Physician-Assisted Suicide in Massachusetts: Vote “No” on 2012 Ballot Question 2

Janet Benestad

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Janet Benestad

Advisor: Marc Landy, Ph.D.

Abstract

The "Death with Dignity Act," if passed in November 2012 in Massachusetts by means of a ballot initiative, would have allowed doctors to prescribe lethal drugs to patients with fewer than six months to live. Introduced by two pro-assisted suicide organizations from the Pacific Northwest, the initiative was expected to take advantage of a political "perfect storm" brewing in the Bay State. A blue state in a presidential election year, with President Obama at the top of the Democratic ticket, Massachusetts was expected to produce an electoral outcome favorable to assisted suicide. Oregon and Washington State had legalized physician-assisted suicide in 1998 and 2008, respectively. Polling in 2011 showed a 2-1 majority among Massachusetts voters in favor of assisted suicide. Nonetheless, the Archbishop of Boston and the Bishops of Worcester, Fall River and Springfield, organized as the Massachusetts Catholic Conference, took up the challenge to oppose the initiative. Relying on the expertise of paid political consultants, they mounted a two-tiered campaign. An internal component, directed at Catholics, included the dissemination of over 2 million pieces of in-print and electronic materials urging a "no" vote on the measure. An external component, directed at the wider public, relied on a coalition of organizations representing the three major religions, health and hospice organizations, disabilities rights activists, and pharmacists. Using "flaws" in the bill identified through strategic polling, they appealed to voters even sympathetic to assisted suicide to reject the bill. When the

votes were counted 2.7 million Massachusetts citizens voted on the physician-assisted suicide initiative and it was defeated by 67,891 votes, 51.1% to 48.9%. One key to the defeat was the split in the vote in the city of Boston, where Question 2 was defeated 50.9% to 49.1% . Twelve of Boston's 22 wards voted against the measure. Leading the way among the twelve were Dorchester, Roxbury, and Hyde Park, traditionally black, liberal Democratic strongholds. This study shows that even the most effective, well-funded, Church-initiated campaign in Massachusetts in 2012 might well have foundered on the 2-1 majority in favor of assisted suicide at the polls, not for the strategic identification of "flaws in the bill," the broad-based coalition campaign based on them, and the "split in the vote in the black community in Boston."

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Introduction

In September 2011, Massachusetts became the third state in the United States to be targeted to legalize physician-assisted suicide (PAS) by ballot initiative. The Massachusetts "Death with Dignity Act," if passed in November 2012, would have allowed doctors to prescribe lethal drugs to patients with fewer than six months to live. This Initiative Petition was the first step in a bold strategy to legalize assisted suicide in the Commonwealth.

The Initiative Petition was certified by State Attorney General Martha Coakley in September 2011. Advocates obtained the necessary 68,911 signatures to send the petition to the legislature, and the Secretary of State accepted the signatures on December 7. The petition went before the Massachusetts legislature where lawmakers failed to act. As a result, petitioners had until May 1st to collect an additional 11,485 signatures needed to place the petition on the November 2 ballot. With the required signatures, the Initiative appeared as Question 2 on the 2012 ballot.

The Ballot language stated "A YES VOTE would enact the proposed law allowing a physician licensed in Massachusetts to prescribe medication, at the request of a terminally-ill patient meeting certain conditions, to end that person's life. A NO VOTE would make no change in existing laws."[1] This dissertation tells the story of the campaign waged principally by the Catholic Bishops of Massachusetts to defeat Ballot Question 2 on election day in 2012. It demonstrates the manner in which disciplined tactical and strategic use of polling data supplied by professional consultants was leveraged to effect a 20-point reversal in an electorate the size of the Commonwealth of Massachusetts on an issue of grave importance.

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[1] Quoted verbatim from the original source. https://ballotpedia.org/Massachusetts_Question_2,_Physician-Assisted Suicide.

Chapter One of this dissertation provides a context for the 2012 campaign to defeat assisted suicide by providing a brief history of ballot initiative use in the United States. It shows that ballot initiatives have been used traditionally to promote progressive issues. Direct election of senators, women's suffrage, and presidential primaries, for example, began as popular initiatives. More recently, however, ballot initiatives have attracted serious criticism on democratic grounds. Particularly pertinent to this dissertation's subject, critics say that initiatives favor white, affluent statewide majorities wishing to promote progressive policies that are less popular among economically deprived, local minority groups. Disabilities groups, for example, have consistently opposed legalized assisted suicide on grounds that it can be used to deprive those with poor quality of life from receiving costly, life-saving, treatments. A second criticism of ballot initiative politics is that it has spawned a generation of professional political consultants, "guns-for-hire" say critics, who use strategic polling, market research and media to guarantee electoral results in exchange for high fees, irrespective of the political benefits or deficits of the policies being proposed. In 2012, political consultants with a reputation for getting liberal candidates elected to office were engaged by the Catholic Church to mount and manage a "conservative" campaign that, by ordinary standards of ballot politics, had hardly any chance of winning—on the face of things, candidates for the unflattering "guns-for-hire" critique. This dissertation will show that the campaign to defeat assisted suicide in Massachusetts in 2012 successfully overcame both these challenges.

Chapter Two of this dissertation takes a long look at proponents of Ballot Question 2. Two organizations based primarily in the Pacific Northwest, the Death with Dignity National Center and Compassion & Choices, wanted to take advantage of an electoral "perfect storm" brewing in Massachusetts in 2012. In 2008, the state of Washington had become the second state in the U.S. to legalize assisted suicide by ballot initiative, after an hiatus of ten years since the first legalization in Oregon in 1998. A blue state in a presidential election year, with a wildly popular candidate at the head of the Democratic presidential ticket, Washington came to be considered the blueprint for success regarding assisted suicide at the polls. In 2011, Massachusetts voters, despite being 40% Catholic, had polled 2-1 in favor of assisted suicide. Voting patterns in Massachusetts showed a majority heavily in favor of abortion. In the Fall of 2011, the Death with Dignity National Center in Portland, Oregon, filed the petition to get the "Death with Dignity" Act on the ballot in Massachusetts. Compassion & Choices, invigorated by its success at the ballot box in Washington State in 2008, launched what it called **"Critical Mass."** a campaign to "elevate discourse" and convince Massachusetts voters that assisted suicide was an idea whose time had come. Convinced that assisted suicide could not fail in Massachusetts, the two organizations spent one million dollars to fund the "Vote Yes on Ballot Question 2" campaign.

Chapter Three of the dissertation focuses on the campaign against Ballot Question 2, and the unusual strategy that produced the surprise opposition win. Chapter Three tells a story of two campaigns, one, essentially educational and the other, political. "Suicide is Always a Tragedy" targeted Catholic institutions in the four dioceses in Massachusetts. The Campaign Against Physician-Assisted Suicide, CAPAS, addressed the wider public. Messaging for both campaigns focused exclusively on the "flaws in the bill," issues identified by strategic polling as having the effect of turning even voters sympathetic to the right of a terminally ill patient to request suicide, against it. Requirements in the bill that the prescription be dispensed to the patient and filled at a local pharmacy, that the patient need not consult any family members regarding his impending death, in addition to the possibility that the prognosis of six-months to live might be mistaken—these were the issues that Massachusetts voters identified as reasons to vote against the measure. These "flaws in the bill" became the messaging of the "Suicide is Always a Tragedy" campaign conducted in Catholic churches, schools, and institutions in Massachusetts starting in February 2011 until Election Day, as well as the messaging for an intense TV, radio and internet campaign against physician-assisted suicide in the weeks leading up to the election. As Chapter Three will show, it was this very messaging, the "flaws in the bill," that were used on editorial pages and in opinion pieces, previously noncommittal or sympathetic to the initiative, to argue against the bill in the final weeks of the campaign. Of no small importance, it was this messaging that lent credibility to two highly influential editorials published just days before the vote—one by Mrs. Edward Kennedy and the other by the *Boston Globe*—both of which relied on the argument that the flawed policy would be harmful to patients and their families.

Chapter Three also focuses attention on a key element of the opposition campaign—the creation of a multifaceted coalition. "A large, diverse coalition united against the measure . . . [which] included Jewish, Christian and Muslim clergy, palliative care doctors, hospice workers, and p*harmacists*," says Lisa Wangsness, *Boston Glob*e columnist, the day following the election.[2] It was this strategy that allowed the Catholic Church, which provided much of the funding against the initiative, to take a less prominent role in the public campaign, reported Wangsness. As Mark Horan of Rasky Baerlein Communications Strategies admitted, much of

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[2] Lisa Wangsness, "A Coalition of Forces Beat Back Question 2," *The Boston Globe*, November 7, 2012, https://www.bostonglobe.com/2012/11/07/dying/22ppArgemoWEHEF6nsE5H/story.html.

the summer of 2012 was spent bringing into the coalition organizations who opposed assisted suicide for their own reasons. These organizations could be counted on to leverage their constituencies and promote messaging against Ballot Question 2 that helped to produce the 51% needed to defeat the initiative. As Joe Baerlein, lead consultant for Rasky Baerlein, explained it, ". . . though 40% Catholic, Massachusetts is secular." A campaign to defeat assisted suicide had to appeal to voters on secular grounds. Chapter Three also reports the absolutely crucial strategy of splitting the liberal vote in Boston by winning the vote on Ballot Question 2 in the predominantly black communities of Dorchester, Roxbury and Hyde Park. Without the vote in those communities, assisted suicide would have become legal in Massachusetts in 2012.

It was my privilege to serve in 2012 on the staff of Cardinal Sean O'Malley, Archbishop of Boston, and thereby to have a ring-side seat for the campaign to defeat Ballot Question 2. This dissertation is a testimony to the accomplishment represented by the success of that campaign.. It was also an experience in leadership—specifically the leadership potential that may be exercised by the Catholic Church in the modern world. Speaking about the Ballot Question in an interview only a month following the defeat of the assisted suicide ballot initiative, Cardinal O'Malley reflected upon the role of the Catholic Church in the campaign. "Obviously the church's first responsibility is to teach the faith. In the initiative here in Massachusetts, we were involved with a very broad coalition. Our first task is one of education, of helping people to understand the church's teachings on these issues. We don't see the life issues as simply being Catholic doctrine, but a matter of human rights. And therefore something that everyone needs to be aware of and concerned about." The "flaws in the bill" identified by strategic polling done by Marttila Strategies, based in Washington and Boston, and the broad-based coalition mounted and managed by Rasky Baerlein made it possible for the Cardinal to do exactly that.

And so the story of the defeat of Ballot Question 2 begins with a discussion of the ballot initiative including its use to legalize assisted suicide in the states of Oregon and Washington, home to the proponents of 2012 “Death with Dignity” Act in Massachusetts.

“Pharmacist” Ad, www.stopassistedsuicide.com Media Campaign

Chapter One

The Ballot Initiative: “Election-day Lawmaking”

When considering the number of states offering the devices of popular governance, it is important to note that no state that has awarded these political mechanisms [ballot initiatives and referenda] to its citizens has ever revoked the devices.

Howard R. Ernst[3]

1.1 Ballot Initiative Use in the U.S.

It is a well-established fact that the American framers preferred representative to direct democracy. A process through which elected officials with a reputation for knowledge and leadership, representing regional, ideological and practical interests, would make good laws was considered superior to one that relied on direct citizen lawmaking. Some illustrious founders

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[3] “The Historical Role of Narrow-Material Interests in Initiative Politics,” in Larry J. Sabato, Howard R Ernst, and Bruce A Larson, *Dangerous Democracy? The Battle over Ballot Initiatives in America* (Lanham: Rowman & Littlefield Publishers, Inc., 2001), 5.

considered representative government the best protection against the worst effect of democracy—"majority tyranny." Still, the U.S. Constitution does not preclude the possibility of citizen initiated law-making.

Twenty-four states in the U.S., plus the District of Columbia, presently allow ballot initiatives and the use of this "election-day lawmaking," as political analyst Larry Sabato calls it.[4] Considered the purest available form of citizen lawmaking, the ballot initiative, begins with policy measures crafted by individuals or groups outside of the legislature. Some states allow the use of referenda, an alternative to the initiative, where the state legislature refers constitutional amendments and/or legislative proposals to voters for direct approval, but that process is considered a less direct form of democracy than ballot initiatives where proposals originate with citizens.

Adopted first in 1898 in South Dakota, the popularity of the ballot process for constitutional or legislative initiatives grew swiftly in the U.S. By 1918, when Massachusetts adopted the initiative, eighteen states had approved it. Of the eighteen, Maine, which adopted it in 1908, and Massachusetts were the only Northeastern states to have the process; the only other non-western states were Missouri and Arkansas. Western states led the movement to adopt and use both the ballot initiative and state legislative referenda. By 1915, 222 separate initiative measures had been voted on in the eighteen states that allowed the initiative process. Oregon, one of the earliest states to adopt it in 1902, used the device 48 times in the first five years; Colorado, which adopted it in 1910, and California, in 1911, used the device 36 and 24 times,

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[4] Sabato, ix.

respectively.[5] Between 1898 and 1940, 777 statewide initiatives had been voted on by citizens in 19 states having the initiative process; the average initiative usage rate was 77.7 per four-year presidential election cycle.[6]

Historic features regarding the ballot-initiative process demonstrate its sticking power and popularity. No state that has offered the ballot initiative to its citizens has ever revoked it in the history of the United States! Additionally, recent years have seen an increased interest in adopting the process. In 1999, thirteen states, among them New York and Pennsylvania, formally considered establishing or strengthening existing initiative and/or referendum processes. Florida, Wyoming, Illinois and Mississippi recently approved statewide citizen initiatives.[7] In 1977, the U.S. Senate held hearings to consider amending the U.S. Constitution to allow national voter initiatives and, in the 2000 presidential election, the Reform Party included a national initiative process as part of its platform.[8] Recent years have also seen an increase in frequency in the use of ballot initiatives. Between 1985 and 2000, 1996 marked the highest single election-period usage of the initiative process in American politics with 93 initiatives on state ballots. The average number of ballot initiatives during that period was 70.3.[9]

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[5] Howard R. Ernst, "The Historical Role of Narrow-Material Interests in Initiative Politics," in Sabato, *Dangerous Democ*racy, 10.

[6] Ibid, 11.

[7] Ibid, 5.

[8] Ibid.

[9] Ibid, 6.

Born during the progressive era, ballot initiatives traditionally serve politically and socially progressive purposes. Supporters of the initiative process considered it essential for getting controversial legislation, like women's suffrage and direct election of Senators, on the ballot during the earliest period of its use. In an article entitled "The Historical Role of Narrow-Material Interests in Initiative Politics," Howard R. Ernst considers the opposite possibility, however, that the initiative has actually come to be used to serve, not progressive, but narrow, material interests. Opponents of the use of state ballot initiatives argue that business and socially conservative interests, like gambling and liquor lobbies, find it easier to fund and win initiative campaigns than to negotiate the cumbersome and time consuming process of securing legislative and gubernatorial support for their concerns. They say the absence in initiative campaigns of party identification, name recognition, and incumbency, typical elements of party sponsored candidate campaigns, makes it easier to sway voter support to progressively unpopular interests, like tax breaks for business interests. Ernst finds, however, that the latter position is "overstated." History reveals, he says, that "narrow-material interests historically and currently operate at a severe electoral disadvantage."[10] While he admits that corporate and financially conservative interests use the initiative ballot process to their advantage, he concludes that their use has not outstripped that of progressive interests. Besides, the most obvious thing about ballot initiatives is their notorious failure rate. "Between 1912 and 1998, 1,043 propositions in California received a formal title (the assigning of a name to the initiative after 1,000 signatures have been secured); only 272 of these qualified for the ballot and, of these, only 87 were

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[10] Ernst, 26

approved by voters. Not only do roughly 70 percent of propositions fail at the ballot, over 70 percent of proposals never actually reach the ballot . . ."[11]

The question of narrow, material interests and ballot-initiative politics is important, of course, for the issue of physician-assisted suicide. Skyrocketing costs of health care, as well as potential savings to insurance companies and providers where assisted suicide might be substituted for traditional treatments and end-of-life care, are matters of concern. For example, Oregon resident, Barbara Wagner's cause became famous in 2008 when her insurance company sent her a letter approving costs associated with assisted suicide but not approving higher costs of potentially life-saving treatment.

Ernst also notes the enduring influence and importance of matters that have been decided at the level of initiative politics. "Women's suffrage, population-based representation, creation of presidential primaries, direct election of U.S. senators, banning of poll taxes, restrictions on child labor, and many other important measures were first proposed and implemented by popular means," he says. "More recently, nuclear-freeze legislation, tax cuts, term limits, campaign finance regulations . . ." are the product of initiative processes."[12] He also notes the progressive, in some cases highly ideological, character of more recent initiatives, which he calls "political bombshells, including gay rights, anti-affirmative action measures, legalization of certain controlled drugs, [our own subject] the 'right to die,'" and school vouchers. . ." These represent only a few of the controversial issues currently being decided by citizens in various states.[13]

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[11] Todd Donovan, Shaun Bowler, and David McCuan, "Political Consultants and the Initiative Industrial Complex," in Sabato, *Dangerous Democracy*, 105.

[12] Ibid., 6.

[13] Ibid.

In discussing the salience of the ballot initiative to progressive policy, Ernst identifies three defining periods in the history of its use—the progressive era from 1898 to 1940, which saw "explosive" use; 1940 to 1976, which saw a sharp decline as that "explosive impact at the turn of century began to fizzle out"; and, 1977 to 1996, which showed a resurgence of usage exceeding even the first period in significant ways. Weighing progressive interests against those that favored narrow, material concerns, Ernst concludes that even in the earlier two periods of initiative politics, 1898 to 1940 and 1941 to1976, initiatives were not used exclusively to advance progressive legislation, but to advance narrower interests as well. For example, he says, during the earliest period, 1898 to 1940, initiatives not uncommonly favored such narrow interests as gambling, the sale of liquor, and tax limits.[14] Furthermore, while Ernst notices an increase in the use of the initiative process by narrow, material interests in the second period, 1941-1976, he reports that those interests were not winning at a higher rate than they had in the earlier period.[15] Of greater interest, says Ernst, during this period, is the fact that, while the explosive impact of initiatives at the turn of the century began to fizzle out, "no state went so far as to withdraw the process from its citizens." Ernst's observation supports the conclusion that neither fear of manipulation by special, moneyed interests, nor any other reason, inclined states to withdraw the initiative and referenda processes from the hands of citizens.

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[14] Donovan, 13.

[15] Ibid., 19

The third period, 1977-1996, says Ernst, shows an unprecedented growth in ballot initiative usage. While the earliest period averaged 78 initiatives nationwide per presidential election cycle, and the middle period averaged 47 initiatives per cycle, the most recent period for which he gives data, 1977 to 1996, averaged over 124 initiatives nationwide for its four presidential cycles. This last period represents an increase of 164 percent over the middle years, and an average per-initiative state usage rate that exceeds even the earliest, progressive period. Ernst's findings suggest, while the earliest period, the progressive era, was a "high usage" period, and the middle period showed a marked drop-off in usage, the recent period shows a resurgence.[16] Still, Ernst's research shows that while reform-oriented issues such as term limits, prison reform, and anti-discrimination measures appear regularly among ballot initiatives, the ratio of narrow, material-related interests to progressive interests remains pretty much the same in this third period as it was in the first two. This supports Ernst's thesis that while ballot initiatives are used successfully by special interests, they don't favor narrow interests over more progressive ones in any of his three periods. As mentioned above, Ernst's findings are significant in considering whether ballot initiatives favoring physician-assisted suicide are the products of narrow, material-based interests, such as those of health care providers and insurance companies, against what might be considered more progressive citizen interests such as health care, particularly at the end of life.

This question has considerable implications for our story. Chapter Two of this dissertation argues that, while legalization of assisted suicide is characterized by friend and foe alike as a benefit to health insurers for obvious reasons, those who promoted the case for twenty years trying to get it enacted at just about every level of government were not so motivated.

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[16] Ibid., 22.

Attorney Kathryn Tucker, Medical Researcher and Ethicist Margaret Battin, and Physician and Editor Marcia Angell were promoting a progressive agenda, namely, the right to decide how one preferred to die in the face of incurable disease. Theirs was a battle against regressive religiously motivated, conservative forces, in their estimation. The embarrassment created by opposition to assisted suicide from the disabilities community in Massachusetts, and by card-carrying progressives like Dr. Ira Byock, palliative care specialist, and Dr. Ezechiel Emanuel, public health specialist, both quoted in Chapter Three against Question 2, proves the point. "People make choices about how to live," says Angell. "Why shouldn't they make choices about how to die?" Angell is reported to have said by Jeff Jacoby, *Globe* columnist. Even severe critics, like Jacoby, do not accuse proponents in 2012 of being unwitting pawns of insurers.

1.2 Ballot Initiative Use in Massachusetts

In 1918, the voters of Massachusetts approved an amendment to the state Constitution, providing that "Legislative power shall continue to be vested in the general court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection."[17] Thereby, they were adopting the constitutional or legislative initiative process at a point relatively early in the history

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[17] William Francis Galvin, Secretary of State of the Commonwealth of Massachusetts, Statewide Ballot Questions—Statistics by Year: 1919 – 2018, https://www.sec.state.ma.us/ele/elebalm/balmresults.html#null

of ballot initiatives in America, but late in Ernst's first period. By so adopting, they reserved to themselves the "popular or ballot initiative." From 1919 to 2018, there have been a total of 82 ballot initiatives in Massachusetts; 37 have been approved (45.1%) and 45, declined (54.8%).[18] Applying Ernst's defining periods for ballot initiatives in U.S. history to Massachusetts, 4 of 6 ballot initiatives were approved between 1919 and 1938 (Ernst's "explosive" first period), 9 of 13, between 1942 and 1971 (Ernst's "fizzling out" middle period), and 14 of 29, between 1978 and 1996 (Ernst's "resurgence" period).[19] Since 1996, years for which Ernst does not provide data, 15 of 32 (46.8%) initiatives were approved in Massachusetts.[20] In terms of percentages, 66% of initiatives were approved during the first period, 69%, during the middle period, 48%, during the third period, and 46.8%, during the period for which Ernst does not show data. Comparing Massachusetts to the rest of the country in terms of initiatives per presidential election cycle, as Ernst does, there was one between 1919 and 1940, 1.75 between 1941 and 1976, and 4 between 1977 to 1996. Most recently, 1996 to 2018, there were 6.4 per presidential election cycle. It seems fair to say that Massachusetts did not experience the "explosive" period characteristic of the progressive era through the 1940s, but rather a slight but steady increase in use of the ballot initiative over the period 1941 to 1996 (an average of 1.75 to 4 initiatives per

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[18] Massachusetts Statewide Ballot Measures, 1919-2018, http://www.sec.state.ma.us/ELE/elebalm/balmidx.htm.

[19] This number excludes referenda and constitutional amendments. Ibid.

[20] Appendix 1. Massachusetts Initiative Petitions for Law Adopted 1996 to 2018 compared with 2012 Question 2, Rejected: Number of votes for/against, blanks, % voters voting on the question, p. 219.

presidential election cycle) with an increase to 6.4 per cycle between1996-2018, the period in which Ballot Question 2, the subject of this dissertation, appears on the ballot in Massachusetts.[21]

In 2012, there were three measures on the ballot: Question 1, which dealt with vehicle owner and business protections in the state; Question 2, which would establish an "Act Relative to Death with Dignity," the initiative that is the focus of our study; and, Question 3, which would allow for the use of medical marijuana in the state. Questions 1 and 3 were approved; Question 2 was voted down by a margin of 1.5 percent! It is interesting that between 1996 and 2018, where an average of three initiatives appeared on the Massachusetts ballot during even-numbered election years, 54% were approved and 48% defeated. In presidential election years for the years 1919 to 2018, 48 of 85, or 56%, of ballot initiatives in Massachusetts have been approved. It's fair to say that the 2012 assisted suicide initiative in Massachusetts stood a statistically positive chance of winning.

Of further interest regarding the Massachusetts 2012 vote is the fact that it represented the second largest voter turnout in state history, exceeded only by the turnout in 2016. In that year two ballot initiatives were approved, Question 3, concerning "Conditions for Farm Animals," and Question 4 concerning "Legalization, Regulation, and Taxation of Marijuana." Question 4 on the legalization of marijuana was voted on by 98 percent of voters voting on a question, the highest percentage of voters voting on a question in Massachusetts between 1996 and 2018. So, in 2016 legalization of marijuana in Massachusetts had the largest percentage of voters voting on a question in the year of the largest turnout in Massachusetts history. Question 3 on the condition of farm animals scored 96% in the same category in 2016. In 2012, Question 2 on "Prescribing Medication to End a Person's Life" was voted on by 94 percent of voters

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[21] Appendix 1, p. 219.

voting on a question. The average for Massachusetts between 1996 and 2018 is 94.6 percent of voters voting on the question. On the basis of this information, it seems fair to say that assisted suicide garnered an average percentage of voter interest compared with other issues. Its salience to voters ranked behind the legalization of marijuana and the condition of farm animals—this despite the high-profile, carefully-targeted campaign against assisted suicide that is the subject of this dissertation.

1.3 The Ballot Initiative and Assisted Suicide: Oregon and Washington State

In the fall of 2011, when the decision was made to mount an effort in Massachusetts to get physician-assisted suicide on the ballot, the states of Oregon and Washington had already legalized assisted suicide, both using the ballot initiative process in 1994 and 2008, respectively. Oregon's 1994 "Death with Dignity Act," provided for the legalization of medical aid in dying (commonly referred to as physician-assisted suicide) with certain restrictions. With its passage, Oregon became the first U.S. state and "one of the first jurisdictions in the world" to permit terminally ill patients to determine the time of their own death.[22] Measure 16, the "Death with Dignity Act," was approved November 8, 1994, by 51.3% of voters (627,980 votes were cast in favor, 596,018 votes against). The law did not take effect, however, until 1997 when it was passed again, this time by an even larger majority, in response to several challenges beginning with Oregon Measure 51.

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[22] 1994 Oregon Ballot Measure 16, https://en.wikipedia.org/wiki/1994_Oregon_Ballot_Measure_16.

Proposed by the Oregon Legislative Assembly, Measure 51 would have repealed the 1994 "Death with Dignity Act" on grounds that it lacked mandatory counseling and family notification provisions, as well as strong residency and reporting requirements. In 1997, the Oregon Legislative Assembly referred Measure 51 to the same voters who had approved Measure 16. A voter guide on Measure 51 included a statement by the Oregon Medical Association opposing Oregon's "Death with Dignity Act," 1994 Measure 16, because of "serious medical deficiencies," and argued that the Act "discounts the disabled," and "open[s] the door to death machines."[23] Despite this aggressive effort on the part of the legislature to repeal assisted suicide, Measure 51 was rejected by 60% of Oregon voters (666,275 to 445,830) in a special election by a larger margin than the original vote to approve in 1994. Voters are reported to have said that sending the measure back to them was disrespectful given the fact that they had approved it via the initiative process three years earlier. By voting against Measure 51, they indicated that the safeguards found wanting in the original bill, namely, counseling, family notification, and residency and reporting requirements, were adequate, summarily rejecting the recommendations of their own Legislative Assembly.[24] A second challenge was overcome when a federal judge rejected a move by Attorney General John Ashcroft to use the federal Controlled Substances Act to suspend licenses of doctors who prescribed life-ending drugs under Oregon law. The Ninth Circuit Court of Appeals affirmed the block. Finally, and subsequent to

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[23] *Voters Pamphlet*, State of Oregon Special Election—November 4, 1997, compiled and distributed by Phil Keisling, Secretary of State, https://ballotpedia.org/Oregon_Repeal_of_%22Death_with_Dignity%22,_Measure_51_(1997).

[24] Ibid.

enactment, Oregon's "Death with Dignity Law" was challenged in court by the Bush administration and upheld by the U.S. Supreme Court in January, 2006, by a 6-3 vote. The survival of Oregon's "Death with Dignity Act," 1994 Measure 16, against state legislative attack, as well as federal attacks from the executive branch and in the courts, testifies to the resilience of ballot questions once approved by the electorate.

There were 15 initiatives on the 1994 ballot in Oregon, and nine of them were approved (60%). Oregon's Measure 16 was worded as follows:

> ALLOWS TERMINALLY ILL ADULTS TO OBTAIN PRESCRIPTION FOR LETHAL DRUGS.
>
> QUESTION: Shall law allow terminally ill adult patients' voluntary informed choice to obtain physician's prescription for drugs to end life?
>
> YES ☐ NO ☐

Among the initiatives approved in Oregon in 1994, in addition to assisted suicide, were campaign finance limits, fulfillment of electoral vacancies, mandatory pension contributions for public employees, prison reforms including mandatory sentencing, legislative obstacles to reduced sentencing, mandatory work requirements for inmates, and a ban on using bait or dogs to hunt black bears.[25] Understandably, none generated as much controversy, or as many challenges, as Measure 16, the ballot initiative that legalized the right of a terminally diagnosed patient's to request, obtain and use lethal drugs for the first time in America!

The approval of assisted suicide in Washington State, while not as dramatic as Oregon, is equally important for the eventual initiative petition in Massachusetts. "Initiative 1000 (I-1000)," the name given to the State of Washington's "Death with Dignity Act," legalized

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[25] Ibid.

medical aid-in-dying with certain restrictions in 2008. Approved by 57.82% of voters in the general election (1,715,219 approved to 1,251,255 rejected), 30 of the state's 39 counties voted in favor of it with a voter turnout of 85%.[26] A similar "Initiative-119" had been rejected by Washington voters by a margin of 54% in 1991. The 1991 initiative would have allowed doctors to prescribe a lethal dose of medication and to administer it in the event the patient was unable to self-administer.[27] Unlike that initiative, the 2008 measure required the patient to ingest the medication unassisted by medical personnel (as the Massachusetts ballot question, and all other subsequent assisted suicide proposals in the U.S. have done).

The Washington initiative was modeled on Oregon's Measure 16, so hotly contested at the state and federal levels. The Washington campaign for and against I-1000 is of interest regarding Question 2 in Massachusetts for several reasons. Occurring four years before the Massachusetts effort, it included the same players on both sides of the question who figured in the Massachusetts contest in 2012, particularly Compassion & Choices on the side supporting assisted suicide, and the Catholic Church and prominent disabilities groups on the opposing side. The campaign in Washington attracted some national attention when actor Martin Sheen appeared in television ads opposing I-1000, allegedly arguing that the initiative would allow persons with depression to be given a lethal dose without psychiatric assessment. Sheen's claim, shown to be a misrepresentation of the proposed law, worked against the opposition side. There were two other initiative measures on the ballot in 2008 in Washington—a transportation measure to improve use of high-occupancy lanes and roadside assistance, and a labor measure

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[26] Washington Death with Dignity Act, https://en. Wikipedia.org/wiki/Washington_Death_with_Dignity_Act.

[27] Ibid.

requiring people who work with the elderly to be trained and certified. Assisted suicide and regulations governing work with the elderly were approved.

The year 2008 was, of course, a presidential election year. President Barak Obama won the State of Washington by a 17.1% margin over the Republican challenger John McCain, winning more than fifty-seven percent of the vote. Prior to the election, all 17 media outlets in Washington State considered it a "blue state" which Obama was projected to win. No Republican presidential nominee had won in Washington State since 1988. Like Oregon, Washington is divided politically between urban and rural voters and geographically by the Cascade Mountains. The two states are similar in that nearly all of the major cities and most of their populations live along the Pacific coast in highly urbanized areas like Seattle, home to almost two-thirds of the state's overwhelmingly Democratic population.[28] I believe that it is safe to say that Oregon and Washington, the latter particularly, set the stage for Massachusetts Ballot Question 2 in 2012. A democratic, "blue" state in a presidential election year, the success of I-1000 in 2008 in Washington established the gold standard for the success of a ballot initiative on assisted suicide elsewhere in the country. Chapter Two of this dissertation suggests, in fact, that the unfortunate prediction may have cost proponents the campaign. Convinced the ballot question couldn't lose, they spent one-fifth the budget of the opposing campaign. The question remains unanswered, however, whether they were simply naïve or unschooled, or both, about the seriousness of the opposition, or whether the initiative in Massachusetts was just another in a long series of attempts to test the waters outside their home turf.

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[28] *2008 US Presidential Election in Washin*gton, https://en.wikipedia.org/wiki/2008_United_States_presidential_election_in_Washington_(state).

1.4 Political Consultants in Initiative Politics: “Guns for Hire”?

Possibly the most controversial issue surrounding ballot initiative politics concerns the role of political consultants. Todd Donovan, *et al*., in an article entitled “Political Consultants and the Initiative Industrial Complex,”[29] asks the question about campaign professionals who charge extraordinary amounts of money for advice regarding ballot access and advocacy and opposition campaigns: “Are they corrosive to the process of democratic politics? Are they a disease in and of themselves or simply a symptom of the difficulty of conducting issue-based politics in a large, diverse polity?”[30] While Donovan reports on a few extreme cases, for example, a firm in the early 1990s that advertised “its ability to fully qualify a constitutional amendment in California in forty-five days on a ‘money-back basis,’” this example is the exception rather than the rule, according to Donovan. Begun in the 1950s, professional consulting firms specializing in media and advocacy campaigns fit into no particular mold either with regard to mercenary intentions or ideological politics, he says. For example, consulting firms are not the proverbial “guns for hire” that critics claim. They routinely take clients on both the pro and con sides of an issue. Fewer than 10% of consultants self-report that ideology is irrelevant to taking the case, with just under half of firms reporting that differences in ideology between consultants and clients determine whether or not to accept a campaign.[31] Also, while it

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[29] Donovan, 101-134.

[30] Ibid.101.

[31] Ibid., 123-24.

is well known that "No" campaigns are easier to win, that is, the number of initiatives that fail far outnumber the ones that win, there is no evidence that consultants take predominantly "No" campaigns. For one thing, consultants get paid whether the initiative wins or loses. In Donovan's study, 63% of consultants said they prefer neither "No" nor "Yes" campaigns, indicating that they accept campaigns based either on "who the client is" or on "the issue" itself.[32] Interestingly, 59% of consulting firms prefer initiative to candidate campaigns where the firms accept both. Donovan's overall conclusions are worth reporting: "These responses suggest that the majority of consultants are not 'guns for hire' to anyone for any purpose, but are engaged by politics and the causes they help fight. To be sure, there is evidence here consistent with the view of a few consultants as unprincipled mercenaries. But it would seem that these are in . . . a very small minority."[33]

That said, Donovan's findings do show the importance of paid consultants to ballot initiatives. Typically, while consultants may be brought in on the campaign early in the process to advise on titling, wording and ballot access, they usually prefer to leave that part of the process to lawyers in much the way that legislative proposal writing is left to lawyers and policy specialists. Campaign consultants report that they prefer to help clients identify the "Achilles heel" that might lead to the defeat of a measure. On this point the 2012 campaign described in Chapter Three is a poster child: identifying the "flaws in the bill" was, without question, the surest way to get to 51% in Massachusetts. Additionally, consultants prefer to build effective coalitions that guarantee passage, also a point on which the 2012 defeat serves as an object

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[32] Donovan, 124.

[33] *2008 US Presidential Elections in Washington.*

lesson. The Committee Against Assisted Suicide, gathering in medical organizations, disabilities groups, and Church-based communities all promoting the same message, allowed for a multi-faceted campaign that appealed, not just to voters opposed in principle to assisted suicide, whose numbers were not sufficient to defeat the measure, but to those who might have voted for the initiative on grounds of compassion or ideology. The work of consultants on the assisted suicide campaign provides a clinic on how focus groups and opinion polling may be used to accomplish a multitude of ends: first, to guide the drafting phase of an initiative, testing language, emphasis, and key provisions, if they are brought in early enough in the process; second, to test messengers, identifying groups and individuals who are more or less credible on the issue and who might become coalition partners; and, third, to test a campaign's viability to potential contributors. Consultants typically also advise on such things as compliance with standard campaign finance regulations, Federal Communications Commission reporting requirements, and internal auditing requirements that apply to modern political campaigns. The consultants on the assisted-suicide initiative in Massachusetts in 2012 performed all of these functions. They were particularly successful in securing editorial and political support for the "No" side, even when that support was initially considered unlikely or impossible.

A fascinating question that remains regarding the 2012 initiative concerns an unofficial rule of thumb among consultants offered in Ron Faucheux's article entitled "Observations of Initiative Elections": ". . . At the start of an initiative's public campaign phase, if there is organized opposition and the 'yes' support ratio is less than 2 to 1 over the 'no' vote (or if the 'no' vote is over 30 percent regardless of the 'yes' level of support), then the issue may be in trouble."[34] Given the fact that support for assisted suicide was 2-1 in favor among Massachusetts

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[34] Ron Faucheux, "Observations of Initiative Elections," Sabato, *Dangerous Democracy*, 140.

voters at the start of the campaign, one wonders what motivated consultants on the "No" side to risk ignoring the "2-1 rule." Chapter Three of this dissertation considers what might have brought consultants who prided themselves on having never lost a campaign to take on what everyone considered a losing battle.

Some general observations by Donovan help to clarify the influence of consultants in the initiative process:

> Ballot access in most states requires professional assistance and substantial amounts of money. This limits the potential for many spontaneous grassroots groups to use the process to shape policy and the public agenda. Despite all of this, it seems clear that initiatives continue to provide issue-advocacy groups who might have a weak legislative presence with the ability to affect public policy and agendas. Although no longer the realm of novices, amateurs, and pure grassroots movements, direct democracy still provides a distinct point of access to the political system for groups who might otherwise be of limited consequence.[35]

While Donovan speaks to the influence of consultants on the advocacy side, Ron Faucheux's article mentioned above follows up on Donovan's study but speaks to the dominant influence of those who consult on the opposition side of ballot initiatives. In that article, Faucheux confirms that another rule of thumb among initiative consultants is that "ballot initiatives are generally easier to kill than to pass. To pass a proposition, you have to offer a compelling reason why the change is both needed and desired. To defeat one, usually all you have to do is raise doubt."[36] I can hear as though it were yesterday the voice of Joe Baerlein of Rasky, Baerlein Associates, consultants on the 2012 assisted-suicide initiative in Massachusetts, saying repeatedly "Confusion is our friend." Focused on the "flaws in the bill," in other words, patient safeguards

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[35] Faucheux, 134.

[36] Ibid.

that were missing or interests that were jeopardized, the campaign relied on the strategy that all that was necessary was to sow doubt in the minds of voters. Doubt about what? Doubt that the law would benefit individuals with whom voters identify or concern that it might protect a practice they find abhorrent.

Regarding this last point, Ballot Question 2 in Massachusetts in 2012 required a terminally ill patient who requested suicide to pick up, or have someone pick up for him, 90 capsules each containing a small amount of the lethal drug. The patient was instructed to empty the contents of all 90 capsules at one time into a glass of liquid, or liquid-like substance, and administer it to himself without assistance from, or presence of, any medical personnel. TV, radio, and internet ads to that effect appeared throughout Massachusetts beginning in the last few weeks of the campaign. A photo of the ad "Pharmacist" appears at the beginning of this chapter. The margin of support during the time the ad was shown went from 60% approval, reported by the Boston *Globe* and the University of Suffolk[37] in September 2012, to 3-6 points against, a few days before the campaign. The idea for the video did not originate with the consultants. The vial of pills was a prop prepared by a local doctor to demonstrate to Catholic audiences the off-putting aspects of the process for ending a person's life that they were being asked to approve. What the doctor prepared and showed to predominantly parish groups was a vial of large orange capsules, empty of the lethal drug of course, but labeled as if it were a real prescription. The visual was stunning! Most people imagined that the drug would be administered in the form of one pill, or a sterile syringe with a calming and instantaneously effective dose of medicine inside it, administered by a white-coated professional. Consultants and other campaign staff questioned

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[37] Paula Span, "How the 'Death with Dignity' Law failed in Massachusetts," The New Old Age: Caring and Coping, End of Life Care December 6, 2012.

the legitimacy of the doctor's vial of medicine; to be blunt, they were appalled that the lethal drug approved in Question 2 would actually be dispensed in the form of 90 capsules, each one to be opened, emptied and ingested by the patient in the privacy of his own home. Once it was confirmed, however, that the Food and Drug Administration would not approve one pill, even the most skeptical immediately saw the potential in the visual of the vial of pills.

1.5 Ballot-Initiative Politics: Populist or Progressive?

As I mentioned earlier, ballot initiatives are historically and politically seen as favoring progressive causes. Historically, progressives are looked upon as generally favoring responsive, effective government, the ballot initiative being one of the tools they rely on to open up an often slow, unresponsive legislative process to popular demands. In an article entitled "The Populist Legacy: Initiatives and the Undermining of Representative Government," Bruce E. Cain and Kenneth P. Miller argue that the ballot initiative, while progressive in origin, can be "populist" and anti-democratic in terms of usage. By populist, Cain and Miller mean "historically populist," as in the populist movement that emerged in late nineteenth century America. A protest movement comprised mainly of political outsiders, "farmers, laborers, miners, ranchers and debtors," based mainly in the Midwest, the West and the South, populists sought relief from government for hardships created by the industrial revolution. Particularly, they pressed for inflation of currency and regulation of railroads. Initially relying on advocacy organizations such as Farmers Alliances within the existing two-party structure, they eventually formed The People's Party and became "almost obsessively" concerned with direct democracy and legislation by the people.[38] Rather than being used to encourage well-informed, broadly-based policy objectives—the traditional progressive agenda—Cain and Miller see the ballot initiative used more often than not by populists to foster policies initiated and crafted by what they call "unmediated public opinion."[39]

Cain and Miller criticize this "populist" model of lawmaking on several grounds. It discourages use of traditional, time-honored constitutional processes, such as recall, which allows citizens to remove elected officials before the end of their terms, and referendum, whereby the legislature may refer legislation directly to the voters. Instead, it favors principally the use of the initiative to bypass the legislature completely in favor of prevailing majority interests. In doing so, it sacrifices normal, helpful elements of lawmaking--marking up, debating and voting on bills, and gubernatorial approval or veto. In bypassing the legislature and governor completely, it sacrifices the openness that comes from public notification and committee hearings, the accountability of debates and voting procedures that are recorded and reported, and the competence often produced by research and reporting on complex and technical pieces of legislation. It also bypasses rules and procedures that guarantee fairness, such as equal time and opportunity for dissenting opinions, consultation, and hearings, as well as strict voting procedures.[40] The result, say Cain and Miller, is poorly crafted, sometimes constitutionally unsound, law. Of particular concern, they say, is that the process favors policies "closer to the median voter" in a state and, as such, sacrifices minority rights. One example, they offer is term

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[38] Bruce E. Cain and Kenneth P. Miller, "The Populist Legacy: Initiatives and the Undermining of Representative Government," Sabato, *Dangerous Democracy*, 34-35.

[39] Ibid., 34-38.

[40] Ibid., 45-48.

limits, widely popular among voters but less popular among legislators. In 21 of 24 states that have the ballot initiative, term limits have been adopted; in the 26 states that do not have the ballot initiative, only one, Louisiana, has adopted term limits.[41]

The issue of "populist" law-making was very much present in 2012 Ballot Question 2. The Cardinal of Boston and others appealed repeatedly to voter sentiment against using a public battle, fought out primarily amidst the din of television ads and editorial slogans, to consider an issue as serious as physician-assisted suicide. Ironically, it was the opposition campaign that capitalized on the fact that proponents were promoting public policy that was "OUT Of CONTROL," blasting on-screen messages about "No doctor present," and "No family notification" in an ad that was titled "Rational"!

Miller and Cain go to some lengths to emphasize the destructive prejudice of the initiative process toward minorities, arguing that, thanks to the framers, the checks and balances circumvented by the initiative process actually assists minorities and constrains majorities.

> " . . . Bicameralism, the executive veto, and supermajority voting rules require the building of broad coalitions (larger than a simple majority); the committee system provides minority groups with additional points of access and often places brakes on the legislative process; the party system and logrolling provide opportunities for minorities to aggregate and leverage their strength; publicly recorded votes and electoral competition build accountability into the system; and the mere presence of minorities in a legislature may deter the worst forms of legislative prejudice. . . .[42]

By contrast, the initiative process, according to Miller and Cain, "allows even a fleeting majority of citizens, in the secrecy and anonymity of the voting booth, to enact a law that adversely affects an unpopular minority." In addition, they maintain, there is some scholarly evidence that

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[41] Cain and Miller., 49.

