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A Commentary of The National Catholic Bioethics Center on Health Care and the Life Sciences

■ Also in this issue: “The Biden Scorecard: Abortion,” by Jozef Zalot ■

END-OF-LIFE OPTIONS ACT FAILS TO PROTECT CONSCIENCE RIGHTS

Andrew S. Kubick



This bill is about choices. Choices for patients and choices for healthcare providers. Only patients and healthcare providers who want to participate in aid-in-dying will do so.

—Deborah Armstrong

The New Mexico Senate passed the Elizabeth Whitefield End-of-Life Options Act on March 15 by a vote of twenty-four to seventeen. That vote followed a February vote of thirty-nine to twenty-seven in the lower chamber. Now with the stroke of Governor Michelle Lujan Grisham’s pen, New Mexico has become the ninth state in the United States to enact a physician-assisted suicide law. (The practice also is legal in Washington, DC.) The End-of-Life Options Act is incompatible with the moral teachings of Catholicism (along with several other religions). A provider who embraces the Catholic faith will be faced with the following ultimatum: You can either write a prescription for a lethal dose of a sedative or refer the patient to a physician who will then write it, or you can suffer the professional consequences of conscientiously objecting to both of those options. It is clear upon review of the End-of-Life Options Act that it fails to fully protect the conscience rights of providers.

Defining Terms

Grisham calls the subject of the End-of-Life Options Act “medical aid-in-dying.”¹ Others call it “self-determined death” or “death with dignity.” Euphemisms like these are often intended to hide the reality of the action in question, thereby making it more tolerable and perhaps even acceptable to the public. Rarely will supporters of medical aid in dying call it what it truly is—physician-assisted suicide.

This law outright denies that it legalizes assisted suicide. It states, “Actions taken in accordance with the End-of-Life Options Act shall not be construed, for any purpose, to constitute suicide, assisted suicide, euthanasia, mercy killing, homicide or adult abuse under the law.”² That statement is included in the law because assisted suicide per se remains illegal in New Mexico. Interestingly,

the law protects physician-assisted suicide and prohibits assisted suicide in general on account of the circumstances: “Assisting suicide consists of deliberately aiding another in the taking of the person’s own life, unless the person aiding another in the taking of the person’s own life is a person acting in accordance with the provisions of the End-of-Life Options Act.”³ “Deliberately aiding” someone in taking his life is assisted suicide for everyone *except* a prescribing provider.

Regardless of what the authors have written, the chambers have approved, and the governor has signed, a lethal dose of sedatives does not aid in dying, but directly causes death, and the lethal dose is made available only by way of a physician’s prescription. Therefore, it ought to be called what it is—physician-assisted suicide.

Catholic Moral Teaching

What, then, are the moral implications of suicide generally and physician-assisted suicide specifically? The *Catechism of the Catholic Church* teaches the following on suicide: “Suicide contradicts the natural inclination of the human being to preserve and perpetuate his life. It is gravely contrary to the just love of self. It likewise offends love of neighbor because it unjustly breaks the ties of solidarity with family, nation, and other human societies to which we continue to have obligations. Suicide is contrary to love for the living God.”⁴

Catholic moral teaching does not discount the effects of “grave psychological disturbances, anguish, or grave fear of hardship, suffering, or torture” on the culpability of the person who commits suicide (*Catechism*, n. 2282). God is merciful, and He understands the deepest experiences in the hearts and minds of his children. Yet objectively the action per se remains intrinsically evil and ought never to be done.

Assisting in another’s suicide is also intrinsically evil. The *Catechism* teaches, “Voluntary cooperation in suicide is contrary to the moral law” (n. 2282). Pope St. John Paul II affirmed this when he wrote, “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.”⁵ Moreover, the circumstances that the bill uses to distinguish between physician-assisted suicide and assisted suicide are insufficient to make the act good: “Circumstances of themselves cannot change the moral quality of acts themselves; they can make neither good nor right an action that is in itself evil” (*Catechism*, n. 1754). Therefore, the Catholic moral tradition is clear: suicide is never permissible, nor is assisting in it.

