A FATE WORSE THAN DEATH: THE PERPETUATION OF ABLEISM THROUGH CALIFORNIA'S "END OF LIFE OPTION ACT"

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INTRODUCTION

A healthy person expressing suicidal thoughts is met with an outpouring of care to pull them back from the brink. Meanwhile, a terminally ill person expressing the

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same thoughts is handed a prescription to die. Under California's End of Life Option Act (EOLOA), this chilling double standard is not just allowed; it's codified into law. By offering "aid-in-dying" to the terminally ill while providing suicide prevention to others, the state has enshrined a hierarchy of life's worth, where the disabled and dying are gently ushered toward death while others are encouraged to live. Is this truly compassion? Or does it reflect a deeper, more insidious discrimination based on a person's physical abilities?

In the United States, eleven states have enacted aid-in-dying laws that enable terminally ill individuals to access physician-assisted suicide.[1] One such state is California, which allows individuals to consider physician-assisted suicide in a discriminatory manner based on their mental and physical condition.[2] The EOLOA makes this practice legal.

Although the Supreme Court has not extended the suspect classification status to people with disabilities, California can and should. Further, people with disabilities are classified as a protected class under California's Unruh Civil Rights Act.[3] Because of the extreme impact a terminal illness has on a person's life, such diagnoses should qualify those individuals as disabled. Therefore, protected status for people with disabilities should be extended to those with terminal illness. However, these people are not offered suicide prevention care like the rest of the California population. Instead, they are encouraged to consider physician-assisted suicide based solely on their physical condition. The terminally ill should be protected from the discriminatory exclusion from suicide prevention under California's anti-discrimination laws. The EOLOA is inconsistent with the California Equal Protection Clause by furthering ableism through this discriminatory view on suicide prevention and should therefore be unconstitutional.

This Note discusses why physician-assisted suicide is inconsistent with California's laws and how it should be remedied. First, Part I examines the history of physician-assisted suicide in the United States; the federal and Californian stances on the issue; how the EOLOA works today; and California's stance on suicide prevention. Next, Part II looks at how California's Equal Protection Clause and Civil Rights laws apply to individuals eligible for aid-in-dying medication, then analyzes a recent lawsuit brought against the state of California by disability advocacy groups regarding the EOLOA. Part III considers California and supporters' interests in the

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[1] *States Where Medical Aid in Dying Is Authorized*, COMPASSION & CHOICES, https://www.compassionandchoices.org/resource/states-or-territories-where-medical-aid-in-dying-is-authorized [https://perma.cc/G4NJ-83R6] (last visited Apr. 17, 2025).

[2] *See Introduction to California End of Life Option Act (EOLOA)*, UCLA HEALTH, https://www.uclahealth.org/patient-resources/support-information/advance-directive/introduction-california-end-life-option-act-eoloa [https://perma.cc/4YN7-2L6S] (last visited Apr. 17, 2025).

[3] *See* CAL. CIV. CODE § 51(c).

EOLOA and examines the autonomy argument. Then, Part IV argues that disability should be a suspect classification in California and that terminal illnesses should qualify as disability. Part IV subsequently examines California's current approach to suicide prevention care, how quality of life impacts the aid-in-dying issue, and California's interest in providing physician-assisted suicide. Finally, Part V discusses the possible future of physician-assisted suicide, reform options for the law, and alternative means for State support of the terminally ill.

I. BACKGROUND OF PHYSICIAN-ASSISTED SUICIDE

In English Common Law, those who committed suicide were acknowledged as their murderer through the principle of *felo de se*.[4] This view of suicide led the community to treat the deceased disgracefully by mutilating the body or denying burial rights.[5] This response to suicide remained popular in the United States until the early 1800s.[6] The colonies eventually decriminalized *felo de se*.[7] The exact reason for decriminalization is unknown. Those who study it argue either that it demonstrates the recognition of an implied right to self-determination or that it shows sympathy for grieving families and not support for suicide.[8] When the Supreme Court examined the historical treatment of suicide, it concluded that "the movement away from the common law's harsh sanctions did not represent an acceptance of suicide; rather . . . this change reflected the growing consensus that it was unfair to punish the suicide's family for his wrongdoing."[9] Regardless of why the early Americans decriminalized suicide, they never extended this allowance to assisted suicide, with the majority of states having criminalized assisted suicide by 1868.[10]

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[4] *See* Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 294 (1990) ("At common law in England, a suicide—defined as one who 'deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death,' . . . was criminally liable." (citation omitted)); *Felo De Se*, BLACK'S LAW DICTIONARY (2d ed. 1910), https://thelawdictionary.org/felo-de-se/ [https://perma.cc/KG67-XZP3] (last visited Apr. 17, 2025) ("A felon of himself; a suicide or murderer of himself. One who deliberately and intentionally puts an end to his own life, or who commits some unlawful or malicious act which results in his own death.").

[5] *See* NEIL M. GORSUCH, THE FUTURE OF ASSISTED SUICIDE AND EUTHANASIA 29–30 (2006) (discussing colonial practice of forfeiture where the body was dishonored and buried at a crossroads).

[6] *Id.* at 30.

[7] *Id.* at 31.

[8] *See id.*

[9] Washington v. Glucksberg, 521 U.S. 702, 713 (1997).

[10] *See id.* at 15 (noting that "the earliest American statute explicitly to outlaw assisting suicide was enacted in New York in 1828" and that "[b]y the time the Fourteenth Amendment was ratified, it was a crime in most States to assist a suicide").

The difference between physician-assisted suicide and euthanasia is often confused. Physician-assisted suicide requires the physician to provide the means of death, but they do not take an active part in the suicide.[11] Conversely, euthanasia requires the physician to cause the death of the patient.[12] The physician's level of involvement distinguishes the possible legal charges.[13] Most states have statutes criminalizing "aid[ing], advis[ing], or encourag[ing] . . . suicide," such that perpetrators have even faced charges of murder or manslaughter.[14] However, states that have legalized physician-assisted suicide have amended their statutes to include an exception.[15] These exceptions do not apply to cases of euthanasia.[16]

The creation of the Hemlock Society in the 1980s reframed the assisted suicide conversation by advocating for the "right to die."[17] Certain physicians began performing euthanasia and assisted suicide procedures to advocate for their legalizations.[18] This sensationalized the aid-in-dying debate. One of the most prominent doctors from the movement was Dr. Jack Kevorkian.[19] He reportedly assisted over 130 people in dying over 8 years.[20] In response to the aid-in-dying movement, some

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[11] T. Howard Stone & William J. Winslade, *Physician-Assisted Suicide and Euthanasia in the United States: Legal and Ethical Observations*, 16 J. LEGAL MED. 481, 483–84 (1995).

[12] *Id.*

> Euthanasia is defined as the hastening of death of a patient to prevent further sufferings. Active euthanasia refers to the physician deliberate act, usually the administration of lethal drugs, to end an incurably or terminally ill patient's life. Passive euthanasia refers to withholding or withdrawing treatment which is necessary for maintaining life.

Kalaivani Annadurai et al., *'Euthanasia: Right to Die with Dignity,'* 3 J. FAM. MED. & PRIMARY CARE 477, 477 (2014).

[13] *See* Stone & Winslade, *supra* note 11, at 484.

[14] CAL. PENAL CODE § 401(a) (West 2024); *see* William Weinberg, *Actively Assisting Another Person's Suicide May Be Charged as Murder*, CAL. CRIM. DEF. LAW. BLOG (Nov. 30, 2022), https://www.californiacriminaldefenselawyerblog.com/actively-assisting-another-persons-suicide-may-be-charged-as-murder/ [https://perma.cc/DL42-PZ7W] (discussing the story of a woman charged with murder, then reduced to manslaughter, for helping her terminally ill husband commit suicide).

[15] *See, e.g.*, § 401(b) ("A person whose actions are compliant with the provisions of the End of Life Option Act . . . shall not be prosecuted under this section.").

[16] *See* Maria Dinzeo, *Judge: California Aid-in-Dying Law Doesn't Discriminate Against the Disabled*, COURTHOUSE NEWS SERV. (June 22, 2022), https://www.courthousenews.com/judge-california-aid-in-dying-law-doesnt-discriminate-against-the-disabled/ [https://perma.cc/PFA5-GS64].

[17] Sarah Childress, *The Evolution of America's Right-to-Die Movement*, FRONTLINE (Nov. 13, 2012), https://www.pbs.org/wgbh/frontline/article/the-evolution-of-americas-right-to-die-movement/ [https://perma.cc/74ER-W6V4].