[42] Ibid., 50.

voters "do not very well understand or appreciate basic constitutional rights and thus may be prone to violate them through the initiative process."[43] Disabilities groups and the elderly represent the ever-present voices of minority rights routinely excluded from the aid-in-dying ballot initiative process. The 2012 campaign against assisted-suicide was no exception. To be heard, these groups must buy ads, and go on political talk shows, rather than counting on even a few minutes' time to testify before a legislative committee or at the gubernatorial level of the process. When it appeared as a ballot initiative in 2012, assisted suicide had been proposed and rejected four times in the Massachusetts legislature. It was a theme of Cardinal O'Malley during the campaign in Massachusetts that Ballot Question 2 protected everyone . . . the doctor, the pharmacist, the patient's relatives, " . . . Everyone," said the Cardinal, "but the patient himself!" One egregious example was the provision that required two witnesses, one of whom could be an heir, to testify to the terminally ill patient's competence to request suicide.[44] Chapter Two considers the use of the ballot initiative politics by pro-assisted suicide groups to discredit persons with disabilities and other vulnerable populations who argue that legalized assisted suicide endangers them. It describes Dr. Margaret Battin's admission that she and other scientists undertook research to disprove that assisted suicide threatens societally vulnerable groups, such persons and with disabilities, in response to pressure from Kathryn Tucker and the leading pro-assisted suicide organization Compassion & Choices.

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[43] Cain and Miller, 53.

[44] Massachusetts Information for Voters, 2012 Ballot Questions, State Election Tuesday, November 6, 2012, https://www.sec.state.ma.us/ele/elepdf/IFV-2012.pdf

An additional feature of the initiative process hostile to minority rights is the result of what Miller and Cain call the "two-constituencies problem." Under certain demographic conditions, it is possible to have a statewide majority different in some politically significant way from the legislative majority. This happened in California where the statewide electorate in 2000 was disproportionately white and middle class compared with the general population. Specifically, the statewide population is nearly 50 percent nonwhite, while the state electorate is over two-thirds white. Statewide initiatives, therefore, under these demographic conditions "are in effect at-large elections controlled by a white electorate." Legislative districts, on the other hand, are based not on the number of people who vote but on total population. One-person-one-vote, plus vigorous application of the 1965 Voting Rights Act in California, resulted in a large number of minority-controlled legislative districts. In 2000, the California legislature had 120 members, including 24 Latinos, 5 African-Americans, and 2 Asian Americans, among them three of whom had served as Speaker. "Given the discrepancy between the composition of the legislature and the initiative electorate, it is not surprising that the recent language, immigration and affirmative action changes were adopted as initiative measures rather than ordinary legislation," say Miller and Cain. "Without expressing an opinion as to whether these were good or bad policies, we can safely state that they would not have been passed by the legislature at the time they appeared on the ballot."[45] Chapter Three argues that splitting the black vote in Boston was key to defeating Question 2. In the city of Boston, the initiative was defeated 50.9% to 49.1% with 12 of Boston's 22 wards voting against it. Leading the way among the twelve wards

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[45] Cain and Mille, p. 51.

who voted against assisted suicide were Dorchester, Roxbury, and Hyde Park, traditionally black, liberal Democratic strongholds.

A natural part of the question of direct democracy versus constitutional checks and balances is the issue of voter competency. On the populist side of the argument, Arthur Lupia addresses voter competence in his essay "Dumber Than Chimps? An Assessment of Direct Democracy Voters." Lupia argues that "direct democracy voters are far more competent than commonly perceived."[46] Lupia is responding to the criticism that initiative voters lack the competence and information of legislators in ordinary lawmaking. "When a few, simple pieces of information can lead citizens to make the same choices that many, complex pieces of information do, citizens can be competent without having detailed information," he says. For one thing the ballot initiative process is binary; in nearly every case voters are only asked to choose between the policy on the ballot or the status quo. Even a competent, well-informed voter need only decide whether he or she likes the change represented by the initiative or not. Thus, for the same reason that it's easier to win "no" campaigns—it's sufficient to sow doubt in voters' minds—the ballot initiative can result in competent policy decisions regarding even technical or controversial issues even when voters are less than well-informed. To prove his point, Lupia compares voters to chimpanzees flipping coins, heads the proposed choice wins and tails, it loses. This process can result in a competent choice 50% of the time, says Lupia. Now, change the outcome for each chimp to a competent choice 51% of the time, that is, allow each chimp's coin tosses to result in a competent choice not 50 but 51% of the time, and multiply the number of chimps by the size of an ordinary state electorate, that is, one million chimps in

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[46] "Dumber than Chimps? An Assessment of Direct Democracy Voters," Sabato, *Dangerous Democracy*, 66-70.

smaller states and 10 million chimps in larger states, and the result is astounding. The competent choice is the result 100%, or close to 100%, of the time, according to Lupia's number theory extrapolations.[47] In other words, voters who probably can be counted on at least 51% of the time to know at least their own interests, and the assumption is that most voters can do at least that much, have a close to 100% chance of choosing the competent outcome when their choice is multiplied by the number of votes in a state electorate. Imagine voters who have not only a better than half chance of voting competently, multiplied by the size of a state's electorate, but who also have the benefit of informational shortcuts like TV ads, endorsements by public figures, interest groups, and citizen-based organizations, as voters ordinarily have in a ballot campaign! Under such conditions, Lupia insists that ordinary voters have at least as a good a chance of choosing competently, even on a complex issue, as they would have chosen had they been far better informed on that same issue.[48]

> The key to competence in direct democracy is the voters who use shortcuts (which is to say nearly all direct democracy voters) for making correct decisions about whom to trust. The research . . . reveals that transparency and feedback regarding the interests of those who attempt to persuade voters are essential elements of voter competence. The research further implies that ensuring publicly visible competition among initiative proponents and supporters induces transparency and feedback—for if someone has the opportunity to expose the opposing side's weaknesses, the competitive nature of politics give them a strong incentive to go public . . . if there are people who are willing to provide simple cues to voters and there is sufficient competition for voters to learn the motives of people they listen to, then voters can approximate the binary choices they would have made if better informed.[49]

Lupia's study raises the question of whether ballot initiatives provide voters an

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[47] "Dumber than Chimps," 69.

[48] Ibid., 70.

[49] Ibid., 70.

opportunity to exercise competence by weeding out popular, but extreme, policies without wasting the valuable time of legislators. A 2014 study on ballot initiatives in Oregon shows that advocacy and opposition campaigns on ballot initiatives can actually change how citizens vote, just as much as they affect turnout or ballot completion, often considered the primary benefits of consultant campaigns. Based on 18% of Oregon households in the 2008 election, the 2014 study looked at a statewide mail program conducted by a political action committee. Results suggest that two initiatives would have passed if not for the campaigns to reject them.[50] The point is that the presence of an initiative on the ballot and the campaign associated with it influences more than voter turnout, ballot completion and roll off, a term used to describe voters who vote for president but not for other candidates or measures on the ballot. Campaigns change people's minds, or at least their votes, on an issue. The result of Question 2 is an object lesson of Lupia's position on this point.

To summarize this chapter, the ballot initiative, a time-honored way of increasing voter influence over legislation, became popular among progressives to advance citizen concerns against unresponsive or slow legislative processes. The favorite of the progressive era, the ballot initiative was seen as an extension of well-informed, competent, but conservative, government by professional lawmakers to allow certain controversial policies, like women's suffrage, to see the light of day, garner support, and become law. As Ernst puts it, ballot initiative politics at the state level have forced the legalization of some of the most democratic impulses in the American experience like direct election of senators, banning of poll taxes, presidential primaries and

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[50] Todd Rogers and Joel Middleton, "Are Ballot Initiative Outcomes Influenced by the Campaigns of Independent Groups? A Precinct-Randomized Field Experiment Showing That They Are," *Political Behavior*, DOI 10.1007/s11109-014-9282-4.

restrictions on child labor.[51] Opponents of the initiative process, on the other hand, say that it is too responsive to citizen concerns and operates outside the ordinary checks and balances of the state legislative process. In so doing, it gives too much power to anti-democratic tendencies and opens the door to unmediated, unreflective policy proposals that serve prevailing majorities in a way dangerously neglectful of minority rights. Furthermore, the comparatively unregulated status of the ballot initiative—for example, there are no limits on contributions to ballot campaigns, and they are virtually independent of party control—opens the door to abuse by narrow, special interests who find it easier to mount and win initiative campaigns than to work within normal legislative processes. With the advent of media and communication specialists in the fifties such abuses are only exacerbated, say critics.

Pertinent to these last two objections—disadvantaged minorities and consultant driven campaigns--Chapter Two of this dissertation explores the fact that the impetus for the 2012 Ballot Question 2 did not originate in Massachusetts. While legalized assisted suicide had been proposed four times in the Massachusetts legislature prior to 2012, none of the proposals had survived the committee process. While the battle for assisted suicide had been raging in other states for twenty years, the ballot initiative had never been invoked locally as the right approach to legalizing assisted suicide in the Bay State, one of the leading medical centers in the country. Four times, disabilities rights' and senior citizens' organizations, supported by professional

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[51] Howard Ernst provides a sketch of important statewide initiatives including, in 1912, citizens in Arizona and Oregon voted to extend suffrage to women (9 years before the national suffrage amendment), citizens in Montana and Oregon voted in favor of presidential primary initiatives, citizens in Montana and Oklahoma voted in favor of initiatives calling for direct election of Senators, and citizens in California, Oregon and Washington voted in favor of initiatives to ban poll taxes; in 1924, citizens in Arkansas voted in favor of an initiative restricting child labor. In more recent years, citizens have voted in favor of initiatives to ban nuclear weapons, to insure "equal rights" and "equal protection" for women.

medical organizations and church affiliated groups, had gone before the Massachusetts legislature and successfully opposed proposals supporting assisted suicide. Chapter Two of this dissertation tells a new story, however, about the "**Critical Mass.**" campaign launched by two organizations in the Pacific Northwest in 2011. By their own admission, the Death with Dignity National Center in Portland, Oregon, and Compassion & Choices in Seattle, Washington, together spent a million dollars, to file the ballot petition, hire consultants, and mount a media campaign to legalize assisted suicide in the Bay State. Emboldened by the success of the assisted suicide ballot initiative in Washington State sponsored by Compassion & Choices in 2008, these pro-assisted suicide organizations acted to take advantage of what political consultant John Rowley described to the National Press Club in 2009 as a unique opportunity. "A blue state in a presidential election year," with a popular president at the head of the Democratic ticket, offered the best chance for the legalization of assisted suicide in a third state in the U.S., said the head of the consulting firm that had won the initiative in Washington State.[52] With a little urging, Massachusetts, gateway to politically powerful states like New York, New Jersey and Pennsylvania, might be roused from its lethargy to see assisted suicide as an idea whose time had come, thought the two Pacific Northwest-based organizations.

And, so, our look at 2012 Ballot Question 2 in Massachusetts takes up in detail, first, a brief summary of the initiative itself, and, second, who were these proponents of the ballot question in Massachusetts and what exactly did they propose.

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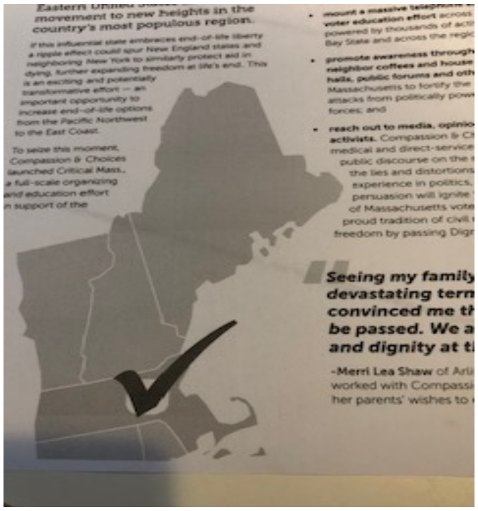
[52] Transcript of Audio Recording Compassion & Choices "Dignity and Choices: A Symposium on End of Life Advocacy," October 14, 2009, National Press Club in Washington, D.C.



Eastern United
movement to new heights in the country's most populous region.

If this influential state embraces end-of-life liberty a ripple effect could spur New England states and neighboring New York to similarly protect aid in dying, further expanding freedom at life's end. This is an exciting and potentially transformative effort — an important opportunity to increase end-of-life options from the Pacific Northwest to the East Coast.

To seize this moment, Compassion & Choices launched Critical Mass, a full-scale organizing and education effort n support of the

- **mount a massive telephon** **voter education effort** across powered by thousands of acti Bay State and across the regi
- **promote awareness through neighbor coffees and house halls, public forums and oth** Massachusetts to fortify the attacks from politically pow forces; and
- **reach out to media, opinio activists.** Compassion & C medical and direct-service public discourse on the the lies and distortions experience in politics, persuasion will ignite of Massachusetts vote proud tradition of civil freedom by passing Dign

Seeing my family devastating term convinced me th be passed. We a and dignity at t

-**Merri Lea Shaw** of Ar worked with Compassi her parents' wishes to

"Critical Mass." Web page
Compassion & Choices Summer 2012[53]

Chapter Two

"Dignity 2012": The Campaign to Legalize Assisted Suicide in Massachusetts

"A YES VOTE would enact the proposed law allowing a physician licensed in Massachusetts to prescribe medication, at the request of a terminally-ill patient meeting certain conditions, to end that person's life. A NO VOTE would make no change in existing laws."

Question 2: Ballot language[54]

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[53] https://compassionandchoices.org/wp-content/uploads/2018/10/Summer_2012_Dear_Abby.pdf.

[54] Massachusetts Secretary of State, "2012 Information for Voters," 2. https://www.sec.state.ma.us/ele/elepdf/IFV-2012.pdf.

“While this choice isn’t for everyone, everyone has the right to this choice.”

Heather Clisch,
Massachusetts “Information for Voters” Guide 2012[55]

2.1 The “Death with Dignity” Act—What Would the Law Require

The Massachusetts initiative proposed in 2012 that eventually was certified as Ballot Question 2 was modeled after Oregon and Washington State laws legalizing assisted suicide. “As required by law, summaries are written by the State Attorney General, and the statements describing the effect of a ‘yes’ or ‘no’ vote are written jointly by the State Attorney General and the Secretary of the Commonwealth,” in the case of Massachusetts in 2012, Martha Coakley and William Francis Galvin, respectively. Theirs is the summary that appeared on the ballot in Massachusetts on election day, November 6, 2012. In his “Information for Voters” mailed to all citizens in the state, Secretary of State William Galvin published a lengthy summary of the ballot initiative “Prescribing Medication to End Life.”[56] The first paragraph of Galvin’s summary describes key elements:

> The proposed law would allow a physician licensed in Massachusetts to prescribe medication, at a terminally ill patient’s request, to end that patient’s life. To qualify, a patient would have to be an adult resident who (1) is medically determined to be mentally capable of making and communicating health care decisions; (2) has been diagnosed by attending and consulting physicians as having an incurable, irreversible disease that will, within reasonable medical judgment, cause death within six months; and (3) voluntarily expresses a wish to die and has made an informed decision. The proposed law states that the patient would ingest the medicine in order to cause death in a humane and dignified manner.

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[55] Ibid.

[56] “Question 2: Law Proposed by Initiative Petition—Prescribing Medication to End Life,” Massachusetts Information for Voters: 2012 Ballot Questions, William Francis Galvin, Secretary of the Commonwealth, 7-13.

Further details of the law are provided in subsequent paragraphs of Galvin's summary. The law would have allowed an attending physician who received three requests, two written and one oral, from a person who had received a diagnosis of fewer than six months to live, and was deemed competent by two witnesses, to write a prescription for lethal drugs. The prescription had to be dispensed to the patient or the patient's agent who could fill it at the local pharmacy. The law did not require a physician or anyone else to witness the death, or that the patient notify his family. It stipulated that the death certificate list the underlying illness, not assisted suicide, as the cause of death. Authorities were forbidden by the law to investigate deaths. It required that only one of two required witnesses to the patient's competence not be his or her heir.[57]

If passed, the proposed initiative, eventually certified as Ballot Question 2, would have effected radical changes in Massachusetts from the perspectives of both citizens' rights and medical treatment. Proponents of the law saw it as an expansion of both. Testifying to the need for a "right to this choice," Heather Clish, a resident of Massachusetts, told the story of her father's death in Oregon by physician-assisted suicide. Clish's account was reproduced in the "Arguments in Favor" that appeared in the same "Information for Voters":

> When my father was diagnosed with brain cancer, he had little time left. As his final days neared, he chose to use the Death with Dignity law in his home state of Oregon. The Massachusetts version, like those in other states, will allow mentally competent adults with no chance to survive their illness to take life-ending medication prescribed by a physician. My dad knew he wanted to die in the comfort of his own home; competent and aware instead of detached and sedated; on his own terms instead of those of a fatal disease that had already taken too much. My dad was already dying, but because of this law, he could say goodbye to those he loved, with dignity and grace in my mother's arms. I urge you to vote "Yes" because, while this choice isn't for everyone, everyone has the right to this choice.[58]

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[57] "Question 2: Law Proposed by Initiative Petition—Prescribing Medication to End Life," Massachusetts Information for Voters: 2012 Ballot Questions, William Francis Galvin, Secretary of the Commonwealth, 7-13.

[58] A statement on the 'No" side is also provided in the "Information for Voters," 7.

Clish's statement is signed by her and identifies her as a resident of Reading, MA. It is also signed by Dignity 2012, Wellesley, MA.

Clish's words capture the spirit of the campaign eventually waged by proponents in Massachusetts. To repeat, " . . . While this choice isn't for everyone, everyone has a right to this choice." In the Fall of 2011, when a petition was filed with the Attorney General in Massachusetts to certify a ballot initiative, advocates had been promoting euthanasia and assistance in dying for twenty years, mostly in the Pacific northwest region of the country. They advocated physician-assisted suicide as a choice that should be available "only to adults," only for people who have "terminal illnesses," only by people who request it, and only under careful guidelines. In 1994 and again in 1998, Oregon voters had approved a "Death with Dignity Act" to make physician-assisted suicide legal medical practice in that state, the first jurisdiction in the world to approve it. While similar laws were subsequently proposed in more than 20 states in intervening years, it was not until 2008 that any were passed. In that year, Washington State voters adopted a ballot initiative virtually identical to Oregon's. With Question 2 on the 2012 ballot, Massachusetts, a top-ranking medical center and choice destination for treatment for thousands of seriously ill people from around the country and the world, was poised to become the third state in the U.S. to legalize physician-assisted suicide.[59]

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[59] In December 2009, the Montana Supreme Court ruled 5-2, in Baxter v. Montana, that nothing in the state law prohibited a physician from honoring a terminally ill, mentally competent patient's request by prescribing medication to hasten the patient's death. The ruling cited the state's Rights of the Terminally Ill Act. Because there is so little difference as a matter of public policy between taking a patient off life support and prescribing lethal medication that the patient can take, the Court determined that existing Montana law permits physician-assisted dying under

Bills to legalize assisted suicide had been proposed in the Massachusetts legislature in 1995, 1997, 2009 and 2011, all by Representative Louis Kafka, from the 8th district, Norfolk. None of them had ever gotten out of committee. Polls showed that citizens in Massachusetts supported assisted suicide for the terminally ill by a 2-1 margin. Nonetheless, as this dissertation will argue, Heather Clish's testimony notwithstanding, the 2012 ballot initiative was not a Massachusetts-citizen driven initiative. Who were its proponents and why did they choose Massachusetts? This chapter identifies sponsors of the Massachusetts "Death with Dignity" Initiative Petition in 2012 as two organizations, Death with Dignity National Center based in Portland, Oregon, and Compassion & Choices, which originated in Seattle, Washington. Compassion & Choices was the result of a merger of two organizations, the original Hemlock Society founded in California in 1980 by Derek Humphrey, and a Seattle chapter of Hemlock which called itself Compassion in Dying, founded by Ralph Mero, Unitarian minister and rights activist in Washington State. The chapter also shows that support for the 2012 initiative was ultimately a result of an aggressive strategy by particular individuals representing those two organizations over a period of 20 years.

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the circumstances of the Baxter case. Montana's judicial approach to physician aid in dying remains unique. https://www.deathwithdignity.org/states/montana/.

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Beginning in 1994, efforts were underway in the Pacific Northwest to push legalization of assisted suicide at the federal level and in as many states as possible. Seizing the opportunity in state legislatures, in the courts, and at the ballot box, Compassion in Dying, and its successor organization, Compassion & Choices, sought every opportunity to advance widespread citizen acceptance of assisted suicide both as a solution for sick people experiencing unbearable end-of-life suffering, and as a right whose time had come and which could no longer be denied under the Constitution.

To these ends, Chapter 2 will first look at "Dignity 2012," the local name adopted by the Portland, Oregon, group filing the petition for the "MA Death with Dignity Act" in Massachusetts in the Fall of 2011. Then it will look at Compassion & Choices, which by the time of the 2012 initiative had transformed itself from an arm of the Hemlock Society into the largest pro-assisted suicide organization in the country. Since both organizations had their origins in efforts to legalize assisted suicide in Oregon and Washington State, it's there that our story about proponents of Ballot Question 2 in Massachusetts begins.

2.2 "Critical Mass."— An Epic Campaign

"We wrote the law, we paid for early staffing, and we provided the campaign with critical seed money. . . We sponsored conversations about dying all over the Commonwealth."

Death with Dignity National Center
Portland, Oregon[60]

" 'Compassion and Choices' singular legal, medical and direct-service expertise
will elevate public discourse on the measure
and challenge lies and distortions of its opponents.

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[60] Peg Sandeen, "A Message from our Executive Director," Death with Dignity National Center, Death with Dignity Political Action Fund, Annual Report 2012, 3, https://www.deathwithdignity.org/wp-content/uploads/2015/11/2012AnnualReport.pdf.

Our experience in politics, communications and persuasion will ignite the passionate resolve of Massachusetts voters . . .”

Compassion and Choices,
Seattle, Washington[61]

When thinking about proponents of what became Ballot Question 2 in Massachusetts in 2012, Death with Dignity National Center in Portland, Oregon, and Compassion & Choices, originally based in Seattle, Washington, one cannot help but notice the peculiar challenge to the two organizations—that of testing their mettle in a New England state! And not just any New England state—not Maine, or Vermont, or Connecticut, with all due respect to those states—but Massachusetts, a leading medical center in the country, if not the world, and on a matter of gravest importance to the practice of medicine. Granted, the two organizations had been battling to promote assisted suicide for twenty years all over the country, including Alaska, but they had done so racking up mostly failures. Their only two successes occurred in their home states, Oregon and Washington.

Granted, the Portland based organization, Death with Dignity National Center, which filed the petition in Massachusetts with a budget of not much more than $1 million in 2012, had won the ballot initiative in Oregon state that legalized assisted suicide for the first time anywhere in the world. The same organization had sustained two challenges, an in-state legislative challenge, as well as a challenge in federal court. Compassion & Choices, the other organization sponsoring the initiative in Massachusetts in 2012, had evolved over 20 years from the Hemlock Society to become what was in 2012 the largest pro-assisted suicide organization in the country

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[61] Compassion & Choices, 2012 Fall Magazine and Annual Report, https://compassionandchoices.org/wp-content/uploads/2018/03/2012-Fall-Magazine-and-Annual-Report.pdf, 17.

with a $15 million budget, significantly more impressive than its Portland counterpart. Coming off only the second win for assisted suicide in 20 years with the success of a ballot initiative in Washington State in 2008, Compassion &Choices was confident that it could repeat that success in 2012 in politically liberal New England.

Critical Mass., the Compassion & Choices website name for its Massachusetts campaign, captured their sentiments exactly. A graphic of the New England and surrounding states, with a bold black checkmark on the State of Massachusetts (reproduced on the title page of this chapter) communicated the strategic importance of the Bay State to the pro-assisted suicide organizations. The website predicted not only a win in 2012 in Massachusetts, but the Commonwealth's potential to be the gateway for assisted suicide to other New England states, as well as New York and the entire East coast. "Assisted suicide, coast to coast," the Compassion & Choices website boldly forecast.[62] The Cardinal Archbishop of Boston, announcing his plans to defeat the ballot initiative as early as the Fall of 2011, even before the petition was filed, described the two organizations as "national and well-funded." Singling out Compassion and Choices, he credits that organization with having targeted Massachusetts: "Physician-assisted suicide has been resisted in many states but this new Hemlock Society sees Massachusetts as low-hanging fruit. We must show them that the fruit is a prickly pear."[63] The Cardinal was correct about the national character of the proponents. Compassion & Choices had subsidiary

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[62] Compassion & Choices Summer 2012, https://compassionandchoices.org/wp-content/uploads/2018/10/Summer_2012_Dear_Abby.pdf

[63] Cardinal Sean O'Malley, "Cardinal Urges Catholic doctors to Oppose Assisted Suicide Measure," The Pilot, November 4, 2011, https://www.thebostonpilot.com/article.asp?ID=13965.

organizations in several states in 2012. Nevertheless, its own website admits that Compassion & Choices' efforts in Massachusetts began only with the 2012 initiative.[64]

Chapter Two of this dissertation focuses on the question "Who really were the proponents of assisted suicide in Massachusetts in 2012 and what were their expectations?" The chapter follows the history and leadership of the two organizations who sponsored and paid for the "Dignity 2012" campaign. It focuses particularly on their perseverance through twenty years of political disappointment, and their expectations that Massachusetts would turn that disappointment into gladness. It makes the case that Death with Dignity National Center and Compassion & Choices were organizations who believed that assisted suicide was an idea whose time had come in 2012, and whose chief opposition at very high levels, namely, from doctors, lawyers and ethicists, had been sufficiently neutralized. They believed that what they had worked to redefine, away from the Kevorkian-style image of physicians surreptitiously assisting people to die into a personally and politically desirable right to "aid-in-dying," was strategically poised to succeed in arguably one of the most influential states in the country regarding healthcare. It also documents what might be described as a certain political naivete with regard to the financial effort needed in Massachusetts, which even in 2012 was an expensive market. Studies show that, in ballot initiatives, there is direct correlation between spending and margins at the ballot box.[65] Ballot Question 2 was defeated by a roughly 2% margin, 51% to 49%, 62,000 votes out of 2.7 million cast. The two pro-assisted suicide organizations together spent a little over $1 million; the opposition, five times that much. Who really were these two

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64 Compassion & Choices Summer 2012.

[65] Thomas Stratmann, "Is Spending More Potent For or Against a Proposition? Evidence from Ballot Measures," American Journal of Political Science, 50, no. 3, (July 2006), pp. 788-801, https://doi.org/10.1111/j.1540-5907.2006.00216.x.

organizations from the Pacific northwest, expecting to effect, had it succeeded, one of the biggest ballot initiative wins in U.S. history?

2.2.1 Death with Dignity National Center

Dignity 2012, the name given to the campaign to legalize assisted suicide in Massachusetts in 2012, was the offspring of Death with Dignity National Center. Established in 1994 in Portland, Oregon, it considered itself a national education and legal defense organization to support Oregon's Death with Dignity Ballot Measure 16, at the time considered model legislation. You'll recall from Chapter One that it was this law, passed by Oregon voters in 1994, that did not take effect until the same voters who had passed it in '94 rejected by an even bigger margin a legislative challenge to it in 1998. At that time, and due in large part to the efforts of the Death with Dignity National Center, Oregon became the first state in the U.S., and one of the first jurisdictions in the world, to legalize assisted suicide. In 2012, it was this Death with Dignity National Center, based in Oregon, that filed the petition for the Death with Dignity Act in Massachusetts, and established the "Dignity 2012" campaign.[66]

Dignity 2012's first task in Massachusetts was to file the petition with Attorney General Martha Coakley, who certified the measure on September 7, 2011. Certification meant that the proposed law met the requirements for a ballot initiative in the Commonwealth. Proponents were required, then, to get 68,911 validated signatures by December 7, 2011, and subsequently

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[66] Wikipedia, https://en.wikipedia.org/wiki/Death_with_Dignity_National_Center.

another 11,485 signatures, if and when the legislature failed to act on the matter in May 2012. Having achieved that, the measure would appear on the Massachusetts ballot in November 2012, which it did as Ballot Question 2, the "Death with Dignity" Act.[67] Writing in 2013 about the failed 2012 Ballot measure in Massachusetts, Marcia Angell, M.D., lecturer in social medicine at Harvard Medical School and spokesperson for the Dignity 2012 campaign, recalled the ease with which signatures were gathered. "Volunteers and paid workers collected signatures outside grocery stores and even wandered around the Occupy Boston encampment. When I asked a couple of them whether they met resistance, they told me that getting signatures was surprisingly easy. Many people were eager to sign, they said, and mentioned that they had family members who had died difficult deaths and would have welcomed the choice offered by the DWDA [Death with Dignity Act]."[68] In the same article, Angell proudly mentions that she was one of the first ten required signatories to the original petition.

In her "Message from the Executive Director," published in its Annual and Financial Report for 2012 for the Death with Dignity National Center in Portland, Oregon, Peg Sandeen says that expectations for the "campaign for Death with Dignity in Massachusetts" were

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[67] The process for certification and getting on the ballot demonstrates the manner in which the ballot initiative is conceived to be a way to get legislatures to consider things they might otherwise wish to ignore, as explained in Chapter 1 of this dissertation. "Under [Massachusetts] state law [in 2012], more than 68,000 certified voters must sign an initial petition, with not more than one-quarter of all the signatures coming from the same county. If the Legislature does not take up the issue, an additional 11,000-plus registrar-certified signatures are needed by July 3 to put it on the ballot." So, action by the legislature in the spring of 2012 could have circumvented proponents' intentions and defeated the effort. "Assisted Suicide Likely on Mass. Ballot." https://www.wcvb.com/article/assisted-suicide-likely -on-mass-ballot/8171740.

[68] Marcia Angell, "How to Die in Massachusetts," New York Review of Books, February 21, 2013. https://www-nybooks-com.proxy.bc.edu/articles/2013/02/21/how-die-massachusetts/?prntpage=true, 2-3.

extremely high. And, she makes no secret of the fact that the initiative, from the start, was not locally inspired.

> What an exciting year for the National Center. We, along with our sister organization the Death with Dignity Political Fund, built the campaign for Death with Dignity in Massachusetts**.** *We wrote the law, we paid for early staffing, and we provided the campaign with critical seed money. . . We sponsored conversations about dying all over the Commonwealth***. . .** By shifting to New England, we hope to steer this movement toward greater progress [emphasis added].[69]

The same report takes credit for having *"founded the political committee, . . . paid its staff to organize the effort in Massachusetts, and provided early financial, political and legal support"* [emphasis added]. It lists actions to advance "this critical effort," included among them having "consulted with the Massachusetts legal team to coauthor the [law]; directly funded the first successful phase of signature gathering with $100,000 donation; "underwrote the second successful signature gathering effort, [in the amount of] $80,000; and, "donated staff time and resources to support the early stages of their work."[70]

The Massachusetts Office of Campaign and Political Finance reports that "Dignity 2012," spent a total of $592,685 in favor of the "Death with Dignity" Act in 2012 in Massachusetts, presumably on behalf of the efforts described in Sandeen's report.[71] For the sake of context, the same Office reports more than $9 million spent on statewide ballot questions in Massachusetts in

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[69] Peg Sandeen, "A Message from our Executive Director," Death with Dignity National Center, Death with Dignity Political Action Fund, Annual Report 2012, 3. https://www.deathwithdignity.org/wp-content/uploads/2015/11/2012AnnualReport.pdf.

[70] "Promote Dignity: Massachusetts," Death with Dignity National Center & Political Action Fund, Annual Report 2012, 7. https://www.deathwithdignity.org/wp-content/uploads/2015/11/2012AnnualReport.pdf.

[71] Ibid.

2012 with three questions on the ballot.[72] The two other laws were an "automobile right to repair law," and "medical marijuana," the latter expected to pass easily.

The Death with Dignity National Center, and Death with Dignity Political Action Fund Comparative Financial Operations Report for the years ending March 31, 2012, and 2011, show assets in the amount of $449,161 for 2011, $350,000 for 2012. A chart showing how program dollars were spent indicates 61.8% of program dollars went toward assisting local groups in 2011-2012. No explicit mention is made of the Massachusetts initiative in that report.

2.2.2 Compassion & Choices

Compassion & Choices, based in Seattle, Washington, was the second organization that sponsored the 2012 Massachusetts initiative. At the time the largest organization in the United States advocating for people's rights at the end of life, it had a budget of $13M in 2012, and $15M in 2013.[73] Descended from two organizations, the Hemlock Society and Compassion in Dying, it distinguished itself by having sponsored and won the second and only ballot initiative legalizing assisted suicide in the United States since 1998.

Compassion & Choices' parent organization, the Hemlock Society, originally formed in 1980, was founded as an end-of-life care organization for those suffering with incurable illnesses. Co-founded in California by Derek Humphry, author of *Final Exit* published in 1991, and his wife, the Society promoted, not only the right of a patient or surrogate to refuse or

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[72] "More than $9 million spent on statewide ballot questions in 2012," Massachusetts Office of Campaign and Political Finance (MOCPF), November 29, 2012, accessed July 18, 2010.

[73] Compassion and Choices Magazine, Fall 2012, 26-27, https://compassionandchoices.org/wp-content/uploads/2018/03/2012-Fall-Magazine-and-Annual-Report.pdf.

remove life-sustaining treatments, as in the famous cases of Karen Ann Quinlan and Nancy Cruzan, but to hasten or bring about death where there was no treatment to withdraw. The Hemlock Society achieved dubious national notoriety in the 1990s because of Dr. Jack Kevorkian, a Michigan pathologist, whose work on behalf of assisted suicide ended in his conviction and imprisonment for second-degree murder when he directly killed a patient on television. At the same time, interest in assisted suicide was being helped by the notoriety of Dr. Timothy Quill. An internist from Rochester, N.Y., Quill published an account of his decision to assist a leukemia patient end her life in the prestigious *New England Journal of Medicine* in 1991. Quill's patient, named Diane in the *Journal* account, had refused a bone marrow transplant and had requested a prescription to bring about death. "She ended her life by taking [the prescription], after first asking her family to leave the house for an hour or so," reports Marcia Angell, executive editor of the *New England Journal of Medicine* at the time Dr. Quill's article was submitted for publication. Aware of the New York State law prohibiting assisted suicide, Angell reports that she offered Quill the opportunity to withdraw his article. He declined. "Quill, who concluded his account by asking 'why Diane, who gave so much to so many of us, had to be alone for the last hour of her life,' was brought by the county district attorney before a grand jury," reports Angell. The grand jury refused to indict Quill for manslaughter.[74]

Compassion in Dying (CID), the second parent organization to Compassion & Choices, originated following the 1991 defeat of the Washington State ballot initiative to legalize assisted suicide and euthanasia, the failure of which is attributed to voters' abhorrence to doctors killing

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[74] Angell, "How to Die in Massachusetts," The New York Review of Books, February 21, 2013, 5. https://www.nybooks.com/articles/2013/02/21/how-die-massachusetts/.

their patients.[75] Officially organized in Seattle in April 1993, Compassion in Dying is described as "the first U.S. group to publicly admit offering assistance in committing suicide" on the website of the Patients' Rights Council, an opponent of assisted suicide. The same website credits CID with acknowledging "involvement in twenty-four deaths during its first thirteen months of operation."[76] CID became the subject of a *New York Times Magazine* cover story by Lisa Belkin entitled "There's No Simple Suicide," published in 1993. The article describes in detail the origin of Compassion in Dying, the parent organization of Compassion & Choices.

The *Times* story documents efforts on the part of Ralph Mero, a founding member of CID and its first executive director, to separate the cause of assisted suicide from the influences of the Hemlock Society, particularly, the taint of Kevorkian. It records Mero's insistence that the organization advance its credibility by serving only qualified patients who meet very strict requirements. Belkin describes in detail the death of Louise, a fictitious name but a real patient, who ended her life with Mero's help. Belkin's account documents well the very controversial role that Compassion in Dying was charting to help seriously ill persons to end their lives, as well as the strategy that would be successful in generating support for assisted suicide in the Pacific Northwest.

> Committing suicide is not against the law in Washington State . . . Helping someone to commit suicide is. Ralph Mero sees this distinction, however, as a challenge, not a hindrance. This past spring [1993] he co-founded an organization, Compassion in Dying, to help terminally ill patients end their lives. Its members include doctors, nurses, social workers and members of the clergy like Mero, a Unitarian Universalist minister for 30 years.

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[75] "Death with Dignity Act," Initiative 119 on the ballot in Washington in 1991, was defeated 54 to 46%. Proponents attribute the defeat to voters' abhorrence of the fact that the law allowed doctor's to administer the drug.

[76] Rita Marker, "Assisted Suicide: The Continuing Debate," Patient Rights Council, accessed September 19, 2020, 8, http://www.patientsrightscouncil.org/site/assisted-suicide-the-continuing-debate/.

> What Compassion members will do is almost limitless: offer advice on lethal doses, counsel bereaved family members, convince wary doctors, literally hold a patient's hand at the moment of death. What they will not do is simple: they will not provide or administer the drugs. It is a role that some call heroic and others call heretical. Mero was either Louise's savior or executioner, depending on one's point of view [writes the *New York Times* columnist in 1993].[77]

Belkin describes Mero's first involvement with assisted suicide and with Kevorkian. A former civil rights activist in 1988, Mero attended a Hemlock Society conference. "It changed his world," says Belkin. As a result, "Mero helped start the first Hemlock chapter in Washington State, and shortly thereafter took a full-time job as the group's northwest regional director." In response to what he saw as the negative effect of Kevorkian's headline-grabbing, he began to distinguish his organization and its work from Kevorkian. Belkin's 1993 account of the organization's evolution provides insight into the approach it eventually took.

> . . . What is at stake is Mero's vision of the future as a time when all doctors can openly do what many doctors are already doing surreptitiously: helping patients to die. He describes Compassion [in Dying] as a "ministerial demonstration project," an experiment in assisted suicide, designed to "show, demonstrate, prove, that when people make a claim for humane treatment, it can be provided in a way that does not jeopardize vulnerable people or pose a threat to the social fabric."

Under Mero's influence Compassion in Dying was developing a model to help people die. Belkin continues.

> Compassion in Dying, in other words, is a prototype, a model for other, similar programs throughout the United States. With that in mind, Mero and the other members of Compassion have set up their organization with a constant eye toward the long term, creating written guidelines that cover every detail, from how patients are chosen to how many Compassion members will attend an assisted death. Almost everything about the rules, in fact the very existence of the rules, can be seen as a determined contrast to Jack Kevorkian.

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[77] Lisa Belkin, "There's No simple Suicide," *New York Times Magazine*, November 14, 1993. https://www.nytimes.com/1993/11/14/magazine/there-s-no-simple-suicide.html.

Belkin recounts Mero’s interactions with Louise, the patient who requested suicide in 1993. He had a soothing voice and professional approach. He carefully reviewed with her the ten steps required under Compassion’s guidelines for the death to qualify for “assistance.” He negotiated the difficult period when Louise didn’t want to talk about her death, and when her friend, a woman Louise had met at the office of one of her doctors, realizes that Louise ultimately did not want to die, but rather to be done with the disease. In stunningly frank passages, Belkin reviews the actual steps needed to insure that, after she had ingested the drug, Louise was dead—that her breathing and heart beat had stopped, the latter requiring a stethoscope and ability to use it by the friend who was also a nurse.

Belkin describes the agonizing, near-seven-hour wait between the time Louise ingested the lethal drug in a bowl of ice cream and her death. She describes Louise’s mother who, terrified that Louise would “wake up” to find her attempt a failure, wanted to call an ambulance. “I was prepared and had the wherewithal,” Mero said, referring to a plastic bag that could be used as a last resort to deprive Louise of oxygen. “But I wouldn’t want to have had to do that. I would not have let her come back. With her mother there, though, it would have been very difficult. I don’t think her mother could have handled the mechanics of further assistance.”

Mero was determined to distance the newly formed Compassion in Dying from Kevorkian and Hemlock, Belkin says. In addition to following a specific protocol with patients, he was adamant about their privacy.

> One of Compassion’s most essential rules, therefore, is secrecy. Kevorkian calls the authorities after each assisted suicide – by early November, he had been involved in nineteen—and, police radios being monitored as they are, the press and the police often arrive at the scene simultaneously. Compassion, in contrast, does not announce its assistance in a suicide. In fact, in the three cases that the organization has admitted involvement in so far, the medical examiner’s office was not told that the deaths were suicides. The patients’ doctors, who knew in advance of the plans, certified the deaths as expected and natural, so no autopsies were performed.

> Mero took it personally when Kevorkian's actions subverted the 1991 Washington State ballot initiative, which Mero had helped to write. His proposition defeated 54 percent to 46 percent at the polls, Mero took the loss hard. . . . Mero partly blamed Kevorkian for the defeat of Initiative 119. . . . "Kevorkian helped two women die little more than 10 days before the election," Mero says. "Those deaths took place in a cabin in the woods and provided a visual image for our opponents to use suggesting that doctor-assisted suicide was reckless and macabre. It had a very negative effect."[78]

The defeat of the initiative at the polls in Washington in 1991 led Mero, according to Belkin, to take the organization in a different, unchartered direction refining its practices regarding patients, as well as its political strategies for promoting assisted suicide.

> At a Hemlock Society board meeting in March [1992], Mero [concluding that ballot initiatives were too uncertain] unveiled a proposal. . . initially referred to [as] . . . "civil disobedience," remembers Don Cook, a retired computer manager, treasurer and co-chairman of Compassion [in Dying]. "We later decided that was a poor choice of words," says Cook. "We wanted to be careful, not confrontational. We concluded we didn't want to break the law in any blatant sense. We wanted to test it."
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> By April [1992], the national Hemlock Society leadership concluded there was no place within its organization for what Mero was proposing if he meant to break the law at all. It was suggested that a new group be formed. The parting was amicable. Although the two groups are separate, half the members of the current Compassion [in Dying] board also sit on the local Hemlock board, and Compassion and Hemlock have adjacent office space. The new board met in that space at least three times a week for several months, trying to work out the legal, medical and moral details of what they planned to do. They faced questions that had no precedent in any other organization's bylaws.
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> For weeks, members discussed whom the new group should help. For ethical reasons they decided that patients must be terminally ill and relatively close to death, . . . [They must] be residents of Washington State . . . to avoid the state from becoming a suicide mecca. To defeat criticism that they were making medical decisions without medical knowledge, members established an advisory committee of physicians, consultants and other health professionals who must examine all patients. And to answer the potential argument that they are giving too much power to that committee, they decided not to help any patient who lacked a doctor who both accepted the suicide plans and agreed to write the fatal prescription . . . .
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> . . . . When he received the call from Louise's doctor, Mero was confident of his rules. And, after hearing the details of her case, he was fairly certain Compassion would be able to help. He suggested two medications to the doctor – Nembutal or Seconal – and

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[78] Belkin.

> the recommended dosage of each. . . Then she made a note of the prescription in Louise's chart, adding that her patient was having trouble sleeping. The doctor made no mention of her conversation with Mero.
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> Mero visited Louise several days later . . . Because she tired so quickly, Louise dispensed with social niceties . . . Mero says he will never forget how relieved Louise looked to see that he did not flinch when she used the word "suicide."

As executive director, Mero also helped Compassion in Dying redefine its political direction. According to Attorney Rita Marker, Executive Director of the Patients' Rights Council and long-time advocate against assisted suicide, it was Mero who welcomed Kathryn Tucker to Compassion in Dying. Tucker, an attorney with Perkins Coie, the largest law firm in the Pacific Northwest, had served as principal outside counsel for sponsors of the failed Washington "Death with Dignity" law in 1991, the same law Mero was so resentful about losing at the ballot box. It was Tucker, says Marker, who called Ralph Mero to suggest challenging "the constitutionality of Washington State's law prohibiting assisted suicide in the courts rather than at the ballot box. That [phone] call," says Marker, "launched two cases which would reach the U.S. Supreme Court and led to a major ongoing role for Tucker with [Compassion in Dying]." Commenting on challenging Washington's law in the courts, Attorney Tucker said to Mero, "[The case] would be the equivalent of *Roe* v. *Wade* for the right to die." "If the Supreme Court rules on it, all state statutes which affect [physician aid-in-dying] will be either upheld or struck down," said Tucker.[79] As it turns out, they were struck down, but not without significant resistance. It's been that resistance that Tucker and assisted suicide forces have capitalized on for more than twenty years.