Embraced by Other Religions

Catholicism is not the only religion to hold this view on physician-assisted suicide. In 2019, members of Catholicism, Islam, and Judaism signed a joint position paper condemning physician-assisted suicide and encouraging palliative care. The paper concludes, “Euthanasia and physician-assisted suicide are inherently and consequentially morally and religiously wrong and should be forbidden with no exceptions. . . . No health care provider should be coerced or pressured to either directly or indirectly assist in the deliberate and intentional death of a patient through assisted suicide or any form of euthanasia, especially when it is against the religious beliefs of the provider.”⁶ Therefore, physician-assisted suicide laws—like the End-of-Life Options Act—affect believers from many religions.

Failure to Protect Conscience Rights

Proponents of the End-of-Life Options Act will dismiss the claim that the law’s conscience protections are insufficient, pointing to the inclusion of the following language: “A person shall not be subject to criminal liability, licensing sanctions or other professional disciplinary action for participating, or refusing to participate, in medical aid in dying. . . . No health care provider who objects for reasons of conscience to participating in the provision of medical aid in dying shall be required to participate in the provision of medical aid in dying under any circumstance.”⁷ Those lines of the law ostensibly support the claim made by Representative Deborah Armstrong, who had sponsored the bill, that only providers who wish to participate in so-called medical aid in dying will do so. However, many people fear that the protection is hollow, and cases of providers being subjected to discrimination based on their refusal to assist in their patients’ suicide is inevitable.

Moreover, other lines of the law are very concerning because they serve as a Trojan horse against conscience protections, especially for Catholics and perhaps for other Christians, Muslims, and Jews as well. Those lines state, “If a health care provider is unable or unwilling to carry out an individual’s request pursuant to the End-of-Life Options Act, that health care provider shall so inform the individual and refer the individual to a health care provider who is able and willing to carry out the individual’s request or to another individual or entity to assist the requesting individual in seeking medical aid in dying.”⁸

No objecting physician should write such a referral. Referring a patient to another physician who will assist in the suicide brings about a level of cooperation with evil that is immoral. In Catholic moral theology, that referral would constitute an act of proximate mediate material cooperation, and the objecting physician would be guilty of a grave sin. Requiring a referral from a Catholic provider is coercive: either repudiate a tenet of your faith or suffer the

professional consequences. That ultimatum is antithetical to robust conscience protection and the free exercise of religion guaranteed in America’s first freedom.

Unfortunately, requiring referrals despite a provider’s objection is not an unreasonable speculation. In 2019, for example, Ontario’s Court of Appeals upheld a lower court’s judgment that mandates referrals regardless of the referring provider’s conscientious objection.⁹ The referral requirement in the End-of-Life Options Act will lead to a situation like that in Ontario where the courts will need to intervene, and that intervention does not necessarily guarantee the protection of conscience rights.

Violation of the First Freedom

As stated above, Catholic moral teaching—as well as the teachings of other Christian denominations and other religions—condemns suicide because it is contrary to the love of God, love of neighbor, and love of oneself, and assisting in another’s suicide is gravely immoral. Furthermore, it is clear upon review that the End-of-Life Options Act legalizes assisted suicide while failing to protect the conscience rights of providers who object to it. The referral requirement is coercive in nature and forces the provider to choose between conscience and career, a choice no one in a free country should have to make. America’s first freedom safeguards both the private and public practice of one’s faith. It does not cease its protection when a person puts on his hard hat, badge, or apron or even his scrubs and stethoscope.

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Notes

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2. Elizabeth Whitefield End-of-Life Options Act, NM H.B. 47, §8 (passed March 15, 2021).
3. End-of-Life Options Act, §10(a).
4. *Catechism of the Catholic Church*, 2nd ed. (Washington, DC: US Conference of Catholic Bishops/Libreria Editrice Vaticana, 2016 update), n. 2281. All subsequent citations appear in the text.
5. John Paul II, *Evangelium vitae* (March 25, 1995), n. 66.
6. Pontifical Academy for Life et al., *Position Paper of the Abrahamic Monotheistic Religions on Matters concerning the End of Life* (Vatican City: PAV, 2019).
7. End-of-Life Options Act, §7(a)(1) and (c).
8. End-of-Life Options Act, §7(c), emphasis added.
9. Catholic News Agency, “Ontario Court: Doctors Must Refer Patients for Abortion, Assisted Suicide,” May 15, 2019, <https://www.catholicnewsagency.com/news/ontario-court-doctors-must-refer-patients-for-abortion-assisted-suicide-15214>.