[18] *See id.*

[19] *Id.*

[20] *Id.*

states attempted to legalize physician-assisted suicide.[21] Oregon became the first state to approve such a law for the terminally ill in 1994 by passing the Death with Dignity Act.[22] Four years later, Kevorkian attempted to further the aid-in-dying movement through an interview on *60 Minutes*.[23] On the show, they played a recording of Kevorkian euthanatizing one of his patients.[24] Kevorkian then dared the legal system to charge him.[25] He claimed if the state did not charge him, it meant his actions were not a crime.[26] The state rose to his challenge and charged Kevorkian for the shown euthanasia, resulting in a second-degree murder conviction.[27] Kevorkian's fate did not dissuade advocates for assisted suicide, and several states continued trying to pass aid-in-dying laws through various methods.[28] Currently, ten states have legalized physician-assisted suicide through legislation, and Montana legalized the practice through a court mandate.[29]

A. The Judicial and Legislative Stance on Physician-Assisted Suicide

The Supreme Court has long honored the rights of private citizens regarding medical autonomy. In 1990, the Court held that informed consent implies the right of a competent person to deny treatment.[30] However, it unanimously held that the right to deny treatment did not imply there was a right to die.[31] Instead, the Court found four legitimate interests opposing such a right: preserving human life, upholding the integrity and ethics of the medical profession, protecting vulnerable groups from abuse, and preventing a broader license to voluntary and involuntary euthanasia.[32] While there is no constitutional right to die, states may legislate the matter as they please.[33]

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[21] *See id.*

[22] *Id.*

[23] 60 Minutes, *60 Minutes Archives: An Interview with Dr. Jack Kevorkian*, YOUTUBE (Dec. 13, 2020), https://youtu.be/BiZKY6FSfwA?si=zotmYcX4WonMRVta [https://perma.cc/BJ74-XYGL].

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*; Keith Schneider, *Dr. Jack Kevorkian Dies at 83; A Doctor Who Helped End Lives*, N.Y. TIMES (June 3, 2011), https://www.nytimes.com/2011/06/04/us/04kevorkian.html [https://perma.cc/B68Y-HCFK].

[28] Childress, *supra* note 17; CNN Editorial Research, *Physician-Assisted Suicide Fast Facts*, CNN (May 29, 2024, 2:44 PM), https://www.cnn.com/2014/11/26/us/physician-assisted-suicide-fast-facts/index.html [https://perma.cc/458S-WTNV].

[29] *See* CNN Editorial Research, *supra* note 28.

[30] Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 270 (1990).

[31] Washington v. Glucksberg, 521 U.S. 702, 735–36 (1997).

[32] *Id.* at 728–35.

[33] *See id.* at 735–36.

1. California's Approach to Physician-Assisted Suicide

In 1992, the citizens of California rejected a proposed aid-in-dying law on the ballot.[34] The Hemlock Society blamed this rejection on the unorthodox and shocking methods of Dr. Kevorkian.[35] Over the next two decades, advocacy for physician-assisted suicide continued to grow.[36] By 2015, public opinion on assisted suicide in California had shifted toward support.[37] Surveys found that about three quarters of Californians supported allowing assisted suicide for terminally ill patients.[38] The California Medical Association even changed its position on physician-assisted suicide from opposition to neutrality.[39] These societal changes encouraged the California legislature to pass the first version of the EOLOA.[40] California modeled it after Oregon's twenty-year-old Death with Dignity Act.[41]

During the fight for legalization, a twenty-nine-year-old Californian woman became the face of the proposed EOLOA.[42] Brittany Maynard moved from California

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[34] Childress, *supra* note 17; Frederick J. White III, *The American Medical Association and Physician Assisted Suicide*, 85 LINACRE Q. 102, 102 (2018) ("'California Proposition 161' proposing to establish assisted suicide by statute had failed 46 percent to 54 percent . . . .").

[35] Childress, *supra* note 17 (rejecting California's first aid-in-dying measure, which took place prior to Dr. Kevorkian's *60 Minutes* interview). However, Dr. Kevorkian was still a well-known advocate, commenting that "[The Hemlock Society] wanted to change the law, to permit physician-assisted suicide for the terminally ill. [Kevorkian] wanted to shock the medical profession by his antics and his show-offs on television and his costumes and all the rest of it." *Id.*

[36] *See id.*

[37] *Compare* White, *supra* note 34, at 102, *with* Kathleen Maclay, *IGS Poll: Californians Support Medical Aid in Dying for Terminally Ill*, U.C. BERKELEY NEWS (Sept. 3, 2015), https://news.berkeley.edu/2015/09/03/igs-poll-californians-support-medical-aid-in-dying-for-terminally-ill [https://perma.cc/63G8-MCT8], *and* Tracie White, *Study Finds Support Across Ethnicities for Physician-Assisted Death*, STAN. MED. (June 9, 2016), https://med.stanford.edu/news/all-news/2016/06/stanford-study-finds-support-across-ethnicities-for-physician-as.html [https://perma.cc/7HQG-H2V5].

[38] Maclay, *supra* note 37 (finding that 76% of Californians support physician-assisted suicide); *California*, DEATH WITH DIGNITY, https://deathwithdignity.org/states/california/ [https://perma.cc/82HM-WQH7] (last visited Apr. 17, 2025) (noting that as of 2015, 72.5% of Californians supported physician-assisted suicide).

[39] *California Medical Association Removes Opposition to Physician Aid in Dying Bill*, CAL. MED. ASS'N (May 20, 2015), https://www.cmadocs.org/newsroom/news/view/ArticleId/27210/California-Medical-Association-removes-opposition-to-physician-aid-in-dying-bill [https://perma.cc/5KHY-BC79].

[40] *See* Helen Jung, *Is This the End of the "End of Life Option Act"?*, LOMA LINDA UNIV. HEALTH: INST. HEALTH POL'Y & LEADERSHIP (June 7, 2018), https://ihpl.llu.edu/end-end-life-option-act [https://perma.cc/NZ4Q-9NHY].

[41] *Id.*

[42] Lauren Gambino, *California Lawmakers Introduce Right-to-Die Bill Inspired by*

to Oregon seeking physician-assisted suicide because of a terminal brain tumor.[43] She died on November 1, 2014.[44] On October 5, 2015, Governor Jerry Brown signed the California EOLOA into law.[45] Brittany's mother showed her bittersweet support for the bill.[46] The law passed during a special session and took effect in June 2016.[47] However, two years after its implementation a California Superior Court judge suspended the law for being unconstitutional.[48]

On May 15, 2018, Judge Ottolia held that the EOLOA was unconstitutional because the legislature passed it during a special session.[49] This special session convened to address healthcare-related issues, but Judge Ottolia found that the EOLOA was not within this scope.[50] He gave the attorney general five days to appeal the ruling.[51] The attorney general did appeal, but the following month, a state appeals court reinstated the law due to a Notice of Appeal.[52] Compassion & Choices (C&C) filed the Notice of Appeal with two terminally ill patients and a Californian physician.[53] C&C is a non-profit organization that advocates for the right to die across the United States.[54] They argued the Notice of Appeal triggered an automatic stay of Judge Ottolia's ruling, "which would reinstate the End of Life Option Act pending further court rulings."[55] The Court of Appeals agreed with C&C and reinstated the

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Brittany Maynard, THE GUARDIAN (Jan. 22, 2015, 3:14 PM), https://www.theguardian.com/us-news/2015/jan/22/california-right-to-die-brittany-maynard [https://perma.cc/MZH7-UZ94].

[43] *Id.*

[44] *Id.*

[45] Ian Lovett & Richard Pérez-Peña, *California Governor Signs Assisted Suicide Bill into Law*, N.Y. TIMES (Oct. 5, 2015), https://www.nytimes.com/2015/10/06/us/california-governor-signs-assisted-suicide-bill-into-law.html [https://perma.cc/JUR2-L9ET].

[46] *Id.*

[47] Susan Scutti, *California Judge Overturns End of Life Option Law*, CNN: HEALTH (May 16, 2018, 2:23 PM), https://www.cnn.com/2018/05/16/health/california-assisted-suicide-law-overturned/index.html [https://perma.cc/FC62-WFEM].

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] Ahn, et al. v. Hestrin, COMPASSION & CHOICES, https://www.compassionandchoices.org/legal-advocacy/recent-cases/ahn-v-hestrin [https://perma.cc/TY8Q-X8E5] (last visited Apr. 17, 2025) (discussing the litigation and Compassion & Choices's role in protecting California's End of Life Options Act and similar laws around the nation).