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[79] Rob Carson, "Suit Disputes State's Ban on Assisted Suicides," *The News Tribune* (Tacoma, WA), 1994, quoted in Rita Marker, "Assisted Suicide," 9.

To make a long story short, Tucker, on behalf of Compassion in Dying, filed two cases in federal court in 1994, one in Washington and one in New York.[80] The challenge of unconstitutionality to the Washington law was initially upheld in a federal district court. Relying on reasoning used in the famous *Planned Parenthood v. Casey* decision (1992), which based the right to abortion on the protections of the Fourteenth Amendment, the federal district court said that "the suffering of a terminally ill patient cannot be deemed any less intimate or personal, or less deserving of protection from unwarranted governmental interference, than that of a pregnant woman. 'Consonant, with the reasoning in *Casey*, such an intimate personal decision [to request lethal drugs] falls within the realm of liberties constitutionally protected under the Fourteenth Amendment.'"[81] That decision was reversed in 1995 by a three-judge panel of the U.S. Circuit Court of Appeals for the Ninth Circuit. However, in 1996 the original district court found in favor of CID's appeal for a hearing before a larger panel, who ruled 8 to 3 to reinstate the finding that Washington's law prohibiting assisted suicide violated the Due Process Clause of the Fourteenth Amendment.[82] Describing the *en banc* decision, Mero congratulated his CID staff and supporters for having just won "the greatest civil rights victory for terminally ill patients in American history," says Marker.

In the New York case filed by Tucker on behalf of Compassion in Dying, also in 1994, the case turned, not on "due process," but on "equal protection." A three-judge panel of the U.S.

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[80] Compassion & Choices, "History of the End-of-Life Choice Movement," https://compassionandchoices.org/resource/history-end-life-choice-movement

[81] Compassion in Dying v. Washington, 850 F Supp. 1454, 1460 (W.D. Wash. 1994), quoted in Marker, "Assisted Suicide," 9.

[82] Compassion in Dying v. Washington, 79 F.3d 790 (9th Cir. 1996) (en banc), quoted in Marker, "Assisted Suicide," 9.

Court of Appeals for the Second Circuit handed down a unanimous ruling that New York's statutes criminalizing assisted suicide violated, in this case, the Equal Protection Clause of the the Fourteenth Amendment.[83] The decision involved the case of Dr. Quill, mentioned above, who had admitted to helping a patient kill herself. The case marked the second one in four weeks resulting from cases brought originally by Tucker on behalf of CID in Washington State and New York overturning laws which banned assisted suicide. If upheld, the rulings would have overturned assisted suicide prohibitions in the Ninth and Second Circuits, and beyond.[84] Both decisions, of course, were overturned by the U.S. Supreme Court, voting unanimously on June 26, 1997, in *Washington* v. *Glucksberg* and *Vacco* v. *Quill*. In *Glucksberg*, the Court ruled that the right to assistance in committing suicide is not a "fundamental liberty interest" protected by the due process clause and, in *Vacco*, that New York's prohibition of assisted dying does not violate equal protection.[85] In those cases the court did recognize a federal constitutional right for dying patients to receive as much pain medication as necessary to obtain relief, even if this advances time of death.[86]

A few months following the 1997 Supreme Court decisions, Mero was replaced as director of CID by Barbara Coombs Lee, who had helped to draft Oregon's laws legalizing assisted suicide, passed by voters in 1994 and 1997. The appointment of Coombs Lee as director and president of the Washington-based pro-assisted suicide organization established a formal organizational link between Death with Dignity National Center in Oregon and Compassion in

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[83] *Quill* v. *Vacco*, 80 F. 3d 716 (1996).

[85] Death with Dignity, "Chronology of Assisted Dying in the U.S.," 8, https//www.deathwithdignity.org/assisted-dying-chronology.

[86] Compassion & Choices, "History of the End-of-Life Choice Movement," https://compassionandchoices.org/resource/history-end-life-choice-movement.

Dying in Washington State. In 2004 the Hemlock Society USA was renamed End-of-Life Choices and, within months, merged with Compassion in Dying to become "Compassion & Choices." In 2011, when the petition to put assisted suicide on the ballot in Massachusetts was filed, Coombs Lee was executive director of what had been Compassion in Dying, and what was now Compassion & Choices.

Rita Marker, of the Patients' Rights Council, offers the following insight into the Oregon and Washington-based pro-assisted suicide organizations emerging in the Pacific northwest. Dignity 2012, Compassion in Dying and Compassion & Choices, along with their leadership, particularly Tucker and Coombs Lee, says Marker, were never daunted by failure. Instead, they interpreted failed efforts, including momentous setbacks like *Glucksberg* and *Vacco*, as a "green light" to pursue other venues. Strange as it sounds, says Marker, passage of the laws they proposed "was not always the goal."

> Those who favor the practice [of introducing physician-assisted suicide] legislation acknowledge that the mere introduction of a legislative proposal is beneficial since, when a 'death with dignity' bill is introduced, media coverage follows. This presents an opportunity to feature an emotional appeal from a patient who pleads for the "right" to assisted suicide. Then, after the initial flurry of stories, most bills linger in committee until their demise at the end of a legislative session and coverage fades. But, the envelope has been moved. A step has been taken to build public support by creating the illusion that legalization of assisted suicide is a compassionate solution to a heart-wrenching situation. Nonetheless, the constant barrage of proposals along with their accompanying attention-grabbing stories creates the illusion that assisted suicide is inevitable, that it's not going away, and that the rest of the country will eventually follow Oregon's lead.[87]

Specifically, Tucker interpreted the Supreme Court reversals as an invitation to promote laws in the states, where constitutions provide broader, more specific privacy and liberty guarantees than

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[87] Marker, "Assisted Suicide," 25.

at the national level, says Marker.[88] And, pursue it they did, and with little more success ultimately than they had experienced in Washington and New York, but always keeping the issue before law- and opinion-makers in whatever venue was available.

They pursued it in Florida where, the state Supreme Court upheld the state law prohibiting assisted suicide by a vote of 5-1. . . . And, in Alaska, specifically targeted by Compassion in Dying for its broad constitution-based protections,[89] Marker reports. The Alaska Supreme Court's rejection of right-to-die claims is of special interest. In 2001, that Court held that an "assisted suicide prohibition regulates the conduct of the physician who assists in a suicide, not the conduct of the patient . . . and that a physician who assists in a suicide undeniably causes harm to others." Furthermore, the Alaskan court argued, "those who will be most vulnerable to abuse, error, or indifference are the poor, minorities, and those who are least educated and least empowered." Commenting on this finding, Marker mentions that the Alaska decision cited the New York State Task Force on Life and the Law, whose members had explicitly said that they did not oppose euthanasia and assisted suicide in principle, but who opposed legalization because of what they saw as the inevitability of discrimination and possible abuse of minority populations.[90] The arguments that laws prohibiting assisted suicide govern the physician's behavior rather than the patient's, and that the practice of assisted suicide

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[88] Tony Mauro "Assisted Suicide Ban Upheld But States Can Enact New Laws," and Richard Price and Tony Mauro, "Advocates Promise to Press The Fight," USA Today, June 27, 1997, reported in Marker, "Assisted Suicide," 11.

[89] "Compassion Brings Court Challenge in Alaska and Seeks Recognition of Right under State's Constitution," Compassion in Dying Newsletter, Issue 11, 1, accessed on May 11, 1999 at http://www.compassionindying.org/news/newsletter11.htm, quoted in Marker, "Assisted Suicide," 12.

[90] Marker, "Assisted Suicide," 33.

disadvantages minority groups, are positions that CID and Compassion and Choices had been actively trying to dispel at the time of the Alaska decision. In fact, there's evidence that Compassion & Choices, and that Kathryn Tucker on its behalf, inspired the collection of data on vulnerable populations in Oregon in order to put to rest arguments that assisted suicide threatens disadvantaged populations with abuse.[91] More will be said about Tucker's efforts in this regard below.

To Marker's point about the persistence of CID/Compassion & Choices, between 1998 and 2011, no fewer than "54 assisted suicide and/or euthanasia measures ha[d] been introduced in 21 states. Not one ha[d] passed"![92] On the contrary, between 1995 and 1999, seven states passed laws explicitly prohibiting assisted suicide, and all states at the time prohibited assisted suicide by statute, common or case law.[93] In 2012, assisted suicide was legal in only two states, Oregon and Washington State. One would expect that both organizations, the National Center in Portland, and Compassion & Choices, would consider their prospects of getting the "Death with Dignity Act" passed in Massachusetts as, at best, uncertain. Not the case . . .!

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[91] "Legal Physician-Assisted Dying in Oregon and the Netherlands: Evidence concerning the Impact on Patients in 'Vulnerable Groups,'" The Journal of Medical Ethics, October 2007, 33 (10): 591-597, was the result of a study undertaken by five physicians, including Margaret Battin, to study whether there was current evidence of abuse—understood as higher rates of utilization—among persons with disabilities or other disadvantaged populations in Oregon. In a 2008 article commenting on the political implications of the results reported in that study, Battin credits Kathryn Tucker, among others, as responsible for calling upon the Oregon ODHS "to collect data about disabilities that are independent of or that preexist a terminal illness. The anti-legalization groups have not done so, suggesting, perhaps, that they fear their concern will turn out to have no basis." Margaret P. Battin, "Physician-Assisted Dying and the Slippery Slope: The Challenge of Empirical Evidence," Willamette Law Review, November 11, 2008, 91-136.

[92] Marker, "Assisted Suicide," 5. For a list of the 54 states that entertained failed assisted suicide laws between 1996 and 2001 see Marker, 28.

[93] Marker, "Assisted Suicide," 28.

According to their websites in 2011-12, Compassion & Choices, and Compassion & Choices of Oregon, are not for-profit 501C(4) organizations that "work to advance patients' rights through laws that allow mentally competent, terminally ill adults the legal choice of physician aid-in-dying. Compassion & Choices, and Compassion & Choices of Oregon, seek to achieve this goal by advocating patients' rights, educating the public about the issues surrounding physician aid-in-dying, and empowering patients so they can make informed choices. Compassion & Choices Action Network's mission is also to engage in programs to advance legislation which will permit terminally ill individuals of sound mind to receive physician aid-in-dying. Compassion & Choices Action Network has independently governed chapters which are located throughout the United States."[94]

Compassion & Choices' current website traces the beginning of its operations in Massachusetts directly to the 2012 ballot initiative. "Compassion & Choices has been on the ground working in the state for six years, beginning with a citizen-led ballot initiative in 2012," the 2020 website says.[95] Just like "Dignity 2012" based in Portland, Compassion & Choices describes itself as a proponent of the 2012 Massachusetts initiative. Entitled **"Critical Mass.,"** a page from Compassion & Choices Summer 2012 online Magazine confidently forecasts success for Ballot Question 2: **"***Massachusetts will become the third state in the union to formally authorize and regulate aid in dying through citizen initiative—if enough voters approve a ballot*

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[94] Compassion & Choices, Compassion & Choices of Oregon and Compassion & Choices Action Network Combined Financial Statements Years Ended June 30, 2012 and 2011 with Independent Auditors' Report, https://compassionandchoices.org/wp-content/uploads/2018/07/CC-Final-Audit-Report-6-30-12.pdf.

[95] Massachusetts History, 2012, Compassion & Choices website, https://compassionandchoices.org/in-your-state/massachusetts#extended-state-content, accessed July 2020.

measure this fall" [emphasis added]. The Compassion & Choices publication predicts that a win for assisted suicide in Massachusetts will then sweep, not only New England, but the country. Echoing the language of the Portland organization, Compassion & Choices says, "A victory would be the first of its kind in the Eastern United States and bring our movement to new heights in the country's most populous region. If this influential state embraces end-of-life liberty a ripple effect could spur New England states and neighboring New York to similarly protect aid in dying . . . This is . . . a transformative effort to increase end-of-life options from the Pacific Northwest to the East Coast."

Like Oregon's National Death with Dignity Center, the Compassion & Choices' Website 2012 takes credit for the Massachusetts ballot initiative and goes further in announcing the implementation of a "comprehensive strategy," and a resulting "epic campaign . . .":

> "To seize the moment Compassion & Choices launched **Critical Mass.,** a full-scale organizing and educational effort in support of the Massachusetts ballot initiative. An official ballot question committee, Massachusetts Compassion & Choices Dignity 2012 Support Committee, will . . . implement a broad, comprehensive strategy for what promises to be **an epic campaign for choice** [emphasis added]."

The "epic campaign" envisioned by the Compassion and Choices magazine promised local, voter-to-voter outreach and politically invigorating effects.

> ". . . [G]rass roots supporters on the ground in Massachusetts"; "a massive telephone and door-to-door voter education effort . . . powered by thousands of active supporters in the Bay State and across the region"; promotion through "neighbor-to-neighbor coffees and house parties, town halls, public forums . . . to fortify the campaign against attacks from politically powerful anti-choice forces"; and, outreach to "media, opinion leaders and local activists."

Regarding "anti-choice" and "local activists," the webpage also promised that "Compassion & Choices singular legal, medical and direct-service expertise will *elevate public discourse* on the measure and challenge lies and distortions of its opponents. Our experience in politics, communications and persuasion will *ignite the passionate resolve of Massachusetts voters . . .”* [emphasis added].

An example of Massachusetts “voter resolve” appears at the bottom of the **“Critical Mass.”** webpage in the form of a quotation from Merri Lea Shaw of Arlington, Massachusetts. “[Shaw] worked with Compassion and Choices to help honor her parents’ wishes to die with dignity. ‘Seeing my family struggle with devastating terminal illnesses convinced me this initiative [to legalize assisted suicide] must be passed. We all deserve choice and dignity at the end of life,” the website quotes Shaw as saying. The Compassion & Choices Annual Report for 2012, published before the November vote that defeated the initiative, is similarly optimistic: “. . . Through our Massachusetts Compassion & Choices Dignity 2012 Committee, field organizers and supporters have worked tirelessly to host house parties, place letters and opinion pieces on local editorial pages, and recruit new volunteers all in support of the Dignity 2012 campaign.”[96]

The **“Critical Mass.”** visual of Massachusetts at the heart of New England with a bold check mark on it, reproduced at the opening to this chapter, provides a stark representation of the organization’s expectation that, once legalized in the Bay State, assisted suicide would go on to become the norm in the northeastern region of the U.S. A bill to legalize assisted suicide had been defeated in Maine in 2000. There a TV advertisement showed a doctor, and past president of the American Medical Association, describing a frantic 911 call for help by family members of a potential suicide in Oregon who experienced complications after ingesting lethal drugs.[97]

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[96] Compassion and Choices, 2012 Fall Magazine and Annual Report, https://compassionandchoices.org/wp-content/uploads/2018/03/2012-Fall-Magazine-and-Annual-Report.pdf, 17.

[97] Marker, “Assisted Suicide,” 4.

Compassion and Choices website foretold its determination to prevent what happened in Maine from repeating itself in Massachusetts. Money spent by Compassion & Choices on the initiative tells a different story, however.

The Combined Statement of Financial Position, June 30, 2012, for Compassion and Choices that appears in the same year-end report as the **"Critical Mass."** webpage shows financial assets of close to $13 M for the year ending June 30, 2012,[98] and close to $15 M for the year ending June 30, 2013.[99] "Program Costs" of $6.3 M, given in the 2012 report, are accounted for as follows:

> More than 81% of your generous contributions are spent on program activities. Here is how those expenses are broken down: Program costs for the year ending June 30, 2012: Public Education: 47.50% Local Presences/Community: 37.73% End-of-Life Consultation: 14.59% Lobbying: 0.17%.[100]

"Program Costs" of a little more than $7.5 M, given in the 2013 report, are accounted for in nearly the same percentages: "Public Education: 37% Local Presences/Community: 32% End-of-Life Consultation: 16% Lobbying: 15%."[101] "Compassion & Choices, Compassion & Choices of Oregon and Compassion & Choices Action Network Combined Financial Statements, Years Ended June 30, 2013 and 2012, with Independent Auditors' Report" confirm assets as reported above.[102] None of these financial documents indicates expenditures in Massachusetts.

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[98] Compassion and Choices Magazine, Fall 2012, 26, https://compassionandchoices.org/wp-content/uploads/2018/03/2012-Fall-Magazine-and-Annual-Report.pdf.

[99] Ibid.

[100] Ibid., 26-27.

[101] Compassion and Choices Magazine, Fall 2013, 25, ibid.

[102] https://compassionandchoices.org/wp-content/uploads/2018/04/Fin-Stmt-06.30.13-12.pdf.

The Massachusetts Office of Campaign and Political Finance reports that, Ballot Question 2, Prescribing Medication to End Life, "had the highest amount of spending" among the three ballot questions in 2012—$5,868,797 by seven committees out of almost $9 million spent on ballot initiatives overall. The same site lists expenditures for the "Yes" side by "MA Compassion and Choices Dignity 2012," as $521,047 expenditures.[103]

Dignity 2012 (the Oregon-based organization) and MA Compassion & Choices Dignity 2012 (the Washington-based organization), the only two organizations listed as having spent money on the "Yes" side of Massachusetts Ballot Question 2, spent a combined total of $1,113,732. That figure represents one-fifth the total expenditures of $5,868,797 spent by committees on both sides of the issue! One-fifth the money in the Boston and wider-Massachusetts markets to "elevate public discourse" and "ignite . . . the passionate resolve of voters . . ."! Expenditures by both pro-assisted suicide organizations in Massachusetts in 2012 amounted to less than any other group that year on behalf of the pro side of a ballot initiative, except for those opposing legalization of Medical Marijuana ($5,466), which was never a contest.

Ballotpedia and Wikipedia report that "the main supporters" of the Dignity 2012 included "The Massachusetts Death with Dignity Coalition," and that the "Berkshire Eagle urges its voters to vote Yes on Question 2."[104] They cite as spokesperson for the Massachusetts Death with Dignity Coalition, Steve Crawford, interviewed in a *Boston Herald* article. It reports also

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[103] "More than 9 million spent on statewide ballot questions in 2012," Massachusetts Office of Campaign and Political Finance, November 29, 2012, http://files.ocpf.us/pdf/releases/bq_2012.pdf, accessed July 18, 2020.

[104] "Massachusetts Death with Dignity Initiative," Wikipedia, https://en.wikipedia.org/wiki/Massachusetts_Death_with Dignity Initiative, 2.

that Representative Louis Kafka, who had previously sponsored right-to-die bills in the Massachusetts legislature, "is sponsoring a similar bill, but is not involved in the current [2012] initiative effort to place the question on the ballot." Following Crawford and Kafka in its list of "Supporters," Ballotpedia and Wikipedia mention Marcia Angell, M.D., saying in an opinion piece: "I believe it is wrong to require dying patients, against their wishes, to continue on a downhill path of suffering." [105] As we shall see, Angell became the spokesperson in Massachusetts for the Dignity 2012 campaign and the most frequently heard voice quoted in support of Ballot Question 2.

By their own admission, Dignity 2012 and Compassion & Choices conceived, sponsored and funded the 2012 Ballot Initiative Question 2 in Massachusetts at least in the early phases. The product of more than 20 years of mostly failed, but strategically planned and orchestrated, legislative and court-centered challenges, the initiative was intended to lift Massachusetts, gateway to the New England states and the eastern U.S., out of its lethargy on the question of assisted suicide. Failures of 54 assisted-suicide and/or euthanasia measures in 21 states between 1998 and 2001 inured proponents to disappointment.[106] As if failed initiatives were not enough, between 1995 and 1999, seven states passed laws explicitly prohibiting assisted suicide, with all states at the time prohibiting assisted suicide by statute, common or case law.[107] The only two ballot initiatives to succeed up to 2012 were both in the far western, most liberal states in the

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[105] Lowell Sun, "Giving a choice to terminally ill patients," September 26, 2011, (http://www.lowellsun.com/editorials/ci_18978604#ixzziZ4DwT6BB) quoted in "Massachusetts Death with Dignity Initiative," Wikipedia, 3.

[106] Marker, "Assisted Suicide," 5 and 28.

[107] Marker, "Assisted Suicide," 28.

Union, and the one in Oregon, only after years of on-the-ground battles and significant court challenges. From 1998 to 2008 when Washington State legalized assisted suicide by ballot initiative, only a Montana court had handed down a decision favorable to assisted suicide that was not eventually overturned.

Nevertheless, the websites above suggest that the northwest organizations were not just confident, but more than optimistic, about an initiative in Massachusetts. While obviously intending not to spend much money in what even then was a very expensive market, an assisted suicide initiative in the Bay State presented what they saw as a rare opportunity at the polls.

2.3 A "Blue State' in A Presidential Election Year . . ."

In 2009, John Rowley, representative of the Nashville consulting firm that mounted the successful 2008 pro-assisted suicide campaign in Washington State, gave a "Symposium on End-of-Life Advocacy" at the National Press Club in Washington, D.C.[108] Rowley talked about "message discipline" regarding assisted-suicide especially when it came to what he called "big" opponents. "Evangelicals and Catholics are a big opponent—are **the** big opponents," he said [emphasis added]. "Protestants, folks that are not regular church goers or just non-affiliated religiously, are what we do pretty well with." In Washington, he added, ". . . We kind of did take on the church because the line we used over and over again is [that] it ought to be your choice, not the choice of the government, politicians, or religious leaders . . . or a church."

Nuancing his position, Rowley admitted that "Even though [Washington] wasn't a religious state, we didn't feel like a religious war was our best argument. Our best argument was

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[108] Transcript of Audio Recording Compassion & Choices "Dignity and Choices: A Symposium on End of Life Advocacy," October 14, 2009, National Press Club in Washington, D.C.

much more on easing of suffering, that it's your choice, not someone else's . . . What this law is about is easing the suffering of people and to make sure that they have a choice in these end-of-life decisions, and the choice is not made for them by the government, a politician or a church."[109] Asked directly what is the most favorable place and time for a physician-assisted suicide campaign, Rowley's answer in 2009 was "a blue state in a presidential election year." The battle for assisted suicide in the state of Washington, he said, represented the "right timing in terms of Obama on the ballot in a blue state that was culturally, you know, a good fit for this issue as well."

Were there advantages other than President Obama's candidacy favoring passage of assisted suicide at the polls in Massachusetts in 2012? In the remainder of this chapter, I argue that there were. As Rowley's statements imply, there is one big opponent to assisted suicide in the U.S. That opponent is the church. And, as I will argue in Chapter Three, in Massachusetts that opponent is the *Catholic* Church. In Washington, he says, that issue was "handled" by focusing on the alleviation of suffering at the end of life, and making sure the decisions are made by the terminally ill person himself—"not the government, a politician or a church." Two-thousand years of authority on care at the end of life, not to mention experience serving at the bedside of the sick by Catholic priests, sisters, and chaplains in Catholic hospitals, was all on the line as the only serious challenge in what was often described as a "Catholic" state. Or, were there other, less obvious factors than the "Obama" advantage that proponents were counting on to produce a win? While the Obama advantage at the polls was the key, I would argue there

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[109] Transcript of Audio Recording Compassion & Choices "Dignity and Choices: A Symposium on End of Life Advocacy," October 14, 2009, National Press Club in Washington, 5.

were other factors driving proponents of the Massachusetts initiative, and not the least of them was a new definition of suicide . . .

2.4 “Elevating Public Discourse”—Suicide Redefined

Compassion & Choices lost no time in its plan to “elevate public discourse on the measure,” and what better place to do that than at the premier medical institution in the country, Harvard Medical School. On October 21, 2011, almost before the ink was dry on the petition filed for the ballot initiative, a seminar entitled “Physician-Assisted Dying: Ethics and the Law,” took place on the Harvard campus. The presenter was none other than Attorney Kathryn Tucker, at the time Director of Advocacy and Legal Affairs for Compassion & Choices, who figured so prominently in Washington and New York to take the issue of assisted suicide to the Supreme Court. Attorney Tucker’s presentation was one of a series of faculty lunch-time seminars sponsored by Harvard Medical School on “Ethical Problems in Health Policy” and was attended by about 30 clinicians and faculty. Attorney Tucker was introduced as a leading proponent of Aid in Dying by seminar moderator, Marcia Angell.

Neither Tucker nor Angell mentioned the ballot initiative that day, as I recall. The conversation had the feel of a high-level academic symposium on medical care at the end of life. Nonetheless, I maintain that ethical and medical definitions, as well as principles surrounding end-of life care articulated by Tucker that day, framed arguments over which the battle regarding assisted suicide in Massachusetts would ensue. With permission of the sponsoring department, I attended the seminar led by Attorney Tucker and the following summary of her remarks is based on my notes. It’s significant that it was Tucker’s remarks on assisted suicide that were the target of the homily given by Cardinal Sean O’Malley, Archbishop of Boston, only a few weeks later at the White Mass for doctors, nurses and medical personnel. That homily was one of two delivered by the Cardinal in the Fall of 2011 announcing his intention to oppose the legalization of assisted suicide in Massachusetts, the other delivered at the Red Mass to members of the legal profession on September 19, 2011.

2.4.1. “Assisted Suicide is not suicide!” Attorney Kathryn Tucker

Tucker began her remarks by making two rather astonishing claims. First, that physician-assisted suicide “isn’t suicide” and, second, that it “is no different” from any other standard of care currently practiced at the end of life. Specifically, Tucker discredited the term “physician-assisted suicide,” along with its acronym “PAS,” as belonging to “the ancient past.” Use of the term “suicide,” she said, is “incendiary.” The proper term for care at the end of life is “Aid-in-Dying” or “A-I-D,” to wit, the title of her talk that day, “Physician-Assisted Dying.” Second, she argued, a terminal patient is entitled to “assistance in dying” as part of standard medical practice. Sedation, palliative care, “palliative sedation,” cessation of nutrition and dehydration, drugs that hasten or bring about death, she said, are all part of “standard care.” Requesting a prescription for drugs that bring about death if one is terminally ill is not suicide, Tucker said. Similarly, writing a prescription for lethal drugs is part of standard medical practice and should not be prosecutable.

Tucker offered several levels of support for her extraordinary positions. First, patients have a right to know the full range of end-of-life options, including voluntary stopping of eating and drinking (VSED), do-not-resuscitate orders (DNR), and do-not-intubate orders (DNI), as well as hospice and palliative care, she said. She referred to “a new definition of palliative care” that includes “palliative sedation.” It allows “sedation to unconsciousness,’ cessation of food and water, and drugs that hasten or bring about death." Palliative sedation, as she defined it, is endorsed by Hospice and the American Medical Association.

Borrowing a famous term from Justice Brandeis, Tucker added that she saw " 'states as laboratories' for establishing the benefits of aid-in-dying," as she was defining it. Data from states where court decisions favor assisted suicide, i.e., Montana, and from states where laws allow it, i.e., Oregon and Washington, said Tucker, give the lie to fears that assisted suicide would be forced on the poor, uninsured and uneducated, or that it would reduce hospice enrollment. She offered data specifically from Oregon showing that people who had chosen assisted death were 98% white, 68% college-educated, 88% enrolled in hospice, 81% dying of cancer, 8% dying of ALS, and 98% insured. In fact, Tucker said, support for aid-in-dying was "growing" as indicated by what she called "broad support among medical communities."[110] Among that support she numbered the "American Public Health Association, American Medical Women's Association, American Medical Students' Association, and the American College of Legal Medicine." Tucker did not mention that neither the American Medical Association nor the

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[110] Statistics provided by Tucker on persons who have received prescriptions, and those who have used them, were based on information gathered by the Oregon Public Health Division, who is required by the Act "to collect information on compliance and to issue an annual report." For purposes of verification or comparison, I have provided a copy of the "2012 summary of Oregon's Death with Dignity Act," published by the Oregon Public Health Division. It provides information beginning in 1998, when the law went into effect, to 2012, including the number of lethal drug recipients, deaths, and characteristics, including sex, age, race, marital status, education, residence, underlying illness, end-of-life care (hospice and insurance), end-of-life concerns (reasons for requesting the prescription), PAS process (psychiatric evaluation, patient informed family, location of patient's death, health-care provider present (in Oregon the prescribing physician may be present), complications, emergency medical services, and timing of the PAS event (duration of patient-doctor relationship, time between 1st request and death, minutes between ingestion and unconsciousness, minutes between ingestion and death). See Oregon Health Authority, "Death with Dignity Act Annual Reports," 2012, https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year12.pdf.

Massachusetts Medical Society, among other prominent medical groups, endorsed physician-assisted suicide at the time. Tucker mentioned that one very important task was to get oncology specialties on board, an indirect but important admission that they, like the AMA and MMS, were not on record as approving.

Tucker took up the impact of legalized assisted suicide on the two communities singled-out by opponents of assisted suicide as particularly vulnerable targets, namely, persons suffering from depression and persons with disabilities. Regarding the former, she stated categorically, that persons who request aid in dying "are not depressed." In fact, she said, it is insulting to require a psychiatric evaluation for patients requesting aid in dying when the same is not required for other medical interventions, refusals or withdrawals. Tucker proposed a "different standard" for terminally ill patients who naturally test positive for indicators of depression such as loss of appetite and interest in ordinary things. Regarding persons with disabilities, Tucker said, "They are not dying"! As such, they are irrelevant to the discussion. They are not eligible to request lethal drugs under legislation that allows Aid-in-Dying. She made no mention of the fact that disabilities groups self-identified as vulnerable and had been prominent opponents of assisted-suicide legislation, not only in Massachusetts, but also in most states where it had been proposed.

Tucker characterized the argument for "autonomy" as a "silent issue." People who seek Aid-in-Dying she said, are people who are used to having lots of control over their lives. More men than women initially sought it, she admitted; as women have become more affluent, educated and powerful, however, they too seek Aid-in-Dying. Overall, those who ask for such assistance, said Tucker, tend to be more affluent and better educated. Minorities, who fear deprivation of proper care, she said, tend to ask for every medical intervention. Tucker was referring to several years of research that showed that blacks see suicide and assisted suicide as a "White thing," a phenomenon which will be discussed further in Chapter 3, along with the fact that the black vote in Boston was crucial to the defeat of the ballot initiative in 2012.

Regarding the Catholic Church, the likely opponent to Aid-in-Dying in Massachusetts, Tucker said it is not possible to force providers to do what they are not comfortable doing. Regarding the Church's *Ethical and Religious Directives*, they are premised on the belief that "suffering is desirable," she said. Since you can't force Catholic hospitals or other institutions to provide care to which they object, Tucker advised that patients avoid those institutions. I do not recall Tucker acknowledging that the Archdiocese of Boston had given up control of its Catholic hospitals only a few years prior.

Despite the fact that the petition to legalize assisted-suicide was about to appear before the legislature in Massachusetts, and that signatures were most likely being collected in Cambridge as she spoke, Tucker did not mention the pending initiative so pertinent to her subject matter. Similarly Tucker did not discuss her role in "successfully defending Oregon law from various legal challenges culminating in a 2006 victory in the US Supreme Court."[111] As I recall, Dr. Angell, who introduced Tucker, did make reference to Tucker's "indefatigable efforts" to defend the Oregon law, and to bring the issue of assisted suicide to the highest court in the land in the *Glucksberg* and *Quill* cases.

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[111] Angell, "May Doctors Help You to Die?" *The New York Review of Books*, October 22, 2012, 5-6, https://www.nybooks.com/articles/2012/10/11/may-doctors-help-you-die/, and *Gonzales* v. *Oregon* 546 US 243 (2006).

2.4.2. States as Laboratories—*Glucksberg*, *Quill*, *Gonzales*

The influence of Kathryn Tucker on the movement to legalize assisted suicide cannot be overstated. In May 2006, she gave testimony before a sub-committee of the Senate Judiciary Committee on the Constitution, Civil Rights, and Property Rights, at a hearing on "Consequences of Legalized Assisted Suicide and Euthanasia.[112] "I represented the patients in the *Glucksberg* and *Quill* cases and in the *Oregon v. Gonzales* case, so I do know a bit about this area," said Tucker in her oral testimony. She reminded the sub-committee, chaired by Senator Brownback of Kansas, an opponent of assisted suicide, of the success on behalf of assisted dying that *Glucksberg* and *Quill* represented at the level of the federal Courts of Appeal. She mentioned, too, that *Glucksberg*, which admittedly denied a federal right to assisted suicide, offered an invitation to further "debate" at the state level. In *Glucksberg* and *Quill*. . . , she says, "the U.S. Supreme Court refrained from finding a Federal constitutional right in 1997, believing that the issue should be left to the States in the first instance. *And the Court's decision encouraged the earnest and profound debate about the matter to continue* [emphasis added].[113]

In her written statement to the sub-committee, Tucker guides the senators through an exercise in federal-state balance of authority, invoking three federal attempts to overturn or thwart Oregon law, each of which failed. First, Attorney General Janet Reno had ruled that

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[112] "The Consequences of Legalized Assisted Suicide and Euthanasia," Statement of Kathryn Tucker, Director of Legal Affairs, Compassion & Choices, and Affiliate Professor of Law, University of Washington School of Law, Seattle, Washington, Hearing before the Subcommittee on the Constitution, Civil Rights and Property Rights of the Committee on the Judiciary, United States Senate, One Hundred Ninth Congress, Second Session, May 25, 2006, p. 19, https://www.govinfo.gov/content/pkg/CHRG-109shrg45836/html/CHRG-109shrg45836.htm.

[113] Oral Testimony of Ms. Kathryn Tucker before Senate Subcommittee, May 25, 2006.

appeals to the Drug Enforcement Administration against Oregon physicians writing legal prescriptions were unreachable under the federal Controlled Substances Act (CSA); second, efforts in two Congressional sessions to amend the CSA to reach Oregon's "Dignity Act" met with "strong opposition from the medical community on grounds it would exacerbate physicians' fears about controlled substances in pain management"; and third, the state of Oregon, an Oregon physician, a pharmacist, and a group of terminally ill Oregonians all had challenged, and won, in federal district court, against the "Ashcroft directive." This directive advised that the Department of Justice had concluded that prescriptions for lethal drugs written under Oregon's 'Dignity Act' violated the CSA. Three courts, a federal district court, the Ninth Circuit Court of Appeals, and the U.S. Supreme Court ruled that the directive exceeded its authority, and a permanent injunction was entered. Tucker uses these outcomes to instruct the senators, to use her words, on the "balance of state-federal power as it pertains to the regulation of the practice of medicine."

> The Supreme Court held that the Attorney General did not have the authority to effect a 'radical shift' in the balance of state-federal power as it pertains to the regulation of the practice of medicine. The Court reaffirmed the traditional state-federal balance of power in regulating the practice of medicine, specifically upholding Oregon's physician-assisted dying law as a legitimate regulation of medicine. By noting that [Attorney] General Ashcroft's view of physician-assisted dying was but 'one reasonable understanding of medical practice,' the Court made clear that Oregon's view also is reasonable.[114]

In her written statement, Tucker recites for the senators the "tightly controlled procedures" for assisted dying required under Oregon law. Those procedures included that the

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[114] Written Testimony of Ms. Kathryn Tucker, Director of Legal Affairs, Compassion & Choices, Affiliate Professor of Law, University of Washington School of Law, Seattle University School of Law, Before the Senate Committee on Judiciary Subcommittee on the Constitution, Civil Rights, and Property Rights, "The Consequences of Legalized Assisted suicide and Euthanasia," Thursday, May 25, 2006, https://www.judiciary.senate.gov/imo/media/doc/Tucker%20Testimony%20052506.pdf.

attending physician determine competence and state residency of the patient; that he confirm the diagnosis, prognosis, and the presence of an “incurable and irreversible disease” which will “within reasonable medical judgment, produce death within six months”; that the physician inform persons requesting medication of said “diagnosis . . . prognosis . . . risks and probable results . . . [and] alternatives . . . including hospice and pain relief”; and [that he]. . . insure . . . confirmation by a consulting physician. Tucker catalogs for the senators requirements governing participation, and immunization from prosecution, extended to physicians and pharmacists under the Oregon law. “The Dignity Act immunizes physicians and pharmacists,” says Attorney Tucker, “who act in compliance with its comprehensive procedures from civil or criminal sanctions, and any professional disciplinary actions based on that conduct.”[115]

Relying on eight annual reports from the Oregon Health Division and/or the Oregon Department of Human Services Office of Disease Prevention and Epidemiology, as well as “related reports and articles . . . published in leading medical journals,” Tucker emphasizes that **“***these reports constitute the only actual source of reliable data regarding the experience of legal, regulated physician-assisted dying in America* [emphasis added].”

> . . Objective observers nationwide have now published studies and publicly spoken out that what we can see from Oregon is that—and here is a quot[ation] from the State of Vermont examining this question, quot[ation], “It is quite apparent from credible sources in and out of Oregon that the Death with Dignity Act has not had an adverse impact on end-of-life care, and in all probability has enhanced other options.
>
> The Director of Bioethics at Pennsylvania Medical School, an objective outside observer, said after reviewing the Oregon data, quote, “I was worried about people being pressured to do this, but the data confirms that the policy in Oregon is working. There is no evidence of abuse, coercion or misuse.[116]

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[115] Written Testimony of Ms. Kathryn Tucker before Senate Subcommittee, May 25, 2006.

[116] Oral Testimony of Ms. Kathryn Tucker before Senate Subcommittee, May 25, 2006, 19.

Anticipating objections from disabilities groups, as well as under- or un-insured constituencies, Tucker cites the American Public Health Association's *amicus* brief to the U.S. Supreme Court in *Gonzales v. Oregon*. Researchers have "consistently found" nothing to support fears that "physician assistance would be disproportionately chosen by or forced upon terminally ill patients who are poor, uneducated, uninsured or fearful of the financial consequences of their illness." Attorney Tucker is speaking in 2006. A study by Dr. Margaret Battin and others reported in October 2007 claims that Battin's 2007 study is "the first attempt to assemble comprehensive *empirical* data about the issue of abuse of the vulnerable."[117] Commenting on the study, Battin credits Tucker and Compassion & Choices as the sole participants in the assisted-suicide debate who actually seek *empirical* evidence to refute or support claims of potential abuse.[118] Much more will be said below about the intended effects of Battin's work on the issue of whether to legalize assisted suicide; here it's significant that Dr. Battin claims that the 2007 data shows the first *empirical* evidence that there is no abuse of vulnerable groups, fully one year following Tucker's testimony that no such abuse is happening. This is the same question raised by the Alaska court quoting the New York State Task Force mentioned above. The Supreme Court in Alaska and the Task Force in New York both argued that the potential for abuse among disadvantaged groups is sufficient for them, prominent jurists, physicians and ethicists, to withhold legalization.

Tucker adds in her 2006 testimony that Oregonians "have access to good pain and symptom management. Only the relatively few who find that the cumulative burden of their

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[117] Margaret P. Battin, "Physician-Assisted Dying and the Slippery Slope: The Challenge of Empirical Evidence," *Willamette Law Review*, 45-1, (November 8, 2008), 100, referred to henceforth as Battin (2008).

[118] Ibid., 133-134.

illness is intolerable persist in the desire to hasten death . . ." She cites nationwide support for physician aid in dying. "[Sixty-five] or 70 percent of Americans support this choice and would like to see it enacted in their own States. Recently, 70 percent of Californians across all demographics, all religious groups, all ages, support the idea that incurably ill patients have the right to ask for and receive life-ending medication," Tucker says, referring here to the California Compassionate Choices Act pending at the time. Tucker quotes an *amicus* brief filed in the *Gonzales* case by a "religious coalition" that advised the court: "Numerous faiths, religious organizations and religious leaders strongly support physician-assisted dying as an entirely legitimate and moral choice." And, of course, the ace in the hole regarding the issue, Tucker adds that "Support is also strong among physicians with all polling showing a majority of physicians favoring patients being empowered to make this choice for themselves," says Tucker, citing her own written testimony based on the reports. "Mental health professionals also recognize that dying patients can choose to hasten impending death and be fully mentally competent and, in fact, be acting to preserve [a] sense of self." Just as she does for clinicians and faculty at Harvard in 2012, Tucker does not acknowledge in her 2006 testimony to the senators that prestigious medical associations, such as the American Medical Association and the American College of Physicians, were on record against assisted suicide at the time.

Finally, Tucker invokes *Glucksberg* and *Quill*, on the face of them two "losses" for her own cause. In both, she says, the courts recognized that Justice Brandeis'[s] venerable concept of "states as laboratories" was applicable to physician-assisted dying. The Courts' conclusions in those cases that the Federal Constitution does not bar states from prohibiting the practice "rested in a reluctance to reach a premature constitutional judgment that would cut off the process of democratic decision making."

> It is timely, prudent and humane for States to enact laws to empower terminally ill, mentally competent adult citizens to control the timing and manner of their deaths by enabling them to obtain medications from their physicians that could be self-administered to bring about a peaceful and humane death, subject to careful procedures. Passage of such a law harms no one and benefits both the relatively few patients *in extremis* who make use of such a law and a great many more who draw comfort from knowing this option is available should their dying process become intolerable.[119]

Tucker's focus, both in her Senate testimony in 2005, and in her October 2011 remarks at Harvard, emphasizes the importance of Oregon as the "sole source of data" on assisted dying in the U.S. The fact that there are no signs of abuse of disadvantaged groups where assisted dying is legal is significant because it answers objections, not only from disabilities groups, but also from objective communities, like the New York State Task Force and Alaska's highest court. Recall that both opposed legalization of assisted dying, not on principle, but because of possibilities for abuse among poor, uneducated, uninsured and other vulnerable groups in their jurisdictions. The potential for abuse, they concluded, outweighed the benefits of legalized assisted suicide to a small group of very unfortunate patients facing difficult deaths.

2.4.3. Abuse among vulnerable groups—"the 800-pound gorilla in the room."

On this last of Tucker's points regarding a "right to aid-in-dying" versus rights of vulnerable groups to protection from abuse, a 2008 article written by Margaret P. Battin, professor of Philosophy and adjunct professor of Internal Medicine at the University of Utah, is extremely pertinent. Entitled "Physician-Assisted Dying and the Slippery Slope: The Challenge of Empirical Evidence," the article raises what Battin calls the "real question" regarding

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[119] Oral Testimony of Ms. Kathryn Tucker before Senate Subcommittee, May 25, 2006, 20.

vulnerable groups and assisted suicide: "What ought to be the reaction when rigorous '***empirical*** data' shows no evidence of abuse?"

Battin and a group of researchers had undertaken a study, and published an article in October 2007, "the first attempt to assemble comprehensive *empirical* data about the issue of abuse of the vulnerable."[120] To advance the political significance of the study, Battin published a second article in 2008, interpreting her own results. This second article argues that, on their face, the 2007 results put to rest, at least for the moment, arguments against assisted suicide from disabilities and other vulnerable groups.

> If it is true that if patterns of abuse particularly affecting people in vulnerable groups are evident, proponents of physician-assisted dying (myself included) will have to rethink their support for such practices. . . Conversely, we must also refrain from blocking a practice that is legal, does not result in abuse, and is desired by some patients. The underlying reason for looking at these objections thus becomes the dual objective of preventing abuse while also recognizing the liberty of an individual to act on his or her own values where no abuse is present. To simply assert that abuse could occur is not an adequate argument, though it has been the mainstay of almost all secular opposition. It is time to evaluate such claims more thoroughly.[121]

The results reported in Battin's 2008 article, adapted with permission from the original 2007 study, show that in all of the vulnerable groups, with the exception of persons with AIDS, there is "no heightened risk" of death by physician-assisted suicide. Details for each group are summarized in the note below.[122]

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[120] "Legal Physician-Assisted Dying in Oregon and the Netherlands: Evidence concerning the Impact on Patients in 'Vulnerable Groups,'" *The Journal of Medical Et*hics, October 2007, 33 (10): 591-597. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2652799/. Accessed September 19, 2020, referred to henceforth as Battin (2007), original study.

[121] Battin (2008) 102-03.

