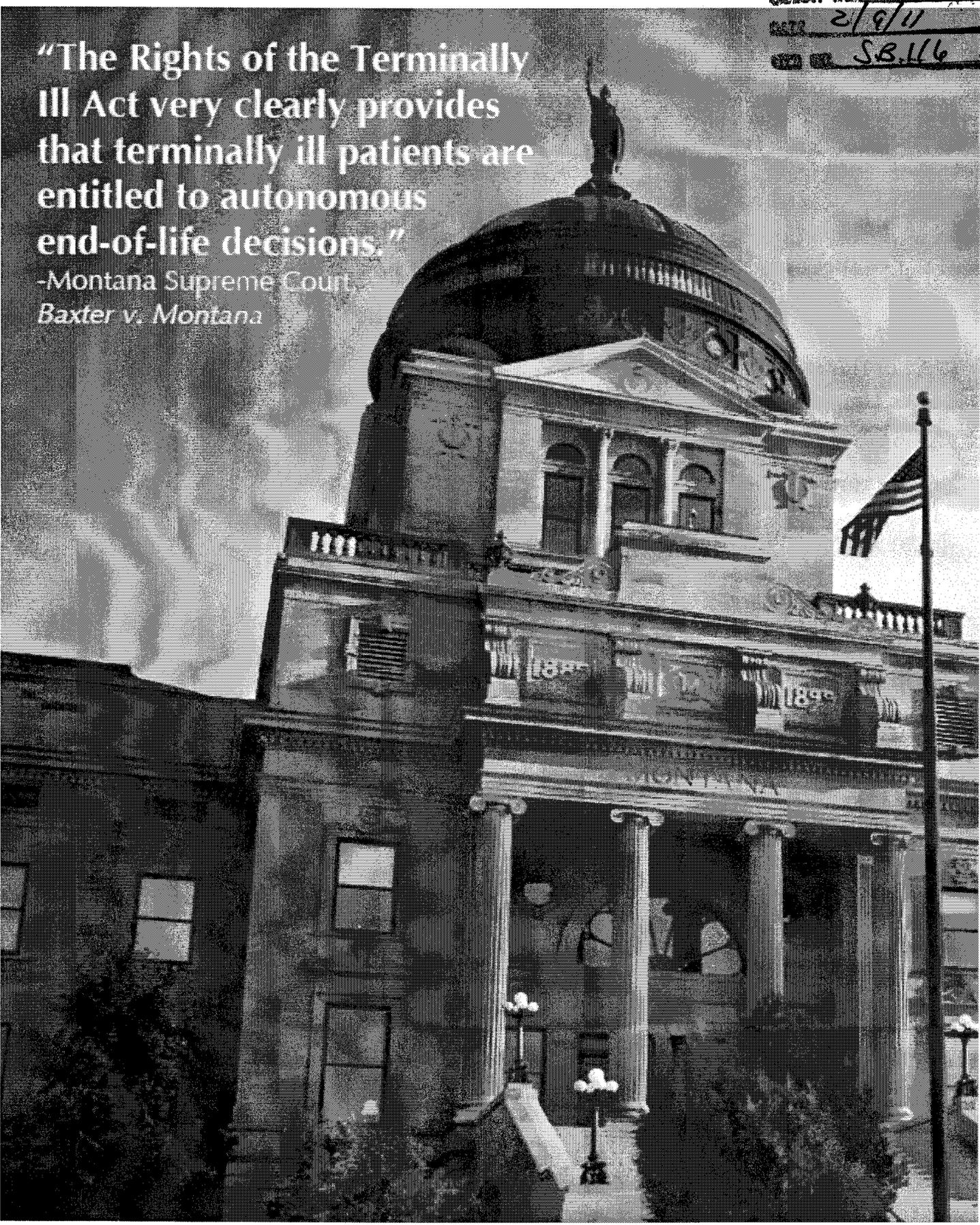
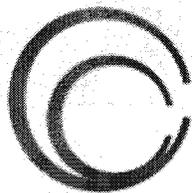


SENATE BILL NO. 25
ENACTED 2/9/11
SB.116

"The Rights of the Terminally Ill Act very clearly provides that terminally ill patients are entitled to autonomous end-of-life decisions."

-Montana Supreme Court
Baxter v. Montana





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Contact Us

Compassion & Choices of Montana
P.O. Box 1348, Helena, Montana 59624
www.CompassionAndChoices.org/montana

Jessica Grennan, Field Campaign Manager
jgrennan@compassionandchoices.org
406.552.2916, 1.800.247.7421

Montana Aid in Dying – *Baxter v. Montana*

Background - Robert Baxter, a marine veteran, outdoorsman and career long haul truck driver was suffering from lymphocytic leukemia when he, along with four Montana doctors and Compassion & Choices, filed a case seeking recognition that the right to choose aid in dying is protected by the Montana Constitution's guarantees of privacy, dignity and equal protection.