[53] *Terminally Ill Adults, Doctor File Notice of Appeal of Ruling Voiding California Medical Aid-in-Dying Law*, COMPASSION & CHOICES (June 1, 2018), https://www.compassionandchoices.org/news/terminally-ill-adults-doctor-file-notice-appeal-ruling-voiding-california-medical-aid-dying-law [https://perma.cc/37L7-U2TS].

[54] *Our Mission. Our Work.*, COMPASSION & CHOICES, https://www.compassionandchoices.org/resource/about-compassion-choices/ [https://perma.cc/8783-QAB3] (last visited Apr. 17, 2025).

[55] Ahn, et al. v. Hestrin, *supra* note 52.

EOLOA.[56] The court later held that the plaintiffs lacked standing and remanded the case.[57] On May 7, 2019, C&C filed a motion to the case as a formal party, which was granted on July 5, 2019.[58] During litigation, C&C worked behind the scenes on an updated EOLOA.[59] Finally, on October 5, 2021, Governor Newsom signed S.B. 380, amending the original EOLOA and ending the plaintiffs constitutional claims to the case.[60]

2. How the End of Life Option Act Works

The revisions to the EOLOA became effective on January 1, 2022.[61] The EOLOA requires the requesting individual to be at least eighteen years old; a resident of California; diagnosed with a terminal illness which will cause death within six months; able to give informed consent; and able to self-administer the necessary medication.[62] A patient applying for aid-in-dying under the EOLOA must submit two oral and written requests to their doctor.[63] The attending physician verifies the individual meets the requirements.[64] Then, the patient is counseled to ensure they make an informed decision.[65] This counseling session discusses the individual's medical prognosis, the risks and results of the aid-in-dying drug, their ability to receive the drug but not take it, and other feasible alternatives for treatment.[66] Next, the physician must offer the patient an opportunity to withdraw consent before prescribing the drug.[67] Patients may withdraw consent at any time.[68] After ensuring the steps, the physician then submits the appropriate documentation.[69] Then, the aid-in-dying drugs are sent (by personal delivery, mail, or messenger service) to the attending physician or the individual.[70] There is no regulation of when or where the person may administer the drug and only limited regulation on how it is actually

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[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *California End of Life Option Act*, KAISER PERMANENTE, https://healthy.kaiserpermanente.org/southern-california/health-wellness/life-care-plan/end-of-life-option-act [https://perma.cc/A2UU-USH7] (last visited Apr. 17, 2025); *see* An Act of Oct. 5, 2021, S.B. 380, 2021 Cal. Stat. 93.
[62] *California End of Life Option Act*, *supra* note 61.
[63] Cal. S.B. 380, 2021 Cal. Stat. 93.
[64] *Id.* § 4(a), (a)(1)(C).
[65] *Id.* § 4(a)(5).
[66] *Id.* § 4(a)(2)(A)–(E).
[67] *Id.* § 4(a)(6).
[68] *Id.* § 3(a).
[69] *Id.* § 3(b).
[70] *Id.* § 4(b)(2).

administered.[71] Due to this limited regulation, there is no data on whether these drugs are ever misused.[72]

In 2022, the EOLOA sent 1,270 people life-ending medication.[73] Of those who received the medication, there were 853 recorded deaths.[74] A total of 3,349 people have died as a result of medication issued under the EOLOA since 2016.[75] That is 64.8% of the 5,168 people prescribed aid-in-dying drugs through the EOLOA.[76] Since the EOLOA started in 2016, participation has rapidly grown.[77] From 2016 to 2022, participation has increased sixfold from 151 confirmed deaths to 853.[78] Just two years after the EOLOA became effective, Dr. Stephanie Harman, a professor at Stanford University and a faculty member at the Stanford Center for Biomedical Ethics, said, "We have seen more patients than we initially expected participating in the End of Life Option Act."[79]

3. California Suicide Prevention Care

In 2020, Governor Newsom signed Assembly Bill 2112 into law, which states, "Suicide is a public health crisis that has warranted response from the state."[80] This bill established the Office of Suicide Prevention (OSP), which is tasked with monitoring and conducting suicide prevention across the state.[81] While OSP focuses its care on high-risk groups such as youth, older adults, veterans, and LGBTQ+ individuals, the office is meant to address the state's "obligation to focus resources on combating the crisis of suicide."[82]

In 2021, a recorded 4,148 people in California committed suicide.[83] By these statistics, California had the second-highest number of suicides in the country, following Texas with 4,193.[84] However, these numbers do not include physician-assisted

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[71] *Id.* § 7(c)(1).

[72] *See* CA. DEP'T PUB. HEALTH, CALIFORNIA END OF LIFE OPTION ACT 2022 DATA REPORT 2 (2023) [hereinafter CALIFORNIA END OF LIFE OPTION ACT 2022 DATA REPORT].

[73] *Id.* at 3.

[74] *Id.* Fifty of the 853 individuals were issued their medication prior to the 2022 calendar year. *Id.*

[75] *Id.*

[76] *Id.*

[77] *See id.*

[78] *Id.*

[79] Scutti, *supra* note 47.

[80] Cal. Assemb. B. 2112 § 1(a).

[81] *Id.* pmbl.

[82] *Id.* § 1(e).

[83] *Suicide Mortality by State*, NAT'L CTR. HEALTH STAT., https://www.cdc.gov/nchs/pressroom/sosmap/suicide-mortality/suicide.htm [https://perma.cc/4999-DNF2] (last visited Apr. 17, 2025).

[84] *Id.* In 2021, California had a reported population of 39,237,836 while Texas's reported population was 29,527,941. *New Vintage 2021 Population Estimates Available for the Nation,*

suicide. In 2021, a reported 486 died by prescriptions administered under the EOLOA.[85] By adding California's physician-assisted suicide numbers to its reported total, there is a twelve percent increase making it the number one state for deaths by suicide.[86] As these numbers show, not only does California not cover the terminally ill in suicide prevention efforts, but they do not even count these deaths as suicide.

II. UNDERSTANDING HOW ANTI-DISCRIMINATION LAWS IMPACT THE END OF LIFE OPTION ACT

Although the Equal Protection Clause first protected only against racial discrimination, the Court eventually extended protection to other suspect classifications.[87] Suspect classifications are groups of people with a history of discrimination.[88] Arguably, one such suspect classification should be persons with disabilities. However, when the U.S. Supreme Court had the opportunity to recognize disabilities as a suspect classification, it did not.[89]

In 1985, the Court unanimously declined to include people with disabilities as a suspect classification.[90] The Court held that rational basis review was sufficient protection for people with disabilities and it would not extend strict scrutiny review to these individuals.[91] Therefore, it did not extend greater protection to people with disabilities. States can extend these protections; California did so by adding gender to their classifications.[92]

When determining a suspect classification, California considers three factors: "The defining characteristic must (1) be based upon an 'immutable trait'; (2) 'bear[] no relation to [a person's] ability to perform or contribute to society'; and (3) be associated with a 'stigma of inferiority and second class citizenship,' manifested by the group's history of legal and social disabilities."[93]

States and Puerto Rico, CENSUS.GOV (Dec. 21, 2021), https://www.census.gov/newsroom/press-releases/2021/2021-population-estimates.html [https://perma.cc/XV7Q-E3CQ]. Each ranked first and second respectively in the United States for most populous states. *Id.* Therefore, California has a suicide rate of 0.01057% while Texas has a suicide rate of 0.0142%.

[85] CALIFORNIA END OF LIFE OPTION ACT 2022 DATA REPORT, *supra* note 72, at 3.

[86] *Suicide Mortality by State*, *supra* note 83.

[87] Brian T. Fitzpatrick & Theodore M. Shaw, *The Equal Protection Clause*, NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/amendments/amendment-xiv/clauses/702#the-equal-protection-clause [https://perma.cc/T7JN-8NK6] (last visited Apr. 17, 2025).

[88] *Suspect Classification*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/suspect_classification [https://perma.cc/SUJ8-HU2Q] (last visited Apr. 17, 2025).

[89] Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 437 (1985).

[90] *Id.*

[91] *See id.* at 456.

[92] *In re* Marriage Cases, 183 P.3d 384, 401 (Cal. 2008).

[93] *Id.* at 442 (quoting Sail'er Inn, Inc. v. Kirby, 485 P.2d 529, 540 (Cal. 1970)).