[122] In "findings based on robust data" available in the cases of the elderly, women, uninsured people, [there was] "no heightened risk," that is, rates of death among these groups were no higher using PAS [physician-assisted suicide] than they were in the general population for the group. The only group that showed "heightened risk," among the groups studied and based on

In the 2008 article, Battin describes "the issue of abuse of vulnerable populations as "the 800-pound gorilla in the room" regarding debate over assisted suicide. "Medical organizations, task forces, and courts in several countries where the issue is under debate have given warnings about potential abuse," she says. The object of the warnings, says Battin, are ten communities of persons—the poor, the elderly, members of a minority group, people without access to good medical care (presumably, the uninsured), people with disabilities, the incompetent, those with chronic (rather than terminal) illnesses, young children, people with dementia, and persons with AIDS. Claims about abuse of such vulnerable groups, she says, are widespread and compelling to the point where they have convinced lawmakers, judges and doctors, not opposed to assisted dying on principle, to deny legalization.

Battin quotes objections to assisted suicide from very influential organizations based on arguments from abuse, including the famed New York State Task Force on Life and the Law in its 1994 report, also mentioned by Tucker in her Senate Sub-committee testimony, and by the U.S. Supreme Court in *Washington* v. *Glucksberg* (1997), the American Medical Association in 1996 and 2005, and others.[123] Prestigious as such groups are, argues Battin, the problem is that

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robust data, were persons with AIDS. In findings based on "partly direct, partly inferential data," people with low educational status, the poor, racial and ethnic minorities, persons with nonterminal physical disabilities or chronic nonterminal illnesses, minors and mature minors, "no heightened risk." In findings based on "inferential or partly contested data, which includes in this study only "patients with psychiatric illness, including depression and Alzheimer Disease," "no evidence of heightened risk." The contested data refers to data showing that, over nine years of legalized assisted suicide in Oregon, 20% of requests came from depressed patients, but none progressed to assisted suicide; none of 292 patients who died "under [the Oregon Death with Dignity Act] were determined to have a mental illness influencing their decision"; and, directly to the point, there were "three disputed cases among the 9-year total of 456 who received prescription." Battin (2008):104-109.

[123] Battin (2008): 97-98.

none has “asked and answered” the question, “Are these fears well founded?” until she and others published the results of their study in 2007.

In her 2008 article, Battin acknowledges and responds to objections to the data in the 2007 study, including claims that it is “seriously flawed” or unreliable. Again, in the interest of brevity, details of objections are summarized below.[124] The objection that gets the most attention from Battin, however, is the one raised by disabilities groups, who claim that assisted suicide “singles out individuals based on their health status in violation of the American with Disabilities Act (ADA). Current trends in managed care and health care rationing,” they say, “already reduce and threaten to further diminish the availability of health care and related services needed by people with disabilities.” Other objections from disabilities groups, says Battin, include that there is social bias that “connects certain disabilities and physical conditions to intolerable suffering.” While such “concerns are of paramount importance, they may be used to reach an unjust conclusion if they result in a requirement of heightened scrutiny for access to assistance in dying for people in certain groups, effectively preventing a disabled individual from making an end-of-life decision that an able-bodied person would be permitted to make.”[125] In other words, just as claims by the New York State Task Force and other groups are unwarranted without

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[124] The data doesn’t identify patients or physicians, and therefore cannot be verified. The definition of the study groups is questionable, i.e., “elderly” was defined in the study as people over 85, rather than people 65-84. There are anomalies in reporting, such as the Dutch category of “life-ending acts without current explicit request,” or LAWER, in which patients experiencing “severe suffering” who had made an antecedent informal request for euthanasia before becoming incompetent are allowed “an easier death.” Background data “cannot reach cases of depression,” for lack of ability or proper tools to analyze decision-making processes of patients, or simply the failure to interview patients prior to their deaths. Battin takes very seriously a final objection to the study from groups like Not Dead Yet who claim that people with severe disabilities should receive “suicide prevention.” Battin (2008): 109-128.

[125] Battin (2008): 128.

evidence of abuse, claims by disabilities groups are unwarranted without evidence of violations of ADA.

The final objection to the study, "author bias," is also considered by Battin in the 2008 article. As she says, the issue of evidence is so important that it could mean that people on one or the other side of the assisted-suicide debate would have to give up their positions including, of course, herself.

> [Data regarding vulnerable persons] are concerns for those who oppose physician-assisted dying on moral grounds and for those who support it but are uneasy about the possible social consequences of legalization. They are also concerns for proponents of legalization who assume that the risks for vulnerable patients are heightened if these practices remain underground, as well as for those who favor legalization but fear that vulnerable patients will be denied a privilege reserved for better-situated patients and that healthcare inequities already affecting vulnerable persons will be exacerbated. In short, slippery slope concerns about vulnerable groups confront both those who do and those who do not find physician-assisted dying objectionable on moral grounds.
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> In my own view, a study like the [2007 one] serves as a potential mind-changer: *if one has been supportive of legal aid-in-dying but discovers that in jurisdictions where it actually is legal that it is associated with extensive abuse, one ought to change one's mind* [emphasis added].
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> In short, these critiques do not succeed in undercutting the conclusion of the study in question: that there is no evidence of heightened risk of physician-assisted dying to vulnerable patients in either legal or extralegal practice groups, with the one exception of persons with AIDS.[126]

Relying on data from Oregon and the Netherlands, and admitting that these data are not comparable in terms of time periods obtained or methods used, Battin repeats that together they offer "the most informative sources concerning legal physician-assisted dying . . ." Furthermore, and most importantly, they are "consistent," in that both show "no evidence of heightened risk of physician-assisted dying to vulnerable patients in either legal or extralegal practice groups, with

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[126] Battin (2008): 131.

the sole exception of people with AIDS." Acknowledging need for further study in Oregon to achieve the "complexity, duration, and comprehensiveness" of the four nationwide Dutch studies, "the joint picture yielded by the available data in the two jurisdictions shows that people who died with a physician's assistance were more likely to be members of groups enjoying comparative social, economic, educational, professional and other privileges." In other words, they are anything but what are commonly understood to be medically, legally and socially vulnerable groups!

Battin admits that these findings do not speak to the moral issues, do not address the appropriateness of physician-assisted dying for some rather than other groups, and do not consider whether people in vulnerable groups may not be disproportionately targeted at some later date or in some other jurisdictions, or even whether the low rates of assisted dying among vulnerable populations is not just another effect of unequal access. In other words, while the findings may be controverted in some place, time or manner in the future, or in the light of a new study, for the present they show " . . . no current factual support for so-called slippery slope concerns that death in this way would be practiced more frequently on persons in vulnerable groups."[127] The long and short of this, of course, is that the Oregon data, empirically determinative as to whether legalized assisted suicide is potentially abusive to persons with disabilities and other disadvantaged groups, shows no evidence of abuse and, therefore, by her own logic, requires no change of mind on Battin's part. It does require, however, a reconsideration, and by implication a possible change of mind and legal course, by "task forces,

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[127] Battin (2008): 132-33.

courts and physicians," who have found or recommended against assisted dying because they feared coercion or abuse, Battin says.

A further consideration, says Battin, about the collection of data is that it is only the proponents of assisted dying, like herself, who support such collection of data on assisted suicide. Opponents of physician-assisted dying, she says, rely not so much on religiously based, or principle-based objections to assisted-dying, but "slippery slope" fears. "This is true," she says, "of all the task forces, courts, and medical organizations cited . . . as well as of groups like Not Dead Yet. It is not these groups that are calling for collection of data concerning aid in dying among people with disabilities, [but] . . . [a]s Kathryn Tucker . . . pointed out," Battin continues, "it is the *pro-legalization group Compassion and Choices* that has called for the [Oregon Department of Human Services] to collect data about disabilities that are independent of, or that preexist, a terminal illness. The anti-legalization groups have not done so, suggesting perhaps, that they fear their concern will turn out to have no basis in fact," says Battin.

Battin loses no time in interpreting what must be the effects of her published work on the issue of vulnerable groups and assisted suicide:

> Wouldn't the most plausible response from those writing on behalf of people in vulnerable groups be: Whew! We were so worried that our people would be abused, but now we see there is no evidence for such a claim. We are now ready to entertain the idea that–barring evidence to the contrary—social acceptance and legalization should be supported. Indeed, we need to work to see that they are not shortchanged in access to physician-assisted dying. If that is what they clearly, genuinely, indeed autonomously want.[128]

It is not an overstatement to say that the Battin *et al*. 2007 study, and her subsequent 2008 article, are significant in understanding Compassion & Choices' strategy for legalizing assisted dying at the state level. First, Compassion & Choices is identified as the only

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[128] Battin (2008): 134.

organization calling for independent study of Oregon data, arguing that the data is not nearly, on the face of it, sufficient to justify interference with individuals and groups who seek a liberty right to assistance in dying. Nor does the data warrant depriving vulnerable populations of rights enjoyed by nonvulnerable ones. Second, Battin acknowledges in the 2008 article that she is a "member of the Advisory Board of the pro-legalization Death With Dignity National Center," the same organization founded to advance Measure 16 in Oregon, and that eventually filed the petition in 2012 in Massachusetts. She acknowledges her own "failure to admit" the connection in the original study; nonetheless, she says that prior support for a position does not discredit empirical data that supports it. Third, there's no denying that empirical evidence reported by Battin is meant to challenge traditionally trusted groups—doctors, lawyers and ethicists—to give up opposition to, indeed, to embrace, assisted suicide, along with liberty rights of vulnerable groups to assisted suicide. To wit, Battin boldly challenges disabilities-rights groups to join her in support of their own claim to a right to aid-in-dying!

Tucker's testimony in 2006 on "states as laboratories" and Oregon as the only source of data in the U.S. on assisted suicide, together with Battin's "*empirical* data" showing that there "is no evidence of abuse of vulnerable groups in Oregon," establishes the ground on which the assisted suicide argument would be made in Massachusetts in 2012. When Tucker says at the 2011 Harvard seminar that disabilities groups are not dying, implying that arguments about them are irrelevant in the assisted suicide debate, she is pushing an envelope opened by Battin in 2007. If there is no evidence of abuse, goes Battin's reasoning, doctors, lawyers and judges not opposed in principle to assisted suicide, at the very least, must give way on the issue. Furthermore, they must desist in using arguments from abuse of identifiable vulnerable populations to deprive citizens, including those same vulnerable populations, from enjoying a right to which they are constitutionally entitled. Put another way, they must desist from obstructing Compassion & Choices efforts to legalize assisted suicide

In Massachusetts, arguments on behalf of persons with disabilities are significant politically. The fact that disabilities-rights activists are on the opposing side regarding legalization of assisted suicide is a strategic nightmare for proponents. Rendering their claims inadmissible to the debate is the strategy toward which Tucker and Battin lay a foundation. Even better, says Battin, is to convince those same groups to embrace fully legalization of assisted suicide for the terminally ill as a good—truly, redefining the ground on which the battle for assisted suicide may be fought. It's of no small significance that, after twenty years as Director of Advocacy and Legal Affairs for Compassion & Choices, Kathryn Tucker eventually became Executive Director of the Disability Rights Legal Center, self-described in an ad as "the nation's oldest disability rights advocacy organization . . . for expanding patient autonomy in end of life decision-making."[129]

2.4.4. "If anyone kills, it's the patient." Dr. Marcia Angell

Speaking of redefining ground, the influence of Marcia Angell, who introduced Kathryn Tucker at Harvard in October 2011, is crucial. A doctor and senior lecturer in social medicine at Harvard Medical School, Angell was no newcomer in 2012 to the assisted suicide battle. Nor was Angell a dispassionate proponent. In the 1988, Angell's father, who lived in Florida, shot himself after years of treatment for prostate cancer. When he fell trying to enter his bedroom, and

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[129] University of Pittsburgh School of Law, "Disability Rights and End of Life Liberty: Respect for Autonomy and Empowerment of the Individual," presented by Kathryn L. Tucker, JD, Tuesday, November 8, 2016.

was "awaiting EMTs to return the next morning to bring him to a hospital," Angell says, the independent spirited 81-year-old Republican, took a pistol he kept in his night stand and shot himself, "making sure the bullet didn't pierce the wall between his room and his wife's. He gave his family no warning, his final act was hardly a surprise. Angell recalls her brother saying, when she called him to break the news of their father's death, 'Did he kill himself?" And I said, 'Yes.'"[130] Angell was repeatedly quoted as an authority on assisted suicide in news articles and interviews during the 2012 campaign in Massachusetts; she became the spokesperson on behalf of Dignity 2012 and was the doctor-authority featured in their 2012 ad campaign.

Like Tucker's arguments on the legal side, Angell's arguments on the medical and moral side had helped to shape the case for assisted suicide for 20 years. As early as 1990, in a New York *Times* article entitled "Don't Criticize Doctor Death . . . Angell had taken on critics of Dr. Jack Kevorkian, the pathologist who assisted his 54-year old patient, Janet Adkins, to kill herself. "Many people find such assisted suicide uncomfortably close to murder," Angell says in that article. "But I think this antipathy obscures important questions. Why would someone like Ms. Adkins have asked for the services of Dr. Kevorkian? What were her alternatives?" queries Angell. Answering her own questions, Angell bluntly says that patients like Adkins, newly diagnosed with Alzheimer's, "can expect their brains to be destroyed slowly over many years," and that "the entire burden of the disease will . . . be carried by their families." Angell describes the "back-breaking and soul-destroying job of caring at home" for someone with Alzheimer's, as well as the prospects that "modern medical care permits longer and longer survival under these

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[130] Scott Helman, "Should People Have The Right to Die?" *The Boston Glo*be, April 29, 2012, https://www.bostonglobe.com/magazine/2012/04/29/massachusettts-death-with-dignity-act-that-would-legalize-physician-assisted-suicide-expected-decided-november-ballot/ljEGuMYnF1TAKgRTTMKYNO/story.htm.

circumstances," not to mention that "patients are often subjected to the full panoply of aggressive treatment simply because it is available . . ." Given that situation, Angell says, the focus on Kevorkian is misplaced. "If suicide under these circumstances is not wrong, then why is it wrong to help?" she asks.

> The argument that doctors should not be involved because of their ethical obligation to 'do no harm' begs the question. What, in this case, is harm? To act or not to act*? In fact, the ethical argument can be made that a doctor's first obligation is to help the patient, consonant with the patient's autonomy. Usually helping patients means extending their lives, but not always*. Sometimes help can mean the possibility of shortening life, as when doctors give such large doses of painkillers to cancer patients that they become vulnerable to pneumonia [emphasis added].[131]

Angell mercifully grants that "Kevorkian's death van is not the answer," but immediately characterizes it as symbolizing "the problem that society seems unwilling to face squarely" in 1990. The problem consists in two things, she says. First, to ask the question, "Should we recognize assisted suicide as a legitimate option for people with certain devastating, irreversible diseases?" In that case, Angell anticipates what would be major objections to legalization of assisted suicide, to wit, the accuracy of the diagnosis and the competence and freedom of the patient. Regarding the first, she asks, "What precautions should we take to be certain of the diagnosis and prognosis and the seriousness of intent?" Focusing on the reliability of the diagnosis and the autonomy of the patient is finally placing the emphasis where it belongs, on the patient, not the doctor, claims Angell.

The second "problem," the competence and freedom of the patient, ironically, shines a bright light on the doctor, says Angell, who dismisses the Hippocratic oath as "begging the question"! Referring to the recognition of assisted suicide as a "legitimate option for people with

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[131] Angell, "Don't Criticize Doctor Death," *New York Times*, June 14, 1990, https://www.nytimes.com/1990/06/14/opinion/dont-criticize-doctor-death.html.

certain devastating, irreversible diseases," Angell says, almost in passing at the close of article: "The time is past when doctors and patients could reach such an understanding privately—when a doctor, say, might leave a lethal dose of sleeping pills on the bedside table. Society should examine the problem forthrightly and compassionately." Angell is alluding to specialization in medicine which increasingly requires doctors to work in teams rather than alone. Still, her admission that it has been the custom of doctors, where assisted suicide is illegal, which was almost everywhere at the time, to make it possible for patients to kill themselves, is shocking. Even more shocking is her accompanying judgment that it is "doctors who care" who leave lethal doses of pills for patients to ingest, while it is those who "don't care enough," or "lack courage enough," who are left with no alternative but to "leave families in isolation to carry out the burden of care."[132]

In a 1997 article, Angell anticipates the very position that Tucker took up with clinicians and faculty at Harvard in October 2011, that is, that aid in dying by lethal drugs is simply administering one among many means of alleviating pain and providing comfort. Continuing the distinction between treatment that is doctor-centered versus patient-centered that she introduced in her 1990 article, Angell advances an unorthodox view, at best. Opponents of assisted suicide, she says, maintain that it ". . . is a form of killing which is always wrong. In contrast, withdrawing life-sustaining treatment simply allows the disease to take its course . . . I believe, [Angell says] . . . these distinctions are too doctor-centered and not sufficiently patient-centered. We should ask ourselves not so much whether the doctor's role is passive or active, but whether the patient's role is passive or active . . . [A]ssisted suicide, by definition, cannot occur without

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[132] Angell, "Don't Criticize Doctor Death."

the patient's knowledge and participation. Therefore, it must be active, that is to say, voluntary. If the loaded term 'kill' is to be used, she says, *it is not the doctor who kills, but the patient* [emphasis added]."[133]

Angell calls such doctor-centered arguments "nothing short of cruel." "The highest ethical imperative of doctors should be to provide care in whatever way best serves patients' interests, in accord with each patient's wishes, not with a theoretical commitment to preserve life no matter what the cost in suffering. If a patient requests help with suicide and the doctor believes the request is appropriate, requiring someone else to provide the assistance would be a form of abandonment . . ."[134] Furthermore, keeping suicide illegal knowing that occasionally it may be warranted, shifts the focus from patient to doctor simply by threatening with prosecution doctors who wish to comply with a patient's wishes to end his or her life, as in the case of Quill mentioned earlier. Where assisted-suicide is illegal, argues Angell, "[i]nstead of reflecting the condition and wishes of patients, [it] . . . reflects the courage and compassion of their doctors.[135]

Angell's final point in the 1997 article addresses what she calls the "cruelest of the arguments." As she phrases it, "People do not need assistance to commit suicide. With enough determination, they can do it themselves. . . they can simply stop eating and drinking . . ." Why is this the cruelest argument? Because "many patients at the end of life are, in fact, physically unable to commit suicide on their own. Others lack resources to do so . . . [T]he fact is," concludes Angell, "this argument leaves most patients to their suffering."

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[133] Marcia Angell, "Anguished Debate: Should Doctors Help Their Patients Die?" *New York Time*s, June 24, 1997, p. 2, https://www.nytimes.com/1997/06/24/science/anquished-debate-should-doctors-help-patients-die.html.

[134] Angell, "Anguished Debate."

[135] Ibid.

Not surprisingly, Angell's case for assisted suicide presented in the pages of the *New York Times* in 1990 and 1997 anticipate Tucker's case for aid in dying presented at Harvard in 2011. They are the very arguments for legalization that are used in two videos, featuring Dr. Angell, produced and aired by Dignity 2012 in Massachusetts. Interestingly, Angell's earlier articles had not adopted the less incendiary language of "aid-in-dying" and "physician-assisted dying," used by Tucker in 2011, and previously by successful campaigns to legalize assisted suicide in Oregon and Washington. Nonetheless, Angell's writings present a bold case by a prominent doctor, and editor of arguably the most prestigious medical journal in the U.S., for legalization of assisted suicide.

Aid-in-dying "is not suicide. . . " There's "no empirical evidence" that legalization leads to abuse . . ." Aid-in-dying is "patient centered." Tucker, Battin, Angell! Lawyer, ethicist, doctor! All connected to Compassion & Choices. Together, their arguments redefine the issue—suicide is not suicide in the terminally ill, and, if anyone kills, it's the patient. If leading doctors, lawyers and ethicists object to assisted suicide principally on the basis of potential abuse of disadvantaged and vulnerable populations, a powerful objection indeed, the response lies in the only empirically sound, reliable data in the country. That data shows that the objection is unsound and, thereby, a path is cleared to legalize assisted suicide, at least at the state level, just as the Supreme Court, according to Tucker's interpretation, invited the states to do in *Glucksberg*. To repeat what John Rowley said to the National Press Club in 2009, all that was needed was a state, like Washington, that was a good fit, "a blue state in a presidential election year, and the right timing in terms of President Obama on the ballot." The stage is set for Dignity 2012 and the ballot initiative in Massachusetts.

2.5 Boots on The Ground: Local Support for Ballot Question 2

If proponents of the "Death with Dignity" Act were two organizations from the Pacific Northwest, that begs the question was there local support. Within hours of the filing of the petition, Boston's major daily newspaper carried a story on August 4, 2011 by Kyle Cheney, State House News Service. Cheney reported optimistically that in November "voters may be asked to determine the fate of a proposal permitting dying patients to take life-ending drugs. . . Backers . . . filed paperwork yesterday with Attorney General Martha Coakley to begin the process of bringing their plan, dubbed the Death With Dignity Act, to the 2012 ballot." Describing the process of signature-gathering and certification required to get the proposal on the November 2012 ballot, the article refers to efforts by "backers" and "proponents," but does not identify them except to quote Louis Kafka, Democrat of Stoughton, [MA], as having "filed a bill earlier this year that resembles the assisted suicide ballot proposal . . ." The article doesn't mention that the same Kafka had previously filed four legislative proposals to legalize assisted suicide, none of which got out of committee. Kafka ironically admits in Cheney's article, however, that he "learned of the proposal yesterday and is not one of the [2012] ballot drive organizers . . . Perhaps educating the public and then pursuing a law from the standpoint of a ballot question may be a better vehicle than legislation," admits Kafka deferentially.[136]

On the same day, the Easton *Journal,* Easton, MA., identified local consultants working with "backers" to promote the initiative. Chris Burrell for the *Journal* reported that "backers of

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[136] Kyle Cheney, "Drive begins to put assisted suicide law on ballot next year," State House News Service, *The Boston Globe*, August 4, 2011, http://alexschadenberg.blogspot.com/2011/08/massachusetts-drive-begins-to-put.html?m=1.

the ballot initiative—. . .[who] hired a Quincy [MA]-based political consultant—took the first step Wednesday, filing paperwork with Attorney General Martha Coakley that could push the "Death With Dignity Act" onto the 2012 ballot." Burrell also does not name "backers," but reports that "Michael Clarke of Hancock Street in Quincy is the [filing] group's political consultant. . . Clarke had most recently worked as a finance director on U.S. Rep. William Keating's (D) successful election campaign in the Fall of 2010 [to win the 10th Massachusetts District]. Clarke declined to comment on the initiative." Neither Clarke nor the Quincy political consulting group were mentioned in either Ballotpeidia's or Wikipedia's lists of "Supporters" of the initiative.

Not surprisingly, optimism about passage of the initiative was not missing in early newspaper and media coverage. On September 19, 2011, *Boston Globe* reporter Kathy McCabe covered the Cardinal's homily at the Red Mass which, she says, reaffirmed "the church's stance on end of life care."[137] McCabe's article, entitled "Cardinal Rips Suicide Ballot Effort," says the Cardinal did not identify Dignity 2012 by name, but urged Bay State voters not to be "seduced by language [such as] dignity and compassion, which are means to disguise the sheer brutality of helping people to kill themselves." McCabe, reporting on the proponents' side, quotes Steve Crawford, public relations spokesperson for Dignity 2012: "We certainly respect the Cardinal's opinion and believe that the people of Massachusetts are ready for the discussion, about how best to provide peace, dignity, and control for terminally ill patients in their final days of life. . ." Optimistic about the incipient campaign, Crawford said the initiative provides terminally ill

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[137] Kathy McCabe, "Cardinal Rips Suicide Ballot Effort," https://www.bostonglobe.com/metro/2011/09/19/cardinal-rips-suicide-ballot-effort/u6F5VYYizw6HsrNCdPBWfL/story.html.

people “with a choice to request, from their doctor, a medicine that would end their life, when other medical efforts to alleviate their pain and suffering are inadequate.”[138]

On September 22, 2011, Scott Lehigh, a *Boston Globe* columnist, anticipates that the question of assisted suicide “may well confront voters next fall.” Downplaying the arduous task of securing close to 100,000 signatures ultimately needed to force the petition on the ballot, he identifies the likely opposition to the controversial proposal.

> Indeed, Cardinal Sean O’Malley focused on the ballot question during a recent Mass for Bay State lawmakers and jurists, saying he hoped that Massachusetts citizens would not be seduced by language like ‘dignity,” ‘mercy,’ and ‘compassion. Those words, he said, are a ‘means to disguise the sheer brutality of helping people to kill themselves.’ A vote for physician-assisted suicide is a vote for suicide.[139]

Clearly taking a view favorable to the initiative, and dismissing the Cardinal’s characterizations, Lehigh goes on to clarify the issue:

> . . . But this really isn’t suicide as we typically think of it—that is, as a healthy person taking his life for reasons of despair, depression, or hopelessness. . . So the real question becomes: Why should it be considered brutal to provide a terminally ill patient the means of ending his life a few months or weeks earlier than his illness otherwise would? . . . But if a terminally ill patient wants to end his life a little early, why is that against the good of his person? [140]

Lehigh grants one serious “concern”: voluntary assisted suicide, such as that which would be permitted under the Massachusetts initiative, can turn into involuntary euthanasia as it has done in the Netherlands. “. . . But it hasn’t happened in Oregon. . . It hasn’t led to people being coerced to end their lives.” Anticipating a serious potential objection regarding Massachusetts,

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[138] Ibid.

[139] Scot Lehigh, Death with Dignity in Massachusetts, September 22, 2011, https: https://www.bostonglobe.com/opinion/2011/09/22/death-with-dignity-mass/Gq0mwFwofWfNCVXVkGJU5M/story.html.

[140] Ibid.

he adds, “And it hasn’t resulted in an influx of terminally ill sufferers seeking aid in ending their lives [in Oregon]. So far,” Lehigh concludes, “there’s no compelling reason to think the situation would be any different here.”[141]

By way of contrast, the *Herald,* the more conservative daily in Boston, while not opposing the initiative as one might expect, remained oddly non-committal. “Democracy Unleashed,” by the Boston *Herald* Editorial Staff, August 15, 2011, reported “31 initiative petitions aiming to get on the November 2012 ballot, including “medically assisted suicide. . . Not all . . . will make the cut . . .” it says, explaining the arduous process of collecting voter signatures. The article acknowledges “special interests . . . and some issues that don’t belong on any ballot,” issues that should be dealt with by legislators, but fails to mention the Death with Dignity Act as one of them. It characterizes a fathers’ rights proposal to repeal “restraining orders” as “Not a good idea!” as well as other initiatives, like casino gambling, as being “easier to vote up or down.” But the *Herald* has no comment on either the wisdom or chances of the assisted suicide initiative, arguably the most controversial initiative petition ever advanced in the Bay State!

In April 2012, while the petition was still in the signature gathering stage, the *Globe* published a Magazine feature story. Extensive and even-handed, Scott Helman’s treatment began with the very personal story of Heather Clish’s dad, who returned to Oregon for treatment having received a diagnosis of an inoperable brain tumor while visiting his daughter in Massachusetts. Clish’s testimony was cited in the “Information for Voters” in 2012 mentioned earlier in this Chapter. A year following her father’s death, Clish had become a leading advocate

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[141] Ibid.

"for affording terminally ill patients in Massachusetts, the same choice her father had [in Oregon]," the *Globe* reports.[142] The headline for Helman's Magazine feature story dramatically states, "It's not often that voters face a moral question like [this] one. . .: Should terminally ill patients have the right to get a fatal prescription? This time the voters will decide."[143]

Helman describes the Massachusetts proposal as identical to laws in Oregon and Washington.

> Under the Massachusetts proposal . . . terminally ill, mentally competent adults deemed to have six months or less to live would have freedom to obtain a fatal prescription. They could qualify only after going through a process designed to ensure that they are not being coerced and that they fully understand what they're doing. They would administer the drugs themselves. Any doctor opposed to the practice could opt out of writing the prescription.[144]

Helman is realistic and correct, I would say, in his assessment of challenges facing proponents and opponents of assisted suicide in the Northeast:

> " . . . As a socially progressive, prominent East Coast state, [Massachusetts] represents the next frontier. It poses a major test for a movement that has had difficulty gaining traction beyond the Pacific Northwest. Supporters face a challenge in part because Massachusetts is among the most Catholic states in the country, and the Church has long opposed the practice. . . Indeed, the ballot initiative would also test the Catholic Church's influence. Church leaders in Massachusetts have already begun a campaign to defeat it."[145]

Helman is sober about the ballot initiative's chances in New England, which has proven itself to be "inhospitable territory," citing the failed 2000 ballot initiative in Maine, and stalled attempts

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[142] Helman, "Right to Die?"

[143] Ibid.

[144] Ibid.

[145] Ibid.

in the New Hampshire and Vermont legislatures at the time of his writing. Hellman reports growing acceptance of the practice around the country, citing a 2007 poll reporting 56% approval among Americans, and mentions a 2011 Gallup Poll suggesting that Americans were split nearly evenly "over whether assisted suicide was 'morally acceptable.'" "Backers of the Massachusetts ballot initiative say they are heartened by their own polling here, and a plurality of respondents in a recent public survey indicated support," he says.[146]

On the opposition side, Hellman quotes veteran local critical-care nurse Deborah O'Hara-Rusckowski, whose mother had lung cancer. Given "an 11 percent chance of making it more than a year, [Rusckowski's mom] made it three [years], dying at 73 . . . ," she says, raising the specter of inaccurate prognoses, an issue which became crucial to the opposition's argument.[147] Helman acknowledges differences among doctors regarding the six-month prognosis. He quotes Dr. Lynda Young, a Worcester pediatrician and president of the Massachusetts Medical Society, who became a spokesperson for the coalition against the ballot initiative, who simply said "Sometimes you're wrong." Dr. Mark Rollo, a Fitchburg family physician, says assisted suicide is "a corruption of medicine," Helman reports. Doctors also express concerns about depression in patients who are terminal, Helman acknowledges. They fear legalization will render irrelevant recent advances in palliative medicine that provide comfort and pain relief at the end of life. On proponents side, Helman quotes Marcia Angell saying categorically that "top-flight end-of-life care and the choice of taking a lethal drug can coexist," and that Oregon's law has "only improved end-of-life care in the state."[148]

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[146] Helman, "Right To Die?"

[147] Ibid.

[148] Ibid.

Helman doesn't shirk from legal and ethical questions. He asks: "Is ingesting a lethal prescription morally distinct from removing a ventilator or a feeding tube? Terminally ill patients and their proxies make those decisions every day," he says, clearly a nod to proponents. Helman reports the "Church's response" on this question, citing a statement by the then Bishop O'Malley of Fall River: "Like many facile solutions, [assisted suicide] is immoral. What passes for mercy is really an act of isolation and abandonment." Helman acknowledges that Church leaders in Massachusetts, including the Cardinal, expect to join with a "coalition of organizations" to defeat the measure. Helman correctly predicts that the church coalition will rely "on the more secular argument that [assisted suicide] would be bad for our shared humanity." Finally, Helman predicts serious challenges raising money and sustaining media exposure needed to sway public opinion in Boston and surrounding markets.

A month following Helman's article in the *Globe*, the *New York Tim*es ran a similar piece, but one clearly sympathetic to the proponents' side. Written by Paula Span, the article leads with a local story about Michael Sutherland, a 60-year old day-care worker, avid runner and resident of Northampton, MA., who died of ALS. His widow articulates her husband's wishes about his death and the lack of opportunity in Massachusetts. "'People suffering from A.L.S. provide a good talking point [for assisted suicide]. . . " says Mrs. Sutherland. "A terminal illness, no treatment and no hope, just the certainty of a death pretty much everyone would abhor . . . . If he could have taken control into his own hands, I believe he would have,' she said. 'I know he would have wanted to have the option. But it wasn't available. If the Death With

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Dignity Act passes, it will be.'"[149] Span reports that copies of the ballot petition were made available at her husband's funeral, along with forms for the 200 guests to sign in support of it, right next to the guest book at the back of the hall. Supporters were taking advantage of the coincidence between Sutherland's unfortunate death and the failure of the Massachusetts legislature to act on the petition after the required 70,000 signatures were secured by the May 1st deadline. Supporters had until July 2 to gather an additional 11,000 signatures in order to take the issue out of legislators' hands and put it on the ballot.

Correctly predicting success of the signature drive, Span anticipates a very intense campaign, not unlike those in Oregon and Washington, but in a very different political milieu:

> Massachusetts will be a very different arena: heavily Catholic (46 percent, according to a 2009 Gallup poll) and largely Democratic, it is also home to a knot of medical schools and facilities. Several prominent physicians, including two former editors of the *New England Journal of Medicine,* were among the original petitioners seeking a "death with dignity" law. The Massachusetts Medical Society has opposed the law, however.[150]

Span's reference to the split in the medical community bears emphasizing. On one hand, Marcia Angell, local educator and long-standing, advocate of assisted suicide, had served as editor of the prestigious *New England Journal of Medicine*. On the other, the Massachusetts Medical Society, publisher of the *Journal*, held an equally long-standing position against it. In fact, in December 2011, in direct response to the filing of the initiative, the chief policymaking body of the

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[149] Paula Span, "Massachusetts Debates Death with Dignity," *New York Ti*mes, May 29, 2012, https://newoldage.blogs.nytimes.com/2012/05/29/massachusetts-debates-death-with-dignity/

[150] Ibid.

Massachusetts Medical Society reaffirmed its opposition to assisted suicide.[151] More will be said later about this unusual conflict between individual doctors and their professional organization. Suffice it to say here that it is probably this conflict that gave voice to an unconventional proposal to "distance doctors" from the process of assisted dying which appeared in the *Globe* in the summer of 2012.

Dr. Lisa Soleymani Lehmann, director of the Center for Bioethics at Brigham and Women's Hospital, and research assistant Julian Prokopetz, proposed a centralized state, or federal "mechanism," for prescribing and dispensing lethal drugs under the proposed initiative. Chelsea Conaboy, writing in *The Globe*, quotes Lehmann:

> Prognosis and treatment options are part of standard clinical discussions, so if a physician certifies that information in writing, patients could conceivably go to an independent authority to obtain the prescription. We envision the development of a central state or federal mechanism to confirm the authenticity and eligibility of patients' requests, dispense medication, and monitor demand and use. This process would have to be transparent, with strict oversight.[152]

"The drugs would be used by people who are already dying and want an option. This isn't suicide," Conaboy quotes Lehman as saying. Conaboy refers readers to a *New England Journal* podcast to hear Lehman's presentation on the controversial proposal.

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[151] Massachusetts Medical Society, "Overview of Massachusetts Ballot Question 2," http://www.massmed.org/Advocacy/Key-Issues/Physician-Assisted-Suicide--Arguments-For-and-Against-(pdf)/.

[152] Chelsea Conaboy, "Assisted Dying, Without the Doctor: Ethicist Says Physicians Can Help without Prescribing Lethal Dose." *The Boston Globe,* July 12, 2012, https://www.bostonglobe.com/lifestyle/health-wellness/2012/07/12/assisted-dying-without-doctor/i2Z7GoWbXHCyS1KiCBkMiP/story.html.

Obviously, Lehman's proposal was meant to advance the initiative while saving doctors, understandably uncomfortable with writing lethal prescriptions, from having to do so. However, obvious concerns about a nondescript government committee actually writing and dispensing lethal drugs had to have a sobering effect on even the most avid supporter. Further, Lehman's unorthodox proposal "extracts" from the process, not only the doctor, but the pharmacist, a point ignored by Conaboy. The issue of the pharmacist actually became highly controversial when one of the most effective opposition campaign strategies relied on a thirty second ad featuring a pharmacist holding 90 capsules of lethal drug to be picked-up at the local pharmacy and self-administered under the proposed law! Opposition polling had shown that Massachusetts voters considered "picking up the prescription at the local pharmacy" good reason to reject the initiative entirely.

A July article in the *American Medical News* reported growing support for the measure and quoted Stephen Crawford, communications director for Dignity 2012, as confident of success in November. The article reports 60% support among Massachusetts voters in a local poll of 504 voters conducted in May by the Western New England University Polling Institute. Twenty-nine percent said they opposed and 11% declined to answer whether they supported "allowing people who are dying to legally obtain medication that they could use to end their lives."[153] Crawford predicted that the presidential election and a hotly contested U.S. Senate race between incumbent Republican Scott Brown and Democrat Elizabeth Warren, "will bring out voters likely to support the death-with-dignity measure. The Dignity 2012 campaign," Crawford added, "will point to the 14 years of experience with similar laws in Oregon and

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[153] Kevin B. O'Reilly, "Push for 'Death with Dignity' in Massachusetts Picks Up Steam," July 16, 2012, p. 1, www.ama-assn.org/amednews/2012/07/16/prsc0716.htm.

Washington. This statute has worked as intended in both Oregon and Washington. The scare tactics the opposition uses simply haven't come to life," he added.[154]

Crawford's optimism belies two things about the proponents in Massachusetts in 2012. First, the *American Medical News* article itself cautions that, since the Montana Supreme Court ruling in December 2009, no state legislature including Montana had acted to regulate physician-assisted suicide or to outlaw it. The Montana ruling said that physicians who prescribe life-ending drugs to terminally ill patients who request them are not subject to state homicide statutes.[155] That's thirteen years with no new law on assisted suicide until the Massachusetts initiative! On the other hand, Crawford's tenor bespoke a sanguine attitude on the part of proponents—with a 60% approval rating among voters, and President Obama on the ticket, they expected assisted suicide would have a hard time losing.

A July 31 *Globe* article written by Michael Cook presented parallel statements "for" and "against" the initiative. The statement "for" was by Marcia Angell, who by this time had become the local medical spokesperson on the proponents' side. Angell dismissed arguments that "doctors should not kill," and "patients who request suicide are depressed," as "conventional" and "wrong." As she had done for almost 20 years, Angell argued that, while "palliative care can relieve pain, existential suffering can be even worse for patients."

> "They know that their condition will grow worse day after day until their deaths, that their course is inexorably downhill, and they find it meaningless to soldier on. Why should anyone – the state, the medical profession, or anyone else – presume to tell someone else how much suffering they must endure while dying? Doctors should stand with their patients, not against them."[156]

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[154] Kevin B. O'Reilly.

[155] Ibid.

[156] Michael Cook, "Leading Massachusetts Doctors Go Mano a Mano Over Assisted Suicide," *BioEdg*e , August 3, 2012, p. 1,

On the opposing side, Cook quoted Dr. Barbara A. Rockett, physician at Newton-Wellesley Hospital and former president of the Massachusetts Medical Society, who had become Angell's counterpart against the initiative. Rockett said that to "substitute physician-assisted suicide for care represents an abandonment of the patient . . ." Seventy-five percent of doctors in Massachusetts, said Rockett, are on record as not supporting the practice.[157] Unlike Conaboy, Cook picks up on the conflict between Angell and doctors like her, who supported the more progressive position to legalize assisted suicide, and the clearly more conservative Mass Medical Society and its leadership who voted to oppose Question 2. "The Massachusetts Medical Society is the oldest of its kind in the U.S." says Cook, and it's membership is on record as overwhelmingly opposing this initiative, as well as assisted suicide in general. "Ironically, [the MMS is also] the publisher of the *New England Journal of Medicine*, which supports assisted suicide and is the country's leading medical journal," writes Cook.[158]

Media interest in the campaign heated up in the Fall 2012, and so did reporting about strategies on both sides. Proponents were reported as beyond confident. The same American Medical News mentioned above reported that 60% of voters in Massachusetts supported "allowing people who are dying to legally obtain medication that they could use to end their lives," according to a Western New England University Polling Institute survey of 504 voters

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https://www.bioedge.org/bioethics/leading_massachusetts_doctors_go_mano_a_mano_over_assisted_suicide/10178

[157] Ibid.

[158] Ibid.

conducted at the end of May.[159] On September 24, *Wicked Local, Wareham* reported that "Social Workers Support 'Death with Dignity," ballot question." In the article, Carol Trust, executive director of the Massachusetts Chapter of the National Association of Social Workers, is quoted as saying that she "encouraged Massachusetts voters to grant terminally-ill patients this choice," adding "Our support . . . is guided by our Code of Ethics. We continually strive as social workers to promote the rights of our clients to self-determination and dignity." *Wicked Local* reported that the Massachusetts Chapter members of the board of the social workers' organization "met with proponents and opponents . . . and decided to express 'strong support' for the initiative petition after their deliberations . . . [and the intention] to work 'in tandem' with the sponsors of the ballot measure to push for its passage." On the opposition side, the same Wareham paper reported that a "newly formed coalition," the Committee Against Physician-Assisted Suicide (CAPAS), included disabilities groups, medical organizations and the Catholic Church. The group had raised objections to the measure as "poorly written, confusing and flawed," and its newly appointed chair, Roseanne Bacon Meade, had said that the initiative petition "is the worst possible way to decide end-of-life treatment." Much more will be said in Chapter Three about CAPAS, the coalition formed to fight the ballot initiative.

It's difficult not to notice here the increasing influence of Dr. Angell as spokesperson and authority on the proponents side. The *Patriot Ledger* led an article about "Dignity 2012" with Angell's statement that "This is not about life versus death. This is about the manner of death." Commenting on the *Ledger's* report of continued 60% support for Ballot Question 2 in

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[159] Western New England University Polling Institute's Survey on Massachusetts, "Death with Dignity" ballot question, reported in American Medical News, p. 1, www.ama-assn.org/amednews/2012/7/16/prsc0716.htm.

recent polls, Angell, one of few on the side of the ballot initiative to do so, advises against an excess of confidence regarding the outcome at the polls: "Despite that level of support, Angell said many voters still aren't familiar with the question's "safeguards." She went on to enumerate them: the right of doctors to refuse a patient request for a prescription; the right of patients to be informed of all alternatives to suicide, including hospice and palliative care; the requirement that a patient make three requests, including one in writing; the waiting periods of 15 days after oral, and 48 hours after written, requests; and, in all cases, the requirement that a patient must be diagnosed with fewer than six months to live. That list was repeated by Angell in just about every presentation and statement she made on Ballot Question 2 in the final months of the campaign, indicating Angell's sensitivity to the fact that the ballot measure would be passed or defeated, not on the merits of aid-in-dying, but on what voters knew about the provisions of the bill and whether there were sufficient "safeguards."

For Angell, there were three primary arguments she wanted voters to know: first, the law provides voluntary choice for "a limited number of terminally ill persons who are in pain that palliative or hospice care can't relieve, and who doctors say have mental competence to choose to end their life." Second, for terminally ill patients, "the loss of dignity is often harder to relieve than the pain . . . They know they're dying." Third, in response specifically to the argument that the law requires no psychiatric exam, "studies from Oregon's 14-year-old-assisted-death law show that patients . . often feel 'peace of mind' having the drugs, even if they never use them," according to Angell. "Oregon law has been used 'almost exactly as intended," she says in the *Ledger* article, "by 596 patients—one in every 500 deaths since 1997 [in Oregon]. Men and women have obtained the drugs in almost equal numbers, at an average age of 71. . .

When you tell people what the (proposed) law is, they say, yes, that's what I would want," says the *Ledge*r quoting Angell.**[160]**

If I had to identify the case for proponents on Question 2, I would point to Dr. Angell's statements in the *Ledger* listed above as encapsulating the Dignity 2012 campaign. On October 25, NPR news produced a story featuring Marcia Angell, urging a "yes" vote, and John Kelly, disabilities advocate, urging "NO." In the story, Angell's defense of assisted dying is explicitly linked to her father's suicide and the incongruity of her professional stand on the issue. "When Marcia Angell was editor of the prestigious *New England Journal of Medicine*," the story by Sacha Pfeiffer, reports, "she startled many of her colleagues by arguing that dying patients should have a legal right to kill themselves. She took that stance partly because of what her father did when he was in severe pain from prostate cancer. . . She believes her father wouldn't have resorted to a bullet if he could have had a fatal medication by his bedside." If Question 2 is passed, says Pfeiffer, adults will have that option. "Angell and the ACLU are primary backers [of the proposed law]," says Pfeiffer, her claim about the ACLU not seen anywhere else, but one which I don't doubt was true. In the same article, John Kelly, disabilities activist, whose photo next to Dr. Angell is featured at the top of the article, is quoted as saying he fears "the bill is a recipe for abuse," and that "sick people with treatable depression could feel pressure to end their lives from family members eager for inheritance or because they feel like a burden." Other opponents mentioned are the Massachusetts Medical Society and "several religious

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[160] "Question 2 Sponsors Say Measure Isn't "Assisted Suicide," *Patriot Ledge*r, October 16, 2012, https://www.patriotledger.com/article/20121016/NEWS/310169744.

organizations."[161] The National Public Radio report not surprisingly showcased Angell's arguments and added, almost as an afterthought, Kelly's remarks about the slippery slope it represented for persons with disabilities.

