provides information on the "Out of Free Will" movement in the Netherlands, which works to expand that country's existing assisted dying law.

Pickett, Jackson. "Can Legalization Improve End-of-Life Care? An Empirical Analysis of the Results of the Legalization of Euthanasia and Physician-Assisted Suicide in the Netherlands and Oregon." *Elder Law Journal* 16, no. 2 (2008): 333–73.

This student article compares case law and statutes on physician-assisted dying in the Netherlands and Oregon (with far greater emphasis on the former), and evaluates empirical data on the use and impact of legal physician-assisted suicide or euthanasia from both jurisdictions. The author, who also has a medical background, uses this analysis to offer suggestions for further improvement of end-of-life care and pain management.

Tiedemann, Marlisa, Julia Nicol, and Dominique Valiquet. *Euthanasia and Assisted Suicide: International Experiences*. Ottawa: Library of Parliament, April 8, 2011 (revised October 25, 2013). http://publications.gc.ca/collections/collection_2011/bdp-lop/bp/2011-67-eng.pdf [<https://perma.cc/7N23-GBDW>].

This report from Canada's Library of Parliament summarizes legal developments and laws on assisted suicide and euthanasia in the United States, the United Kingdom, the Netherlands, Australia, Belgium, Switzerland, France, Luxembourg, and Colombia.

Tindell, Jennifer. "To Be, or Not to Be: A Global Perspective on Physician-Assisted Suicide." *Journal of International Aging Law & Policy* 9 (Fall 2016): 151–78.

Tindell covers the terminology associated with physician-assisted suicide; state laws and cases legalizing physician-assisted suicide in the United States; statistics from Oregon, Washington, and Switzerland on the demographics of patients in

those jurisdictions electing physician-assisted suicide; the status of legal physician-assisted suicide in Canada, Belgium, Switzerland, and the Netherlands; and the role of patient autonomy in the debates.

Tretyakov, Konstantin. "The Right to Die in the United States, Canada, and China: Legal Fictions and Their Utility in a Comparative Perspective." *University of Pennsylvania Journal of Law and Social Change* 21, no. 2 (2018): 79–120.

Tretyakov analyzes and compares U.S. courts' disparate treatment of the withdrawal of life-sustaining treatment and terminal sedation (which are legal in the United States) and of physician-assisted suicide and voluntary active euthanasia (for which no constitutional right has yet been found). He attributes this inconsistency to the courts' differing interpretations of causation and intention (the two "legal fictions" of the article's title) in withdrawal cases versus assisted suicide and euthanasia cases. He then contrasts Canadian and Chinese courts' approaches to these types of the right to die in emphasizing "the importance of a morally neutral doctrine of the right to die" (p.120), which U.S. courts and legislatures should implement.

Youngner, Stuart J., and Gerrit K. Kimsma, eds. *Physician-Assisted Death in Perspective: Assessing the Dutch Experience*. New York: Cambridge University Press, 2012.

This book offers an exhaustive look at the history, regulation, and impact of legalized physician-assisted suicide and euthanasia in the Netherlands. The featured articles, all by Dutch scholars and clinicians, are "intended to present the next phase in Dutch empirical, legal, and ethical developments" (p.xvi–xvii) in this field.

Ziegler, Stephen J. "Collaborated Death: An Exploration of the Swiss Model of Assisted Suicide for Its Potential to Enhance Oversight and Demedicalize the Dying Process." *Journal of Law, Medicine & Ethics* 37, no. 2 (Summer 2009): 318–30.

Ziegler compares the regulation of assisted suicide in Oregon and Switzerland. He favors the latter jurisdiction's approach due to the prospect of better government oversight over assisted suicide, more thorough patient assessment due to reduced physician involvement, and the potential for "demedicalization of death" (p.326) (because of, for instance, the room for greater assistance and advocacy by Swiss right-to-die organizations).

Bibliographies and Resource Guides

Aggerbeck, Valerie, Deborah Hackerson, and Mary Wells. "Bibliography: Life Issues in Legal Scholarship." *University of St. Thomas Journal of Law & Public Policy* 6, no. 1 (Fall 2011): 206–21.

This unannotated bibliography compiles books, treatises, and legal periodical articles published from 2005 to 2011 that address physician-assisted suicide and euthanasia, as well as suicide, abortion, and infanticide.

Wester-Mittan, Candle M. *Physician-Assisted Death: Four Views on the Issue of Legalizing PAD: A Legal Research Guide*. Buffalo: William S. Hein, 2009.

This annotated bibliography organizes sources into four categories: proponent, opponent, neutral, and international/comparative perspectives on physician-assisted death. Each section lists and annotates relevant books, law review articles, existing statutes and case law, and websites. Two appendices contain full-text reprints of the Oregon and Washington Death with Dignity Acts.