California currently recognizes race, national origin, alienage, and sex as suspect classifications.[94] The state has not extended the classifications since adding sex in 1971.[95] However, most courts still consider individuals with disabilities as a suspect class based on the codified protections in the Fair Housing Act.[96]

The California legislature considers disabled persons as one of seventeen recognized protected classes.[97] Protected classes are distinct from suspect classifications. A federal or state statute creates a protected class while the judiciary determines suspect classifications.[98] When a law discriminates against a protected class, it must survive the anti-discrimination statute of the jurisdiction.[99] Conversely, laws that discriminate against suspect classifications must survive strict scrutiny review.[100] The state must show a compelling interest in the law to pass strict scrutiny.[101]

A. The California Fair Employment and Housing Act

The American with Disabilities Act (ADA) has a broad definition for the classification of disabled.[102] It includes anyone with "a physical or mental impairment that substantially limits one or more major life activity."[103] California boasts that its definition of disability, found in the California Fair Employment and Housing Act (FEHA), is broader than the federal definition:

> The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has

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[94] *Id.* at 465.

[95] *Sail'er Inn, Inc.*, 485 P.2d at 539–41.

[96] Hum. Res. Rsch. & Mgmt. Grp. v. Cnty. of Suffolk, 687 F. Supp. 2d 237, 256 (E.D.N.Y. 2010).

[97] *See, e.g.*, *Protected Classes*, CAL. STATE SENATE, https://www.senate.ca.gov/content/protected-classes [https://perma.cc/EG8V-T2UD] (last visited Apr. 17, 2025); *The "Protected Classes" in California—What Are They?*, SHOUSE CAL. L. GRP. (Jan. 26, 2023), https://www.shouselaw.com/ca/blog/protected-classes-in-california/ [https://perma.cc/5NYX-HQ5Y].

[98] *Compare Suspect Classification*, *supra* note 88, *with Protected Class*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/protected_class [https://perma.cc/B7WB-V57X] (last visited Apr. 17, 2025).

[99] *See Protected Class*, *supra* note 98.

[100] *Suspect Classification*, *supra* note 88.

[101] *Strict Scrutiny*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/strict_scrutiny [https://perma.cc/7MMH-UPG7] (last visited Apr. 17, 2025).

[102] *See What Is the Definition of Disability Under the ADA?*, ADA NAT'L NETWORK, https://adata.org/faq/what-definition-disability-under-ada [https://perma.cc/NV99-MD6X] (last visited Apr. 17, 2025).

[103] *Id.*

> always, even prior to passage of the federal act, afforded additional protections.[104]

The California FEHA goes on to define medical condition, mental disability, and physical disability separately, drawing purposefully broad definitions to protect all from discrimination under the classification as a disability.[105] California is careful to cover medical conditions as a disability, which includes cancer or genetic characteristics.[106] Other medical conditions are included in the "physical disability" definition, such as "a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability."[107] One more distinction between the ADA and the California FEHA disability definition is that the latter only requires a "'limitation' upon a major life activity."[108] In contrast, the former requires a "substantial limitation."[109] This distinction is emphasized in the text to show California's intent to provide "broader coverage under the law of this state than under [the ADA]."[110] California is careful and precise in extending as broad coverage as possible to anyone suffering to end discrimination against anything that is ability-based.

B. California's Anti-Discrimination Provisions

The California Equal Protection Clause mimics the Federal Equal Protection Clause in many ways. The fundamental assertion is that no person should be deprived of equal protection of the law. California's clause then expands this point by explaining what these laws entail: "A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked."[111] This ensures that the state cannot discriminate against individuals or groups by unequally applying the laws.

In 1959, California broadened its original public accommodation law through an amendment known as the Unruh Civil Rights Act.[112] This Act protects persons from discrimination based on "sex, race, color, religion, ancestry, national origin,

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[104] *Americans with Disabilities Act*, CAL. DEP'T REHAB., https://www.dor.ca.gov/Home/AmericanswithDisabilitiesAct [https://perma.cc/N4AF-S3WG] (last visited Apr. 17, 2025); CAL. GOV'T CODE § 12926.1(a).

[105] *See* CAL. GOV'T CODE § 12926.1(b).

[106] *Id.* § 12926(i).

[107] *Id.* § 12926(m)(5).

[108] *Id.* § 12926.1(c).

[109] *Id.*

[110] *Id.*

[111] CAL. CONST. art. 1, § 7(b).

[112] Steven Wyllie, *The Unruh Civil Rights Act: A Weapon to Combat Homophobia in Military On-Campus Recruiting*, 24 LOY. L.A. L. REV. 1333, 1336 (1991).

disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status."[113] Here, the bill defines "disability" and "medical condition," according to "Sections 12926 and 12926.1," and, "subdivision (i) of Section 12926" of the Government Code, which is the California FEHA definition discussed above.[114]

The Unruh Civil Rights Act ensures persons within California are given full and equal access to "accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."[115] Courts have interpreted the wording of "all business establishments of every kind whatsoever" very liberally to include for-profit and non-profit entities.[116]

C. Recent Lawsuit Against the End of Life Option Act

In 2023, a collection of disability advocacy groups filed a federal lawsuit against California, claiming that the EOLOA is inherently discriminatory and should be permanently enjoined.[117] The End Assisted Suicide organization claims that "[u]nder EOLOA, people with life-threatening disabilities and *only* people with life-threatening disabilities who say they want to die can get a state-facilitated death. Everyone else gets suicide prevention and the protections afforded by the law and professional standards. That's not choice, it's eugenics."[118]

Unlike the prior challenge to physician-assisted suicide in California, *United Spinal Ass'n v. California* focused on the argument that people with a terminal illness prognosis are also considered disabled.[119] The plaintiffs claimed that this distinction meant people with disabilities are not provided the same state-sponsored suicide prevention as other citizens and, therefore, violates the Americans with Disabilities Act.[120] However, on March 27, 2024, the judge dismissed the case with prejudice, stating:

> Fatal to Plaintiffs' claims . . . is that a terminally ill patient's decision to request aid-in-dying medication—and accordingly, to not participate in or seek the benefits of other public health

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[113] CAL. CIV. CODE § 51(b).

[114] *Id.* § 51(b), (e)(1), (e)(3).

[115] *Id.* § 51(b).

[116] *See* Wyllie, *supra* note 112, at 1334 n.5; CAL. CIV. CODE § 51(b).

[117] *See California's Assisted Suicide Law Is Inherently Discriminatory*, END ASSISTED SUICIDE, https://endassistedsuicide.org/ [https://perma.cc/J2WR-6K6Z] (last visited Apr. 17, 2025).

[118] *Id.* (emphasis in original).

[119] *See* Complaint for Declaratory and Injunctive Relief ¶ 4, United Spinal Ass'n v. California, No. 2:23-cv-03107 (C.D. Cal. Apr. 25, 2023), https://endassistedsuicide.org/wp-content/uploads/2023/04/Complaint_Accessible.pdf [https://perma.cc/68K8-FJ5V].

[120] *Id.* at 91.

> services—is voluntary. . . . Because Plaintiffs do not (and cannot) plead that terminally ill patients are affirmatively denied the option to avail themselves of behavioral health services and the protection of criminal law enforcement, their claims for relief under the ADA [American with Disabilities Act] and [ADA] Section 504 fail as a matter of law.[121]

The judge found the Plaintiff's interpretation of the statute to be erroneous, and ultimately fatal to their claims.[122]

III. CALIFORNIA'S INTEREST IN THE END OF LIFE OPTION ACT

When Governor Brown signed the EOLOA into law, he said, "I do not know what I would do if I were dying in prolonged and excruciating pain. . . . I am certain, however, that it would be a comfort to be able to consider the options afforded by this bill. And I wouldn't deny that right to others."[123] The root of the autonomy debate is shown here by the heavy emphasis placed on the patient's ability to choose their means of death rather than wasting away.

In 2022, Sandra Morris, a California woman with ALS, challenged the EOLOA for discriminating against her.[124] Her disability prevented her from being able to self-administer the aid-in-dying medication, which led her to request a doctor to administer the drug.[125] This administration request crossed the line between physician-assisted suicide to euthanasia, which is what one would assume a judgment would rely on, but the court applied a different logic. A federal judge refused the request, stating: "A person seeking to end their life pursuant to the act can opt out at any point . . . . The accommodation that the plaintiffs seek would significantly undermine these protections by opening a window during which there would be no way of knowing whether the patient had changed their mind."[126] The court was concerned with the patient's ability to revoke their consent during the procedure, not the doctor's liability.

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[121] *California Judge Dismisses Federal Lawsuit Seeking to Void Medical Aid-in-Dying Law*, COMPASSION & CHOICES (Mar. 28, 2024), https://compassionandchoices.org/news/california-judge-dismisses-federal-lawsuit-seeking-to-void-medical-aid-in-dying-law/ [https://perma.cc/PX8P-ZMAJ].

