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LEGISLATIVE TESTIMONY

To: Members of the Joint Committee on Judiciary
From: Edward F. Saunders, Jr., Esq., Executive Director
Re: House 1468, An Act Relative to Death with Dignity
Date: February 23, 2010

The Massachusetts Catholic Conference ("Conference") respectfully submits this testimony in opposition to House 1468, "An Act Relative to Death with Dignity," filed by request on behalf of a constituent of Representative Louis Kafka.¹ House 1468 would add to the Massachusetts General Laws new language authorizing physicians to provide lethal dosages of medication at the request of patients with terminal conditions seeking suicide assistance.²

Assisting suicide is a common law crime in Massachusetts.³ Current law also treats all persons as possessing lives worthy of protection against harmful intervention, regardless of their condition or proximity to death and notwithstanding the good intentions of those providing the means of death.⁴

By deeming assistance in the suicides of a class of vulnerable persons to be legally permissible, House 1468 contradicts the fundamental guarantee of inalienable rights, the first of which is the right to life. The legislation also would exempt physicians from the duty to do no harm, encouraging the violation of the Hippocratic Oath.

As indicated in a 1995 statement on a similar bill, the Roman Catholic Bishops in Massachusetts are strongly opposed to the legalization of assisted suicide because it is "contrary to the good of persons and

¹ The constituent has since passed away. Nancy Reardon, *Man Behind Local Right-to-Die Movement Passes Away*, Quincy Patriot Ledger, Oct. 27, 2009, at <http://www.patriotledger.com/homepage/x1768143471/Man-behind-local-right-to-die-movement-passes-away>. The bill also lists Representative William Galvin as a sponsor.

² H.1468, §§ 2 & 3. Similar provisions are in force in Oregon and Washington. See Or. Rev. Stat. §§ 127.800 to -.897; Wash. Rev. Code §§ 70.245.010 to -.904.

³ *Commonwealth v. Mink*, 123 Mass. 422 (1877)

⁴ 123 Mass. at 425 ("The life of every human being is under the protection of the law, and cannot be lawfully taken by himself, or another with his consent"); *Brophy v. New England Sinai Hospital, Inc.*, 497 N.E.2d 626, 635 n. 29 (Mass. 1986) ("Of course, the law does not permit suicide. Thus, the law does not permit unlimited self-determination, nor give unqualified free choice over life."); *Commonwealth v. Bowen*, 13 Mass. 356 (1816) (upholding conviction for accessory to murder of defendant charged with urging a fellow prisoner to kill himself hours before that prisoner was scheduled to be executed, ruling that the homicide law does "not consider the atrocity of this offence in the least degree diminished by the consideration . . . that but a small portion of [the suicide victim's] earthly existence could, in any event, remain in him"); *Commonwealth v. Pierce*, 138 Mass. 165 (1884) ("[W]e cannot recognize a privilege to do acts manifestly endangering human life, on the ground of good intentions alone."). The law on assisted suicide is consistent with other legal rules in Massachusetts governing harmful conduct affecting willing victims. Massachusetts common law holds that a victim's consent does not justify the infliction of harm by another, and thus cannot be raised as a defense to criminal charges. *Commonwealth v. Atencio*, 189 N.E.2d 223, 224-25 (Mass. 1963) (manslaughter); *Commonwealth v. Farrell*, 78 N.E.2d 697, 705 (Mass. 1942) (battery); *Commonwealth v. Burke*, 457 N.E. 622, 624 (Mass. 1983) (battery).

contrary to the common good of this Commonwealth.”⁵ For “once a society allows one individual to take the life of another based on their private standards of what constitutes a life worth living, even when there is mutual agreement, there can be no safe or sure way to contain its possible consequences.”⁶

The Bishops recognize that “the specter of extreme pain and agony haunts many persons,” but note that “there are many means of palliative care available which will reduce pain in a licit manner.”⁷ Legalizing physician assistance with patient suicides “does not offer a legitimate solution” and instead “confuses the issues and renders them more problematic.”⁸ Though “[p]hysician assisted suicide may provide what some would call ‘a quick fix’ . . . what it proposes in actuality is seriously flawed and ethically intolerable.”⁹

The Catholic Church and its health-related institutions have worked and continue to cooperate with a broad array of organizations and groups seeking to provide life-affirming solutions in the areas of pain management, hospice care and compassionate outreach to vulnerable persons in the face of societal calls to legalize assisted suicide. Earlier this decade, the Massachusetts Catholic Conference joined the Massachusetts Medical Society, the Hospice & Palliative Care Federation of Massachusetts, the Massachusetts Nurses Association, disability rights organizations and other secular and religious entities in the Commonwealth in a coalition formed to educate the public about positive resources for those facing end-of-life decisions.¹⁰ At the same time, the four Catholic dioceses in the Commonwealth implemented a successful statewide educational initiative on end-of-life care called *In Support of Life*.¹¹

House 1468 would turn the Commonwealth in the wrong direction by making the law indifferent to whether persons with terminal conditions decide to commit suicide, thus stigmatizing the entire class as not worthy of the state’s full protection and care. With health care costs continuing to rise in Massachusetts, legalizing assisted suicide would exert pressure on state agencies, insurers and providers to recommend suicide assistance to terminally ill patients requiring expensive care. In Oregon, for example, the state has encouraged terminally ill individuals to seek physician assisted suicide while at the same time the state denies them end-of-life care under Oregon’s healthcare rationing plan.¹²

In view of the foregoing concerns, the Conference urges the Committee to give House 1468 an unfavorable report recommending that the bill ought not pass.

The Massachusetts Catholic Conference is the public policy office of the Roman Catholic Bishops in the Commonwealth, representing the Archdiocese of Boston and the Dioceses of Fall River, Springfield, and Worcester.

⁵ Massachusetts Catholic Bishops’ Statement to the Joint Legislative Judiciary Committee 3 (April 6, 1995), available at <http://www.macathconf.org/Archives1995BishopsStatementPASApril06.pdf>.

⁶ *Id.* at 1.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ See organizations listed in support of A Statement Regarding the World Conference in Boston on Dying (Aug. 2000) (vowing to promote positive alternatives to assisted suicide), available at http://www.macathconf.org/boston_assisted_dying_statement.htm.

¹¹ See *In Support of Life Resource Page* at <http://www.macathconf.org/EOLresources.htm>.

¹² See the ABC News report on the cases involving Oregon residents Barbara Wagner and Randy Stroup in Susan Donaldson James, *Death Drugs Cause Uproar in Oregon: Terminally Ill Denied Drugs for Life, But Can Opt for Suicide*, ABCNews.Go.com, Aug. 6, 2008, available at <http://abcnews.go.com/Health/story?id=5517492&page=1>.