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THE BIDEN SCORECARD: ABORTION

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Jozef Zalot
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We must pray and fast that the President will cease attempting to confuse people about Catholic teaching by trampling on the sanctity of human life while presenting himself as a devout Catholic.

—Archbishop Joseph Naumann

On January 20, 2021, Joseph Biden took the oath of office as the forty-sixth President of the United States. The Sunday prior I was speaking with a family member who stated, “I can’t wait until Biden is sworn in; it will be great to have a faithful Catholic in the White House.” To say I was shocked at these words would be an understatement. I immediately began listing the numerous things directly contrary to Catholic teaching that candidate Biden had pledged to do if elected. My family member did not believe what I said, claiming, “Those were just campaign promises; they don’t mean anything.” I suggested that after the inauguration, I would call him whenever President Biden did something contrary to Church teaching. He agreed. Needless to say, there have been multiple calls.

Throughout his political career, Biden has portrayed himself as a faithful Catholic, a point that his administration continually repeats. Yet his actions in the months since his inauguration reveal a very different reality. The National Catholic Bioethics Center is particularly concerned about our Catholic president’s actions on two topics: abortion and gender ideology. This essay will focus on abortion. A future essay will address gender ideology.

The Administration

As president, Biden has surrounded himself with advisors who are radical abortion supporters. Vice President Kamala Harris opposes mandated waiting periods for abortion as well as laws requiring informed consent and parental notification. She also voted against the Born-Alive Abortion Survivors Protection Act and opposes conscience protections for health care professionals who, for religious or other reasons, choose not to participate in abortion.¹

Arguably the most problematic member of Biden’s administration is Xavier Becerra, secretary of the US Department of Health and Human Services (HHS). As the attorney general of California, he forcefully defended a state law that forced faith-based, pro-life crisis pregnancy centers to post information about how to procure an abortion; he prosecuted investigative journalists who filmed Planned Parenthood officials openly talking about selling body parts of aborted children; and he sued the Trump administration over its reduction of Title X funding for Planned Parenthood as well as the religious and conscience exemptions it offered from the contraception and sterilization coverage mandate.² Interestingly, forty pro-life leaders sent a letter to the Senate urging it to reject Becerra’s confirmation.³

Statements and Executive Orders

Biden began implementing the abortion agenda of the radical political Left immediately upon entering the oval office. He did this first through statements and executive orders. On January 22, Biden and Harris released a statement on the forty-eighth anniversary of *Roe v. Wade*. This brief communiqué opened with the claim that “reproductive health, including the right to choose [i.e., abortion], has been under relentless and extreme attack” from the Trump administration. As a result, the signatories committed to (1) codify *Roe* in federal law, (2) appoint federal judges who will uphold *Roe*, (3) provide access to reproductive health care (read *abortion*), and (4) increase access to contraception.⁴

On January 28, Biden signed the executive order Memorandum on Protecting Women’s Health at Home and Abroad. The centerpiece of this order was the rescinding of the Mexico City Policy, which directs the US Agency for International Development to withhold family planning funds from nongovernmental organizations that use non-USAID funds to promote or perform abortions internationally.⁵ This policy, implemented by President Ronald Reagan, has been upheld by all Republican presidents and rescinded by all Democratic presidents.

The executive order also instructed the secretary of state and the secretary of health and human services to withdraw US co-sponsorship and signature from the Geneva Consensus Declaration. This document (1) affirms “the inherent ‘dignity and worth of the human person’ [and] that every human being has the inherent right to life,” (2) emphasizes that “in no case should abortion be promoted as a method of family planning,” and (3) maintains “there is no international right to abortion, nor any international obligation on the part of States to finance or facilitate abortion.”⁶ Under our Catholic president, the United States no longer recognizes these basic truths.