[122] *Id.*

[123] Lovett & Pérez-Peña, *supra* note 45.

[124] Dinzeo, *supra* note 16; *see also What is ALS?*, ALS ASS'N, https://www.als.org/understanding-als/what-is-als [https://perma.cc/XR5F-XKWA] (last visited Apr. 17, 2025) ("ALS, or amyotrophic lateral sclerosis, is a progressive neurodegenerative disease that affects nerve cells in the brain and spinal cord . . . . When voluntary muscle action is progressively affected, people may lose the ability to speak, eat, move and breathe.").

[125] Dinzeo, *supra* note 16.

[126] *Id.*

Autonomy to choose physician-assisted suicide is distinct from a person's right to refuse medical care. Notably, "when a patient refuses life-sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient ingests lethal medication prescribed by a physician, he is killed by that medication."[127]

The physician-assisted suicide debate requires a broader autonomy than that of simple life choices but one of self-determination. During the end-of-life experience, many patients can feel like a victim of their circumstances and are empowered by having a choice in how they die. In the case of Sandra Morris, the Californian woman with ALS, she would rather die early while she could still self-administer the medication than wait until her disease ended her life.[128]

In the recent *United Spinal Ass'n v. California* decision, the judge focused on such autonomy as the reason for a lack of discrimination because the law simply gives terminally ill patients the option to choose.[129] One of the outside counsel for C&C, John Kappos, pointed to this win for dismissing the Plaintiff's coercion argument because "it specifies that the law explicitly requires attending physicians to discuss with patients the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control."[130] The EOLOA simply gives terminally ill patients an additional choice to permanent pain relief and dignity in death.

Autonomy is used in the judiciary as both a state interest and a litmus test for possible violations of the laws.[131] In a California Court of Appeals case, the court said, "If an obvious invasion of interest fundamental to personal autonomy is involved, then the compelling interest test applies. If the invasion is less central or is in bona fide dispute, then a general balancing test applies."[132] But whether the right to die is a blatant invasion of personal autonomy is less clear. The Supreme Court has recognized many privacy and individual autonomy rights in the areas of marriage, procreation, privacy, and refusal of medical treatment.[133] When the Court looked at physician-assisted suicide, however, it did not find a right to die.[134] This interest is left to the states to decide, but can the states discriminate within such an interest?

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[127] Vacco v. Quill, 521 U.S. 793, 801 (1997).

[128] Dinzeo, *supra* note 16.

[129] *See California Judge Dismisses Federal Lawsuit Seeking to Void Medical Aid-in-Dying Law*, *supra* note 121.

[130] *Id.*

[131] Dep't of Fair Emp. & Hous. v. Super. Ct., 99 Cal. App. 4th 896, 903 (2002).

[132] *Id.*

[133] *See, e.g.*, Griswold v. Connecticut, 381 U.S. 479, 485 (1965) (finding a right to privacy in the Bill of Rights, here in the case of marriage); Eisenstadt v. Baird, 405 U.S. 438, 443 (1972) (extending privacy rights to procreation between unmarried individuals); Lawrence v. Texas, 539 U.S. 558, 558 (2003) (protecting consensual homosexual relations); Vacco v. Quill, 521 U.S. 793, 807 (1997) (finding a right to refusal medical treatment).

[134] *See* Washington v. Glucksberg, 521 U.S. 702, 735 (1997).

The Court has held that some discriminatory laws may remain when they serve "legitimate and worthy purposes."[135] In *Personnel Administrator of Massachusetts v. Feeney*, a woman sued the state because of a hiring law that favored veterans.[136]

She argued this practice was discriminatory based on sex because few women benefitted from the statute.[137] However, the Court held this practice was allowed because of its purposes and because the distinction was based on veteran status, not sex.[138]

In the same way, California could argue that the EOLOA serves the legitimate and worthy purpose of autonomy and compassion for suffering patients. This could be seen as the same advantage that the veterans were given in the hiring process. However, the claimed interests of that statute were to "reward veterans for the sacrifice of military service, to ease the transition from military to civilian life, to encourage patriotic service, and to attract loyal and well-disciplined people to civil service occupations."[139] Comparatively, the interests of autonomy and compassion do not seem to reach the same level as those stated above. Further, as identified in *Glucksberg*, a state has the legitimate interests of preserving human life, upholding the integrity and ethics of the medical profession, protecting vulnerable groups (such as the poor, elderly, and disabled) from abuse, and preventing a broader license to voluntary and involuntary euthanasia.[140] While California has at least some interest in personal autonomy, many state interests oppose physician-assisted suicide. Where the line in *Feeney* was drawn along the veteran classification, the EOLOA is drawn based on specific disabilities and medical conditions.[141] This treatment burdens the protected classes' ability to receive suicide prevention. Unlike the men who were not veterans in *Feeney*, there is no equivalent burden for those who are not terminally ill under the EOLOA.[142]

To recognize the autonomous right to die completely undercuts the entire purpose of state-sponsored suicide prevention. The right to die cannot only extend to the dying but to all people if it genuinely is an inalienable right, as its proponents claim.

If the state recognizes people with disabilities as a suspect classification, the courts must look at any challenge to the EOLOA under strict scrutiny. This would require California to show a compelling state interest in the law. However, personal autonomy and compassion are not substantial enough interests to outweigh the discriminatory practice of excluding specific disabilities and medical conditions from suicide prevention care.[143]

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[135] Pers. Adm'r of Mass. v. Feeney, 442 U.S. 256, 260 (1979).
[136] *Id.* at 259.
[137] *Id.*
[138] *Id.* at 281.
[139] *Id.* at 265.
[140] Washington v. Glucksberg, 521 U.S. 702, 728–35 (1997).
[141] *See Feeney*, 442 U.S. at 274.
[142] *See id.* at 275.
[143] *See Glucksberg*, 521 U.S. at 728–35 (discussing the legitimate state interests).

Opponents of the EOLOA must admit that the law is not rooted in a discriminatory purpose but is aimed towards having compassion for those suffering. But good intentions are not enough to justify a practice that is essentially modern-day eugenics. History points to physician-assisted suicide for the terminally ill as a "slippery slope" to euthanasia for lesser reasons.[144]

IV. PROTECTING THE TERMINALLY ILL FROM ABLEISM

The broad protections provided by California's Equal Protection Clause and the Unruh Civil Rights Act overlap with the state's definition of a terminal illness. The EOLOA defines a terminal illness as an "incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months."[145] In 2022, 66% of people (making up the largest group) who died as a result of prescribed medicine from EOLOA were identified as having a malignant neoplasm, more commonly called cancer.[146] Since cancer is covered as a medical condition under California's FEHA, a majority of EOLOA deaths in 2022 were of people who qualified as disabled under California law.[147] Other terminal illnesses reported in 2022 were cardiovascular disease (11.8%), neurological disease (8.6%), respiratory diseases (6.8%), kidney disease (2.0%), other diseases (1.8%), cerebrovascular disease (1.6%), immune-mediated disease (0.8%), endocrine, nutritional and metabolic disease (0.6%).[148] All the diseases listed not only have a "limitation" on a person's life, but a "substantial limitation."[149] Even if these diseases do not meet the limitation standard, they are all covered under the definition of physical disability.[150] This classification means everyone eligible for aid-in-dying medication under EOLOA is dually classified as disabled under the California FEHA.

An illustration of a potential violation of the Unruh Civil Rights Act is a person being declined medical treatment based on their HIV-positive status.[151] An HIV-positive person is protected under the Act's definition of a medical condition.[152] Like this illustration, being declined suicide prevention care based on a person's disability

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[144] *20 Years of Euthanasia in Belgium: After Almost 30,000 Lives Lost, What Can We Learn?*, ADF INT'L (May 25, 2022), https://adfinternational.org/news/20-years-euthanasia [https://perma.cc/ZQ8D-LC25].

[145] An Act of Oct. 5, 2021, Cal. S.B. 380, 2021 Cal. Stat. 93 § 1(r).

[146] *See* CALIFORNIA END OF LIFE OPTION ACT 2022 DATA REPORT, *supra* note 72, at 6.

[147] *See* CAL. GOV'T CODE § 12926(i)(1).

[148] CALIFORNIA END OF LIFE OPTION ACT 2022 DATA REPORT, *supra* note 72, at 6–7.

[149] § 12926.1(c).

[150] *Id.* § 12926(m)(5).

[151] C.R. DEP'T STATE CAL., PUBLIC ACCESS DISCRIMINATION AND CIVIL RIGHTS FACT SHEET 2 (2022).