On October 17th, 2007, Mr. Baxter asked the court to affirm his legal right to be able to hasten his inevitable death and die in a peaceful and dignified manner by taking medication prescribed by his doctor for that purpose. Physician plaintiffs who wanted to know that they could assist a patient with aid in dying and not be subject to criminal prosecution joined Mr. Baxter in this suit.

District Court Judgment and Appeal - On December 5 2008, Montana State District Court Judge Dorothy McCarter issued summary judgment to plaintiffs, holding that the state constitution's individual dignity clause and the constitution's "stringent" right of privacy are "intertwined insofar as they apply to plaintiffs' assertion that competent terminal patients have the constitutional right to determine the timing of their death and to obtain physician assistance in doing so."

The State filed a notice of appeal. It also sought a stay of the lower court ruling pending the appeal. Judge McCarter denied the request for a stay in January 2009, meaning her ruling was fully effective and remained so unless and until the Montana Supreme Court ruled differently.

Montana Supreme Court Decision - On December 31, 2009, in a 5 – 2 decision, the Montana Supreme Court ruled that terminally ill Montanans have the right to choose aid in dying under state law. The court ruled that public policy of Montana does not criminalize, and much in current public policy affirmatively supports, aid in dying. The court did not reach the question of whether the Montana constitution specifically protects aid in dying.

In a detailed review of Montana law on the "Rights of the Terminally Ill," the Court concluded that the legislature specifically defers to a patient's own decisions and affords patients the right to control their own bodies at the end of life. The decision to self-administer life-ending medication receives the same treatment as a decision to discontinue life sustaining therapies such as mechanical ventilation.

Learn more about *Baxter v. Montana* and Aid in Dying in Montana online at <http://www.compassionandchoices.org/montana>.

About Compassion & Choices of Montana

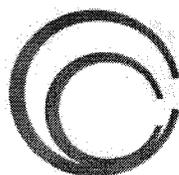
Compassion & Choices of Montana is an affiliate of Compassion & Choices, the nation's largest and oldest non-profit organization working to improve care and expand choice at the end of life. With over 30 local groups and 40,000 members and supporters throughout the United States, Compassion & Choices leads the aid-in-dying movement. We support, educate and advocate.

Support - Compassion & Choices' Consultation program uses the power of choice and comfort to restore hope to individuals and their loved ones at the end of life. Our professional staff and trained volunteers help thousands of clients each year by listening without judgment to their fears and guiding their search for a peaceful, humane death. We help clients with advance directives, local service referrals and pain and symptom management. We offer information on self-determined dying when appropriate and provide emotional support through a difficult time.

Educate - Compassion & Choices promotes informed end-of-life decision making by educating the public and advising health care professionals. Too many health care professionals turn away from their dying patients. Too many Americans are unprepared to navigate the complex options and restrictions surrounding the end of life. We employ educational training programs, media outreach and online and print publications to change healthcare practice, inform policy-makers, influence public opinion and empower individuals.

Advocate - Compassion & Choices devotes itself to creative legal and legislative initiatives to secure comprehensive and compassionate options at the end of life. We set national standards for end-of-life care and assert constitutional protection for aid in dying. Our team of litigators and legislative experts fights bills that would force patients to endure futile, invasive treatment; sets enforceability standards for advance directives; mandates pain and palliative care training for physicians; monitors legislative and policy initiatives; and ultimately shapes best-practice standards for end-of-life care.

Compassion & Choices creates an atmosphere free from judgment where everyone can talk about, and come to terms with, the difficult issues surrounding death and dying. Unlike most end-of-life organizations, we are not a religious organization; nor do we promote one ethical or belief system. We honor all people as individuals, regardless of sexual orientation, gender identity, age, disability, race or any other category. Learn more at www.compassionandchoices.org.



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The Case for **Terminal Patients' End-of-Life Choice**

Mentally competent, terminally ill patients have the right to choose aid in dying: to request a prescription for medication from their doctors which they can ingest to bring about a peaceful death. Doctors, patients, religious leaders, the Montana public and a Montana Supreme Court decision, as well as the success of the Oregon experience support this right of terminal patients in making their own end-of-life decisions.