Finally, the executive order instructed HHS to “review” the Trump administration’s rule that prevented Title X family planning funds from going to Planned Parenthood and other organizations that refer women for abortion. In April, HHS—now under Becerra’s leadership—completed its review and proposed a rule change that will once again allow millions of dollars of Title X funds to go to organizations that refer women for abortion.⁷

Legislation and Policy

On March 11, Biden signed the American Rescue Plan. In addition to its many other flaws, it does not include the Hyde Amendment, a spending rider that prevents taxpayer money from funding elective abortion. Throughout much of his political career, Biden publicly supported this amendment. He is on record stating, “Government should not tell those with strong convictions against abortion . . . that we must pay for them.”⁸ However, because of pressure from the Democratic party, his position changed radically during the 2020 presidential campaign. As a result, our Catholic president has penned his name to legislation that exposes approximately \$467 billion of taxpayer money to pay for abortion.⁹

Biden has also facilitated the expansion of chemical abortion. On April 12, the US Food and Drug Administration decided that mifepristone can be prescribed remotely through telemedicine and received through the mail, reversing a Trump-era policy. Women no longer need an in-person visit with a physician to receive drugs that will kill their unborn children.

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In the area of research ethics, the Trump administration halted all research using tissue from aborted children in facilities operated by the National Institutes of Health and mandated that taxpayer-funded research using abortion-derived tissue in non-NIH facilities needed special approval to proceed. However, on April 16 Becerra signaled that the Biden administration was rescinding these restrictions, which NIH subsequently confirmed.¹⁰ US taxpayers are once again funding research that exploits the bodies of aborted children.

So, is Biden a faithful Catholic? Based on his clear support for and promotion of abortion, the answer is a resounding no. Biden and his supporters cannot make this claim; the evidence against it is too overwhelming.

The fact of the matter is that the Biden administration is the source of distress for many people. It is distressing that Biden uses the office of President of the United States to justify, promote, and expand the direct killing of unborn children yet claims to be a faithful Catholic. It is distressing that people like my family member held such disdain for Donald Trump that during the 2020 campaign, they chose not to heed Biden's—and the Democratic party's—clearly stated agenda of promoting and expanding abortion. It is distressing that members of the Catholic Church (both clergy and laity) refuse to confront Biden regarding his formal cooperation with this intrinsic evil. It is also distressing that despite his obstinate perseverance in manifest grave sin, many Catholics hold that Biden is in a state of grace sufficient to receive the body and blood of our Lord Jesus Christ in the Eucharist.

As distressing as his actions are, and difficult as it may be, I recognize that I need to love Joe Biden. I need to will his good. I need to pray and fast for him because, through his own words and actions, he has placed his immortal soul in grave danger of eternal damnation. Throughout the 2020 campaign, Biden repeatedly stated, "This election is a battle for the soul of America." No, Joe. The battle is for the destiny of your soul.

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Notes

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3. Autumn Schimmer, "SFLAction Urges the U.S. Senate to Reject the Nomination of Becerra as Head of the Department of Health and Human Services," Students for Life Action, December 21, 2020, <https://studentsforlifeaction.org/sflaction-urges-senate-to-reject-becerra/>.
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5. Joseph R. Biden Jr., Memorandum on Protecting Women's Health at Home and Abroad (January 28, 2021).
6. US Mission to the United Nations et al., Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family (November 11, 2020), <https://www.hhs.gov/sites/default/files/geneva-consensus-declaration-english.pdf>.
7. US Department of Health and Human Services, "Fact Sheet: Notice of Proposed Rulemaking Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services," April 14, 2021, <https://www.hhs.gov/about/news/2021/04/14/fact-sheet-notice-of-proposed-rulemaking-ensuring-access-to-equitable-affordable-client-centered.html>.
8. Joseph R. Biden Jr., letter to Michael Gregg, April 7, 1994, <https://www.nrlc.org/uploads/ObamaAbortionAgenda/BidenOnHydeAmenmentTwoLetters.pdf>.
9. Connor Semelsberger, "100 Days: A Big Helping of Abortion Funding with a Side of COVID Relief," *LifeSite News*, April 29, 2021, <https://www.lifesitenews.com/opinion/100-days-a-big-helping-of-abortion-funding-with-a-side-of-covid-relief.13>.
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