Angell gave several presentations promoting the Ballot Question in and around Boston in the final days leading up to the election. One of particular note given on October 9, 2012, at the Cambridge Forum in Harvard Square, was entitled "May Doctors Help You Die."[162] Reiterating arguments discussed above, Angell's presentation to the *Forum* explicitly targeted campaign opponents. The only strong opposition, she says, comes from three sources: the Catholic Church, the Massachusetts Medical Society (MMS), and Disabilities groups, each of whom she dismisses in cursory fashion. First, the Church opposes assistance in dying as a matter of doctrine and "Catholics do not always follow the teachings of the Church. I suspect that would be the case here," she quips. Second regarding the Mass Medical Society, its position is that assisted dying is incompatible with the role of physician as healer. To this objection, Angell responds in the same way she did in her *NY Times* article in 1997: It's not about the physician but the patient, and in the case of assisted dying, it's about a patient for whom "healing is no longer possible." As if that's not sufficient, she adds, somewhat off-handedly, "While there are no polls among doctors, I suspect doctors would disagree with their hierarchy just like Catholics

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[161] "Assisted Suicide Goes to Vote in Massachusetts," National Public Radio, https://www.pr.org/2012/10/25/163643370/assisted-suicide-goes-to-vote-in-massachusetts.

[162] Cambridge Forum is a free public forum for discussion of the issues and ideas shaping our world dating back to 1967. Forum programs are broadcast on public radio stations nation-wide, and feature the nation's most noted thinkers. Select fora can be viewed on YouTube and are hosted by the WGBH Forum Network. Programs are held at the First Parish (Unitarian Universalist) located at 3 Church Street in Harvard Square, 7:00 pm, on Wednesday evenings.

do with theirs."[163] Introducing Angell that night, the director of the Cambridge Forum and moderator for the evening's event underscored lack of conformity among members of the medical community, stressing that the most recent MMS vote not to support assisted suicide was not unanimous.

Angell's last point in her presentation to the Cambridge Forum concerns the inaccuracy of six-month prognosis of death, an issue that was being exploited in ads by the opposition side. While prognoses of death may involve some uncertainty, Angell says, doctors "do know when a patient is terminal"—they know, she says with authority when a disease will end a life. Stories about persons who live twenty years beyond their diagnoses of metastatic cancer, for example, she says, are "undocumented" and "akin to urban legend. Such stories have a long life because they give hope," she says, dismissing what had become a critical argument of the opposition campaign. Angell classifies opponents who question doctors' prognoses as "bullies" who assume "terminally ill patients need to be protected from themselves." On behalf of bullied patients, Angell says, "Patients should say when their sickness is unbearable."

Angell concludes her in-person presentation at the Harvard Forum with a slogan that had become popular as part of the Dignity 2012 campaign: "Vote Yes. It truly is the right thing to do," the same message she used in several Dignity 2012 thirty-second ads in support of Ballot Question 2. Two of those ads featured Dr. Angell. In one, Angell capitalizes on her experience

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[163] "May Doctors Help You Die? Physician-Assisted Suicide in Massachusetts, Presentation by Dr. Marcia Angell, October 9, 2012, Cambridge Forum, https://www.youtube.com/watch?v=HSDqQCkPabA.

as doctor and editor of the *New England Journal of Medicine*, to testify to the merits of the proposed law. It appeals to the preference for choice—the choice not to suffer . . .

> *I am Dr. Marcia Angell. From my work as a physician and as a New England Journal of Medicine editor, I believe we need to give dying patients a choice they don't now have. Terminally ill patients with just months to live are now forced to continue to suffer. That's simply wrong. We need a Death with Dignity law so dying patients can end their suffering peacefully. No doctors would be forced to comply. This very personal decision should be the patient's choice.*[164]

A second ad featured Dr. Angell and Heather Clish, the Reading, MA. resident whose testimony about her father, who returned to Oregon to die, appeared in the 2012 Voters' Guide. Entitled "From a Daughter and a Doctor. Vote Yes on Ballot Question 2," this ad also focused on personal choice of the patient and safeguards for the doctor.

> Clish: "At the end of my dad's battle with cancer, he used the death with dignity law in another state."
>
> Angell: "This law gives patients with only six months to live the right to choose to end their suffering."
>
> Clish: "My dad wanted to live but he couldn't. So he chose death with dignity."

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[164] "Marcia Angell, M.D., former Editor, *New England Journal of Medicine*." Paid for by Dignity 2012, unofficial transcript.

Angell: “Two doctors must approve. No doctor is forced to help, and there are waiting periods.”

Clish: “As a daughter . . . Angell: As a doctor . . . we’re asking you to vote yes on Question 2. Death with Dignity.”

Onscreen Text: “Paid for and sponsored by Dignity 2012.[165]

A third ad on the proponents side featured Jim Carberry of Natick, MA. “Jim Carberry feels certain of one thing, and one thing only, when it comes to Question 2, . . . given the option, his late wife, Margie, would have used it,” reports *Globe* columnist Adrian Walker on October 11, 2012.[166] Carberry’s wife had suffered for 16 years from a tumor at the base of her skull. She had four surgeries, a titanium rod placed in her neck, a tracheotomy tube, and permanent double vision. She underwent 44 doses of powerful radiation, all in an effort to see her daughters, 4 and 2 years of age when she was first diagnosed, graduate from high school. “She had reached the decision, her husband says, after consulting with clergy, and a trusted social worker, as well as a palliative care specialist at Massachusetts General Hospital. [After 16 years of treatment] she wanted to die on her own terms,” Walker reports Carberry as saying. Margie Carberry died five weeks following discontinuation of her feeding tube, Jim recalls. “But one question continues to

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[165] “From a Daughter and a Doctor: Vote Yes on Ballot Question 2,” .30 sec ad paid for by Dignity 2012, https://www.youtube.com/watch?v=5gLD5Jj4C0Y; radio ad featuring same content, https://www.youtube.com/watch?v=8z8nzhyD6dE. Unofficial transcript.

[166] Adrian Walker, “Whose Life Is It, Anyway?” *The Boston Globe*, October 22, 2012, https://www.bostonglobe.com/metro/2012/10/21/should-terminally-ill-patients-able-decide-die/jUDDyR1XGtwXJBULLhrRnN/story.html.

haunt me," the *Globe* reporter says at the end of the article. "Who is anyone else to say what Margie Carberry should have done?"

"Margie Carberry, From A Husband and A Mother," not unlike the doctor/daughter ad featuring Angell and Clish, featured Jim Carberry, and Margie's mother, Claire Shapiro, also of Natick, MA.

Jim: "She was my wife. Claire: She was my daughter. [pause]. She would have chosen to end her suffering, but our laws stopped her."

> Jim: "We need Death with Dignity to give the choice to those who have less than six months to live."
>
> Claire: "Margie didn't get a choice."
>
> Jim: "Voting yes on Question 2 will make sure that won't happen again."[167]

Jim Carberry was interviewed by an *Inside Bosto*n reporter, Melissa Adan, for a TV special to be shown the day before, and on, election day. "If Question 2 Death with Dignity had been in effect and [your wife, Margie] had the option of taking the pill," asked Adan, would she have taken it?" "Absolutely!" is Carberry's response. "She would have liked to have close friends in the room with her, telling stories, and listening to music, and she would have taken the

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[167] "Maggie Carberry, From A Husband and A Mother." Dignity 2012, .30 sec., Paid for and sponsored by Dignity 2012, Yes2Dignity, Vote Yes On Question 2. https://www.youtube.com/watch?v=zK6jbBz5nck&feature=plcp.

medication and drifted off. . ., " he says. "I had promised my wife that I would do what I could to make sure nobody would go through this again. . . . It's wrong to force people to do this. . . [168]

Also the subject of Adan's special election day report is Dr. Lewis Cohen, a psychiatrist at Bay State Medical, Springfield, who talks professionally and personally about the pressing need for a ballot initiative. Cohen is the author of "No Good Deed: A Story of Medicine, Murder Accusations, and the Debate over How We Die," a 2010 book about nurses at Bay State accused by a nurse's aide of murder. "They had stopped dialysis and were helping a patient to die," Cohen says. In the interview with Adan, Cohen tells the story of his 92-year-old mother-in-law who was terminal. She had emphysema, was oxygen dependent and house-bound. Her world had kind of shrunk," he recalls. She asked Lewis to help her die. "No I cannot write a prescription . . . It is not the law . . . If the law had been in effect . . . and she had chosen to use it," he says, "it would have been over inside of 20 minutes . . . 40 minutes . . . done!" says Cohen. Both Cohen and Carberry encourage students to educate themselves about Question 2 when they go to vote," concludes the reporter.[169]

As Kathryn Tucker said to health care professionals gathered at Harvard in October 2011, Aid-In-Dying was the ground on which a new standard of medical care was emerging—one that envisioned the right of a competent, terminally ill patient to expect help in dying that includes, not only sedation and palliative care, but removal of food and water, and "drugs that hasten or

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[168] Originally aired November 5 and 6, 2012. Written/Filmed/Produced by: Melissa Adan, Nicole Jacques, Kiva Liu With Additional Camera Work from: Sandy Hooper. For more information and access to full episodes of Insider Boston and other BUTV10 shows, please see www.butv10.com.

[169] Adan, Insider Boston Election-day Report.

bring about death,"[170] the last two being legally and morally equivalent. Dignity 2012, representing the Death with Dignity National Center in Portland, and Compassion & Choices, saw the opportunity to propose that standard, in the form of a "citizen-initiated" ballot question in politically fertile ground, "a blue state in a presidential election year with a certain winner at the top of the Democratic ticket."[171] Neither of the two major Boston newspapers offered significant opposition, if only to question how the legalization of such a controversial policy would affect the provision of healthcare in premier medical centers in Boston. Nor did either newspaper reflect much on the emerging split in the local medical community between the Massachusetts Medical Society and one of its most prominent members. Nor did they consider to any extent the potential effect of that split on other medical communities in New England, the rest of the country, and the world! Finally, they did not substantially question, at least not until the eleventh hour, the vast expansion of patient rights, and corresponding impositions on physicians and pharmacists, represented by the ballot initiative. Perhaps these things seemed irrelevant in the face of polls which indicated, even as late as October 2012, that Massachusetts voters favored aid-in-dying by a 60% margin.

Or, perhaps, as Scott Lehigh and others predicted the day after the petition was filed, apart from disabilities groups, the only real obstacle to assisted suicide in Massachusetts would come from the Catholic Church.

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[170] Kathryn Tucker, October 21, 2011.

[171] John Rowley, October 14, 2009, National Press Club in Washington, D.C.

Cardinal Sean O'Malley talks with citizens at polling place nearest Cathedral on election day.

Chapter Three

"Low Hanging Fruit": The Campaign to Defeat Assisted-Suicide in Massachusetts

At the Red Mass, an annual Mass for Catholic jurists, held at the Cathedral of the Holy Cross in Boston on September 19, 2011, Cardinal Sean O'Malley addressed the issue. The annual Mass was attended in 2011 by about 175 judges, lawyers and other legal professionals, reported *The Boston Globe*.[172] Invoking Jewish, Christian and secular teachings as ground for opposition to assisted suicide, the Cardinal set the tone for what would become a politically

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[172] Kathy McCabe, "Cardinal Rips Suicide Ballot Effort," *The Boston Globe*, September 20, 2011, https://www.bostonglobe.com/metro/2011/09/19/cardinal-rips-suicide-ballot-effort/u6F5VYYizw6HsrNCdPBWfL/story.html.

broad-based campaign against assisted suicide. “God expects us, as the Jews say, to ‘repair the world . . . [to] leave it a better place than the way we found it.” Jesus tells us to “render unto Caesar . . .” which often means “let’s lock God in the sacristy and let Caesar call all the shots,” the Cardinal quipped. Our own Declaration of Independence tells us that we are endowed with “self-evident” rights, unanimously adopted, which constitute a “moral foundation” for American liberty, he went on. Quoting Pope Benedict XVI on the “ethical foundation for political choices,” he said, the “objective norms governing right action are accessible to reason, prescinding from the content of Revelation.” In other words, that one need not be Jewish, Christian, Muslim, or even religious, to oppose assisted suicide, was the Cardinal’s message from the outset.

Anticipating objections to the course he was clearly charting to oppose the ballot initiative, Cardinal O’Malley said that the role of religion is not to “supply norms, as if they could not be known by nonbelievers, still less to propose concrete political solutions which would lie outside the competence of religion.” It is the role of religion, he stressed, “. . .rather to help purify and shed light upon the application of reason to the discovery of objective moral principles. . . This corrective role of religion . . . is not always welcome . . .” he added. Welcome or not, the Cardinal Archbishop of Boston was urging Catholic members of the legal profession of Massachusetts to recognize and act upon their responsibility to oppose the legalization of assisted suicide in their home state.

Calling upon members of the profession for support, the Cardinal announced the theme for what would become the campaign against assisted suicide not only in the Archdiocese of Boston, but in the three additional Massachusetts dioceses—Fall River, Worcester and

Springfield. In doing so, he predicted that voters in the Commonwealth could be counted on to recognize the terrible dangers inherent in the proposed law.

> Most people, regardless of religious affiliation know that ***suicide is a tragedy***, [a phrase borrowed from the U.S. Catholic Bishops statement of June 2011] and one that a compassionate society should work to prevent. They realize that allowing doctors to prescribe the means for their patients to kill themselves is a corruption of the medical profession. It even violates the Hippocratic Oath that has guided physicians for thousands of years. To quote from that foundational document: "I will not give a lethal drug to anyone even if I am asked, nor will I advise such a plan."

The Cardinal's homily foretells dire legal, moral and practical consequences of legalizing assisted suicide in Massachusetts. First, the law would rescind legal protections for persons with disabilities, sending a message that they are "better off dead," replacing their freedom to exercise genuine rights to care, housing and other things with freedom to take their lives. Second, it is not, as proponents maintain, an act of compassion, but rather the elimination of the person suffering and the transferal of that suffering to his or her surviving relatives and friends. Finally, legalization of assisted suicide only "normalizes suicide or represents it as a solution to problems," leading to increased numbers of suicides, as it has clearly done in Oregon. "A vote for assisted suicide is a vote for suicide," the Cardinal concluded. These three objections as laid out by Cardinal O'Malley in the Red Mass homily—the threat to persons with disabilities, that "suicide is not compassion," and that "legalization normalizes suicide," the last a problem already on the rise particularly among the young in America, became mainstays of the Cardinal's messages during the Archdiocese of Boston campaign entitled "*Suicide Is Always a Tragedy*."

The Cardinal exhorted lawyers and judges in attendance that day to see their profession particularly as invested "with an even greater responsibility to ensure just laws and protect the weak." The world sees people in the last stages of life as persons "diminished in their humanity [who] should be eliminated. . . We must see them through God's eyes and recognize . . . that we are all . . . our brother's keeper and our sister's helper. Cain who forgot he was his brother's keeper ended up becoming his executioner," warned the Cardinal. "'Thou shall not kill' is God's law and it is written in our hearts by our Creator."[173]

On October 29, only days following Attorney Kathryn Tucker's presentation on "Aid-in-Dying" at Harvard, discussed in the previous chapter, the Cardinal addressed physicians, nurses and medical personnel gathered at the annual White Mass, also at Holy Cross Cathedral. In this homily, the Cardinal identified the "real" advocates for assisted suicide in Massachusetts: "Physician-assisted suicide has been resisted in many states but this new Hemlock Society sees Massachusetts as low-hanging fruit. We must show them that the fruit is a prickly pear," he said. [They] "will muster great resources and impressive amounts of money to seduce our people . . . " This last comment was an obvious reference to the political experience and financial resources particularly of the Washington State-based pro-assisted suicide organization, Compassion & Choices. .

In his homily, the Cardinal mentioned Attorney Tucker by name, and singled out her talk at Harvard as emblematic of the arguments being made in favor of assisted suicide in Massachusetts. Tucker objected to the term assisted suicide, calling it "aid-in-dying," he said, instead of physician-assisted suicide. She advocated a standard of medical practice where a "competent and reasonable" person has a right to "help in dying" that includes sedation, palliative care, removal of food and water, and "drugs that hasten or bring about death," as if the last two were ordinary methods of care and treatment for the sick and dying. (Catholic teaching

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[173] Cardinal O'Malley, Red Mass Homily, September 19, 2011, https://www.bostoncatholic.org/press-release/2011/09/september-19-2011-cardinal-omalley-red-mass-homily

does not allow starvation and dehydration, or lethal medication.) The organization represented by Tucker, Compassion & Choices, said the Cardinal, had been working to create a legal environment in Massachusetts in which doctors would be able to prescribe lethal drugs without fear of prosecution. It sought also to intimidate with fear of legal and financial reprisals institutions who failed to offer "the full range of end-of life-options," including lethal drugs.[174]

Even before the two homilies were delivered, the Cardinal and the three Roman Catholic bishops of Massachusetts, comprising together the Massachusetts Conference of Catholic Bishops, had announced their opposition to the ballot initiative: ". . . [A] compassionate society should work to prevent suicide, which is always a terrible tragedy, no matter what form it may take," they said. "This Initiative Petition is a first step in Massachusetts toward legalizing physician-assisted suicide, effectively authorizing the killing of human beings prior to their natural death."[175] Like the Cardinal's homilies, the bishops' statement relied on legal, moral and religious teaching which for millennia had opposed suicide, especially physician-assisted suicide. Quoting Pope John Paul II, they said, "Suicide is always as morally objectionable as murder. The Church's tradition has always rejected it as a gravely evil choice: 'to concur with the intention of another person to commit suicide and to help in carrying it out through so called "assisted suicide" means to cooperate in, and at times to be the actual perpetrator of, an injustice which can never be excused, even if it is requested . . .'"[176]

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[174] Justin Bell, "Cardinal Urges Catholic Doctors to Oppose Assisted Suicide Measure," *The Pilot*, November 4, 2011, http://www.thebostonpilot.com/article.asp?ID=13965.

[175] "Catholic Bishops Oppose 'Death with Dignity' Initiative," Massachusetts Conference of Catholic Bishops, September 7, 2011.

[176] *Evangelium vitae*, March 25, 1995, no. 66.

The bishops knew they had the support of the medical community in Boston and beyond in opposing the petition. At the time of their statement, both the American Medical Association and the American College of Physicians and Surgeons opposed physician-assisted suicide. The Massachusetts Medical Society, on record since 1999 as opposing the practice, and understanding that assisted suicide would be on the ballot in their state the following year, took a decisive step. The House of Delegates, the chief policy-making body to the 23,000 member organization of physicians, voted on December 3, 2011, to withhold support from the ballot initiative. In doing so, they cited the insufficiency of safeguards against abuse and absence of enforcement, investigation, oversight and data gathering provisions in the bill.[177] Still, the bishops knew also that defeat of assisted suicide in their state was a long shot. As did Dignity 2012 and Compassion & Choices, they knew that Massachusetts, like Oregon and Washington, faced serious political and cultural challenges on the issue. In 2011, "Massachusetts citizens answered yes, by a 2-1 margin, to the question, "Do you think that terminally ill patients should have access to physician-assisted suicide?"[178] The bishops were not insensitive to the certain prospect that a wildly popular Democratic president on the ballot in November 2012 insured a high turnout of voters sympathetic to expanding patients' rights. Voting patterns in Massachusetts, classically a "blue" state with a democratic majority heavily in favor of abortion,

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[177] Massachusetts Medical Society, Overview of Massachusetts Ballot Question 2, https://www.massmed.org/Advocacy/Key-Issues/Physician-Assisted-Suicide--Arguments-For-and-Against-(pdf)/.

[178] Rev. J. Bryan Hehir, "Physician-Assisted Suicide: Political, Pastoral Challenges Ahead," Health Progress January-February 2014, https://www.chausa.org/publications/health-progress/article/january-february-2014/physician-assisted-suicide-political-pastoral-challenges-ahead.

confirmed the Cardinal's image of Massachusetts as "low-hanging fruit." Despite the fact that approximately 40 percent of citizens in Massachusetts were Catholic, 50 percent of voters described themselves as more secular than religious in their worldview.[179]

Relying on 2,000 years of Catholic teaching regarding the dignity of life, and decades of experience caring for the sick and the dying at home, in Catholic hospitals and in nursing homes, the Cardinal, preaching in the Fall of 2011, had committed himself and the Massachusetts Catholic Conference to the defeat of Ballot Question 2. A month later, on November 18, 2011, Cardinal O'Malley was elected by his fellow bishops, gathered as the United States Conference of Catholic Bishops, to chair its Pro-Life Committee. Six months earlier, that committee had issued a document on physician-assisted suicide. In it the U.S. bishops stated, "Respect for life does not demand that we attempt to prolong life by using medical treatments that are ineffective or unduly burdensome. Nor does it mean we should deprive suffering patients of needed pain medications out of a misplaced or exaggerated fear that they might have the side effect of shortening life. . . In fact, severe pain can shorten life, while effective palliative care can enhance the length as well as the quality of a person's life. . . Effective palliative care . . . allows patients to devote their attention to the unfinished business of their lives, to arrive at a sense of peace with God, with loved ones, and with themselves."[180] Now, the Cardinal Archbishop of Boston, in union with fellow bishops in Massachusetts, had positioned himself and them to test whether that teaching could prevail in Massachusetts, arguably the most politically liberal state in the U.S.

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[179] J. Bryan Hehir, "Physician-assisted Suicide: Political, Pastoral Challenges."

[180] United States Conference of Catholic Bishops, "To Live Each Day with Dignity: A Statement on Physician-Assisted Suicide," June 16, 2011, p. 5.

Opponents of the law foresaw several dangerous effects which, to facilitate discussion, I will summarize here. First, the initiative petition would have created a special class of citizens—those with a life expectancy of fewer than six months—whose suicides might be legally facilitated rather than prevented. Persons with disabilities, who ordinarily have a short time to live if they do not receive life-supporting treatment, as well as people with chronic illnesses, might have been swept up in the law's definition. Prominent doctors, jurists and ethicists had argued for years that taking life in the name of compassion promised to be a slippery slope toward ending the lives of people who were not terminal. Dutch doctors, who once limited euthanasia to terminally ill patients, were, at the time of the Massachusetts initiative, legally providing lethal drugs to people with chronic illness, disabilities, mental illness, and even to children. Second, the law could be expected to have grave consequences for the medical profession in Massachusetts, a world-renowned medical center to which people come from all over the world for treatment. Allowing doctors to prescribe lethal drugs is a corruption of the healing art which violates the very oath that has guided physicians for millennia: "I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan,"[181] doctors had traditionally sworn. Finally, legalization of assisted suicide in Massachusetts might have signaled a special relationship between cost-effective health care and assisted suicide emerging in Oregon and Washington, the only two states in which physician-assisted suicide was legal. Regarding this last point, in May of 2008, three years prior to the Massachusetts initiative petition, a 64-year-old

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[181] The Hippocratic Oath, translated by Michael North, National Library of Medicine, 2002, History of Medicine Division, National Library of Medicine, National Institutes of Health, https://www.nlm.nih.gov/hmd/greek/greek_oath.html.

retired school bus driver in Oregon named Barbara Wagner received news that her late-stage lung cancer, which had been in remission, had returned. Her doctor prescribed a drug that would slow the cancer's growth. Wagner, who had health coverage through the state of Oregon, was notified that her insurance would cover all costs of assisted suicide but would not cover $4,000 per month for treatment because it was not approved for her condition.[182] "They will pay to kill me, but they will not give me the medication to try to stop the growth of my cancer," said Wagner in a controversial ad that appeared as part of an unsuccessful effort to defeat physician-assisted suicide in Washington State in 2008.[183]

The "Information for Voters" Guide, issued by the Secretary of State of Massachusetts and sent to every voter in 2012, gave summaries of positions for and against the initiative. The statement on behalf of the Committee Against Physician-Assisted Suicide captures well the tone of the campaign to defeat the measure:

> Question 2 restricts patients' choices and control by enabling suicide as a substitute for quality health care. Question 2 is poorly written, confusing and lacks even the most basic safeguards. Patients would not be required to see a psychiatrist before obtaining the lethal drug. Many patients with a treatable form of depression could get a life-ending prescription, rather than effective psychological care. Also, the proposal lacks any public safety oversight after the fatal drug is obtained.
>
> Question 2 does not require a consultation for palliative care, a compassionate form of care that eliminates pain and maximizes quality of life for the terminally ill. And, eligibility is based on a six-month life expectancy. Doctors agree these estimates are often wrong. Individuals can outlive their prognosis by months or even years.

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[182] The cost of Barbara Wagner's treatment is reported in Ira Byock, "Physician-Assisted Suicide is Not Progressive: 'Right to Die' Is Just A Slogan. No Civil Right to Commit Suicide Exists in Any Social Compact." The Atlantic, October 25, 2012, https://www.theatlantic.com/health/archive/2012/10/physician-assisted suicide-is-not-progressive/264091, 3.

[183] Steven Ertelt, "Woman Victimized by Oregon Assisted-Suicide Law Urges Washington to Vote No," Life News.com, October 28, 2008, https://www.lifenews.com/2008/10/28/bio-2608/.

> Massachusetts should improve access to quality health care for terminally ill patients, not access to suicide. Vote no on Question 2.[184]

To conduct the political campaign against assisted suicide, a coalition was formed under the leadership of the Massachusetts Catholic Conference. Consisting predominantly of medical organizations, disabilities rights groups, and the Church, all of whom agreed that the Death with Dignity Act posed either dangers to the practice of medicine or to persons with disabilities, it also included groups who opposed legalized assisted suicide in principle, e.g., pro-life and religious groups. The "Committee Against Physician-Assisted Suicide," (CAPAS), along with its website www.stopassistedsuicide.org, was the official name for the coalition. CAPAS was chaired by Dr. Roseanne Bacon Meade, appointed September 7, 2012. Former president of the Massachusetts Teacher Association and member of the executive committee of the National Education Association, Dr. Meade was a local activist on progressive issues.[185] It was that Committee Against Physician-Assisted Suicide who hired consultants to craft and manage a media campaign to convince even voters who might support assisted suicide in the name of compassion to vote against the 2012 initiative. It was CAPAS that is reported by the Massachusetts Committee on Finance as having raised and spent over four million dollars to defeat the measure.

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[184] Authored by: The Committee Against Physician-Assisted Suicide One Beacon Street, Suite 1320 Boston, MA 02108 617-391-9663 www.StopAssistedSuicide.org. Secretary of State, "Information for Voters, p. 8.

[185] September 7, 2012, "Rosanne Bacon Meade to Head Committee Against Physician-Assisted Suicide," Archdiocese of Boston, https://www.bostoncatholic.org/press-release/2012/09/september-7-2012-rosanne-bacon-meade-head-committee-against-physician.

Opponents' strategy involved using ordinary means available to the Church, namely, church bulletins, in-pew prayer and information cards, homilies, novenas, special presentations, etc., to reach parishioners in roughly 400 parishes in the state of Massachusetts. "*Suicide is Always a Tragedy,*" the name borrowed from the U.S. Catholic bishops' statement, and used by the Cardinal in his White Mass homily, became the name of the education campaigns in the four dioceses. In that effort, the Archdiocese of Boston campaign became the prototype. Beginning on February 11, the feast of Our Lady of Lourdes, whose shrine is world-renowned for the cure of the sick, Boston parishes launched its "Suicide is Always a Tragedy" campaign. Parishes throughout Boston displayed and distributed in-print and electronic materials. Specially designed and made available by the Archdiocese of Boston Catholic media group, the materials included video messages, in-pew cards, posters and banners announcing the urgency of stopping the effort to legalize assisted suicide which, if enough signatures were gathered, would appear on the ballot in November. Thus began nine months of intense, in-church activities on the part of the Boston Archdiocese and the dioceses of Fall River, Worcester, and Springfield. Advised by consultants hired by Committee Against Physician-Assisted Suicide on messaging, images and target audiences, the goal was to reach Catholics in parishes, schools and other Catholic institutions throughout the state. In the closing months of the campaign, those individual diocesan efforts came together with an intense public relations and media-based campaign. TV, radio, and electronic media-based messaging, as well as outreach to editorial boards, influential organizations and well-known individuals, was supported by an on-the-ground, conventional election campaign. Featuring yard signs on front lawns and hand-held posters on street corners, the campaign had one goal—"to get to 51%" against assisted suicide in a state that everyone predicted would vote overwhelmingly in favor of the ballot question on November 6th.

As Secretary for Faith Formation and Evangelization in the Archdiocese of Boston, I had the task of assisting the Cardinal to implement what came to be called the "internal" campaign in the parishes of the Archdiocese. I also had the responsibility of working with the Massachusetts Catholic Conference and diocesan pro-life directors in Boston and the three additional dioceses to coordinate educational outreach.

3.1 "Suicide Is Always a Tragedy": The Archdiocesan Campaign

Defeat of a ballot initiative is equivalent to running a candidate for office; it involves convincing the majority of voters to pull the lever for your position. "It was quickly decided that the Catholic Church by itself could not defeat the physician-assisted suicide challenge," says Rev. J. Bryan Hehir, member of the Massachusetts Catholic Conference and Secretary of Health and Social Services in the Archdiocese of Boston.[186] The bishops decided to engage the services of public affairs experts. They chose the Boston public relations consultants Rasky Baerlein Strategic Communications, and Democratic strategic planning and opinion research experts Marttila Strategies. "Given the makeup of the electorate and the complexity of the issue about which the citizenry held strong views already, it would be essential for the church to be deeply involved—but it could neither lead the public campaign nor be the face of it.," argued Fr. Hehir, This demanded a campaign strategy that was multifaceted, attempting to reach Catholics primarily through parishes and Catholic institutions, as described above, and non-practicing

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[186] J. Bryan Hehir, "Physician-assisted Suicide: Political, Pastoral Challenges."

Catholics and non-Catholics through major media outlets and a conventional on-the-ground campaign.

In order to get to 51% against the initiative in Massachusetts, Catholics had to provide 38% of the votes. In 2012, the Boston Archdiocese reported 1.8 million Catholics in the territory of whom about 270,000 regularly attended Mass (an average of 15%). With 3 million people voting, roughly one-fifth of Catholics would have to vote against the ballot initiative in order for it to be defeated. A significant portion of that turnout had to come from Boston. Outreach to people attending Sunday Mass and parish activities was crucial. Parishes in Boston were identified to host workshops in the Spring and Fall of 2012. Teams of speakers including Catholic doctors, nurses, lawyers and ethicists were formed to give presentations. In the Spring, content of the presentations focused on the initiative process, urging listeners not to sign the petition.[187] It also focused on serious "flaws in the bill," such as the requirement that no doctor be present at the death, or that the patient need not have a psychiatric exam, or the possibility that the diagnosis of six months might be inaccurate. The goal was to convince Catholics that, while they might consider assisted suicide a form of compassion, this was indeed a bad bill.

One memorable presentation given probably dozens of times at different venues over the year-long campaign was the work of the imaginative Attorney Henry Luthin. Called "The Humane and Dignified Death of Uncle Charlie," it told the story of a man recently diagnosed with cancer and given six months to live. At 72, Uncle Charlie had suffered several strokes which left him immobile and unable to speak. Within a week of diagnosis, Charlie's favorite nephew Felix flew in the from the West Coast with his girlfriend Francesca. Felix was the

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[187] Janet P. Benestad, "Doctor-assisted Suicide Masquerades as Compassion," *The Pilot*, November 19, 2011, https://www.thebostonpilot.com/article.asp?ID=14014, for a discussion of signature gathering in the early stages of the campaign.

principle beneficiary of Charlie's will, and the Death with Dignity Act, having been passed in 2012, eight years prior to Uncle Charlie's cancer diagnosis, was part of Massachusetts General Law (MGL). Felix informed Charlie's physician that his Uncle had requested suicide, that is, "orally, a prescription to end his life in a humane and dignified manner" (MGL 201G:9, and 201G:3)." Charlie's physician, having certified the Uncle "capable" under the law (201G:4) "ha[d] a question about whether Uncle Charlie [was able to] communicate his desire." Below is Attorney Luthin's rendition of what might have transpired:

- Charlie's physician interviews Uncle Charlie with Felix present as one familiar with Uncle Charlie's method of communication. One grunt, Felix assures the doctor, means yes (201G:1(3)). A consulting physician confirms in writing Uncle Charlie's prognosis, diagnosis and capacity.
- The attending physician informs Uncle Charlie of his diagnosis, prognosis, the potential risks of taking the medication, the likely result of taking the medication and feasible alternatives to taking the medication . . . (201G:4(1)I.
- Uncle Charlie grunts once.
- The following week, Felix and Francesca both witness Uncle Charlie's execution of a written request for a prescription for medication to end his life in a humane and dignified manner (201G:2 and 3). Felix is an heir to Uncle Charlie's estate, but Francesca is not.
- Felix helps Uncle Charlie sign the written request.
- Fifteen days following the first oral request and more than 49 hours after the written request, Uncle Charlie makes his second oral request. . . again through Felix (201G:1(4)).
- The attending physician offers Uncle Charlie the opportunity to rescind his request (201G:9).
- Uncle Charlie grunts twice. This means no. I don't think Felix pinched him.
- There were no witnesses when Uncle Charlie takes the medication. Felix and Francesca were, however, present.
- The attending physician states on the death certificate that Uncle Charlie died of cancer . . . (201G:4(2)).

  Under laws of the Commonwealth of Massachusetts, Uncle Charlie ended his life in a humane and dignified manner. (201G, throughout).[188]

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[188] Henry C. Luthin, Attorney-at-Law, "The Humane and Dignified Death of Uncle Charlie," supplied courtesy of Mrs. Allison Le Doux, Pro-Life Directior, Diocese of Worcester.

No one who saw and heard Attorney Luthin's presentation walked away doubting his point. With accuracy and simplicity, the fictitious story of Uncle Charlie captured the horror, and the macabre humor, that might surround a physician-assisted death under the proposed law. Uncle Charlie's demise, bizarre and outlandish as it seemed, might be anyone's who sought relief under the pending law. And, that death would be certified as "dignified and humane" under Massachusetts law.

Parish workshops also focused on Catholic directives regarding removal of food and water, and administration of pain relief at the end of life, in order to dispel the mistaken idea that the Church requires patients to undergo painful and costly treatments. The nature of palliative care was discussed. An emerging alternative to traditional courses of treatment, palliative care involved holistic medical, psychological and spiritual care in the case of life-long and terminal illnesses, including the cessation of burdensome or unproductive treatments. Despite the state's reputation as a leading center for medical research and healthcare, few hospitals in Massachusetts had palliative care departments or specialists in 2012. The talks were intended to assure parishioners that refusing to sign the petition, and eventually voting against the initiative should it get on the ballot, was the right thing to do. They also assured parishioners that voting against the initiative would not compromise Catholic Ethical and Religious Directives on end-of-life care, particularly that a patient may refuse unnecessary, burdensome and costly treatments if he so desires.[189]

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[189] United States Catholic Conference of Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, Sixth Edition, Digital Edition, June 2018, https://www.usccb.org/about/doctrine/ethical-and-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf.

The reach of the Archdiocese of Boston campaign alone is noteworthy. Events at more than 36 parishes, three colleges, one theology-on-tap meeting, two live-stream sessions, and a Social Justice Convocation held on October 27th, only days prior to the vote, reached at least 1,000 registered, in-person attendees. Twenty-two workshops were held in the last month of the campaign, September 17 to October 28, two at local colleges, one at Merrimack College in North Andover, one at Emmanuel College in Boston, and the other 20 at Catholic parishes. A video homily by Cardinal Sean O'Malley, entitled "Our Task is to Help Prevent Suicide," was sent to every parish in the Archdiocese in the form of 310 DVDs and 310 CDs in English, 40 CDs in Spanish and 30 CDs in Portuguese, to be shown or played at Saturday and Sunday Masses, and other parish functions, on October 27-28th weekend masses. The content of the homily was printed in *The Pilot*, the archdiocesan Catholic newspaper, and is summarized below. Printed materials in three languages were delivered to parishes, schools, and ministries archdiocese-wide.[190]

Anti-assisted suicide documents totaling 1,769,725 were delivered to Catholic parishes and institutions in Boston between February and October 2012, including business cards, in-pew cards, prayer cards, brochures, bumper magnets, stickers, and yard signs (3,623 yard signs alone were distributed). In the closing weeks of the campaign, five thousand hand-held signs for display at the polls on election day were distributed from seven parishes chosen strategically to blanket the archdiocese, including St. Edith Stein, Brockton; St. John the Evangelist, Chelmsford; St. Bridget's, Framingham; St. Mary's, Franklin; St. Michael's, North Andover; St. Athanasius, Reading; Our Lady Comforter of the Afflicted, Waltham. (See photo of Cardinal

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[190] Archdiocese of Boston, Physician-Assisted Suicide Education Campaign: Phases II and III, Final Repot—December 2012, www.suicideisalwaysatragedy.org.

O'Malley standing at the polling place nearest the Cathedral talking to folks holding signs saying "Vote 'No' on Question 2" at the beginning of this chapter.)[191] All in-print and electronic materials for the Boston campaign had been created, designed, photographed, printed, packed, and either shipped from, or delivered by staff working at, Archdiocesan offices in Braintree or in Boston parishes.

In addition to materials for general distribution, a total of 1,000 parish guides, outlining steps to follow in executing the campaign, were sent to pastors and parish staff on January 20, 2012. Included in the parish guide, were announcements and prayer petitions to be reprinted or prayed every weekend beginning in February and ending April 8th. Additional bulletin announcements, prayer petitions and other materials were sent in September for publication and distribution leading up to election day.[192]

On behalf of the Archdiocesan Education Campaign, weekly emails via Constant Contact were sent to pastors, deacons, designated parish staff, and personnel at Catholic institutions, beginning in February 2012 and continuing until Election Day. The emails urged preparation for, execution, and reporting on the progress of local campaigns. The Boston campaign involved three pre-announced phases. Phase 1, preparation and training during January and early February, involved the launch of "Suicide is Always a Tragedy," on the Feast of Our Lady of Lourdes, February 11, in all parishes of the Archdiocese. As part of this phase, priests, deacons,

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[191] Chris Pineo, "Mass Voters Say No to Assisted Suicide," *The Pilot*, November 9, 2012, https://www.thebostonpilot.com/article.asp?ID=15317.

[192] Archdiocese of Boston, Physician-Assisted Suicide Education Campaign: Phases II and III, Final Repot—December 2012, www.suicideisalwaysatragedy.org.

chaplains, parish staff, and anyone serving the sick and dying, were invited to specially prepared workshops at the Archdiocesan offices. Presented by Reverend Myles Sheehan, a Jesuit priest and physician, and Dr. Peter Cataldo, Chief Healthcare Ethicist for the Archdiocese, the workshops addressed theological, ethical and practical issues surrounding death and dying. Phase II, extending from May to September 2012, focused on a Catholic education campaign, including workshops by physicians, lawyers and ethicists, *Pilot* articles, distribution of yard signs and bumper stickers in parishes. Phase III, spanning October 2012 to election day, saw the implementation of an intensified public relations campaign, leveraging all elements of the Catholic population. It consisted of Catholic TV, radio, in-print and social media, personal testimonies in the archdiocesan newspaper, parish-based promotions and letters to schools and religious education programs, as well as to parents of school-age children, with age-appropriate curriculum included, as well as outreach to Catholic colleges, campus ministries on secular colleges and and young adult populations. A letter signed by all Catholic college presidents in Massachusetts and sent to alumni and student families opposing the initiative represented probably the most controversial of the strategies used and will be discussed later in this chapter.

The archdiocesan website, at www.SuicideisAlwaysATragedy.org, received 10,060 visits, 6,656 unique visitors, and included 25,047 pageviews over the course of the campaign. Included on the website were six newspaper columns written by the Cardinal, as well as other articles written and published in the Boston archdiocesan newspaper, *The Pilot*, other newspapers, individuals and agencies. Liturgical aids, including Prayers of the Faithful and a Rosary novena, were developed for the campaign and made available particularly through the offices of Catholic TV, under the direction of then Father Robert Reed, President of iCatholic media, and the offices of Pilot New Media and Pilot Printing, under the direction of Mr. Scot

Landry, then Secretary for Catholic Media. The website included Voter Resources, a "Flaws in the Bill Handout" listing the lack of safeguards in the bill, as well as logos, graphics, and resources made available through the United States Conference of Catholic Bishops. The website included universal Church documents explaining the Catholic position regarding moral and ethical objections to assisted suicide and the taking of human life. Through the efforts of Catholic TV and Pilot New Media, a live virtual Town Hall Meeting Forum was held at the Catholic TV studios in Watertown, Massachusetts, and aired in Boston and surrounding areas on Catholic television, CatholicTV.com, and 1060AM WQOM Catholic Radio Boston, with a minimum of twelve TV and radio rebroadcasts, and unlimited website availability, leading up to and including election day. Between July and November, there were 16 live broadcasts dedicated to the ballot initiative on *The Good Catholic Life Radio Program,* aired on 1060AM WQOM Catholic Radio during the 4 P.M daily-commute hour, with an average of one per week in September, October, and the first week of November, 2012. Last but certainly not least, Cardinal Sean O'Malley took to Twitter, sending 121 assisted-suicide related tweets between October 11 and November 6; his followers grew from 5,081 to 6,940 during that time.[193]

The Pilot, published by the Archdiocese of Boston and the oldest Catholic newspaper in the country, carried 13 articles and opinion pieces against assisted suicide between September 21 and election day. Six of the opinion pieces, signed by the Cardinal himself, addressed reasons for voting "no" on the ballot initiative. Summaries and excerpts of those articles say much about the Cardinal's personal involvement in the campaign. "Better Ways to Care for the Dying," the first of the opinion pieces published on September 21st, spoke about true compassion, including

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[193] Archdiocese of Boston, Physician-Assisted Suicide Education Campaign: Phases II and III, Final Repot—December 2012, www.suicideisalwaysatragedy.org.

hospice and palliative care that the Cardinal had witnessed personally. "Hospice is not a place, but a concept of care. Hospice cared for my Dad when he was dying. The nurses and hospice workers truly ministered to the whole family," he said.[194] The Cardinal's opinion piece entitled "Suicide is Always a Tragedy," addressed the agony so often experienced by family members closest to those who take their lives, and the additional, real danger of "copy-cat syndrome" reported by states where assisted suicide is legal. The increasing rates of suicide, especially among the young, was a theme the Cardinal repeated often in interviews and presentations. "Oregon," said the Cardinal in the opinion piece, "has one of the highest rates of suicide (not including deaths from physician-assisted suicide) of any state . . ." Suicide is "among the three leading causes of death among those aged 15-24," the Cardinal warned.[195] Another opinion piece signed by the Cardinal, entitled "A Flawed Law, A False Choice," appealed to reasonable people of all faiths, and no faith, to remember that "for 2500 years doctors have taken the Hippocratic Oath, promising to practice medicine ethically and honestly. Part of the promise is 'to do no harm.' Indeed, the oath is very explicit about rejecting physician-assisted suicide," the Cardinal stressed. Addressing non-Catholics directly in this opinion piece, the Cardinal invited them not to allow their differences with Catholic teaching to keep them from making a good decision about a bad law: "There are many citizens of the Commonwealth . . . who do not share our faith and for whom the clear biblical teaching is not a convincing argument. To them, we make an

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[194] Cardinal Sean P. O'Malley, "Better Ways to Care for the Dying," *The Pilot*, September 21, 2012, https://bostonpilot.com/article.asp?Source=Archives&ID=15122.