[152] CAL. CIV. CODE § 51(e)(3).

or medical condition is an analogous situation and potential violation of the Unruh Civil Rights Act.

A. Disability as a Suspect Classification

Disability should be considered a suspect classification under California law because it satisfies all factors and aligns with the state's interests. These factors are described as follows: "The defining characteristic must (1) be based upon an 'immutable trait'; (2) 'bear[] no relation to [a person's] ability to perform or contribute to society'; and (3) be associated with a 'stigma of inferiority and second class citizenship,' manifested by the group's history of legal and social disabilities."[153] Disabilities meet the first and third prong. Disability, like the established suspect classifications, is an immutable trait that gives rise to stigma and second-class citizenship. Individuals with disabilities face pervasive social and economic disadvantages stemming from negative stereotypes and lack of accommodation. The second prong is more challenging to show.

In the case that added sex as a suspect classification in California, the court said, "What differentiates sex from nonsuspect statuses, such as intelligence or physical disability, and aligns it with the recognized suspect classifications is that the characteristic frequently bears no relation to ability to perform or contribute to society."[154] The court adds this sentence as a throwaway comparison but does not delve into why it believes this.[155]

The court has not further defined what it means to "perform or contribute to society,"[156] but it has applied the standard to imprisoned people.[157] The status of imprisonment impacts the ability to be involved in society by completely removing those people. However, when a person is disabled, they are not confined to a cell but enjoy life out in society with a family and friends like able bodied peers. Many people with disabilities have jobs and contribute in an economic way to their society. This is a tough argument because the court has declined to extend suspect classification to the age category, and there are many similarities between age and disabilities. Still, those with disabilities have a stronger case that they have an immutable trait and suffer because of it. The court may have excluded age as a classification because it barely satisfies the factors. Here, disability satisfies all three more squarely than age.

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[153] *In re* Marriage Cases, 183 P.3d 384, 442 (Cal. 2008) (quoting Sail'er Inn, Inc. v. Kirby, 485 P.2d 529, 540 (Cal. 1970)).

[154] *Sail'er Inn, Inc.*, 85 P.2d at 540.

[155] *See id.*

[156] *Id.*

[157] *See* Meredith v. Workers' Comp. App. Bd., 567 P.2d 746, 747 (Cal. 1977).

While disability has not been recognized as a suspect classification, courts have yet to rule it out. Given the similarities to the other classifications through the fulfillment of the three factors, disability warrants strict scrutiny under California's equal protection doctrine.

B. Terminal Illness Should Qualify as a Disability

While terminal illnesses are similar to other disabilities or medical conditions, they are also distinct because of the incurability and known impending death that these prognoses carry.[158] Studies show there is an optimistic inaccuracy when giving terminal illness prognoses.[159] It is not hard to imagine that a terminal illness diagnosis is highly challenging for a person to experience psychologically.[160] This experience is unique from any other disability or diagnosis. During this psychological pain, the patient also experiences terrible physical pain, with studies showing that "more than 70% of patients with advanced cancer experience severe pain. . . . It has been estimated that at least 25% of all cancer patients die without adequate pain relief."[161]

Other disabilities and medical conditions have the same limitations on life, and while they do not have an imminent end, they are comparable in many ways. The pain experienced in the remaining time of a terminal illness is a common experience for many disabilities or medical conditions. Yet, the individuals suffering from them are not included in the EOLOA.[162]

Since the pain experienced in a terminal illness is comparable to other disabilities and medicinal conditions, the difference between receiving suicide prevention or not is decided on the amount of time a person will likely continue to live. In other words, suicide prevention care is not given to the terminally ill because they will

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[158] *What Is a Terminal Illness?*, MARIE CURIE (Apr. 3, 2022), https://www.mariecurie.org.uk/who/terminal-illness-definition [https://perma.cc/F475-PDM4].

[159] *See, e.g.*, Nicholas A. Christakis & Elizabeth B. Lamont, *Extent and Determinants of Error in Physicians' Prognoses in Terminally Ill Patients*, 320 W. J. MED. 469, 469 (2000) (showing that of the estimated time a person has left to live, only twenty percent were accurate estimations while sixty-three percent were over-optimistic).

[160] *See* Robert L. Fine, *Depression, Anxiety, and Delirium in the Terminally Ill Patient*, 14 BAYLOR U. MED. CTR: PROC. 130, 130 (2001).

[161] *Pain Relief for Terminally Ill Patients: Introduction*, MICH. ST. UNIV. COLL. HUM. MED., https://web.archive.org/web/20240222143217/https://learn.chm.msu.edu/painmanagement/intro.asp [https://perma.cc/P4B5-3BVZ] (last visited Apr. 17, 2025).

[162] *Meet the Suicide Disease: CRPS*, SPERO CLINIC, https://www.thesperoclinic.com/resources/videos/the-most-painful-disorder-known-to-humans-meet-the-suicide-disease/ [https://perma.cc/8SX9-CN69] (last visited Apr. 17, 2025) ("A rare neurological disorder, Complex Regional Pain Syndrome (CRPS) is ranked among the most painful diseases and medical problems. . . . and is often referred to as 'the suicide disease' because there is technically no 'cure' and limited effective treatments.").

likely die within six months anyway. This reasoning is inherently dangerous because it implies that the value of one's life is determined by the time one has left to live. Apart from the moral considerations, this view of life leads to enormous legal consequences about the State's responsibility to dying people. Justice Scalia expressed his concern about this unequal application of the law in his *Cruzan* concurrence by quoting the language used in *Blackburn v. State*:

> The life of those to whom life has become a burden—of those who are hopelessly diseased or fatally wounded—nay, even the lives of criminals condemned to death, are under the protection of the law, equally as the lives of those who are in the full tide of life's enjoyment, and anxious to continue to live.[163]

Equality among our fellow citizens is essential regardless of ability or quality of life. This is a principle that our country has fought for time and time again.

A terminal illness prognosis is, therefore, not specialized enough to draw a difference between it and other disabilities or medical conditions. All suffer pain, and imminent death is not compelling enough to warrant different treatment within the category. Nuances within the groups of disabilities and medical conditions are numerous, and terminal illnesses are horrible misfortunes that fall within these classifications.[164] To allow an accommodation from the protected classification of disabled based solely on the amount of time a person has left to live makes the implicit claim that such a life is not worth living. Where does that leave society's, and the law's, view of those who suffer that painful life every day with no hope of reprieve?

When a person receives a terminal illness diagnosis, they experience a form of grief.[165] They go through a process of shock, disbelief, anger, guilt, depression, and acceptance.[166] Typically, a person who is depressed, suicidal, and receiving medical care will also be provided with many suicide prevention resources. However, when that depression is caused by a terminal illness diagnosis, paired with hopelessness and suicidal thoughts, they are not provided the same care but enabled to end their life.

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[163] Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 295 (1990) (Scalia, J., concurring) (quoting Blackburn v. State, 23 Ohio St. 146, 163 (1872)).

[164] *See Understanding Disabilities*, OLD DOMINION UNIV., https://www.odu.edu/accessibility/faculty-staff/understanding-disabilities [https://perma.cc/FXV5-2QDY] (last visited Apr. 17, 2025); *Chronic Conditions*, CTR. FOR MEDICARE & MEDICAID SERVS. (Sept. 6, 2023), https://www.cms.gov/data-research/statistics-trends-and-reports/chronic-conditions/chronic-conditions [https://web.archive.org/web/20231010190725/https://www.cms.gov/data-research/statistics-trends-and-reports/chronic-conditions/chronic-conditions].

[165] Tara Strand, *Surviving Terminal Illness: Advice from Empowered Patients*, MESOTHELIOMA.COM (Apr. 5, 2016), https://www.mesothelioma.com/blog/surviving-terminal-illness-advice-from-empowered-patients/ [https://perma.cc/YF3L-SUY4].

[166] *Id.*

C. California Suicide Prevention Care

Physician-assisted suicide should be covered by California's prevention efforts because it is no different than suicides committed outside the EOLOA. California's "Striving for Zero" strategic plan for suicide prevention explains,

> The major risk factors for suicide are a prior suicide attempt; substance use disorder; mood disorders, such as depression; *medical illness*; and access to the methods to attempt suicide. The common factors that reduce risk for suicide are *access to effective medical and mental health care*; connectedness to others; problem-solving skills; and caring contacts, such as postcards or letters, *from service providers and caregivers*.[167]

Medical conditions and the impact that medical providers can make in saving a life is known and used to protect the citizens of California. But these same mitigating and aggravating circumstances are precisely what the EOLOA exploits to take lives rather than support them.