[195] O'Malley, "Suicide is Always A Tragedy," *The Pilot*, September 28, 2012, ibid., 15161.

appeal to reason: that this is bad legislation because it puts vulnerable people at risk and it promotes suicide."[196]

Addressing proponents directly, the Cardinal's opinion piece on October 12, focused on "slippery slope" effects among vulnerable populations. Here, the Cardinal appealed to the common sense of voters: "Proponents . . . tell us that there is no danger of a slippery slope, that in Oregon the cases 'are not that numerous' and are 'carefully monitored.' I hope that reasonable people will question these claims . . ." He lists tragic outcomes to which legalization of assisted suicide can lead, among them "elder abuse," standards where those "with lower perceived 'quality of life' receive fewer benefits and protections," "lower quality of [medical] care" and corruption of "doctor-patient relationships," and, finally, "among those who have studied the evolution of this matter in the Netherlands. . . first voluntary . . . and [eventually] involuntary euthanasia."[197] In "Ten Reasons to Oppose Question 2," published October 19th, the Cardinal reviews what he believes are the "most compelling reasons" for defeating the law. "Our society admires suicide prevention organizations," he says, "including the Samaritans, hotlines, and first responders who often take great risks to save people. . . . True compassion does not put a lethal weapon, in this case a prescription of 100 capsules of Seconal, into the hands of a person to help take his or her life . . ." he urges.[198]

Published on October 26, just eleven days before the vote, *The Pilot* carried a transcript of the Cardinal's recorded homily which had been distributed to all archdiocesan parishes to be

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[196] Cardinal Sean P. O'Malley, "A Flawed Law, A False Choice," *The Pilot*, October 5, 2012, ibid., 15181.

[197] O'Malley, "The Slippery Slope of Assisted Suicide," *The Pilot*, October 12, 2012, ibid., 15219.

[198] O'Malley, "Ten Reasons to Oppose Question 2," *The Pilot*, October 19, 2012, ibid., 15239.

shown at masses on Saturday/Sunday, October 27/28. In it, Cardinal O'Malley squarely addresses the "slippery-slope" concerns regarding persons with disabilities. He recalled a personal encounter with a young man from South America who appeared one day at the Spanish Catholic Center in Washington with no money, no job and no contacts. And, like the beggar in the Gospel reading that very Sunday, says the Cardinal, the young man was blind. I asked him what possessed him to make such a trip. The man answered, "Padre, in my country there are no seeing eye dogs, no schools for the blind, and not much medical attention. Blind people in my town spend their whole life sitting on the steps of the church begging . . I said, 'Segundo, welcome to Washington. Welcome to the Spanish Catholic Center." The Cardinal went on to quote St. Francis, who loved beggars, and who, as patron of the Capuchin Archbishop's own order, practiced spiritual poverty and utter dependency on God. "At periods of our life, we are completely dependent on others for our basic needs; at the beginning and at the end of life. Somewhere in between, we get to be caregivers," he said. In this homily, the Cardinal made an impassioned plea to those who shared his faith, and to those who did not:

> We cannot ignore the impending legalization of physician-assisted suicide as if it did not affect us. It would bring spiritual death, a cheapening of human life, and a corrupting of the medical profession. Physician-assisted suicide means making the pharmacists, doctors, nurses, family members, friends and society itself, accomplices in a suicide. Our task is to help prevent suicide and provide the very best palliative and hospice care for our terminally ill loved ones.
>
> There are many citizens of this state who do not share our faith and for whom the clear biblical teaching is not a convincing argument. To them, we make an appeal to reason: that this is bad legislation because it puts vulnerable people at risk and it promotes suicide.

Just as he had done in the five opinion pieces published earlier, the Cardinal ended this video with a plea: " . . . I am asking you to join me and partner with so many medical and disability groups to stop assisted suicide and 'Vote No on Question 2' on Election Day."[199]

Based on archdiocesan statistics, at least 250,000 parishioners heard the Cardinal's homily on the last weekend in October 2012 and received campaign materials.[200] Unofficially, the editor of the Boston *Globe* was reported as saying he had planned to print an editorial recommending a "Yes" vote on Question 2. Hearing the Cardinal's homily that last weekend in October, however, had changed his mind. While that story may also be the stuff of "urban legend," to use Dr. Angell's term, the fact is that, on November 2, the Boston *Globe* published "End-of-life Discussions, Care Should Come Before Question 2," a totally unanticipated and welcome acknowledgement of the wisdom of the opposition's position from the city's major newspaper. The editorial said that assisted suicide may only be a last resort after all other methods including hospice and palliative care have failed. While not a principled rejection of the initiative, at the crucial time the editorial appeared—only four days before the vote—it was considered a key factor in such a close outcome.[201] Arguments in the editorial are discussed later in this chapter under the heading "Flaws in the Bill."

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[199] Cardinal Sean O'Malley, "Our Task is to Help Prevent Suicide," *The Pilot*, October 26, 2012, Ibid., 15275.

[200] In 2012, the Boston Archdiocese reported 290 parishes with 1.8 million Catholics in the territory of whom about 270,000 regularly attended Mass (an average of 15%). https://en.wikipedia.org/wiki/Roman_Catholic_Archdiocese_of_Boston.

[201] "End-of-Life Discussions, Care Should Come Before Question 2," *Boston Globe*, November 2,2012, https//www.bostonglobe.com/opinion/editorials/2012/11/01election-endorsement-question/qAAp21DlC6mkoGYPjA9J6M/story.html.

Reflecting on his plan to "Tweet each day until the ballot vote, "the Cardinal addressed the historic significance of the "Suicide Is Always a Tragedy" campaign in an article published October 12:

> The next four weeks are very important here in the Archdiocese of Boston and in the Commonwealth of Massachusetts . . . Even though we are less than one month away from Election Day many people still have not heard about this ballot question. It's critical that we all do what we can to inform everyone we can reach about . . . Question 2. . . . Twitter has been used to advocate for many important issues as one user's message can be re-tweeted several times to reach millions. My hope is that Catholics will respond to the need to share information on this issue by first following @CardinalSean and then re-tweeting some or all of my messages."

Just as he did in other opinion pieces, the Cardinal asked readers to join him "through Twitter and other means to stop assisted suicide by informing others about Question 2, and by encouraging your own Twitter followers to vote no."[202] Each one of the Cardinal's six opinion pieces closed with the same message:

> The Archdiocese of Boston has developed an educational website on the Church's teachings on end of life issues, www.SuicideIsAlwyasATragedy.org. The archdiocese is also part of a large coalition of groups from other faiths, from the medical community, and from disabilities rights groups that are advocating a no vote on Question 2. The coalition's website is www.StopAssistedSuicide.org.

More will be said about *StopAssstedSuicide.org* and the "coalition of groups" that defeated Ballot Question 2 in the section below entitled "Flaws in the Bill." For the moment, it's important to note here that, in the final weeks of the campaign, distinctions between an "education" and "public" campaign gave way to a joint effort between educational and coalition campaigns to defeat the PAS ballot initiative." Messaging in those weeks encouraged Catholic

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[202] Pilot Staff, "Cardinal O'Malley to Tweet Each Day until Ballot Vote," *The Pilot*, October 12, 2012, https://thebostonpilot.com/article.asp?Source=Archives &ID=15222.

parishes to link to both education and coalition websites, www.suicideisalwaysatragedy.org and www.stopassistedsuicide.org, and to implement very specific steps. They included using homily helps, general intercessions, and bulletin announcements urging citizens to vote "No on Question 2" at parish liturgies; praying the "Prayer to Prevent Assisted Suicide" as part of the Prayer of Faithful at all masses; announcing the Cardinal plan to "TWEET Each Day Until November 6" on important matters including assisted suicide; distributing an updated round of prayer and information cards, posters and other materials in English, Portuguese and Spanish, as well as ordering and displaying banners, yard signs, and bumper stickers during the weeks prior to Election Day; reproducing and distributing the Cardinal's Op ED pieces in parish bulletins; and, finally, showing the Cardinal's homily at October 27/28 liturgies.[203] No distinctions here between educational and political, internal and external, Catholic and non-Catholic audiences. It was clear each of the four dioceses, beginning with Boston, would be leveraging every resource to urge voters to vote "NO" on Question 2 in the last weeks before the election.

In early October, Catholic school principals and parish directors of religious education in the Boston Archdiocese were sent a Lesson Plan on the ballot initiative. The Plan provided presentations on assisted suicide for "young people especially those of voting age," and encouraging them to register (before October16), to vote, [and to] invite parents to the presentation on this very important issue." Catholic schools served 144 cities and towns in the Boston Archdiocese with a total enrollment 41,275 students, and 3,250 Grade 12 students in 2012.[204] Pastors and parish leaders were encouraged to access "Radio and TV Commercials from

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[203] "Education and Coalition Campaigns to Defeat the PAS Ballot Initiative, Fall 2012" and "Materials for the Campaign to Stop Assisted Suicide," www.suicideisalwaysatragedy.org. and www.stopassistedsuicide.org.

[204] State of the Schools Report, Archdiocese of Boston Catholic Schools, June 2014,

the Committee Against Physician-Assisted Suicide (CAPAS), . . . [and to] view or read the commercials [at specified websites] and forward them to your parishioners and friends." More will be said in the next section about the impact of the commercials on the wider public, it's sufficient to say here that they were integrated into the campaign intended for Catholic audiences.

At the same time, the Massachusetts Catholic Conference established "Mobilization/Coalition Campaign Efforts" at the parish level, recommending the appointment of a "liason or captain" to educate and inform parishioners about the *Stop Assisted Suicide* campaign and to "strongly urge a 'No' vote." The Massachusetts Catholic Conference hosted a conference call for parish captains to advise them and to support their efforts. Parishes were asked to place graphics on parish and school websites with direct links to the archdiocesan and coalition websites; to send an "e-blast to parishioners, religious education parents, school communities, and other distribution lists" forwarding messaging against the ballot initiative; to utilize social media, by posting support for the archdiocesan and coalition websites; and, finally, to exercise good Catholic citizenship efforts by registering voters and encouraging applications for absentee ballots.[205]

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https://www.bostoncatholic.org/sites/g/files/zjfyce871/files/financial-statements/StateoftheSchoolsReport_62514.pdf.

[205] Massachusetts Catholic Conference, "Education and Coalition Campaigns to Defeat the PAS Ballot Initiative, Fall 2012," https://macatholic.org/sites/macatholic.org/files/assets/One%2520Pager%2520Draft%2520April%25202012%2520RK%2520following%2520JFD%2520Edits%25204%252026%25202012%2520Fr%2520%2520Kickham%2520Edis.pdf.

One strategy of the “Suicide is Always a Tragedy” campaign mentioned above stands out as unconventional, and perhaps unprecedented. It involved a letter signed by Catholic college presidents “urging defeat of ballot question 2. . .” The letter expressed “. . . strong objections to this [ballot] measure which would cast aside moral and ethical principles long held in our society and in the medical profession about the sanctity of life and of physicians not doing harm.” The college presidents’ letter listed the “serious defects” of the bill including the possibility of an erroneous six-month prognosis, and no requirements for psychiatric evaluation or for immediate family notification. It cites the judgment of the Massachusetts Medical Society that the law lacks sufficient safeguards against abuse because it does not include “provisions for enforcement, oversight, and verification of data.” The letter stressed that the law is “unnecessary since current law gives patients the right to receive adequate pain relief as well as to refuse unwanted treatments. . . In our analysis, Ballot Question 2 is profoundly flawed and should be rejected,” the presidents’ letter concluded.”[206] Signed by Rev. Philip L Boroughs, S.J., President, College of the Holy Cross; Jack P. Colareso, Ph.D., President, Anna Maria College; Rev. William P. Leahy, S.J., President, Boston College; Sister Janet Eisner, SND, President, Emmanuel College; Antoinette M. Hays, President, Regis College; Rev. Martin T. Cregan, C.S.C., President, Stonehill College; Diane Arathuzik, Chair, Department of Nursing, Emmanuel College; and, Susan Genaro, Dean, William F. Connell School of Nursing, Boston College,[207] the letter was published and, in some cases, sent to alumni, students and others connected with the respective colleges.

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[206] “Opponents Line Up Against Question 2,” *Catholic Free Pre*ss, Worcester, Mass., November 1, 2012, https://catholicfreepress.org/news/opponents-line-up-against-question-2.

[207] Ibid.

The Worcester paper reported that Assumption College President Francesco C. Cesareo, Ph.D., sent his own letter on October 12 to college alumni. "Rather than extending care and compassion to those facing terminal illnesses, this law would implicitly encourage patients to end their lives prematurely," wrote President Cesareo. "The medical community has made great strides to provide patients with far less pain and far more comfort when they reach the final stages of life. Appropriately, supporting life and providing comfort should be our priority as Christians—not encouraging suicide," the President added. Assumption College, located in Worcester, MA., sponsored a series of educational programs throughout October which President Cesareo said were aimed at helping students understand "the gravity of this issue as well as the broader issues at play in this year's election," the Worcester paper reported. Assumption College was the site for a National End-of-Life Conference, "To Live Each Day With Dignity," sponsored by the Diocese of Worcester in the days immediately preceding the election.

Commentary on the Catholic college presidents' letter appeared in an article entitled "Ballot Question Is A Matter of Life-or-Death: Passions Rise, Divide over Assisted Suicide Bill," published November 2, 2012, only four days before the election. Written by Stephanie Ebbert, the article assessed the reach of the letter. "Catholic colleges had taken the extraordinary step of reaching out to tens of thousands of alumni to warn them against the ballot question," Ebbert wrote. She also reported Sr. Janet Eisner's comment that "she could not remember another similar outreach to alumni." In 2012, Sr. Janet was the longest serving women's college president in the country, having been installed in 1979. Ebbert reported that two of the college presidents admitted that the "effort by Catholic colleges to reach out to alumni followed months of discussion."[208]

In addition to commentary on the remarkable letter, Ebbert's article documents well the fact that 2012 in Massachusetts was no ordinary election. If proponents thought Massachusetts was a stepping-stone to other Northeastern states, to wit, Compassion & Choices' optimistic predictions about the initiative's chances reported in Chapter Two, it was an expectation not lost on opponents and their supporters outside Massachusetts. Ebbert reports that almost half the five million dollars raised and spent by the Campaign Against Physician-Assisted Suicide came from outside the state, an ironic detail given the fact that speeches and ads made by opponents almost from day one of their campaign criticized backers of assisted suicide as well-financed outsiders. Critical of opponents of the ballot initiative, and the ads opposing it, Ebbert says:

> The controversial ballot referendum on physician-assisted suicide has prompted a flurry of late-breaking, heart-wrenching TV ads and fierce opposition from a broad coalition of religious, conservative, and anti-abortion activists across the country who have dramatically outraised proponents.
>
> Opponents, fearing that passage in Massachusetts would advance the movement nationally, have poured nearly $2.6 million into efforts to defeat it, with contributions coming from Catholic dioceses as far away as Minnesota, Kansas, and even the U.S. Virgin Islands.

Terry Donilon, spokesperson for the Archdiocese of Boston, is reported by Ebbert as defending the archdiocese's unconventional campaign strategies.

> Everyone who is involved in this believes that if it passes in Massachusetts, it's a gateway to the rest of the country . . . The . . . Archdiocese of Boston recently contributed $250,000 to the opposition . . . [The] Cardinal felt that it was imperative, even though money is extremely tight,' Donilon added. '[The Cardinal] feels this is one of the most

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[208] Stephanie Ebbert, "Ballot Question Is a Matter of Life-or-Death: Passions Rise, Divide over Assisted Suicide Bill," https://www.boston.com/news/local-news/2012/11/02ballot-question-is-matter-of-life-or-death, accessed 8/26/2020.

> serious social and moral issues facing the Commonwealth, and he asked dioceses around the country to contribute; they have,' Donilon said.[209]

Ebbert highlights another point about the unusualness of 2012 in Massachusetts. She calls the contest over assisted suicide in the Bay State "a new front in the ongoing battle between the extreme left and the far right, with figureheads of both camps leading the fight in the final days."

> US Representative Barney Frank, the outspoken gay liberal congressman long demonized by conservatives, pointed to some of those who have enlisted in the opposition, to paint the movement as extremist.
>
> "Question Two is a personal choice, and we deserve to have a fair and meaningful dialogue, not a smear campaign loaded with scare tactics and funded by radical antigay, antichoice hate groups," Frank wrote in a fund-raising letter for the ballot question last month.

Ebbert's article emphasizes the ideological split between the two campaigns, as well as huge discrepancies in funding by proponents and opponents. She refers to Dignity 2012, the legal name given by proponents from Portland and Seattle to their campaign, as "the Frank-backed coalition, [which] has raised $419,979." On the opposition side, Ebbert acknowledges the wholly unanticipated intervention by Victoria Kennedy, wife of the late Senator Ted Kennedy of Massachusetts. In a letter to the *Cape Cod Times*, the Democratic senator's wife "aligned herself with the opposition, citing her husband's experience with cancer. Given only two to four months to live, the senator instead survived 15 months, she wrote in an opinion piece . . ." says Ebbert about Kennedy's departure from the liberal position on the issue.[210]

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[209] Ebbert.

[210] Ibid.

Ebbert's point, of course, is well taken: the 2012 campaign saw high profile individuals like the Massachusetts Senator's widow, as well as the editors of the Boston *Globe*, "cross the aisle." And they were not the only ones. The Committee Against Physician-Assisted Suicide's website, www.stopassistedsuicide.org, boasted support from Dr. Ira Byock, a self-proclaimed, committed Democrat on just about every progressive issue—"universal health care, voting rights, disability rights, women's rights, Planned Parenthood, gay marriage, alternative energy, and gun control. I yearn to see an end to the war on drugs and the war in Afghanistan," said the palliative care specialist of himself in 2012, underscoring his progressive credentials. "And, I am convinced that legalization of physician-assisted suicide is something my fellow progressives should fear and loathe. . . Giving licensed physicians the authority to write lethal prescriptions," he says, "is not a progressive thing to do."[211]

Dr. Byock's several and interesting reasons for opposing assisted suicide will be discussed later in this chapter. Suffice it to say here that he took a dim view of colleagues willing to trade the hard work of caring for dying patients for a quick fix in the form of a lethal prescription just because the law might allow it. "The term Orwellian is overused," he says, "but seems apt here. . . Progressives in Massachusetts who vote for Question 2 should remember," he says, "that by the end of Orwell's *1984*, the protagonist, Winston Smith, loved Big Brother." Like Mrs. Kennedy who urged a common sense objection to a law which might hasten death, Byock urged concentrating first on fixing things that are broken in medicine. "Honoring the inherent dignity of a person starts with ensuring there's someone to answer the bell when the

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[211] Ira Byock, "Physician-Assisted Suicide Is Not Progressive: 'Right to die' is just a slogan. No civil right to commit suicide exists in any social compact." October 25, 2012, p. 1, https://www.theatlantic.com/health/archive/2012/10physician-assisted -suicide-is-not-progressive/264091.

person needs help getting to the bathroom," says the practical palliative care specialist. Invoking two-thousand-years-old prohibitions, "taught in Clinical Ethics 101," chides Byock, "doctors must not intentionally kill a patient, must not have sex with a patient, and must not financially benefit beyond reasonable compensation for their professional services."[212] Given their power over patients, this is the least doctors can do, he plainly says.

With regard to the issue of transcending ordinary political ideologies, the Archdiocese of Boston and iCatholic media, an archdiocesan subsidiary, hosted a televised Town Hall Meeting Forum on assisted suicide. Sponsored and broadcast on Catholic TV and radio, it reached primarily Catholic audiences. Aired originally on Catholic television on the evening of October 3, 2012, it was rebroadcast at least a dozen times between October 8 and November 6 on Catholic television and radio, and was available at www.CatholicTV.com and www.Suicideisalwaysatragedy.[213] Convened as part of the Boston education campaign, the Town Hall focused on the reality that a significant number of practicing Catholics might consider assisted suicide a form of compassion and vote for it. Promotional materials advertised the Town Hall as an opportunity for listeners to hear "a group of concerned Catholics . . . openly discuss physician-assisted suicide to ensure that the families of people with terminal illnesses will never feel they have been left alone in caring for [loved ones and patients]." In the second segment of the broadcast, studio, TV and radio audiences, as well as participants on Facebook, Twitter and email, were invited to engage the experts. This part of the forum, focusing on "flaws in the bill" and arguments from medical and disabilities communities, revealed a campaign

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[212] Byock, "Physician-Assisted Suicide is Not Progressive," 3-6.

[213] Archdiocese of Boston, Physician-Assisted Suicide—Town Hall Forum, October 4, 2012, https://www.youtube.com/watch?v=jkoacmWHi8k.

highly sensitive to the fact that some coalition partners had reasons for opposing physician-assisted suicide that were different from, albeit not inconsistent with, those advanced by the Church.

The panel included the Cardinal, as well as Father Tad Pacholczyk, Ph.D., priest of the Fall River Diocese, bioethicist, molecular biologist, and director of education for The National Catholic Bioethics Center, Philadelphia; M. C. Sullivan, a nurse-bioethicist-attorney, Director of Ethics at Covenant Health Systems in Tewksbury, MA, and lead developer of a palliative care delivery project; John Howland, M.D., local family physician with extensive experience with end-of-life care in home, hospice, hospital, and nursing home settings, founder of Doctors Against Suicide, and New England regional director of the Catholic Medical Association; and, myself, as coordinator of the Archdiocese of Boston education campaign. The Cardinal and M.C. Sullivan, the latter on behalf of the Committee Against Assisted Suicide, opened the broadcast with prepared remarks.

The Cardinal spoke directly to the Catholic audience, characterizing the initiative as "the gravest threat to the dignity of life in the Commonwealth." His statement was an implicit admission that Catholics were as likely as others to vote "Yes" out of a sincere but misplaced sense of compassion. He stressed the political challenges facing voters—the cunning arguments of proponents, who prefer the "so-called 'Death with Dignity' euphemism" to the word suicide, and the campaigns themselves "dominated by thirty second commercials and lack of debate." He cautioned that ordinary, common sense safeguards for patients and doctors missing from this bill might go unnoticed by voters at the polls. "People live much longer than their doctors tell them," said the Cardinal. "There's no requirement for a consult with a psychiatrist, or palliative care expert, or even to inform family members. . . We should be improving palliative care and hospice care and not providing access to lethal drugs," he said, hammering home the "flaws."

M.C. Sullivan, a nurse and healthcare ethicist, addressed the issue of palliative care, "[a] multidisciplinary approach where teams of professionals treat physical and physiological symptoms of pain and discomfort, as well as mental anguish, emotional distress, and the spiritual agony that constitutes the non-physical suffering. . . . Every single healthcare facility in America knows about palliative care," the nurse-attorney said dramatically. "Our job is to expect it, to request it, to demand it for our loved ones, our patients and ourselves . . ." Sullivan's remarks underscored the fact that, palliative care was not always immediately available even in the best hospitals, such as those in Boston. "The thing about the initiative is that it's "the lazy way out!" said Sullivan. "Rather than ending a life of pain and suffering, our responsibilities as physicians, nurses, caregivers, family members are to work, *and to work hard*, to alleviate the pain and diminish the suffering, to assist loved ones and our patients to make the very most of the end of life."

The remainder of the Town Hall focused on the "public" campaign conducted by the Committee Against Physician-Assisted Suicide. As explained by John Monahan, moderator of the Town Hall Forum, CAPAS was the formal name of about "thirty groups who had come together in recent months" to oppose the ballot initiative. Including the Church and other faith-based organizations, CAPAS represented medical, hospice, and disabilities groups, all who agreed that the bill is "flawed," lacking safeguards to protect patients and doctors that are serious enough to warrant rejection at the polls. In this respect, the Town Hall on assisted suicide was a clinic on the way in which arguments from various coalition constituents were coming together to create one message.

Responses by panelists in this part of the Town Hall were unscripted, personal, direct—"'How long do I have, doc?' I am asked," said Dr. John Howland. "I can't answer that!" he dramatized, responding to someone who asked about the six-month prognosis. "My job is to help care for people, to offer time to help resolve relationships and to spend precious time with family and friends at the end of life. . . For a physician to even consider the possibility of writing such a prescription for lethal drugs is unthinkable for me . . .," he insisted. "There's no witness to the actual suicide," Sullivan reminded listeners. "Compassion is a loaded word," said Fr. Tad, referring to proponents who use it to describe the act of writing a lethal prescription. Asked about the process of family notification, one panelist described the form which required patients to check off one of three boxes labeled " 'I have notified family,' 'I have not notified family,' 'I have no family.' The doctor cannot refuse to write the prescription even if the patient checks 'I have not notified family,'" the panelist said. To that another panelist quickly added, "In Oregon, most physicians won't do it," referring to fears that legalization would promote specialization among physicians in assisted suicide. Asked about conscience exemptions, Sullivan stressed that, while the proposed initiative would allow "doctors and nurses to opt out, . . . there is no exemption for pharmacists, who, by the way, are not happy about the law at all!" she added.

The assumption behind the Town Hall format was that people with access to Catholic TV, radio and websites would defer to testimony of Catholic professionals. At the same time, it acknowledged that even Catholic audiences needed evidentiary argumentation about the bill's "flaws" to convince friends and family. As Fr. Tad said, it is only "prescinding from moral arguments," that we talk about "flaws" and "safeguards," and raise the specter of even more outrageous possibilities. For example, said the priest-ethicist, "why limit it to doctors. . . why not 'police-assisted suicide,'" where an officer called to the scene of a jumper, or terminally ill person, leaves his loaded, cocked .45 on the ledge or bedside, with instructions on the best angle from which to shoot . . . Or a life-guard who puts mill stones around the necks of terminally ill people . . . ”? said the priest/medical ethicist, obviously pushing the argument to extremes. The fact that one focuses on practical excesses and disadvantages of the law does not mean we do not appreciate principled moral and ethical arguments against it, he said. The Town Hall meeting in its entirety may be viewed at https://www.youtube.com/watch?v=jkoacmWHi8k.

So far, this chapter addresses the campaign against assisted suicide as waged in the Archdiocese of Boston alone. The fact is that Boston became the model for campaigns conducted in the Worcester, Fall River and Springfield dioceses. First, at the level of the diocesan Pro-Life offices, Marianne Luthin in Boston, Allison Ledoux in Worcester, Marion Desrosiers in Fall River had, for many years, represented their dioceses on the Family Life Pro-life Commission of the Massachusetts Catholic Conference, chaired by the Attorney Frances Hogan. Through the graciousness of Attorney Hogan, I sat on that commission *ex officio*, and so have first-hand knowledge of the commission’s contributions to the campaign. Attorney Hogan’s diligent and wise counsel, her knowledge and insights about Boston politics, not to mention years-long experience advancing the mission of the Church, were sure guides to all who were working on the high profile campaign. Attorney Hogan, herself a member of the Massachusetts Catholic Conference board, immediately refocused her Commission to support the anti-assisted suicide effort, providing time for discussion of messaging, strategy, development and implementation of Massachusetts Catholic Conference goals regarding the campaign within individual dioceses. Her unique ability to engage people of all faiths, beliefs, political orientations and ideologies, to respect their differences and find common ground even when they differed from her own, and to remain their friends and colleagues in the process, made her a perfect councilor within the anti-assisted suicide camp, trying as it was to accommodate a diverse coalition of individuals all working on the same campaign. It's no exaggeration to say that the pro-life directors in the dioceses, organized as the Family Life-Pro-life Commission of the MCC, meeting for years under Attorney Hogan's expert leadership, was an unanticipated boon to the success of the campaign. Under the direction of their individual bishops, pro-life and family-life offices in Worcester, Fall River, and Springfield mounted campaigns. They utilized expertise and resources gathered from decades of pro-life experience. Working within the context of the strategies developed by the campaign consultants, refining and perfecting messaging and images, they looked for every opportunity to reach yet another nook and cranny of their respective dioceses to educate Catholics and non-Catholics alike in order to find every possible vote.

The Most Reverend Robert J. McManus, Bishop of Worcester, published regular editorials in the *Catholic Free Press* in the weeks preceding the election. Clergy Information Sessions for priests, deacons, and seminarians in the diocese, distribution of materials with images and messaging consistent with the *Suicide is Always a Tragedy* theme were made available. Parish leaders were prepared and invited to assist with intense local activity to publicize the "Vote No on Question 2" language that had become watchwords of the education effort. The Worcester Pro-Life Office, headed by Mrs. Allison Ledoux, reported that the diocese distributed 62,000 each of brochures and in-pew cards, and 500 posters, to Worcester Catholic parishes. It made available training and support in the form of 300 leader packets containing "information on carrying out the education of the faithful in the PAS issue," including "how-to" suggestions, bulletin inserts, prayer cards. The Worcester diocese organized and hosted no fewer than 13 Panel Presentations with doctors, lawyers and ethicists at churches, local colleges, and other venues, including Anna Maria College, Paxton; St. Bernard's Catholic High School, Fitchburg; Catholic School Teachers' Assembly, as well as an Emmanuel Radio fundraising gathering which became an on-air rally to defeat Question 2. On the eve of the election, Worcester turned an annual diocesan conference into a forum on the ballot measure "To Live Each Day with Dignity," featuring experts on physician-assisted suicide at Assumption College, Worcester. The diocesan website featured information, materials, articles, training, prayer resources and weekly guides on ways in which parishes could support the campaign. It also facilitated the distribution of "Vote No on Question 2" lawn signs, bumper stickers, bumper magnets and small handout cards, eventually totaling approximately 90,000 in number, at convenient spots in the diocese, including the Chancery Building at 49 Elm Street, Worcester, Catholic Charities, Leominster, and, Sacred Heart of Jesus Rectory, Webster.[214]

Bishop McManus sent to every pastor at each of the 99 Catholic parishes in his diocese a letter addressed to the faithful, to be read at all Masses on the weekend of October 27/28. Addressed to the people of Worcester, the Bishop's letter said that the ballot measure was "poorly written, deliberately confusing and morally flawed." After explaining the "flaws" in the bill, including the lack of a psychological evaluation, lack of the presence of a physician at the sick person's death, and uncertainty regarding six-month diagnoses, Bishop McManus went on to urge Catholics to recognize that, when it comes to public policy, "hard cases make bad law." He ended his letter with an impassioned plea:

> Our Catholic faith teaches that every person is created in the image and likeness of God and that this reality bestows on every human being a moral worth that does not come from a government or the rule of law. However, if a government or a legal system is to be recognized as just and humane, then it must recognize and protect this fundamental human dignity. Ballot Question 2 does not do this and therefore the citizens of the

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[214] Data and documents provided courtesy of Mrs. Allison Ledoux, Director, Respect Life Office, Diocese of Worcester.

> Commonwealth of Massachusetts should vote a resounding “No” to this question. May God grant all of us the moral wisdom and conviction to do so on Election Day.[215]

Campaigns similar in messaging, images, tone and magnitude were conducted in the Fall River and Springfield under the direction of their bishops, The Most Reverend George William Coleman, and The Most Reverend Timothy Anthony McDonnell, respectively.

While numbers and data tell a great deal about the nature and scope of the campaign, memory and personal recollections reveal much as well.

. . . For example, take my recollection of a bitter cold night in January 2012, when Archdiocesan staff had an opportunity to observe a focus group of twelve local doctors. One of the doctors recounted treating a long-time patient at home who was reaching a difficult end. He admitted having spoken with the man and his wife, but not the children. When he went to pronounce the man dead, he recalled, the son had an intriguing look in his eye. The impact of suicide on children was something the doctor had not anticipated, he admitted. Another doctor in the group acknowledged that he had practiced palliative sedation. Only one doctor, a cardiologist, having listened to colleagues for the two-hour session, said that in cardiac care he never heard colleagues say, “I wish I gave a patient a pill to die.” He never had a patient say “I wish to die, help me.” There’s no need for this bill—you’ve written the prescription, you admit sedating a patient to death, he said, acknowledging colleagues around the table. “Who’s behind this?” he asked, implying that legalization was disturbingly redundant.

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[215] Most Revered Robert J. McManus, Bishop of Worcester, “Question 2 Not Death with Dignity,” *The Catholic Free Press*, November 2, 2012, p 5.

. . . Or, when Fr. Myles Sheehan, M.D., was asked at a workshop for priests and deacons what he would do if, and when, he might be called to the bedside to anoint a dying patient planning to take lethal drugs. With barely a moment's hesitation, Fr. Sheehan said, "Go, and talk the person out of it!" Fr. Sheehan went on to explain the permissible medical uses of drugs to keep patients comfortable even in cases where the drugs might hasten death. "Doctors know what's enough, and what is too much," the priest-physician urged listeners to understand.

. . . Or, a workshop in the Spring of 2012 at St. John the Evangelist Church in Hopkinton, MA., where Dr. John Howland, family practitioner, talked in hushed tones about his experiences with dying patients. Their often most pressing desire, he said, was not to save themselves, or to escape pain, but to be with loved ones, at home if possible as they approached the end. He told the story of assisting a patient to spend his last Christmas at home with his family. Then, in abrupt contrast to this near "Pieta-like depiction" of a dying man in the arms of his loved ones, Dr. Howland held up a vial of large orange capsules, labeled as follows:

> ACME Pharmacy, Anytown, MA.,
> RX: #234388,
> Name: Jane Doe,
> 123 Main St., Anycity, MA.
> TAKE 100 CAPSULES ALL AT ONCE, "Secobarbital" 100 mg #100
> QTY 100 Exp: 5/7/13
> Dr. John smith Date: 11/7/12 [the day following election day]
> No refills [Include photo of the vial]

Dr. Howland opened the vial and poured out 90 capsules, pausing in his presentation to allow them to be passed among the people gathered in the parish hall. You could hear a pin drop! "And the patient or his caregiver will pick this prescription up at the local pharmacy," he quietly added, breaking the silence.

. . . Or, truly, the worst moment of the campaign for me personally—when a high school student from Lynn attending a presentation on assisted suicide for her class asked, in a way she might have asked about getting a driver's license: "How old do you have to be . . . I mean is there an age limit?" My heart skipped a beat. This proposal would enshrine a right to be exercised, not just by adults, but those who were terminally ill at any age! "Eighteen years of age, with or without parental notification, under the proposed initiative as written," I was compelled to say to the curious teenager and her classmates!

Suffice it to say that what is recounted here gives a picture of the unprecedented effort by the four dioceses of Massachusetts, under the leadership of the Massachusetts Catholic Conference, to defeat Question 2. This is not to suggest that the Church taking a stand on a political question is unprecedented; on the contrary, the Church is no stranger to the exercise of political influence. Permit us a walk down memory lane to make the point. In 1948, Richard Cardinal Cushing, Archbishop of Boston, conducted a "full-fledged public communications and grass-roots organization effort to defeat . . ." a ballot initiative on birth control proposed by Planned Parenthood. Maurice T. Cunningham, writing about that campaign, says, Cardinal Cushing, "who had inherited a network of institutions such as Catholic fraternal organizations, sports leagues, charities, and parochial schools that served as a ready-made political machine . . . raised money for an advertising campaign, . . . engaged a professional advertising agency and distributed its message via fliers, billboards, pamphlets, and newspaper advertisements. From mid-October on, the groups purchased sizeable blocs of radio advertising time for ads that ran one to fifteen minutes"![216] Cunningham describes how the 1948 advertising campaign ignited a

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[216] Maurice T. Cunningham, "Defeating 'Death with Dignity': Morality and Message in a Massachusetts Referendum," American Catholic Studies, 125, no. 2, (Summer 2014), pp. 23-43.

grassroots “parish” effort culminating in 80,000 Catholic youths parading in the streets of Boston. “In September, Cushing directed priests to deliver a sermon entitled, “The Moral Responsibilities of Election Day.” On October 17, parishioners were greeted by a *Pilot* editorial urging a “no vote” on birth control and a sermon that termed Question 4 the “anti-baby bill” and “still against God’s law.” The archdiocesan chancellor wrote to pastors to employ leading parishioners to distribute “vote no” literature to neighbors. The *Pilot* published a guest column that urged “a vote against Referendum No. 4 is *a vote to further the will of God among the people of the Commonwealth of Massachusetts* (emphasis added).” Cunningham remarks that “the Church never again mounted such an elaborate campaign . . .” including, I assume, the 2012 effort in his sweeping generalization.[217] Cunningham, however, fails to draw attention to the similarities in the two campaigns, including reliance on public relations professionals, use of a grass-roots approach, enlistment of Church organizations and leadership to reach voters, outreach to the young, targeted messages to church-goers in homilies and the Catholic newspaper—all in the name of advancing a political position.

Cunningham’s remark notwithstanding, the comprehensiveness and novelty of the 2012 “Suicide is Always a Tragedy” campaign, including electronically-supported meetings among the four Massachusetts bishops and diocesan staff, weekly communications with pastors and parish staff, distribution of what amounted to nearly two million pieces of professionally designed campaign literature and signage throughout the state, TV, radio and internet ads, not to mention a Cardinal who Tweets, were unconventional in the least, if not ground-breaking. Commenting on Cardinal O’Malley’s unconventional tenures in Fall River and Boston, Scot

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[217] Cunningham., 28.

Landry, archdiocesan Secretary for Catholic Media at the time of the campaign, said: "He was the first cardinal in the world to launch a blog in September 2006 (www.CardinalSeanBlog.org). He created the Catholic Media Secretariat in 2010 to embrace all forms of media to share the Good News of our faith and to connect Catholics with the Church in new ways." Referring to the Cardinal's intention to use Twitter, hardly a household word in 2012, to advance the reach of the campaign, Landry said, "The effort to expand his use of Twitter over the next four weeks, and possibly longer, is his latest initiative to leverage social media for the mission of the Church."[218] As far as I know, Boston was the only diocese in the country at the time to have a separate Media Group, such as the one headed by Landry, including a custom printing company, Pilot Printing, managed by Michael Strong. It was the presence of that Media Group which made possible the in-house professional creation, design, finishing, printing and shipping of just about all of the materials that supported the five-million dollar campaign.

Cunningham's larger point, of course, is that a blatant display of church influence on behalf of its own teaching on assisted suicide, such as the one in 1948 against birth control, would have spelled sure defeat in 2012. Instead, he says, the 2012 campaign to defeat assisted suicide relied on "cultural and secular" arguments, rather than "religious ones" to accomplish its goal. In a very interesting exercise, Cunningham measures what he calls "religious, cultural, and secular legitimations" in TV ads and web videos released by CAPAS, as well as the content of articles on Question 2 published by *The Pilot* in September and October, including the Cardinal's Op Ed pieces which I summarized above, and also the Cardinal's tweets. To distinguish "religious, cultural and secular legitimations," Cunningham relies on the work of David Yamene,

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[218] *Pilot* staff, "Cardinal O'Malley to Tweet Each Day until Ballot Vote.".

supplementing Yamene's categories with a new category called "Transmission," to describe tweets only. Within the categories of communications, Cunningham identifies two categories of "Religious" legitimations, one based on Scripture and one based on Church tradition and teaching, for example, "Thou shalt not kill," and "Our faith demands that we not be guilty bystanders," respectively. Among the same communications, he finds two types of "Cultural" legitimations, one based on "Moral Norms" and one on "Societal or Professional Norms." For example, "Question 2 places vulnerable people at risk," and "[Q2] would involve physicians in a violation of [their] oath," represent Societal and Professional norms, respectively. Continuing, Cunningham identifies four types of "Secular" legitimations. They include one based in scientific authority, for example, doctors agree that the six-month prediction may be wrong. Another is based on legal authority, that is, that the bill lacks legal protections for the patient. A third is based on socioeconomic factors, for example, assisted suicide may have unintended consequences such as elder abuse. Finally, the fourth secular legitimation is based on personal experience, for example, a testimony by members of a family that its husband/father outlived his prognosis. "Transmissions," that is, "Tweets only," are categorized on the basis of the material (message) to which they link. So, "Linked to Religious, Cultural, Secular, and Directive Statements, are Tweets that link to material that relies on religious, cultural, and secular arguments, respectively. Directive statements are ones that lack third party links or substantive arguments, providing instead simple directions, for example, "vote 'NO' on Question 2."[219]

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[219] Cunningham., 34.

Applying these categories to CAPAS communications, Cunningham finds the following. Regarding four thirty-second TV commercials and six longer web videos (1:42 to 2:48 minutes), the "television commercials and ads released to the large general audiences advance no instance of a religious legitimation for opposition to Question 2."[220] In the thirty-second spot entitled "Pharmacist," for example, where a pharmacist pours out 90 Seconal capsules to be self-administered without a doctor present, Cunningham says, the message relies on scientific authority for rejecting assisted suicide. For the ad entitled "Rational," claims by proponents that assisted suicide enhances patient control are challenged by the bill's lack of protections for the patient, such as psychological counseling, family notification or the presence of medical personnel, designated by Cunningham as legal and socioeconomic legitimations. Among the TV commercials and web videos, Cunningham finds eleven legitimations based on scientific authority, three, based on legal flaws, two, based on socioeconomic factors, and five, based on personal experience, but none based on religious teaching or authority. Similarly, among the Cardinal's Tweets, Cunningham reports seven "religious legitimations" and eight Tweets that link to religious arguments," and 94 that are non-religious, linking either to cultural or secular messaging, or that are directive, that is, they merely recommend a "no" vote.[221]

Cunningham's analysis considers twelve articles published in *The Pilot* for religious legitimations, six of which were signed by the Cardinal, the content of which I summarized above. He reports that religious legitimations, amounting to twelve, "all appeared in articles written by Cardinal O'Malley or attributed to him . . ."[222] Among those articles, 49 showed

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[220] Cunningham, 35.

[221] Ibid., 37.

[222] Ibid., 38.

evidence of cultural legitimations, moral, societal and professional, and 101 showed evidence of secular legitimations, 19 based on scientific authority, 42, on legal flaws, 2, on socioeconomic factors, and 2, on personal experience.[223]

In his conclusion, Cunningham says that, while the Church is notoriously "a poor coalition member [a conclusion for which I think this dissertation provides at least some basis for reconsideration]. . . CAPAS put together a diverse coalition of religious and medical leaders and organizations and earned the endorsement of important media outlets in the state [referring obviously to the Boston *Globe* and the *Herald*, the two leading newspapers in Boston whose ultimate editorial statements helped spell defeat for the initiative]. Death with Dignity proponents," he goes on, "were not as well-funded nor as politically sophisticated as CAPAS," who outspent their opponents, says Cunningham, six and one-half to one.[224] Cunningham's conclusion about the campaign is that, while the days of precinct captains emerging from the parishes, and issues turning on 'what Lake Street thinks,' are long past." (Lake Street is the former residence of the Boston Archbishop, the property having been sold in 2002 in order to compensate victims of the priest sex-abuse scandal.) "[I]n 2012, the church adapted to the political realities in which it operates. . . . The [Death with Dignity] campaign shows that the church can adapt to evolving circumstances and craft a message steeped in church teachings that appeals to a wide audience, Catholic and non-Catholic alike," Cunningham concludes."[225] Faint

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[223] Cunningham, 38

[224] Ibid., 42 and 34.

[225] Ibid., 43.

praise, indeed, for what I would describe as a stunningly crafted, unexpectedly successful campaign.

Cunningham gets many things right about the campaign, particularly that the Church in Boston in 2012 "adapted to evolving circumstances" and "crafted a message steeped in church teachings that appeals to a wide audience—Catholic and non-Catholic alike." How did the Church manage to do that? The answer—"flaws in the bill."

3.2 The Committee Against Physician-Assisted Suicide (CAPAS*)*

Reflecting on the difference between the "Suicide Is Always a Tragedy" campaign, conducted in Catholic parishes and institutions, and the public campaign conducted by the Committee Against Assisted Suicide, Fr. J. Bryan Hehir, said "Externally, the strategy looked quite different, for the audience went beyond Catholics . . ." Unlike the situation of the Church in Boston in 1948, the majority of voters in Massachusetts in 2012 were either non-Catholic or non-practicing Catholics. Parish data in 2012 showed Church attendance by Catholics at an all-time average low of roughly 15 percent; participation in other aspects of parish life by registered Catholics was a small percentage of that. The 2002 sex-abuse scandal, originating in Boston as it had, took a great toll on Church attendance and finances. Seeking to rectify the situation, Cardinal O'Malley had commissioned a *"Catholics Come Home"* initiative for the Boston Archdiocese in Lent 2011 in order to invite Catholics who had fallen away to return to the Church. Specially prepared TV and radio ads procured from Catholics Come Home.org, a lay apostolate based in Oregon, ran on local, cable, and national networks and radio stations, beginning March 7 and ending April 24, 2011, that is, throughout Lent, Holy Week and on Easter Sunday.

The most frequently shown of the Catholics Come Home.org commercials was one adapted for Boston audiences, showing scenes of the Charles River, Boston Harbor, and an iconic Catholic Church in the Mission Hill section of the city. The ad represented the only time that the *Catholics Come Home* organization allowed adaptation of any of its ads up to that time. In Boston and surrounding media markets, commercial airtime for the ads included prime time and around-the-clock programming. Commercials ranged from 30 to 120 seconds in length, and numbered 2,500 during Lent. They reached 92% of the viewing audience on stations that carried them. Radio ads in English, Spanish, Portuguese and Haitian-Creole were aired as well. Bostonians who saw and heard the professionally produced videos testifying to the Church's unique 2000-year history, reported favorable reactions. More than a dozen dioceses in the U.S. had aired the commercials prior to the Boston campaign; some had reported average increases in Sunday Mass attendance of as much as 12%. The program in Boston raised and spent nearly 1 million dollars almost all of it on the ads inviting Catholics back to the practice of the faith.

While *Catholics Come Home* generated interest among viewers in the Boston archdiocese, measurable results were disappointing. Few if any Boston parishes realized Sunday Mass attendance increases like those reported in other parts of country. Some Boston parishes reported increases in the numbers of people coming to Confession and seeking to receive the sacraments of Baptism and Confirmation, but Mass attendance did not change appreciably. Despite low returns, however, the fact that the Lenten initiative came only one year prior to the ballot question was a fortunate circumstance for Boston indeed. Scott Landry, head of the Catholic Media Secretariat at the Archdiocese of Boston, described *Catholics Come Home* as the "biggest outreach program in a generation" by the Archdiocese of Boston. All Boston parishes participated at some level, many mounting intense efforts to invite people to come back to Church, holding all-night vigils to distribute ashes on Ash Wednesday, and offering Mass and Confession at times convenient for daily commuters. "Leaving the Light On" was a program in which evening Mass and Confession were offered in churches that had, if only symbolically, been darkened as a result of the scandal.

As a result of the *Catholics Come Home* initiative, parishes became accustomed to receiving weekly *Constant Contact* emails from the Archdiocese with requests to appoint a parish captain or team to spearhead local efforts. They were asked to reproduce *Catholics Come Home* messaging in the weekly bulletin, and show the commercials in church and to parish groups. Thousands of in-pew prayer cards, posters, banners, bulletin inserts and other materials, all professionally prepared by iCatholic media in the Archdiocese of Boston, were made available to parishes for distribution. A website was created and training and support were offered to parish staff. In short, for those of us in the Boston archdiocesan offices, for pastors and parish staff in the field, and for the Bostonians who paid attention to it*, Catholics Come Home* provided a clinic for what would happen one year later, except that in 2012 the effort was directed toward defeating assisted suicide.

In addition to the effects of the scandal, a second big problem faced Boston in 2012 particularly related to defeating assisted suicide. Politically, Church campaigns in other parts of the country opposing assisted suicide had not gone well. In Oregon and Washington State, Church efforts to defeat "Death with Dignity" measures at the ballot box had failed. In fact, as Mr. Rowley commented in 2009 to national broadcasters, messaging that took seriously that the Church is THE opponent with regard to assisted suicide had succeeded. Confronting the Church head-on, ads in Washington State appealed to autonomy. " . . . The line we used over and over again is [that] it ought to be your choice, not the choice of the government, politicians, or religious leaders . . . or a church," said Rowley.[226] It was clear in 2012, as Fr. Hehir said, that while the Church could be a key player in opposing assisted suicide, it could not be the only player, nor could it be the the lead player, in Massachusetts. It would have to be part of a coalition. Quoting the Rev. Eugene Rivers, famous for having worked with black pastors to build a coalition against urban violence in Boston in the nineties, Maurice Cunningham captures the wisdom that the opposition to assisted suicide in Boston in 2012 was forced to observe: "The smart way to fight this campaign is to do everything we can not to have this perceived as a Roman Catholic initiative. It is an ecumenical and interfaith initiative, and that is how we ensure our success in terms of the ballot question. I think that is a tactical imperative."[227]

The Coalition Against Physician-Assisted Suicide, or CAPAS, as it was called, took Rivers seriously and organized leaders from "over twenty other denominations," to oppose Question 2. In addition, CAPAS allied itself with medical organizations and disabilities groups that, on their own, had taken positions against assisted suicide. Alliances were established with the Massachusetts Medical Society, the Massachusetts Hospice and Palliative Care Federation, the American Medical Directors Association, all of whom opposed physician-assisted suicide as "unnecessary and dangerous." CAPAS allied itself with the local disabilities group "Second Thoughts," founded specifically to fight the 2012 initiative. Elected officials across the Commonwealth, liberal and conservative, were approached to secure their support. Dozens of

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[226] Transcript of Audio Recording Compassion & Choices "Dignity and Choices: A Symposium on End of Life Advocacy," October 14, 2009, National Press Club in Washington, D.C.

[227] Cunningham, 40.

newspaper editorial boards were visited by teams of doctors, lawyers and ethicists engaged by the campaign to secure endorsements opposing the ballot initiative, says the Massachusetts Catholic Conference website.[228]

The Massachusetts Catholic Conference, the political arm of the bishops in Massachusetts, announcing the formation of a coalition of groups opposed to assisted suicide, recommended on its website things that individuals could do immediately to help. "Talk to friends, identify "no" voters and send their names to a "defeat PAS" email, write a letter to the editor, contact local officials, and identify yourself with the Massachusetts Catholic Conference to receive updates and campaign materials."[229] The Massachusetts Catholic Conference was obviously positioning itself to capitalize and expand upon the Church's existing communications, with the more than 400 parishes in Boston, Fall River, Worcester and Springfield combined.

The Coalition Against Physician-Assisted Suicide intentionally included "prominent liberals," for example, Dr. Ira Byock, a palliative care specialist mentioned earlier who opposed assisted suicide. In an article entitled "Physician-assisted Suicide Is Not Progressive," Byock described himself as an "outlier" on the issue, a "registered Democrat and progressive," comfortable pretty much with all politically progressive issues like abortion and same-sex marriage. Also mentioned earlier, Byock characterized the aid-in-dying movement as nothing

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[228] Physician-Assisted Suicide, Massachusetts Initiative Petition, Massachusetts Catholic Conference, http://www.macatholic.org/sites/macatholic.org/files/assets/One%2520Pager%2520Draft%2520April%25202012%2520RK%2520following%2520JFD%2520Edits%25204%252026%25202012%2520Fr%2520%2520Kickham%2520Edis.pdf.

[229] Physician-Assisted Suicide, Massachusetts Initiative Petition, Massachusetts Catholic Conference.

short of Orwellian and the practice of assisted suicide as "a morally primitive, socially regressive, response to basic human needs."[230] The www.stopassistedsuicide website inaugurated by CAPAS carried Byock's devastating critiques of the progressive position, as well as his explanation of the difference between suicide and physician-assisted suicide. His remarks take into account directly, although not by name, Dr. Angell's presentation of suicide as if it were a totally private act when she says, with regard to assisted suicide, "If anyone kills, it's the patient . . ." On the contrary, says Byock:

> Human beings have a biologically imposed *obligation* to die; and, as Jean Paul Sartre reminded us, suicide is always an option. However, even if a civic right to suicide did exist, *suicide* and *assisted suicide* are very different things. Suicide might be a very private act; but physician-assisted suicide involves two people, one of whom is trained, certified, licensed, and compensated by society."[231]

Additionally, Byock is critical of health care as it is delivered in the United States. "If the moral worth of a society can be a measured by how well it cares for the most vulnerable of its members, the America in which I live and practice medicine scores poorly. Much of the suffering I see among people with advanced illness is preventable. Many of the indignities I witness are imposed," he says. Byock describes the "dizzying array of system-based personal assaults on patients," including "a maze of appointments, irrational insurance hoops, and requirements, and indecipherable bills."[232] Byock's critique of a progressive agenda that manufactures a right to physician-assisted suicide and then uses rights language and arguments

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[230] Ira Byock, "Physician-Assisted Suicide Is Not Progressive," *The Atlantic*, http://irabyock.org/wp-content/uploads/2015/01/Physician-Assisted-SuicideThe-Atlantic-10-25-12.pdf, 2-3.

[231] Ibid., 2.

[232] Byock, 2.

to justify it, testifies to the unique challenge, well-appreciated by the Coalition Against Assisted Suicide, of trying to defeat assisted suicide in a liberal state. To get to 51% against physician-assisted suicide, the campaign had to reach progressives who supported assisted suicide in principle or who, like Dr. Byock, saw it as a cove for, or an escape from, failed treatment.

On September 7, 2012, CAPAS announced the appointment of Rosanne Bacon Meade as Chair of the coalition. As mentioned earlier, Dr. Meade was a former president of the Massachusetts Teachers' Association and member of the National Education Association's executive committee. Over a 38-year career, Meade had taught middle school English, run the Teach Boston Program in the Boston Public Schools, and taught in the Graduate School of Education at Cambridge College. In addition to her career as educator, Meade had helped "spearhead a number of progressive causes in Massachusetts over the past three decades."[233]

To manage the campaign, the Massachusetts Catholic Conference, on behalf of the Cardinal and the three Catholic bishops of Massachusetts, engaged the services of Rasky Baerlein Strategic Communications. The firm represented an established name in Boston for success in creating and executing ballot campaigns. Joseph T. Baerlein, President of Rasky Baerlein, was proud of an undefeated record in running ballot campaigns, most notable among them, a 2006 victory to defeat a petition by grocers to sell beer and wine. Rasky's campaign on behalf of liquor wholesalers had used testimony by law enforcement officials to make the case to the public that the issue was one of safety of young people and the community, rather than

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[233] September 7, 2012—Rosanne Bacon Meade to head committee Against Physician-Assisted Suicide, https://www.bostoncatholic.org/press-release/2012/09/september -7-2012-rosanne-bacon-meade-head-committee-against-phsician-assisted-suicide.

market share.[234] Rasky Baerlein, on behalf of the Coalition Against Assisted Suicide, engaged the services of Marttila Strategies, a Washington/Boston-based polling firm well known in political circles for successful campaigns on behalf of Senators Joseph Biden and John Kerry.

Some people, Catholics among them, might have characterized the firm of Rasky Baerlein as a "hired gun," the term used by political analysts to describe consultants willing to argue any position for a fee discussed in Chapter One. My personal experience working with Mr. Baerlein and his staff for almost a year was that such a conclusion would be mistaken. Meetings with the consulting group revealed a highly confident team, knowledgeable about Boston politics, enthusiastic about winning for the client, and proud of the campaigns they had done, particularly the "come-from-behind" win on behalf of liquor wholesalers. Consultants were extremely forthright about the process of polling, the need for absolute message-discipline, and the fact that current polls gave the "No on Question 2" position virtually no chance of success. They explained the nature of focus groups and sample polling and the strategies behind using them to determine messaging, thus defining the narrow course the Archdiocese would be embracing in order to conduct a credible political campaign with any chance of winning. In their first meeting with archdiocesan staff, consultants were blunt about the fact that votes can be counted in dollars. "It will cost three million dollars and, if you win," they said, "it will be by no more than 1 or 2 points." Horrible odds at best, I recall thinking.

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[234] Lisa Wangsness, "Massachusetts Religious Communities Divided over Doctor-Assisted Suicide Measure: Bay State Ballot Item Galvanizes Major Organizations," Boston.com, September 11, 2012, https://www.boston.com/news/local-news/2012/09/11/massachusetts-religious-communities-divided-over-doctor-assisted-suicide-measure.

Another point with regard to consultants' conduct of the campaign—everyone ultimately reported to Joe Baerlein, and there was no compromise on messaging. "The flaws in the bill," and only the flaws in the bill, were the message. As Mr. Baerlein said in an interview with Lisa Wangsness of the Boston *Globe* in September 2012, "With no disrespect to religion, in the world we live in, we say, 'How do you get to 51% . . . The fact is, this state is more secular than religious."[235] Presentations in parishes were attended by Rasky's messaging experts. Materials prepared for distribution in parishes were reviewed before being sent to parishes. When there was a disagreement about messaging, Rasky's rules were determinative.

Consultants provided directives regarding messages to emphasize, and messages to avoid. Foremost among the former were the multiple flaws in the bill. The possibility that a six-month prognosis might be wrong; that the patient could get a lethal prescription without a psychiatric exam; that government ought not to be in the business of encouraging suicide; that people who are sick and dying believe themselves to be a burden but that the majority of voters do not share that belief; that medicine has made sufficient strides in palliative care to render suicide unnecessary at the end of life—these were all arguments that should be used repeatedly because they were the arguments on which a majority of people polled indicated they would vote against the petition. Arguments to be avoided included speculation about unintended consequences, such as a patient encouraged by family to kill himself, exaggeration of Oregon and Washington results, entanglement with the abortion issue or explicitly calling assisted suicide a pro-life

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[235] Lisa Wangsness, "Massachusetts Religious Communities Divided over Doctor-Assisted Suicide, *The Boston Globe*, September 11, 2012, https://www.bostonglobe.com/metro/2012/09/10/massachusetts-religious-communities-divided-over-doctor-assisted-suicide-measure/SmASpPSUf6AJHqmOSwzijJ/story.html.

issue.[236] After the campaign was over, and assisted suicide had been defeated, Joe Baerlein described a particular point about messaging:

> ...Early research showed that Massachusetts residents believed in individual choice, and respect for others' choices, about death and dying, Mr. Baerlein said. So the anti-Question 2 forces didn't attack on direct moral or ethical grounds; instead, its ads took aim at certain provisions and how they were worded.
>
> For instance, the proposed law — which included multiple safeguards and waiting periods to prevent impulsive requests, coercion or abuse — required a physician to "recommend" that a terminally ill patient notify his next of kin of his intent.
>
> But it didn't "require" family notification. "How would you feel if you came home and your mother had decided to take her life?" Mr. Baerlein said. "Voters couldn't get their arms around that.[237]

Not that moral and ethical considerations were absent from opponents' campaign. They weren't, as my analysis of the Cardinal's homilies, as well as that of Maurice Cunningham, in preceding pages show. The point about the campaign messaging was that the Church's teaching is not inconsistent with what human reason and understanding hold, and with what the major religious traditions share. Catholics may argue rightly that it's more important for citizens to understand that killing mom is a grave sin, not to mention an offense against "mom," as well as the state on her behalf. But for purposes of defeating Ballot Question 2, it was essential that voters hear one message—that, under the proposed law, a physician may legally write a prescription for lethal

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[236] Physician-Assisted Suicide Massachusetts Initiative Petition, Massachusetts Catholic Conference Website, https://www.macatholic.org/sites/macatholic.org/files/assets/One%2520Pager%2520Draft%2520April%25202012%2520RK%2520following%2520JFD%2520Edits%25204%252026%25202012%2520Fr%2520%2520Kickham%2520Edis.pdf.

[237] Paula Span, "How the 'Death With Dignity' Initiative Failed in Massachusetts," *New York Times,* December 6, 2012, https://newoldage.blogs.nytimes.com/2012/12/06/how-the-death-with-dignity-law-died-in-massachusetts/.

drugs even if he knows that mom is not letting her children know that she's planning suicide . . . or that she has not been examined and treated by a psychiatrist for depression . . . or that her prognosis may be inaccurate. These were the issues that voters polled said would cause them to vote against the initiative. When emphasized, these were the arguments that would get us to 51%, consultants correctly insisted.

Thanks to Rasky's ads, based on polling results provided by Marttila Strategies, voters heard over and over again about the uncertainty of a doctor's six-month prediction of death, and the absence of a mandatory psychiatric exam and/or family notification. These difficulties with the law led the list of "flaws" that "in and of themselves, strongly recommend[ed] a 'no' vote," said a statement by the Massachusetts Catholic Conference (MCC) website. "These critical flaws point to why an initiative petition is the wrong way of deciding public policy on such a serious, complex and intensely personal issue. A statewide campaign of competing messaging, advertisements and press releases does not address the gravity of this issue and the permanent consequences of legalizing (physician-assisted) suicide," the website announced, taking aim at the whole process of ballot initiative politics as a suitable place to hammer out the benefits and disadvantages of legalizing physician-assisted suicide.

Regarding the complexity surrounding a coalition campaign based on disciplined messaging, a talk given at Harvard University in April 2012, by Fr. Roger Landry, a Fall River priest is instructive. Covered in a *National Catholic Register* article by Joan Frawley Desmond published in September 2012, the talk communicated well Fr. Landy's appreciation for the Massachusetts bishops' awareness of the complexity surrounding a ballot initiative campaign. Landry described the Massachusetts Catholic Conference as "... a driving force in the Committee Against Physician-Assisted Suicide," having "attracted a number of religious groups, as well as organizations like the Hospice and Palliative Care Federation of Massachusetts, the American Medical Association, the American College of Physicians and Surgeons and the National Council on Disability."[238] He also described political awareness on the part of coalition members who "have updated their constituencies, developed voter-education websites, and . . . launched a media campaign to explain their concerns on television and in radio shows.[239]

On this issue of coalition strategy, Desmond reported an interview with Mark Horan, Vice-President of Rasky Baerlein, who candidly addressed the need for a broad-based coalition to defeat Question 2, as well as the role of consultants in that endeavor.

> We were hired by the Committee to draw more like-minded groups, develop a website and fund a blitz of television and radio advertising.
>
> We know that even politically attuned and sophisticated people don't know this is on the ballot. You can also be assured that people don't know about the flaws in the way [the bill] was written or would be implemented.
>
> We decided to spend all of our efforts over the summer on building a broad coalition. We needed people of all faiths and other walks of life that are clearly affected by this, like doctors, nurses and hospice workers, average citizens.
>
> We are working on our Web presence and starting to optimize our search capacity to drive people to the content, and we're getting a ton of media requests — mini debates on radio and television.

Desmond's article compares the broad-ranging quality of Dignity 2012 efforts to the single-mindedness of the opposition campaign's strategy. "The political coalition endorsing the ballot measure," she says, "presents itself as a group of 'concerned citizens supporting the proposed [initiative], leading the way to bring state-monitored physician-hastened dying for terminally ill adult residents.' But," Desmond shrewdly observes, "its website documents its ties

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[238] Joan Frawley Desmond, "Euthanasia Opponents in Boston Gird for Ballot Battle," *National Catholic Register*, September 21, 2012, https://www.ncregister.com/daily-news/euthanasia-opponents-in-boston-gird-for-ballot-battle.

[239] Ibid.

to a national center and a political action fund focused on the ‘political defense of the Oregon law and the promotion of death-with-dignity initiatives in other states. . . The Committee Against Physician-Assisted Suicide,” on the other hand, says Desmond, “is matching the efforts by Dignity 2012, having raised $900,000 to date, with a hefty assist from the Massachusetts Catholic Conference. Those funds have been used to hire a top campaign strategist, draw in more like-minded state groups, develop a website and fund a blitz of television and radio advertising during the final stretch before the election,” says Desmond.

3.3 “Flaws in the Bill”: Disciplined Polling and Thirty-second Commercials

“In August and September [2012], polls by the Boston *Globe*, Suffolk University and others found 60 percent or more support for physician-assisted suicide. “If proponents could pass this in 40-percent-Catholic Massachusetts, they’d be running through the other states within five years,” said Joe Baerlein, acknowledging the wider political significance of the Massachusetts effort.[240] “The crucial component of the external strategy was Marttila’s polling, carried out statewide on four occasions between January and October 2012,” said J. Bryan Hehir, Archdiocesan Secretary for Social Services, “More than 3,000 citizens were interviewed, and several focus groups complemented the interviews.”[241] Polling by consultants indicated that focusing on what became known as the “flaws in the bill,” could circumvent basic convictions of

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[240] Paula Span, “How the ‘Death with Dignity’ Law Failed in Massachusetts,” *The New Old Age: Caring and Coping*, *New York Times*, December 6, 2012.

[241] Hehir, “Physician-Assisted Suicide: Political, Pastoral Challenges,” *Health Progress: Journal of the Catholic Health Association of the United States*, January-February 2014, https://www.chausa.org/publications/health-progress/article/january-february-2014/physician-assisted-suicide-political-pastoral-challenges-ahead.

Massachusetts voters in favor of assisted-suicide. Polling identified requirements of the bill and measured whether each provided reason to support or oppose the initiative, or whether it made no difference. Voters were asked whether the fact that "a doctor is not present" at the death is reason to oppose the ballot measure. . . , whether pick-up of the drug at a local pharmacy is reason to oppose . . . , whether administration of Seconal is reason to oppose . . , whether no required family notification is reason to oppose . . . . Messaging both internal and external focused on what came to be known as "flaws in the bill," based on voter responses to these prompts. Speakers, articles, website posts, and television and radio ads emphasized the "flaws."

Between August and the end of October "the strategy appeared to be working," consultants reported. Polling conducted in late October showed that a 60% lead of voters who supported the initiative had been reduced. Original polling on the issue of assisted suicide typically revealed a marked gender gap, with men more favorable to assisted suicide than women. October results, however, showed the gap closing. They also showed growing concern with methods of dispensing and ingesting the pills and no family notification. More importantly, voters who objected to picking up the drug at the local pharmacy and lack of family notification were showing a trend, by the end of their interviews, toward saying that they intended to vote against the bill.

Public polling confirmed results reported by consultants. A late May poll taken by both Western New England University and MassLive.com showed 60% in favor, and 29% opposed, with 11% undecided, among a sample of 936 voters. Public Policy Polling in August showed 58% in favor, and 24% opposed, with 18% undecided, among a sample of 1,115 voters. Two Suffolk University/7News polls, the first in mid-September, and the second, October 25-28, 2012, however, reflect changes occurring in the positions of voters surveyed. "In late October, Death with Dignity still held the lead, 47% to 41%, with 11% undecided.[242] But that lead had deteriorated 22 points among males and 12 points among women from what it had been in September, when it was 64% in favor, 27% opposed, with 9% undecided.[243] The October Suffolk/7News poll also showed a drop-off in support by 21 points among those 45 and older, as well as a change among Republicans of 34 points, and a change of 19 points among Independents (the largest voting group in the state), against the initiative.[244]

Public polls even into early October continued to report a favorable result for the ballot measure, however. Ballotpedia reported a *Boston Globe* poll conducted by the University of New Hampshire Survey Center, September 21-27, showing 68% in favor, 20% opposed, with 12% undecided, based on 502 people polled. An October 2nd to October 8th poll by the University of Massachusetts and YouGovAmerica, showed 65% in favor, and 19% opposed, with 17% undecided, based on 498 people interviewed. Public Policy Polling's last poll, conducted October 9-11th, showed 56% in favor and 30% opposed, with 14% undecided, 1,051 people polled. Messaging focused on the "flaws in the bill," in parish-based outreach, as well as pubic venues, press, television, radio and web-based platforms, was having an effect. The strategy against the ballot initiative as described by consultant Michael Horan—a coalition of "like-minded," but diverse, partners willing to leverage their constituencies, a website that educated and appealed to traditionally liberal voters, and, finally, but most importantly, a robust

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[242] "Polls, 2012 Ballot Measures," appearing in "Massachusetts Question 2, Physician-Assisted Death Initiative (2012), *Ballotpedia,* https://ballotpedia.org/Massachusetts_Question_2,_Physician_Assisted_Death_Initiative_(2012)#.XtUV o8f9)OUs.email, 5-6 (all polls reported have a margin of error +/-5.4 percent or below).

[243] Ibid.

[244] Cunningham, p 40.

television, radio and web-based advertising campaign—were all working. But nothing was as important as the messaging about the "flaws," and for that, NOTHING was more important than television, radio and web-based commercials.

The most controversial of the commercials created by CAPAS, and one which drew severe criticisms from proponents mentioned in Chapter Two, provides a good example of how the messaging strategy came together. Entitled "Pharmacist," the "idea" for the ad was not the result of polling data. As mentioned above, Dr. John Howland, speaking on behalf of the campaign in Boston, wanted his audiences to experience what the actual lethal dose used in an assisted suicide would look like should the initiative pass. Speaking to parish groups, he brought along a vial of 90 orange capsules, containing no drug, made out in the name of a fictitious patient. He passed the vial around, urged listeners to pour the capsules into their hands . . . . "The patient was instructed to empty the powdered Seconal into juice or apple sauce and consume it," he explained, "without a doctor present . . ." The effect on listeners in Catholic parishes was stunning, without question! But would the effect be the same on the general public?

My own colleagues at the archdiocesan offices, seeing the actual vial of pills for the first time, were skeptical—"That's impossible . . . . They'll come up with one pill . . . Nobody's going to swallow all that stuff," they commented. Dr. Timothy Maher, Professor of Pharmacology and Associate Dean at the Massachusetts College of Pharmacy and Health Sciences, offered a clarification: ". . . If the proponents of PAS are suggesting that a drug company is developing a single, small mass oral dosage form drug for PAS this seems unlikely . . . " That said, would the public react the same way parishioners had to the vial of pills? Enter the polling results! As mentioned above, October polling by consultants showed that voters who objected to picking up the prescription at a local pharmacy indicated increased likelihood of voting against the ballot initiative.

In September and October of 2012, TV, radio and other media advertisements featured an ad entitled "Pharmacist," showing a lab-coated, wide-eyed pharmacist surrounded by shelves lined with vials of medications. Following is an unofficial transcript of the thirty second ad:

Pharmacist: "As a pharmacist my job is to help people get better from their illnesses. But if Question 2 passes Physician-Assisted Suicide will be legal in Massachusetts and I'll be doing just the opposite. Local pharmacies like mine could fill prescriptions for a powerful narcotic called Seconal, which people will use to commit suicide at home. No doctors, no hospitals, just a hundred of these. [The pharmacist holds up the vial of orange capsules which he then pours out onto a glass tray; orange capsules bouncing around on the screen] . . . They call that death with dignity."

Voice over: "Vote No on Question 2. It's out of control!"

Onscreen message: Paid for by the Committee Against Physician-Assisted Suicide, and www.Stopassistedsuicide.org.

On December 6, 2012, the *New York Times* "End-of-Life Care" section published an article entitled "How the 'Death With Dignity' Initiative Failed in Massachusetts." The story led with the picture of "Pharmacist," the campaign ad transcribed above. "In an ad run by the Committee Against Physician-Assisted Suicide, an actor playing a pharmacist criticized Massachusetts' Death With Dignity law. The proposal was defeated last month. Credit : Committee Against Physician-Assisted Suicide," the caption read. The article was written by Paula Span, the same author of the *Times* piece published the previous Spring about Michael

Sutherland who died of ALS. Sutherland's wife had testified that her husband would have chosen suicide had it been legal, and his funeral became an opportunity for signature gathering in support of the petition. In the December article after the defeat, Span interviewed Joe Baerlein on the effectiveness of "Pharmacist" and other ads his firm had created.

> "[E]arly research showed that Massachusetts residents believed in individual choice, and respect for others' choices, about death and dying . . . So the anti-Question 2 forces didn't attack on direct moral or ethical grounds; instead, its ads took aim at certain provisions and how they were worded . . ." [As an example, Baerlein cited the "lack of family notification," asking how you'd feel if you "came home and found your mother had killed herself," quoted earlier.]
>
> The law also required a prescribing physician to refer a patient to a psychiatrist or psychologist "if the physician believes the patient may have a disorder causing impaired judgment," like depression. But opposition ads criticized it for not mandating that a psychiatrist be one of the two physicians a patient had to consult.
>
> Opponents also pointed out that medical prognoses — the law required that a patient be within six months of death — can be wrong. One ad, almost a counter to Dignity 2012's spot featuring Mr. Carberry, [whose wife had lived 16 years with a very debilitating brain cancer], showed a young widow whose husband lived a year and a half longer than expected. She was grateful he hadn't "made a terrible decision based upon a doctor's guess."
>
> "*In the end, even if you believed you should control your end of life decision-making, there are too many flaws in the language*," Mr. Baerlein said (emphasis added).[245]

Baerlein's remark, italicized above, reveals the essence of the 2012 Campaign Against Physician-Assisted Suicide and the reason it succeeded. Prescinding from "moral and ethical grounds," it simply exposed difficulties with the law voters could not abide, including voters who still supported patient control at the end of life. The decision about whether assisted suicide, in and of itself was good or bad, was one that could be postponed until a better law could be conceived, or indefinitely if such a law never materialized. But the thought of "mom" taking

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[245] Paula Span, "How the Death with Dignity Initiative Failed in Massachusetts, *New York Times,* December 6, 2012, https://newoldage.blogs.nytimes.com/2012/12/06/how-the-death-with-dignity-law-died-in-massachusetts/.

her life without telling anyone, or of standing in line at the local CVS while the person in front picks up a lethal prescription, were simply not things for which Massachusetts voters in 2012 could comfortably vote. The thirty second "Pharmacist" ad may be viewed at https://www.youtube.com/watch?time_continue=1&v=KjEPdMbMYec&feature=emb_title.

A second ad entitled "Rational," featured a red screen and a simple voice over, and was a direct response to proponents' claims that Death With Dignity enhances patient control. In stark contrast, the ad said that legalization is something " OUT OF CONTROL!" Zeroing in on the bill's lack of safeguards, including no required psychological exam, no required family notification, no requirement that a doctor be present—on the words alone with no images or personal testimonies—"Rational" isolates the absence of "safeguards" as sufficient grounds to oppose the law. An unofficial transcript reads as follows:

Voice over: "Question 2 would make physician-assisted suicide legal in Massachusetts."

On-screen text: Physician-Assisted Suicide.

Voice over: "Supporters say it's about personal control, but consider this . . ."

On-screen text: Consider this . . .

Voice over: "If a patient decides to commit suicide, there's no requirement for a psychological consultation . . ."

On-screen text: NO requirement for psychological consult . . .

Voice over*:* *"* . . . or even to notify their family."

On-screen text: NO family notification.

Voice over: "And though it's called physician-assisted suicide, there are no doctors present at the end . . ."

On-screen text: NO doctors present.

Voice over: “Control! More like completely out of control.”

On-screen text: CONTROL—OUT OF CONTROL.

Voice over: “Vote No on Question 2. It’s out of control.”

On-screen text: Vote NO on Question 2. It’s out of control.

On-screen text: www.stopassistedsuicide.org.

Paid for by the Committee Against Physician-Assisted Suicide.

A third ad, and the one that became a favorite among archdiocesan staff working on the campaign, addressed the sensitive question of the accuracy of a six-month prognosis. It is the ad to which Joe Baerlein refers as the “answer” to proponents’ “She was my wife . . .And she was my daughter” ad, about Jim Carberry’s wife who battled brain cancer for 16 years. In that pro-assisted suicide ad, Carberry, along with his wife’s mother, assured viewers that “his wife”, “and [her] daughter,” respectively, would have chosen death with dignity had it been legal in Massachusetts. The CAPAS ad, on the other hand, featured Tahni Morrell, whose husband, Paul, had been diagnosed with prostate cancer. It focused on the terrible possibility that productive lives may be shortened because of a doctor’s inaccurate prediction. Entitled “Family,” the ad shows the Morells’ on their wedding day, their children, and their life together. Tahni, exceptionally photogenic and articulate, pleads her case.

Tahni Morrell: “When I heard that my husband Paul had less than six months to live, we were devastated. So I understand why some people in that situation might want to end their lives. Then I learned that doctors can’t predict for sure because Paul lived longer than any doctor ever thought he would. It’s awful to think that he might have made a terrible decision based on a doctor's guess and cost us all that extra time together, because we cherished every moment."

On screen message as Tahni is speaking*:* *"*Question 2 would make physician-assisted suicide legal in Massachusetts."

Voice over & on screen message*:* *"*Vote No on Question 2. It's out of control*"*.

On screen message: "Paid for by the Committee Against Physician-Assisted Suicide" www.stop assistedsuicide.org [246]

"Family" was a compelling ad! No Hollywood star could have matched Tahni's sincerity and, quite frankly, her "brilliance" on screen. Nothing about the ad was staged or manipulative because the story was true, and Tahni's testimony, her own. A friend of a member of the development office at the Archdiocese, Tahni had been more than willing to add her testimony to campaign efforts. "Tahni Morell, Vote No on Question 2" may be found at https://www.youtube.com/watch?v=Vte8GYPCvd8.

Longer ads about the Morrell family included testimony from two Massachusetts physicians, Dr. Barbara Rockett and Dr. Linda Brown, who had become spokespersons for the opposition, admitting that their own prognoses may be inaccurate. John Kelly, local disabilities-rights activist, and director of "Second Thoughts," the Boston-based disabilities group founded to fight the initiative, was also included, speaking about potential abuse of persons with disabilities under the proposed law. Additional videos produced by CAPAS included testimony

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[246] "Family – Question 2 Massachusetts (Vote No)," Paid for by the Committee Against Physician-Assisted Suicide, https://www.youtube.com/watch?v=VTe8GYPCvd8

about advances in palliative care, the best alternative to assisted suicide, as well as hospice care and pain management.[247]

Late October polling showed that the Massachusetts "Death with Dignity" ballot initiative was losing ground. The groups opposing assisted suicide "spent close to $5 million, mostly on TV and radio ads in the campaign's final weeks. 'It's a tactic they've used in other states, to blitz the airwaves with commercials,' said Peg Sandeen, who heads the Death with Dignity National Center," quoted by Span in the *New York Times* December 2012 article reporting the loss.[248]

"How do you get to 51% . . .*?"*

The Committee Against Physician-Assisted Suicide did not fight the battle in Massachusetts entirely alone. There were other opponents of the ballot measure, and even parallel campaigns run by other groups. Ballotpedia lists Second Thoughts, the disability rights organization mentioned earlier, and its activist leader, John Kelly, as first among opponents of the ballot measure. A long-time rights activist, Kelly could not miss the implications of the "real arguments" for assisted suicide, namely, dependency and the burdens of long-range care, and he articulated them at every opportunity. "Some people may ask why disabled people are speaking out about problems with a proposal that's supposed to be about terminal illness, but when you look at the reasons Oregon reports for giving lethal prescriptions, it's mainly about the social and emotional issues of becoming disabled, like depending on others and feeling like a burden," the

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[247] Cunningham, 36.

[248] Span, *New York Times*, December 6, 2012.

veteran disabilities-rights activist said.[249] Kelly even initiated, and lost, an effort to stall the "Death With Dignity Act" from getting on the ballot in time for the November election. He and others filed a motion in Massachusetts Supreme Judicial Court, claiming "the ballot language is clearly misleading. Specifically, "Kelly's petition" asked the Supreme Judicial Court to remand the language to Massachusetts Attorney General Martha Coakley (D) and Secretary of State William Galvin (D) with the requirement that they amend [it] for clarity and accuracy." The "Death With Dignity Act," however, was placed on the ballot despite the request to remand, which was formally denied in June 2012.[250]

Other opponents listed by Ballotpedia include, Kristian Mineau, president of the Massachusetts Family Institute, and Washington State attorney Margaret Dore, President of Choice Is An Illusion. Mineau is quoted as saying, "Literally, some people will be signing their own death warrants" about the ballot measure," and "it's a further erosion of the sanctity of life in our commonwealth. You talk about the slippery slope; this is going off the cliff – morally."[251] Dore is quoted as saying that "Proponents tout assisted suicide as providing 'choice' over the timing of one's death. But choice under the Oregon and Washington acts cannot be assured. For example, neither act requires witnesses at the death. Without disinterested witnesses, the opportunity is created for an heir, or someone else who will benefit from the patient's death, to

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[249] John Kelly, Digital Journal, "Disability Rights Group Announces Opposition to Massachusetts Assisted Suicide Initiative," December 9, 2011, quoted in Ballotpedia, https://ballotpedia.org/Massachusetts_Question_2,_Physician-Assisted_Death_Initiative_(2012).

[250] John Kelly et al. v. Martha Coakley, Ballotpedia, https://ballotpedia.org/Massachusetts_Question_2,_Physician-Assisted_Death_Initiative_(2012).

[251] "Mass. petition aims to OK Doctor-Assisted Suicide," Boston *Herald*, August 24, 2011, quoted in Ballotpedia, https://ballotpedia.org/Massachusetts_Question_2,_Physician-Assisted_Death_Initiative_(2012).

administer the lethal dose to the patient without his consent. Even if he struggled, who would know?"[252]

While others joined the effort, the Massachusetts Office of Campaign and Political Finance showed the Committee Against Physician-Assisted Suicide as reporting the highest expenditures for any ballot question committee in Massachusetts in 2012, "$4,027,098, in a successful effort to defeat Question 2." The largest donors to that effort were Boston Catholic Television Center, $1 million; St. John's Seminary Corporation, $1 million, both subsidiaries of the Archdiocese of Boston. Also listed are Knights of Columbus, $450,000; and, The Catholic Association, $420,000.[253] The Knights are a global Catholic fraternal service order, composed of practicing Catholic men founded in 1882 as a "mutual benefit society for working-class and immigrant Catholics in the United States."[254] The Catholic Association, originally founded in Ireland, is an international pro-life, pro-religious freedom organization that argues for the dignity of life and Catholic Church teaching in the public square.[255]

The total breakdown of expenditures reported by the Massachusetts Office of Campaign and Political Finance, on behalf of defeating Question 2, are as follows:

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[252] Margaret Dore "Assisted-Suicide Laws Are A Recipe for Elder Abuse," New York Times, April 10, 2012, quoted in Ballotpedia, https://ballotpedia.org/Massachusetts_Question_2,_Physician-Assisted_Death_Initiative_(2012).

[253] Massachusetts Office of Campaign and Political Finance (MOCPF), "More Than $9 million Spent on Statewide Ballot Questions in 2012," November 29, 2012.

[254] Knights of Columbus website at https://www.google.com/search?q=knights+of+columbus&oq=Knights+of+Columbus&aqs=chrome.0.0j46l3j0l3j46.3748j1j8&sourceid=chrome&ie=UTF-8

[255] TCA, The Catholic Association, www. https://thecatholicassociation.org/, accessed August 12, 2020.

> The Committee Against Physician-Assisted Suicide, CAPAS, $4,027,098, with receipts of $4,129,775 and $121,189 in-kind contributions reported.
>
> Massachusetts Against Doctor Prescribed Suicide – NO on 2, $707,095, with receipts of $709,383, and $5,937 in-kind contributions.
>
> Second Thoughts: People with Disabilities opposing the Legalization of Assisted Suicide, $20,763, with receipts of $23,699, and $992 in-kind contributions.

Two other organizations are reported by the Office of Campaign and Political Finance, namely, Life with Dignity – No on 2, $109.00, and, Choice is an Illusion, $0. It's fair to say that, from the point of view of expenditures, the Committee Against Physician-Assisted Suicide fought the battle alone, accounting for $4,027,098 of the total $4,755,065 spent to oppose the Death with Dignity Act, Question 2.[256]

"Independent of the ballot question committees, six organizations are reported to have made expenditures to oppose question 2. The Massachusetts Family Institute [Minneau's organization], The Trustees of Emmanuel College, Stonehill College, Anna Maria College, College of the Holy Cross, and Trustees of Boston College spent $48,264 opposing Question 2. An individual also reported spending $2,373 opposing the same question," the MOCPF reported.

For purposes of context, the Massachusetts Office for Campaign Finance reports that, since 1988, there have been three questions on the ballot six times in the state. Of the six elections, 2012 ranked fourth highest, with $9,554,909 total spending reported.

A word about spending and ballot initiatives pertinent to the 2012 opposition campaign. An article by Thomas Stratmann, professor of Economics at George Mason University, entitled "Is Spending More Potent For or Against a Proposition? Evidence from Ballot Measures,"

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[256] Massachusetts Office of Campaign and Political Finance, November 29, 2012.

investigates the claim that "spending against ballot measures, and for the status quo, is effective, while spending in favor, and for change in the status quo, is not." Studying particularly television advertising for or against California ballot measures from 2000 to 2004, Stratmann concludes based on his data that both supporting and opposing interest group campaigning has "quantitatively important and statistically significant influence" on initiative outcomes. In fact, the study shows that campaigning [by] pro-initiative groups is at least as productive as that by anti-initiative groups interest groups."

At least two news articles reported in these pages, Span's and Cunningham's, argued that the defeat of Question 2 was due ultimately to the fact that the opposing side outspent proponents five to one. Stratmann's study shows that there is certainly evidence to support such a conclusion, showing for example, that "100 advertisements increase the vote share by 0.74 percentage points for the favoring side and 0.52 percentage points for the opposing side in the campaigns he studied, suggesting that supporting and opposing advertising are not significantly different from each other with respect to their ability to influence ballot measures."[257] In fact, Stratmann reports that, using a research design that allows for controlling of voter preferences and initiative particulars, one concludes that opposing and supporting campaigns have a statistically significant impact on voting outcomes, and contradicts previous results indicating that opposition advertising (and spending) is more effective than supporting advertising. In particular, Stratmann reports that "an additional 100 supporting ads increases the percent of votes in favor by 1.1 percentage points and a corresponding change for opposition advertising lowers this percentage by 0.6 percentage points" in the California ad campaigns he studied. One might

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[257] Thomas Stratmann, "Is Spending More Potent For or Against a Proposition? Evidence from Ballot Measures," American Journal of Political Science, 50, no. 3 (July 2006) 796.

conclude that opposition campaigns, on the basis of Stratmann's findings, must spend more to stay even, at least by about half. Nonetheless, the almost five-to-one spending advantage of opponents in Massachusetts in 2012 would be sufficient to produce the win.

Stratmann offers words of caution regarding his conclusions. "The influence of interest groups is mitigated," he says, "because groups compete. Although money spent on campaigning is important to outcomes, resources spent to support and oppose at least partially offset each other," he warns."[258] In that context, one might say there was little to offset spending by the opposition campaign in Massachusetts in 2012. Furthermore, and in contrast to Stramann's conclusions, *The Boston Globe* reported on November 4, 2020, that, in 17 of 20 ballot initiative elections in Massachusetts between 2008 and 2020, the side that spent the most money won.[259] Commenting on historic spending on ballot initiatives in the Bay State in 2020, the article reported on a "Right to Repair" law which "had become the most expensive ballot initiative in Massachusetts history . . ."[260] incurring expenditures of $43 million.

Regarding support among CAPAS affiliated groups, a story by Lisa Wangsness published on September 11, 2012, reported division in the ranks of faith-based organizations on Question 2. Commenting on the irony of the situation, the *Globe* reporter says, "The largest religious force in Massachusetts, the Roman Catholic Church, has come out squarely against the referendum, as have other prominent faith voices. A handful of smaller denominations support the measure known as Question 2. But some umbrella faith organizations remain loath to stake

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[258] Stratmann, p. 798.

[259] Matt Stout, "Amid Auto Industry Battle, Question 1 Is the Most Expensive Ballot Initiative in Mass. History, *The Boston Globe*, November 2, 2020.

[260] Ibid.

out a position, reflecting, they say, the range of opinion among their membership . . ."[261] Wangsness reports that the Rev. Laura Everett, executive director of the Massachusetts Council of Churches, an ecumenical partnership of 17 protestant and Orthodox denominations, admits "lack of consensus within the council's membership. With complex theological issues that have public policy expression, there are Christians of strong conscience and faith who disagree," Everett is quoted as saying.

Wangsness acknowledges that most Christian, Jewish, and Islamic churches oppose ending life before natural death. She cites a letter signed by eight prominent Reform rabbis "arguing in a gentle tone against the ballot question . . ." "Although Reform Judaism gives personal autonomy great weight, Judaism has always understood that life is a gift and that ultimately life belongs to God," the letter says. She also grants that opposition to the Roman Catholic Church's campaign to defeat Question 2 "is not uniform," citing the Unitarian Universalist Association of Congregations, with about 22,000 members in Massachusetts, officially supporting the coalition's position; she cautions, however, that Unitarians, like most Protestant denominations, "do not take positions on specific state proposals."

Wangsness analyzes the significance of divisions over the issue within Protestant and Jewish communities. ". . . In an age when many ecclesiastical hierarchies are weakening, in a country where many people are used to filtering religious beliefs through personal and secular lenses, individual clergy and congregants do not necessarily follow the lead of the church officials," she says. Her statement is not unlike Dr. Angell's remark on the eve of the election

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[261] Lisa Wangsness, "Massachusetts Religious Communities Divided over Doctor-Assisted Suicide measure: Bay State Ballot Item Galvanizes Major Organizations." September 11, 2012, boston.com, https://www.boston.com/news/local-news/2012/09/11/massachusetts-religious-communities-divided-over-doctor-assisted-suicide-measure.

comparing Catholics and doctors, neither of whom, she dryly asserts, always "follow their hierarchies." Wangsness offers the national Episcopal Church as an example. Officially opposed to physician-assisted suicide, members like the Reverend Daphne B. Noyes, deacon and hospital chaplain said "her work with dying people and their families has led her to believe the option should be available under religiously limited circumstances that ensure participation by all parties is voluntary and deliberate." Another example, Wangsness says, is the Jewish Community Relations Council which was "declining to take sides, instead promoting awareness of the question." Wangsness acknowledges that both sides appreciate that Massachusetts is a test ground for whether aid-in-dying "could succeed outside the Pacific Northwest."