The exclusion of terminally ill people from suicide prevention cannot be justified by their limited time left because of the increased focus on prevention efforts towards the elderly. Older adults (eighty-five years or older) have the highest rate of suicide per age group.[168] About 18.2 per 100,000 California residents over the age of 85 killed themselves in 2021.[169] California has one of the highest life expectancies in the country.[170] In 2020, the life expectancy was estimated at 79.0 years.[171] Even though the expectation is seventy-nine years, they continue to live valuable lives past this mark. Further, they are still included in suicide prevention care even though there is not an expectation that the elderly will live much longer. Older adults are even provided more attention by California's Office of Suicide Prevention through their classification as a high-risk group.[172]

If suicide prevention were just determined by the time a person has left to live, the state would not spend its resources protecting the elderly beyond their life

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[167] MENTAL HEALTH SERVS. OVERSIGHT & ACCOUNTABILITY COMM'N, STRIVING FOR ZERO: CALIFORNIA'S STRATEGIC PLAN FOR SUICIDE PREVENTION 2020–2025, at 9 (2019) (emphasis added) [hereinafter STRIVING FOR ZERO: CALIFORNIA'S STRATEGIC PLAN FOR SUICIDE PREVENTION 2020–2025].

[168] CAL. DEP'T OF PUB. HEALTH OFF. OF SUICIDE PREVENTION, INJURY DATA BRIEF: CALIFORNIA SUICIDE AND SELF-HARM TRENDS IN 2021, at 2 (2023).

[169] *Id.*

[170] *Life Expectancy at Birth by State*, NAT'L CTR. FOR HEALTH STAT., https://www.cdc.gov/nchs/pressroom/sosmap/life_expectancy/life_expectancy.htm [https://perma.cc/H836-KDXW] (last visited Apr. 17, 2025).

[171] *Id.*

[172] Cal. Assemb. B. 2112 § (2)(b).

expectancy. But California does because it recognizes that suicide is "a major public health concern . . . that can have both immediate and long-term impacts on individuals, families[,] and entire communities."[173] The state values the lives of all, regardless of how much or the quality of the life. Further, suicide impacts more than just the individual dying, but their loved ones and community. Studies show that those close to someone who dies by suicide have a much higher risk of developing major mental illnesses like depression and even suicidal thoughts themselves.[174]

When suicide prevention is not applied to the terminally ill, there is a violation of the Equal Protection Clause by omitting them care because of their group status.[175] This applies to state hospitals, hospices, and privately owned entities through the Unruh Civil Rights Act.[176] While OSP champions these policies, medical professionals must execute them indiscriminately.

California's strategic plan for suicide prevention outlines four steps to take when someone is showing the warning signs of suicide: (1) ask directly if they are thinking about suicide; (2) express compassion; (3) reach out for support through the crisis lines; and (4) follow up with the person to see if they need any other support.[177] These steps are simple and have saved many. But, compared with the steps of applying for the EOLOA, the parallels are frightening. A patient asks their physician for aid in dying; the physician then expresses compassion for this decision and reaches out to the appropriate authorities to ensure the patient is qualified.[178] Finally, the physician follows up to ensure the patient wants this before prescribing the medication.[179] How can the same steps be used to save lives but help take others away?

D. The Element of Life Quality

Two elements of a terminal illness drastically impact a person's quality of life: pain experienced and the limited time left to live. As shown above, the pain points to the classification of disabled while the time left is like that of an elderly person who still receives suicide prevention care. It would make sense that each element alone is necessary but insufficient to justify aid-in-dying. However, this is not true for the EOLOA since the determination is based solely on the second element of

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[173] *Suicide Prevention*, CAL. DEP'T OF PUB. HEALTH: INJ. & VIOLENCE PREVENTION (IVP) BRANCH, https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/Pages/SuicidePreventionProgram.aspx [https://perma.cc/47UL-VG6G] (last visited Apr. 17, 2025).

[174] *See, e.g.*, Ilanit Tal Young et al., *Suicide Bereavement and Complicated Grief*, 14 DIALOGUES CLINICAL NEUROSCI. 177, 177 (2012).

[175] *See* CAL. CONST. art. 1, § 7(b).

[176] *See* CAL. CIV. CODE § 51(b).

[177] *See* STRIVING FOR ZERO: CALIFORNIA'S STRATEGIC PLAN FOR SUICIDE PREVENTION 2020–2025, *supra* note 167, at 9.

[178] *See* An Act of Oct. 5, 2021, Cal. S.B. 380, 2021 Cal. Stat. 93 § 2(a).

[179] *Id.* § 4(a)(7).

time, with no thought paid to pain.[180] This is shown through what is considered when applying for physician-assisted suicide under the EOLOA. The application does not require any information about the pain experienced by the patient.[181] The only medical consideration is the disease prognosis and that the illness will likely kill them in six months or less.[182] The consulting physician merely checks off boxes to ensure the patient does have a terminal illness, has the mental capacity to make the decision, is acting voluntarily, and has been informed of the risk.[183]

One could imagine a hypothetical terminal illness where a person experiences no pain or impact on their quality of life, but they know they will die in six months. While it would be reasonable to think most people diagnosed with such an illness would try to live their lives to the fullest, perhaps complete bucket list items or spending more time with loved ones, we could imagine a scenario where a person diagnosed with this illness was suicidal. Although their quality of life is not negatively impacted in any way, the suicidal patient would be eligible for aid-in-dying medication under the EOLOA requirements.[184] They would then be able to kill themselves through state-sponsored medication.

Even if the law were amended to weigh the pain felt by the terminally ill applicant, this would require an entirely new balancing test. Would an excruciating illness with a longer life expectancy but one that results in death nonetheless qualify?[185] What about a nearly painless illness but a short life expectancy? In both circumstances, a person's quality of life is severely impacted.

Unlike California, Canada expanded their physician-assisted suicide law to allow applicants with both terminal illnesses and extreme and continuing pain.[186] Out of all countries that allow physician-assisted suicide, Canada has the least number of safeguards.[187] The statute allows euthanasia by lethal injection for chronic pain, which includes any significant disability or mental illness like depression.[188] By allowing qualification for assisted death by chronic pain (psychological and

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[180] *See id.* pmbl.

[181] *California End of Life Option Act*, *supra* note 61; *see also* An Act of Oct. 5, 2021, Cal. S.B. 380, 2021 Cal. Stat. 93 pmbl.

[182] *California End of Life Option Act*, *supra* note 61; *see* Cal. S.B. 380, 2021 Cal. Stat. 93 pmbl.

[183] *Consulting Physician Compliance Form*, CAL. DEP'T OF PUB. HEALTH, https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/EOL_Consulting_Physician_Compliance_Form.pdf [https://perma.cc/VR9S-FFRN] (last visited Apr. 17, 2025).

[184] *See* S.B. 380, 2021 Cal. Stat. 93 pmbl.

[185] *See Amyotrophic Lateral Sclerosis (ALS)*, JOHN HOPKINS MED., https://www.hopkinsmedicine.org/health/conditions-and-diseases/amyotrophic-lateral-sclerosis-als [https://perma.cc/ZST8-2GVC] (last visited Apr. 17, 2025) (discussing ALS, a fatal motor neuron disease).

[186] Ian Austen, *Is Choosing Death Too Easy in Canada?*, N.Y. TIMES (June 21, 2023), https://www.nytimes.com/2022/09/18/world/canada/medically-assisted-death.html [https://perma.cc/T2FD-C59X].

[187] *Id.*

[188] *Id.*

physical), Canada has, in effect, declared that the lives worth living are those without pain. This ableist view devalues the lives of people suffering from disabilities.

While it is easy to understand how pain and limited time make us more sympathetic to those who are terminally ill, the quality of a person's life is not the basis for their value. If California has an interest in protecting the lives of its residents through suicide prevention care and other means, it must not predicate this care on the quality of an individual's life.