Wangsness ends her article quoting Joe Baerlein on strategy. Discounting division within and among religious groups and emphasizing the effectiveness of the coalition, Baerlein talks about harnessing "the state's medical community, whose professional associations are largely aligned against the measure," and emphasizing the "flaws in the way the bill is written," as the more serious consideration. With great candor, Baerlein puts Wangsness's observations about religious groups into perspective: "With no disrespect to religion, in the world we live in, we say, 'How do you get to 51% . . . The fact is, this state is more secular than religious," says the public relations strategist.

On October 2, 2012, an article in *Wicked Local*, Wareham, MA., reported that the Massachusetts Academy of Family Physicians had announced its opposition to the ballot question. Stressing the need that every patient have "access to a pre-existing, trusting, personal relationship with a primary care physician," the more than 1,000 family doctors [joined] the

Mass[achusetts] Medical Society and the Mass[achusetts] Osteopathic Society in opposition to Question 2."[262]

The fact is that the language regarding "flaws in the bill" had taken hold, proving Baerlein's point. From local news outlets to the *New York Times*, opinion piece after opinion piece in October and early November used the very language identified and promoted by the opposition campaign as "flaws in the bill." Put another way, the local and national news outlets were making the case for the coalition. In late October, Waltham Massachusetts mayor and "all 15 city councilors," were reported as voting "No" on Question 2, and "were imploring other Massachusetts residents to do the same." Mayor Jeanette McCarthy is quoted as saying that the "proposed law is flawed" . . . [doesn't] provide for family or medical oversight . . . If people take a hard look at this law – even those who support assisted suicide should vote no," McCarthy said, echoing the campaign language.[263] State Senator Richard Moore, Democrat from Uxbridge and chair of the Joint Committee on Health Care Financing, was reported "urging constituents to vote no. Moore was joining a rapidly expanding list of lawmakers, medical community organizations, clergy and other groups who say Question 2 is deeply flawed and lacks critical safeguards for protecting patients," said the report.[264]

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[262] Doctors' Group Opposes End-of-Life Ballot Questions, Wicked Local, Wareham, MA., October 2, 2012, https://wareham.wickedlocal.com/article/20121002/NEWS/310029785.

[263] Jaclyn Reiss, "Waltham Massachusetts, Mayor and Councilors, All Voting No on Question 2 (Assisted Suicide)," on boston.com, reported by Alex Shadenberg, Euthanasia Prevention Coalition, National Right to Life News, October 25, 2012, https://www.nationalrighttolifenews.org/2012/10/walthan-massachusetts-mayor-and-coucilors-all-voting-no-on-question-2-assisted-suicide.

[264] Mary MacDonald, "Sen. Richard Moore Urges 'No' Vote on Physician-Assisted Suicide, Milford, MA. *Patch*, https://patch.com/massachusetts/milford-ma-sen-richard-moore-urges-no-vote-on-physician-assisted-suicide, pp. 3-5.

The Fitchburg *Sentinel and Enterprise* published a Guest Column by John Kelly, disabilities rights advocate, on October 19, 2012, entitled "Too Many Flaws in Question 2." The papers' editorial page carried the following message introducing Kelly's column:

> Progressive social-justice advocates from the disability-rights community ask voters to look deeper into Question 2 and the real threats it poses. Because Question 2 would establish a social policy under which certain deaths would be seen as beneficial, we must closely examine the social ramifications of passage.[265]

Kelly's column captured the strategic nightmare that faced proponents of Ballot Question 2: a progressive cause in a progressive state opposed by an organization with a track record of supporting progressive causes. Relentlessly, Kelly hammered home the ideological quagmire created when advocates for "choice" get caught in their own contradictions. ". . . [A]dvocates say it is all about 'choice,'" Kelly says, "but in reality Question 2 will limit choice, because it incentivizes insurers to restrict, or even deny, coverage . . . In today's cost-cutting environment, where health-care options are limited, many people already struggle with this," he says. Echoing the campaign's message about 'the flaws," Kelly said that "No alleged safeguard can protect patients from deciding to die based on a wrong prognosis or diagnosis . . . Under the law . . . an heir can be one of the witnesses," Kelly continues. "We urge Massachusetts voters to consider all the flaws in Question 2. There will be abuses." As he had for ten months in statement after statement, Kelly pointed to the people most likely to suffer from legalized assisted suicide. "Seniors and people with disabilities will be endangered. We urge you, have 'second thoughts,' vote No on Question 2."[266]

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[265] *Sentinel* and *Enterprise* Contributor and *Sentinal* and *Enterprise*, "Too Many Flaws in Question 2," by John Kelly, Guest Column, October 19, 2012, https://www.sentinelandenterprise.com/2012/10/19/too-many-flaws-in-question-2/, p. 1.

[266] Ibid., 1-2.

On October 17, *Boston Globe* columnist Jeff Jacoby confronted proponents, particularly Dr. Marcia Angell, whom he describes as "lead petitioner of the Massachusetts ballot measure." "If Hippocrates . . . were alive today, would he favor Question 2," asks Jacoby. Decidedly not, he answers. Dr. Angell claims assisted suicide "can be an appropriate aspect of patient care, especially when the alternative is drawn-out misery inexorably ending in death. People have control over their lives . . . They ought to have control over their deaths," Jacoby quotes Angell as saying. His response to Angell: there's nothing new about this argument. "Hippocrates heard the arguments too; then as now they exerted an undeniable emotional pull. There is a reason the Hippocratic oath obliged new doctors to stand firm against it," Jacoby argues. "Only a moral cretin yells 'Jump" to the man on the high bridge who wants to end it all," the columnist bluntly adds. In fact, Jacoby goes on, civilized societies seek ways to "avert" that man's suicide, not ways to "facilitate" it. Jacoby unmasks the strategy of asking voters to "endorse a view that our ethical culture at its best has always abhorred: that certain lives aren't worth living. That there are times when people *should* jump—indeed, that there is nothing wrong with making it easier for them to do so." Jacoby invokes the flaws and adds the "Glucksberg" argument in support of them—what about "a paralyzed victim of Lou Gehrig's disease," Jacoby asks. Doesn't his pain deserve alleviation as much as someone "capable" of asking for it under the law. Characterizing legal distinctions between "capable" and "incapable" as "capricious line-drawing," Jacoby calls attention to the fact that, for Dr. Angell, such distinctions "are the only way to make [assisted suicide] 'politically acceptable.'"[267]

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[267] Jeff Jacoby, "What About Do No Harm? Suicide Is Not Healthcare, and Prescribing Death is Not a Doctor's Role," *Boston Globe,* October 17, 2012, https://www.bostonglobe.com/opinion/2012/10/17/what-would-hippocrates/3TbEEvaWvKSbK7gqld9L4J/story.html.

Like the *Globe*, the *New York Times,* which had carried Paula Span's sympathetic article about Michael Sutherland's death from ALS the previous Spring, published a different view in the Fall 2012. An article by Ezekiel J. Emanuel, M.D., University of Pennsylvania, entitled "Four Myths About Doctor-Assisted Suicide," published on the Opinion Page on October 27, did not mince words. Rivaling Jacoby's frankness on the legal and ethical issues, Emanuel took aim on the medical side. Stop blaming the cause for assisted suicide on pain, or on technologies that drag out what might have been merciful deaths in a previous lifetime, stop talking about mass appeal, and, above all, stop calling it a "good death," Emmanuel said, exploding the euphemisms used by typical proponents. Call it what it is, he says—most often, the result of depression that tends to accompany a terminal diagnosis, and, as such, "just plain old suicide. . ." Or , he adds, call it little more than a desire as old as Hippocrates himself to avoid a difficult death, and in modern, more liberal times, yet another way to push patient autonomy. . . And, as data shows, Emmanuel goes on, admit that assisted suicide is a choice most often exercised by rich, educated, well-insured, white people used to being in control of their lives and who happen to live in places where it's legal . . . Finally, he challenges, call it what it truly is—an ignominious, often complicated, process of dying with no benefit of medical intervention should things go wrong! "The appeal of physician-assisted suicide is a fantasy," says the physician-educator. The alternative—". . .Ensuring that all patents can talk openly with their physicians and families about their wishes and have access to high-quality palliative or hospice care before they suffer needless medical procedures."[268]

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[268] Ezekiel J. Emanuel, "Four Myths About Doctor-Assisted Suicide," New York Times, October 27, 2012.

Two powerful testimonies urging defeat of ballot Question 2, both referred to earlier in these pages, came only days preceding the election. In an op-ed piece in *the Cape Cod Times* on October 27, Victoria Kennedy, wife of deceased Senator Ted Kennedy of Massachusetts, urged defeat of the bill. Ballot Question 2, she said, would turn her husband's vision of health care "on its head by asking us to endorse patient suicide — not patient care — as our public policy for dealing with pain and the financial burdens of care at the end of life." "Her husband was given two to four months to live," she added, "and survived for another 15. In that time . . . he cast a key Senate vote, gave a speech at the Democratic Convention, attended the president's inauguration, and spent time "kissing his wife, loving his family, and preparing for the end of life." Mrs. Kennedy argued that assisted suicide "would rob people of precious time with friends and family. That seems cruel to me . . . And lonely. And sad," she wrote.[269]

The second testimonial against the initiative came from a similarly unlikely source—the *Boston Globe* editorial page. On November 2, 2012, the *Globe* asserted that in "End-of-life discussions, care should come before Question 2." Accusing Massachusetts, like most states, of being in a state of denial about good end-of-life care, the *Globe* editorial recommended that "a yes vote would not serve the larger interests of the state. . . Massachusetts should commit itself to . . . bringing the medical community, insurers, religious groups and state policy makers into agreement on how best to help individuals handle terminal illnesses . . ."[270] Recommending financial realism, the editorial added that "access to palliative care, psychiatric therapy, and

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[269] https://www.capecodtimes.com/article/20121027/OPINION/210270347.

[270] "End-of-Life Discussions, Care Should Come Before Question 2," Boston Globe, November 2,2012, https//www.bostonglobe.com/opinion/editorials/2012/11/01election-endorsement-question/qAAp21DlC6mkoGYPjA9J6M/story.html.

hospice nurses are already covered by Medicare and most insurers. Such services may sound elaborate, but are actually far less costly than the intensive care that so often attends last-ditch treatments." Not ruling out assisted suicide entirely, the editorial said it "should be the last option on the table" only after "all patients have access to all the alternatives, including palliative care." The *Globe* editorial noted that Question 2 "has drawn the opposition of the Massachusetts Medical Society, which argues that physicians shouldn't be put in the position of ending people's lives."

By November 3rd, three days before the election, the following papers all had urged saying "NO" on Question 2: The *Cape Cod Times*—Vote No on Question 2; *The Salem News*—Our View: No on Question 2; *The Worcester Telegram and Gazette*—Vote 'No' on Question 2; *The Boston Herald*, which had barely mentioned the likelihood of the petition making it to the ballot in the Fall of 2011—No on Question 2; *The New Bedford Standard Times*—Our View: Death with Dignity law fatally flawed; *The Bay State Banner*—Vote No on Question 2; *The Lowell Sun*—Vote No on Question 2; *The Springfield Repu*blic—recommend voting 'no' on Question 2, Physician-Assisted Suicide; *The Waltham News Tribune*—Endorsement: "Death with Dignity" is Not Good Enough.[271]

On the Friday before election day consultants reported that all indicators were that the strategy had worked." Joe Baerlein's question—"How do you get to 51%" had been answered, by riveting attention on the "flaws in the bill"!

In January 2012 polling in Massachusetts had shown physician-assisted suicide favored by 20 points. At a meeting in January 2012, consultants had forecast that defeat of the ballot

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[271] Mass Against Assisted Suicide, "Choice is an Illusion," website, Saturday, November 3, 2012, http://www.massagainstassistedsuicide.org/2012/11/papers-say-notoquestion-2_3.html.

initiative in Massachusetts would cost 3 million dollars and "if you win, it will be by no more than 1 or 2 points." On Election Day, November 6, 2012, more than 2.7 million Massachusetts citizens voted on the physician-assisted suicide initiative and it was defeated by 67,891 votes, 51.1% to 48.9%--the very margin predicted by consultants ten months prior!

From where did the 1.1% come . . .

3.4. "Splitting the Vote in Boston": The Miracle of the One Percent

In the city of Boston, Question 2 was defeated 50.9% to 49.1% with twelve of Boston's 22 wards voting against it. Leading the way among the twelve wards who voted against assisted suicide were Dorchester, Roxbury, and Hyde Park, traditionally Black, liberal Democratic strongholds. Fifty-eight percent of voting precincts in the city of Boston, 146 out of 255, voted "No" on Question 2.

Studies had shown for years that there were significant disparities, sometimes up to 20 percentage points, between blacks and whites in levels of support for assisted suicide. "The gap between blacks and whites in their support for legalization of physician-assisted suicide is notable both because of its magnitude and its stability over the past 17 years," reported one Michigan study in 1997. "Blacks were also far less likely than whites to contemplate requesting physician-assisted suicide for themselves or to support voluntary euthanasia," the report concluded.[272] The study was done in Michigan, where the notorious Dr. Kevorkian had assisted

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[272] Richard L. Lichtenstein, Ph.D., Kirsten H. Alcser, Ph.D., Amy D. Corning, M.A., Jerald G. Bachman, Ph.D., and David J. Doukas, M.D., "Black/White Differences in Attitudes toward Physician-Assisted Suicide," *Journal of the National Medical Association*, 89, no. 2: 131.

in more than two dozen suicides, and where the legislature had passed Public Act 270 in 1992 banning physician-assisted suicide. Statewide studies in Michigan done in 1994 revealed that returned questionnaires did not represent blacks in proportion to their numbers in the population. A survey of 500 Detroit residents was conducted in June 1994 to better control the sample for attitudes among blacks. Respondents were asked to answer questions relative to "Plan A," adapted from the Michigan commission on Death and Dying, which specified eligibility requirements, multiple requests, witnesses who could not be heirs or relatives, and safeguards against euthanasia and "suicide clinics."[273] Usable questionnaires totaling 299 produced a subsample of 257 respondents who identified as either black (62%) or white (38%). Results showed a strong relationship between race and religion and attitudes toward physician-assisted suicide.[274]

In the 1994 Detroit study, 76% of whites supported legalization "definitely" or "probably" compared to 56% of blacks. Asked if they might ever request physician-assisted suicide for themselves, 52% of whites said they "definitely/probably" would, compared to 37% of blacks. Twenty-nine percent of blacks said they "definitely would not request physician-assisted suicide, more than double the proportion of whites (12%) who said they definitely would not."[275] The study also revealed that race played a significant factor in attitudes, not just toward assisted suicide, but health care generally, showing blacks less inclined than whites to support expanding assisted suicide to allow physicians to administer a lethal drug. The article appeals to

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[273] Lichtenstein, et al., 127.

[274] Ibid., 128.

[275] Lichtenstein, et al., 128.

other studies that show that blacks are "far more likely" than whites to want life-prolonging treatments, to believe "people should live as long as they can," and to resist "capitulating to death." Finally, the article mentions that blacks "are less likely than whites to trust physicians and the medical establishment," and "simply may not believe that physicians, or the health-care system in general, will follow the black patient's best interest."[276]

The study also revealed a correlation between religion and opposition to assisted suicide. Baptists and those who said religion was "very important" in their lives were most likely to advocate keeping assisted suicide illegal (50% of Baptists said they would legalize PAS compared to 59% of other Protestants, 69% of Catholics, 78% of others, and 90% who identified as non-religious).[277] While race and religion were the strongest indicators of attitude toward assisted suicide, the study revealed correlations with sex and age as well. Seventy-three percent of male respondents said "probably/definitely" legalize assisted suicide, while only 56% of women said the same. Regarding age, 40-49 year-olds showed 80% saying "probably/definitely legalize," while among 60-69 year-olds, the rate drops to 67%, and among 70+, the rate drops to 49%. On the issue of religion and its effect on attitudes toward assisted suicide, the article says that a "review of the literature on suicide among blacks . . . indicates that the condemnation of suicide by blacks not only represents a fundamental tenet of black religion but also seems to be a cultural manifestation of black heritage itself. National data reveal that suicide rates among blacks are lower than they are among whites and have been for many years. [One study]

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[276] Lichtenstein, 132.

[277] Ibid., 128.

underscore[d] the cultural dismissal of suicide by blacks . . . [quoting a magazine article entitled] "It's a White Thing," which identified suicide as "alien to the black experience."[278]

Aware of the possibility of splitting the liberal vote in Black communities on the issue, the campaign reached out to Black pastors in the city of Boston who cooperated effectively in getting word to church members about the threats posed by Ballot Question 2. One of those pastors, Reverend Eugene Rivers, whose comments on the necessity of a coalition led effort against assisted suicide were cited earlier, took the initiative in distributing materials and messaging among black pastors who in turn made them available in their communities. Without those communities, without that effort, it would not have been possible to get to 51%.

Regarding the efforts by the four bishops of the Massachusetts Catholic Conference, "Suicide is Always a Tragedy" campaigns in four dioceses, and coalition efforts represented by the Committee Against Physician-Assisted Suicide, official results say it all. Question 2 was defeated territorially in three out of the four Massachusetts dioceses, including Boston where the vote was 50.3% against Question 2, Fall River, 53.1% against, and Worcester, 54.5% against. Springfield was the only one of the four Massachusetts diocese to vote in favor of assisted suicide and that by a margin of less than 1% (50.6% to 49.4%). In the Archdiocese of Boston, Question 2 was defeated in 13 of 20 vicariates (a vicariate is a cluster of Catholic parishes in geographic area under the authority of a Catholic vicar) and in 54.9% of towns. Appendix 2 shows a map of Massachusetts on election night displaying the final vote on Ballot Question 2.[279]

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[278] Lichtenstein., 132.

[279] Appendix 2. p. 147.

At a celebratory dinner after the election, John Marttila greeted me with a warm smile. "It was a miracle, you know," he said. "That's what we do," I lightly replied. Miracle or not, the defeat of assisted suicide in Massachusetts in 2012 was remarkable. At their fall 2011 meeting, the four bishops of Massachusetts had decided to utilize combined resources of the state's four Catholic dioceses, as well as resources of the Massachusetts Catholic Conference itself, to oppose Ballot Question 2. The bishops knew that defeat of a ballot initiative is equivalent to running a candidate for office; it involves convincing the majority of voters to pull the lever for a particular position. They knew that ballot campaigns are expensive and can be unpredictable. Similar campaigns by the Catholic Church in Oregon and Washington State had failed. The bishops decided to enlist the assistance of public affairs consultants with an expertise in Massachusetts electoral politics. Given the secular character of the electorate and the complexity of the issue, the bishops were soon convinced that the Church could not succeed alone, nor could it be the face of the campaign. This led to a campaign strategy that was multifaceted and inclusive of a number of groups not usually associated with one another, all opposed to assisted suicide—Catholic, Protestant, and Jew, white and black, liberal and conservative. "It was a United Nations of religions," Joe Baerlein called the Committee Against Physician-Assisted Suicide (CAPAS), in a testimony to the critical strategy of coalition building that his firm had managed to effect.

Internally, the Church relied on traditional parish-based outreach including on-site workshops, TV, radio, print and electronic media, as well as personally-targeted messaging to Catholic college students, graduates and families, among other strategies. Video-taped messages by Cardinal O'Malley shown in Catholic urging Catholics to vote "No" on Question 2 reached significant numbers. These efforts were supported by the distribution of 1.7 million pieces of literature in parishes and Catholic institutions between January and November 2012 in the Boston **a**rchdiocese alone. Smaller efforts were mounted in the three other dioceses of Fall River, Springfield and Worcester.

Polling results provided by Marttila Strategies shaped the campaign. While Massachusetts citizens polled 2-1 in favor of physician-assisted suicide for the terminally ill, polling also revealed that Massachusetts voters were uncomfortable with identifiable elements of the proposed law. Called "flaws in the bill," they included the uncertainty of a doctor's six-month prediction of death, the absence of a mandatory psychiatric, no requirement that family members be notified, and, the requirement that the lethal drug be dispensed at the local pharmacy. The goal of the external campaign, then, became to convince secular- and non-Catholics, many of whom supported assisted-suicide in principle, that these flaws were serious enough to vote against the bill. Alliances were established with organizations such as the Massachusetts Medical Society and other prestigious medical groups. Elected officials across the Commonwealth, liberal and conservative, were approached to secure their support. Dozens of newspaper editorial boards, most importantly the Boston *Glob*e and the Boston *Herald*, were visited by teams of doctors, lawyers and ethicists to secure endorsements against the initiative.

Still, August and September 2012 saw polls by the Boston *Globe*, Suffolk University and others showing 60 percent or more support for Ballot Question 2.[280] As with most elections, money was an issue. Two groups pushing for Question 2 spent a little over one million dollars in Massachusetts in 2012. The Catholic Church spent as much as three million dollars, reported

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[280] Paula Span, "How the 'Death with Dignity' Law failed in Massachusetts," The New Old Age: Caring and Coping, End of Life Care December 6, 2012.

the Boston *Globe*, that money coming from entities of the Archdiocese of Boston, as well as Catholic dioceses, organizations, and individuals across the country and the world.

The external strategy, aimed at secular and non-Catholic audiences, envisioned a robust media campaign. Focus for that campaign came, however, from some unexpected sources, such as the vial of pills provided by Dr. John Howland, Sudbury, MA., who wanted his audiences to experience what the actual lethal dose would look like. His vial of large orange capsules, that would in a real prescription contain a lethal dose of Seconal and be dispensed at a local pharmacy, became the focus of an ad credited by the *New York Times* as having sealed the fate of Ballot Question 2. By late October, polling showed that the Massachusetts "Death with Dignity" ballot initiative was losing ground. Ultimately, the "Suicide is Always a Tragedy" and "Stop Assisted Suicide" campaigns spent close to five million dollars, mostly on TV and radio ads in the campaign's final weeks.

Two powerful testimonies against the initiative published just before election day came from unexpected sources. Editorials by Victoria Kennedy and the Boston *Globe* testified to the accuracy of the opposition campaign's position—this was a flawed bill worthy of voter rejection. Legalized assisted suicide, Mrs. Kennedy, testified might have cost her husband precious time with his family and in public service. At least as proposed in this initiative, said the Globe, assisted suicide was not an idea whose time had come, either for Massachusetts or anywhere else for that matter, at least not until all alternatives were exhausted. One after another in the final days of the campaign, newspaper and other media editorials adopted the very language of the opposition campaign regarding "flaws in the bill," echoing the opposition campaign's arguments for voting "No."

On Election Day, November 6, 2012, more than 2.7 million Massachusetts residents voted on the physician-assisted suicide initiative and it was defeated by less than 2 percent—the very margin predicted by consultants 11 months prior! Official results revealed that the margin of victory for the "No" campaign came from votes cast in black, liberal, Democratic strongholds in the city of Boston. Traditionally opposed to assisted suicide, the black community responded to efforts by Black pastors, who had gotten the word to church members about the lack of safeguards in the bill especially for the poor, uninsured and societally marginalized. The result was that 58% of voting precincts in the city of Boston voted "No" on Question 2.

Conclusion

Election-day Lawmaking Revisited

"What they did was to make people worry that their first instincts were somehow wrong, that something bad they couldn't quite put their finger on was going to happen."

Marcia Angell, M.D.,
Lead proponent
Dignity 2012

In order to provide context for the significance of the 2012 Ballot Initiative to legalize assisted suicide in Massachusetts, Chapter One of this dissertation offers a brief overview of ballot initiative politics in America. Historically a friend to liberal interests that have difficulty getting legislative support, the ballot initiatives have been used to initiat assage of significant democratic processes and policies at the state level, for example women's suffrage, restrictions on child labor, and presidential primaries. Proponents of Ballot Question 2 in 2012 expected it would sail through the electoral process in Massachusetts, traditionally a Democratic, liberal state. Still, some critics see more recent ballot initiative use as anti-democratic. Overly responsive to citizen initiatives, operating outside the normal give-and-take of traditional legislative processes, ballot initiatives, say opponents, are also used successfully to serve anti-democratic tendencies. For example, the ballot initiative has been used by liquor wholesalers and gambling interests to bypass slow, cumbersome legislative procedures in order to secure wins for business interests at the ballot box. Furthermore, say opponents, ballot initiatives are used by unmediated, unreflective state-wide majorities inimical to genuine, locally-based minority interests. Since the advent of media-based campaigns, critics say, they have been used by professional consultants to guarantee wins at the ballot box in exchange for exorbitant fees, with little or no concern for the wisdom or benefits of policies enacted.

These last two critiques of ballot initiative use, unmediated state-wide majorities and financially motivated consultants, are particularly pertinent to Ballot Question 2 to legalize assisted suicide in Massachusetts. Chapter Two of this dissertation shows that, from the perspective of ordinary ballot initiative politics, Question 2 to legalize assisted suicide in Massachusetts was a guaranteed win in 2012. A blue state in a presidential election year with President Obama heading the Democratic ticket, Massachusetts could surely be counted on to produce a state-wide majority at the ballot box favoring assisted suicide. In 20111, polling showed that voters in the Bay State favored assisted suicide 2-1. As anticipated, the initiative had support from progressive quarters from the start—Barney Frank, the *Boston Globe*, the *New York Times*, a myriad of local news outlets. Also as anticipated, the Catholic Church, once a powerful player in Boston politics, came out early in opposition to the initiative; however, in the wake of the relatively recent priest sex-abuse scandal, the Church was hardly expected to mount a strong or well-funded campaign. Disabilities-rights groups, historically successful in thwarting assisted-suicide in the Massachusetts legislature, were not likely to have the same success against a liberal majority at the polls. Proponents of the petition to put assisted suicide on the ballot in 2012, although not natives of Massachusetts, were counting on that state-wide majority to guarantee a win for assisted suicide at the ballot box. What happened to alter such bright prospects for Ballot Question 2?

Chapter Three of the dissertation demonstrates that several factors account for the unexpected defeat of Ballot Question 2 in 2012, but none more importantly than the work of consultants in identifying the "flaws in the bill." On the issue of ballot initiatives as poorly crafted laws, Ballot Question 2 provisions that no doctor be present, that no family member need be notified, and that no conscience exclusions be provided for pharmacists, jumped off the page even to a first time reader of the initiative. The requirement that the lethal prescription be picked up at the local pharmacy, and that a falsified death certificate be filed, were alarming. These provisions—what consultants eventually identified as "flaws in the bill"—were red flags from the perspective of poorly written law. But ballot initiative politics relies on the fact that voters seldom read the proposed law carefully. Rather, they read a summary of the law accompanied by pro and con arguments which appear on the ballot on election day, along with testimonies such as that of Heather Clish whose father moved to Oregon to seek relief from cancer. It was the work of consultants, particularly strategic polling to identify flaws in the bill, and a media campaign based upon the flaws, that turned an electorate favorable toward assisted suicide by a 2-1 margin against it. "The Pharmacist," "Family," and other ads, broadcast in the weeks just prior to the election on TV, radio, and electronic media capitalized on the disturbing lack of safeguards for patients and their families. As Chapter Three argues, that very message about serious "flaws in the bill," began to appear as content in editorials and opinion pieces published by prominent local newspapers and media outlets, including some originally supportive of the policy, in the final weeks and days before the election.

Regarding controversies surrounding the role of consultants in initiative politics, particularly the "guns-for-hire" critique, the 2012 campaign in Massachusetts to defeat assisted suicide provides a classic example. Consultants famous for getting prominent liberal candidates elected to office, hired by the Catholic Church in Boston, who mounted and managed a "conservative" campaign against a highly controversial, progressive issue might well be suspected of mixed motives. Nonetheless, the work of Rasky Baerlein Consultants and their colleagues at Marttila Strategies—identifying and recruiting coalition partners, building cohesion, timing and staging campaign activities, identifying "flaws in the bill" and crafting messages around the flaws that changed "yes" to "no" votes, was, pardon the pun, flawless.

An unofficial measure for whether to take a campaign or not among consultants is the "2 to 1" rule, mentioned in Chapter One. "At the start of an initiative's public campaign phase, if there is organized opposition and 'yes' support ratio is less than 2 to 1 over the 'no' vote, or if the 'no' vote is over 30 percent regardless of the 'yes' level, than the issue is in trouble."[281] Polls showed that support for a terminally ill patient to seek a doctor's prescription to end his life was 2-1 in favor at the start of the campaign. The 2-1 rule was met—consultants should have turned down the campaign! But the decision by Rasky Baerlein to ignore the 2-1 rule may have to do with yet another rule of thumb among consultants—"ballot initiatives are easier to kill than pass."[282] To get a proposition passed, it is necessary to offer compelling reasons why the change is needed and/or desired. To defeat a proposition, usually "all you have to do is raise doubt," says the political analyst David Faucheux. Insisting that everyone concentrate on the "flaws in the bill," in other words, insisting that patient safeguards were missing and that interests of families and doctors were jeopardized, Joe Baerlein drove home to workers on the campaign, and to financial backers as well, that all that was needed was to "sow doubt" in the minds of voters.

A second factor that insured defeat of Ballot Question 2 was the strategy that created a multifaceted coalition on the opposing side—a large, diverse coalition ". . . united against the measure, including Jewish, Christian, and Muslim clergy, palliative care doctors, hospice

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[281] Ron Faucheux, "Observations of Initiative Elections," Sabato, *Dangerous Democrac*y, 140.

[282] Ibid., 134.

workers and *pharmacists*,"[283] reported Lisa Wangsness, *Boston Globe* columnist, the day following the election. Wangsness had written the story published only a few days earlier reporting dissension in the ranks of Boston religious leadership. In her post-election assessment, however, Wangsness reconsidered. "Catholic institutions and individual donors supplied much of the money . . ." says Wangsness, but theirs was not the only support. "A group of prominent rabbis wrote an open letter opposing the idea on religious grounds. Reverend Liz Walker, a minister in the African Methodist Episcopal church and former television news anchor, wrote an essay arguing against the measure which was published in the *Globe.*[284]

Crucial to the coalition position was support by the Massachusetts Medical Society, which had reasserted its long-standing opposition to assisted suicide in response to the ballot petition. Also significant was support from palliative care, hospice and other health related groups, all leveraging constituents and affiliated organizations to oppose the measure. As Mark Horan, Vice-President of Rasky Baerlein, frankly admitted, his firm had been hired to attract like-minded groups to the campaign, to develop a website and to fund a blitz of TV, radio and internet advertising, all to overcome the fact that even sophisticated voters often do not know about ballot initiative measures. Horan reported that the entire summer had been spent building the coalition in order to attract people of "all faiths' and "walks of life affected by [the potential legalization of assisted suicide]." We are working on our Web presence and starting to optimize our search capacity to drive people to the content, and we're getting a ton of media requests — mini

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[283] Lisa Wangsness,, "A Coalition of Forces Beat Back Question 2," The Boston Globe, November 7, 2012, https://www.bostonglobe.com/2012/11/07/dying/22ppArgemoWEHEF6nsE5H/story.html.

[284] Liz Walker, *The Boston Globe*.

debates on radio and television," said the strategist. [285] Also crucial to the coalition's success was its skill in communicating its local character and singlemindedness and cohesiveness in pursuing policy beneficial to the people of Massachusetts. This was in contrast to proponents, whose principal ties were to a national organizations in Portland and Seattle, and whose political action funds promoted "death with dignity" in many states.[286]

Intimately connected to coalition strategy was the two-tiered approach used to address Catholic voters "internally," and non-practicing Catholics, and non-Catholics, "externally." The messaging that appeared at the conclusion of the Cardinal's six opinion pieces published in *The Pilot* in weeks just prior to the election describes it well.

> *The Archdiocese of Boston has developed an educational website on the Church's teachings on end of life issues, www.SuicideIsAlwyasATragedy.org. The archdiocese is also part of a large coalition of groups from other faiths, from the medical community, and from disabilities rights groups that are advocating a no vote on Question 2. The coalition's website is www.StopAssistedSuicide.org.*

It was this strategy that allowed the Catholic Church to leverage its institutions and to reach as many Catholic votes as possible, while remaining in the background of a broadly secular, public media campaign.

Chapter Three shows, in the final weeks of the campaign, that the distinction between the "internal" and "external" campaigns gave way to a joint effort between educational and coalition campaigns to get the messaging about "flaws in the bill" to as many voters as possible. Catholic parishes were advised to link to both websites, www.suicideisalwaysatragedy.org and

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[285] Joan Frawley Desmond, "Euthanasia Opponents in Boston Gird for Ballot Battle," National Catholic Register, September 21, 2012. https://www.ncregister.com/daily-news/euthanasia-opponents-in-boston-gird-for-ballot-battle.

[286] Ibid.

www.stopassistedsuicide.org, and to implement very specific steps, including use of homily helps, general intercessions, bulletin announcements, and prayers at Sunday liturgies. In Boston alone in early October, outreach to Catholic school students and parents reached more than 50,000 potential voters. An unprecedented letter to students, parents and alumni of Catholic colleges urging them to vote no on Question 2 was sent by each respective Catholic college president in the state. Based on archdiocesan statistics, potentially 200,000 parishioners heard the Cardinal's homily in late October and/or received campaign materials in the final weeks before the election.[287] At the same time, the Massachusetts Catholic Conference established "Mobilization/Coalition Campaign Efforts," educating and resourcing "captains on the ground" to set up and man centers for the distribution of yard signs, posters, placards, door hangers and business cards throughout the state. By the close of the campaign, Pilot Printing, owned and operated by the Archdiocese of Boston, alone printed and distributed close to 2 million pieces of literature urging a no vote on Ballot Question 2 distributed by the four dioceses. While the messaging of the campaign remained predominantly secular, the influence of the Church to leverage its institutions and membership was formidable.

Third, the split in the Black vote in Boston was definitive. Traditional opposition to assisted suicide on racial and religious grounds in black communities nationally was well-documented. Thanks to the efforts of Reverend Eugene Rivers primarily, local black pastors were successful in getting the messaging against assisted suicide into the black community in Boston to provide the desperately needed votes to get to 51%. The 1% in the magic number 51%

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[287] In 2012, the Boston Archdiocese reported 290 parishes with 1.8 million Catholics in the territory of whom about 270,000 regularly attended Mass (an average of 15%). https://en.wikipedia.org/wiki/Roman_Catholic_Archdiocese_of_Boston.

came from Dorchester, Roxbury, and Hyde Park, traditionally black, liberal Democratic strongholds. Fifty-eight percent of voting precincts in the city of Boston, 146 out of 255, voted “No” on Question 2. Confirming the significance of the black vote , results in white, suburban communities such as Concord, Cambridge, Brookline, Newton, and Northampton showed the vote was 2 to 1 in favor of Question 2.[288]

Last, but certainly not least, opponents of Ballot Question 2 outspent proponents 5 to 1. To that point, it is true that, in Massachusetts in 2012, every dime was needed to the defeat the measure. Recall, however, that political analyst Thomas Stratmann, quoted in Chapter Three, clarifies that both opposition and proponent campaigns have a statistically significant impact on voting outcomes. His study contradicts previously published results that opposition advertising (and spending) is more effective than advertising by proponents. Relevant to 2012 Question 2 in Massachusetts is Stratmann’s report that “an additional 100 supporting ads increases the percent of votes in favor by 1.1 percentage points, while a corresponding change for opposition advertising lowers this percentage by 0.6 percentage points.” The inference is that an opposition campaign must spend more to stay even, at least by about half. On this point, the almost five-to-one spending advantage by the opposition campaign in Massachusetts in 2012 was sufficient to produce the win. Stratmann’s words of caution, also quoted in Chapter Three, are worth repeating here, however. “The influence of interest groups is mitigated,” he says, “because groups compete. Although money spent on campaigning is important to outcomes, resources

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[288] Mark Arsenault, “She Hastened Her Own Death—A Deliberate Decision In Accordance with The Law, In The Face of a Terminal Illness. Will the Option Be Available in Massachusetts? November 28, 2020, https://www.bostonglobe.com/2020/11/28/metro/she-hastened-her-own-death-deliberate-decision-accordance-with-law-face-terminal-illness-will-option.

spent to support and oppose at least partially offset each other."[289] In that context, it's safe to say that spending on the part of proponents was insufficient to offset spending by opponents of Ballot Question 2 in Massachusetts in 2012.

In his report to the American bishops gathered in November 2012, Cardinal Sean O'Malley offers his assessment of the Ballot Question 2 campaign: "The Catholic dioceses of Massachusetts' opposition to physician-assisted suicide was not a matter of partisan politics, it was simply the exercising of our right to contribute to the exchange of ideas that the Constitution of the United States guarantees. The Church performs an important service by weighing in on moral and ethical issues." By appealing to reason and the common sense of voters, the campaign stirred the consciences of an electorate to expect safeguards for patients who are terminally ill. It upheld the obligations of less vulnerable citizens to insure protections for their more vulnerable and disadvantaged neighbors. And, as the *Boston Globe* editorial put it, the campaign reminded voters of the responsibility to provide, first and foremost, morally acceptable means of care for the terminally ill. All that being said, however, what this study proves is that even the most effective, well-funded Church initiated campaign in Massachusetts in 2012 might well have foundered on the 2-1 majority in favor of assisted suicide at the polls, not for the strategic identification of "flaws in the bill," the broad-based, media campaign based on them, and the "split in the vote in the black community in Boston."

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[289] Thomas Stratmann, "Is Spending More Potent For or Against a Proposition? Evidence from Ballot Measures," American Journal of Political Science, 50, no. 3 (July 2006), 796.

Afterword

At the time of this writing, unprecedented shortages of materials, personnel and equipment experienced during the Covid-19 pandemic are being used to drive arguments for stricter "triage" requirements in the treatment of the elderly and the dying. A bill to legalize assisted suicide, S.1208/H.1926, the Massachusetts End of Life Options Act, has advanced from the Joint Committee on Public Health on May 29, 2020 in an amended version S.2745/H.4782, and awaits a vote in the Joint Committee on Healthcare Financing in the Massachusetts legislature. The bill currently in the Massachusetts legislature was introduced by Louis Kafka, now the fifth legislative bill legalizing assisted suicide sponsored by the Democrat from Stoughton, and the first since the failure of the 2012 ballot initiative. The bill's progress marks the farthest assisted suicide has ever gone in the legislative process in Massachusetts.[290]

In December 2017, the Massachusetts Medical Society rescinded its opposition to physician-assisted suicide, adopting a position of "neutral engagement" on the issue.

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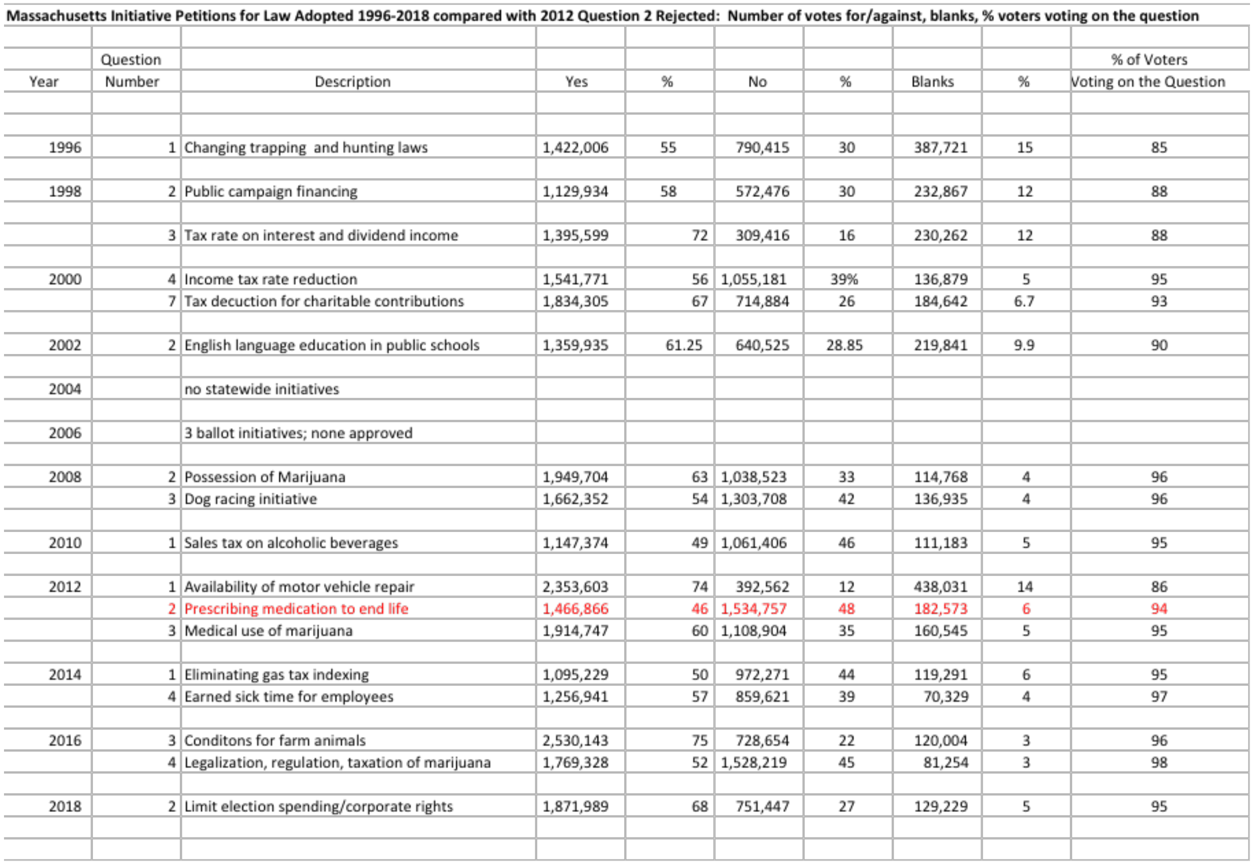
[290] Mark Arsenault, "She Hastened Her Own Death," *The Boston Globe*, November 28, 2020.

Appendix 1. Massachusetts Initiative Petitions for Law Adopted 1996 to 2018 compared with 2012 Question 2, Rejected: Number of votes for/against, blanks, % voters voting on the question



Massachusetts Initiative Petitions for Law Adopted 1996-2018 compared with 2012 Question 2 Rejected: Number of votes for/against, blanks, % voters voting on the question

Year	Question Number	Description	Yes	%	No	%	Blanks	%	% of Voters Voting on the Question
1996	1	Changing trapping and hunting laws	1,422,006	55	790,415	30	387,721	15	85
1998	2	Public campaign financing	1,129,934	58	572,476	30	232,867	12	88
	3	Tax rate on interest and dividend income	1,395,599	72	309,416	16	230,262	12	88
2000	4	Income tax rate reduction	1,541,771	56	1,055,181	39%	136,879	5	95
	7	Tax decuction for charitable contributions	1,834,305	67	714,884	26	184,642	6.7	93
2002	2	English language education in public schools	1,359,935	61.25	640,525	28.85	219,841	9.9	90
2004		no statewide initiatives							
2006		3 ballot initiatives; none approved							
2008	2	Possession of Marijuana	1,949,704	63	1,038,523	33	114,768	4	96
	3	Dog racing initiative	1,662,352	54	1,303,708	42	136,935	4	96
2010	1	Sales tax on alcoholic beverages	1,147,374	49	1,061,406	46	111,183	5	95
2012	1	Availability of motor vehicle repair	2,353,603	74	392,562	12	438,031	14	86
	2	Prescribing medication to end life	1,466,866	46	1,534,757	48	182,573	6	94
	3	Medical use of marijuana	1,914,747	60	1,108,904	35	160,545	5	95
2014	1	Eliminating gas tax indexing	1,095,229	50	972,271	44	119,291	6	95
	4	Earned sick time for employees	1,256,941	57	859,621	39	70,329	4	97
2016	3	Conditons for farm animals	2,530,143	75	728,654	22	120,004	3	96
	4	Legalization, regulation, taxation of marijuana	1,769,328	52	1,528,219	45	81,254	3	98
2018	2	Limit election spending/corporate rights	1,871,989	68	751,447	27	129,229	5	95

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