V. FUTURE OF THE END OF LIFE OPTION ACT

The United States is not the only country implementing aid-in-dying laws; it even has many safeguards that others do not.[189] Other countries are much more lenient in their treatment of physician-assisted suicide, even allowing voluntary and involuntary euthanasia.[190] Many worry about a "slippery slope" movement within the aid-in-dying legalization. The slippery slope "generally asserts that one exception to a law is followed by more exceptions until a point is reached that would initially have been unacceptable."[191] Many have upheld Belgium as an international example of this through its euthanasia laws.[192]

In 2002, Belgium decriminalized active euthanasia and, to date, has over 33,000 registered deaths due to euthanasia.[193] Each year (except 2020), the number of deaths due to active euthanasia has increased and does not show signs of stopping.[194] Originally, Belgium had more safeguards in place through strict conditions to qualify for euthanasia, but today, the country is the only one in the world with no minimum age.[195] Further, a person need not be terminally ill or even expected to die soon; they merely need to show "as a result of a severe pathology or accident, in a condition of durable and unbearable physical or mental suffering that cannot be alleviated."[196]

Advocates for the EOLOA argue that the comparison between Belgium and U.S. laws is misplaced and inaccurate because Belgium's laws concern euthanasia and

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[189] Jean-Paul Van De Walle & Sophia Kuby, *The Legalization of Euthanasia and Assisted Suicide: An Inevitable Slippery Slope* 15–18, ADF INT'L (2022), https://adfinternational.org/wp-content/uploads/2022/02/Euthanasia-White-Paper_2022_DIGITAL.pdf [https://perma.cc/7L4X-W6GV].

[190] *Id.* at 30.

[191] José Pereira, *Legalizing Euthanasia or Assisted Suicide: the Illusion of Safeguards and Controls*, 18 CURRENT ONCOLOGY 38, 40 (2011).

[192] *Id.* at 38.

[193] *Number of Registered Euthanasia Instances in Belgium from 2002 to 2023*, STATISTA (May 7, 2024), https://www.statista.com/statistics/1098051/number-of-euthanasia-instances-registered-in-belgium/ [https://perma.cc/NVY3-8B5X].

[194] *Id.*

[195] *20 Years of Euthanasia in Belgium*: *After Almost 30,000 Lives Lost, What Can We Learn?*, *supra* note 144.

[196] Van De Walle & Kuby, *supra* note 189, at 27.

did not evolve from physician-assisted suicide.[197] Compassion & Choices implies in their response that the slippery slope is an abandonment of safeguards rather than an evolution of broader laws.[198] Furthermore, slippery slope arguments are generally viewed as a logical fallacy based on little to no evidence.[199] Where Belgium demonstrates a rapid decrease in safeguards for physician-assisted suicide, and euthanasia, the equivalent is not shown by the United States' treatment of the same. The EOLOA has demonstrated an increased participation in the program each year,[200] and there is already advocacy for an extension of the EOLOA to euthanasia.[201] But whether the EOLOA is set to expand towards euthanasia is unclear; however, some action must be taken to protect vulnerable members of society from being excluded from the appropriate care.

A. Reform Options for the End of Life Option Act

The EOLOA deserves reform to honor the state's interests and show the terminally ill that their lives are valued in a way that warrants suicide prevention care in their most vulnerable hour. While creating a legal carve-out from the definition of disabled for the terminally ill, or even extending the EOLOA beyond the terminally ill, may seem like the simple fix, these solutions would not honor the goal of treating the disabled as equal to their nondisabled peers.

California should amend their laws to consider people with disabilities are a suspect classification. It is clear from the treatment of terminally ill people through the EOLOA that the status of a protected class does not provide enough protection. This group is vulnerable and taken advantage of without a compelling state interest. Where California has touted its progressive protections for people with disabilities, it should extend these protections because the current laws do not protect from ableist applications of suicide prevention.

To maintain the EOLOA in a nondiscriminatory manner, the state could extend it to include people beyond those with disabilities. There are two options for broadening the law: qualification through chronic pain or terminal illness status or open application for all residents with an adjudication process. In essence, this is a quickening of the slippery slope.

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[197] *See Doctors for Dignity*, COMPASSION & CHOICES, https://www.compassionandchoices.org/take-action/community-engagement/doctors-for-dignity/slippery-slope [https://perma.cc/8CVC-YRGX] (last visited Apr. 17, 2025).

[198] *Id.*

[199] *Slippery Slope*, TEX. ST. UNIV., https://www.txst.edu/philosophy/resources/fallacy-definitions/slippery-slope.html [https://perma.cc/CU9W-AVJ8] (last visited Apr. 17, 2025).

[200] CALIFORNIA END OF LIFE OPTION ACT 2022 DATA REPORT, *supra* note 72, at 3.

[201] *See* Dinzeo, *supra* note 16 (advocating for a doctor's active participation in her suicide); Annadurai et al., *supra* note 12.

Extending the law to the terminally ill and those suffering from chronic pain mirrors what Canada has implemented. However, Canada's law has been widely criticized as ableist.[202] Although this solution would no longer discriminate against the sole group of the terminally ill, it expands the discrimination against those with disabilities. This expansion of the EOLOA removes more of the disabled class from suicide prevention care, further harming their perceived life value.

Next, reform could remove the terminally illness qualification from the EOLOA so all Californian citizens would have equal access to the program. This would eliminate the equal protection problem because there would be no distinction based on ability. In practice, the law would still need some ability-based qualification to determine whether an individual was suffering enough to warrant this "relief." However, this would broaden the law, so it no longer served the original purpose of autonomy and compassion for the dying. This expansion to all citizens would be unprecedented and disturbing. Although there would finally be a level of equality for all people regardless of ability, this law would essentially eliminate suicide prevention care. What sort of adjudication could take place that wouldn't predicate its balancing on the overall ability and quality of life? If the decision would not be based on one of these two things, then anyone could apply and have state-funded suicide. There, of course, is no state interest in this practice, and it would not be a feasible expansion of the law.

Finally, the recommended reform option is to end the EOLOA and equally provide suicide prevention care. If suicide prevention is genuinely a state obligation in California, then the care provided should not be based on the medical condition of the patient. But just giving people suffering from terminal illness suicide prevention care is not enough. The state must go further to value the lives of these suffering individuals.

California should provide both suicide prevention care and invest in palliative and hospice care for the terminally ill. Palliative care, specialized medical care for people living with a serious illness, is meant to enhance a person's current care by focusing on quality of life for them and their family.[203] Palliative care is often used to continue care and attempt to find a cure.[204] While this option is not realistic for some terminal illnesses, California can turn its attention to investing in hospice care. "Hospice care focuses on the care, comfort, and quality of life of a person with a serious illness who is approaching the end of life."[205] Palliative and hospice care don't just focus on the comfort of the patient but also the comfort of the family as well.[206]

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[202] Austen, *supra* note 186.

[203] *See What Are Palliative Care and Hospice Care?*, NAT'L INST. AGING (May 14, 2021), https://www.nia.nih.gov/health/hospice-and-palliative-care/what-are-palliative-care-and-hospice-care [https://perma.cc/P2PX-4L8Z].

[204] *See id.*

[205] *Id.*

[206] *Id.*

Beyond investing in palliative and hospice care, California should treat the terminally ill as a particular classification for suicide prevention care. OSP has identified many high-risk groups, one such group being older adults.[207] What people suffering from terminal illness experience after their diagnosis is extremely painful and disorienting. Many who have managed a terminal illness diagnosis have focused on having a positive attitude, continuing medical treatment, and finding coping mechanisms.[208] OSP should create a specialized program for the mental health of people diagnosed with terminal illnesses. This program would help patients and their families progress through the stages of grief, come to terms with their illness, and make the most of their life left. California could further implement a specialized program, like the Make-A-Wish Foundation,[209] that could provide for some paid excursion or other "wish" to enhance these people's life experiences.

An elimination of the EOLOA would help to create greater equality between the terminally ill and those without. California must recognize that a group of citizens is concerned by this discriminatory treatment towards people within their class.[210] Disability groups have taken a stand against the EOLOA and laws similarly situated because although the legislatures did not intend to discriminate, these laws are ableist and further the stigma that a disabled life is not one worth living.

CONCLUSION

What lives are worth living? The able ones? The happy ones? What about the painful ones? From our earliest common law, and still in many states and countries today, physician-assisted suicide is an unthinkable crime. Although the EOLOA is based on ideals of autonomy, compassion, and mercy, it devalues the disabled, elderly, and terminally ill. A person's life is not worth ending because they experience chronic pain or only have a short amount of time left. The California Equal Protection Clause and the Unruh Civil Rights Act guarantee that laws will be applied equally to all classes of people. California considers suicide a public health crisis and, through the Office of Suicide Prevention, has endeavored to reduce suicide rates even among those who have little time left to live. Therefore, the state must provide equal protection and care to all citizens. Suicide prevention care is not about protecting the lives that some believe are worth saving, but instead about valuing all lives until the very end.

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[207] Assemb. B. § 2112 (1)(b).

[208] *See* Strand, *supra* note 165.

[209] *Make-A-Wish Foundation*, MAKE-A-WISH AM., https://wish.org/ [https://perma.cc/6ANH-QTXX].

[210] *California's Assisted Suicide Law Is Inherently Discriminatory*, *supra* note 117.