Patients

The right of terminal patients to make their own end-of-life decisions is based on the simple premise that people should be free. Specifically, that when they are terminally ill and death is near, they should be free to decide whether to prolong life as long as possible, or to end their suffering more quickly. Terminally ill patients, mostly suffering from cancer and other incurable diseases, want the right to have some measure of control at the end of their lives. The right to request aid in dying places the power to choose solely in the hands of the terminally ill patient

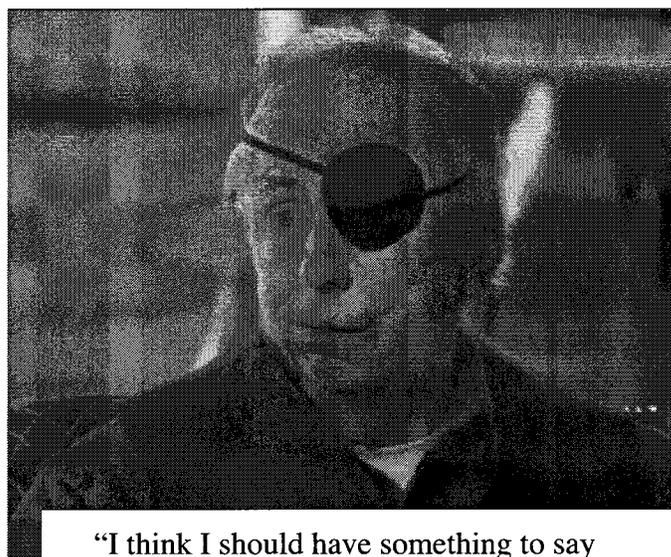
Doctors

"Two of the fundamental bioethical principles that guide a physician's interactions with patients are respect for the patients' fundamental right of self-determination and respect for the patients' interests. Physicians have an ethical obligation to relieve pain and suffering and to promote the dignity and autonomy of dying patients in their care."

*Dr. Stephen Speckart,
Missoula cancer specialist*

"Montanans should know this choice is available, and physicians should know they can provide aid in dying. Patients, families, doctors and hospices are beginning to integrate this into their practice and the Montana Medical Association should further the discussion among physicians and help establish the standard of care for aid in dying."

*Dr. Deric Weiss, a palliative care and
ethics expert at the Billings Clinic*



"I think I should have something to say about my ending. It's my decision to make, and it's a great comfort to know I can ask my doctor to honor my choice to die with dignity."

*Steve Johnson
Helena cancer patient*

Montana Supreme Court

Our Montana Supreme Court decided, in *Baxter v. Montana*, that end-of-life medical choices are private, between you and your doctor, and that adults can request medication to bring about a peaceful death. The Montana Supreme Court ruled that terminally ill Montanans have the right to choose aid in dying under state law.

"...we find no indication in Montana law that physician aid in dying provided to terminally ill, mentally competent adult patients is against public policy."

*Montana Supreme Court
Baxter v. Montana*

Religious Leaders

Free will, love, and compassion are each an article that Christians should employ in making any decision that affects oneself and/or others. How any individual approaches a decision and what that individual utilizes for his/her decision-making process is left to that person to decide.”

*Rev. John C. Board,
Episcopal Deacon, Helena*

Montanans Support End-of-Life Choice

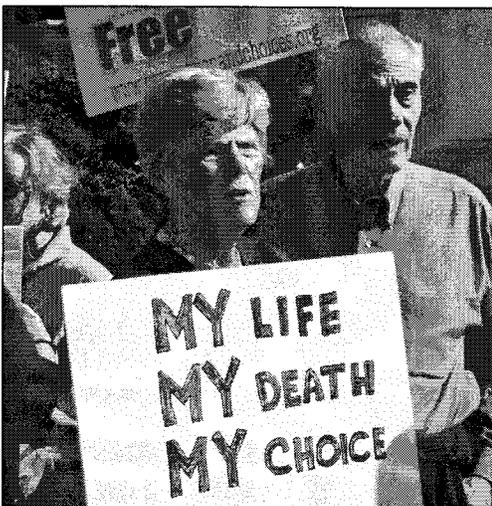
A strong majority of Montanans support patients' end-of-life choice because they cherish the freedom and autonomy it protects. 65% of Montana voters support the Montana Supreme Court decision granting end-of-life choice.

*Compassion & Choices public opinion survey,
January 2010*

Oregon Experience is a Documented Success

Oregon's aid-in-dying law has been a tremendous success. In its first twelve years, only 460 dying people self-administered, medication to hasten their imminent death, a tribute to the law's stringent safeguards.

The Oregon law is also credited with increasing referrals to hospice care, improving the quality of pain management services, and encouraging physicians and families to have early and honest discussions about honoring the wishes of dying patients.



Myths:

Why Opponents are Wrong

Opponents consistently make false arguments about physician aid in dying.

- *They deliberately use the scary and misleading word “suicide” to imply that the law would somehow cause the deaths of healthy people.*

Aid in dying, as set down by the Montana Supreme Court, applies only to people whose deaths are already imminent.

- *They claim that it would allow doctors to “kill” people.*

Only those already dying can request a prescription and then choose to self administer medication to hasten their deaths when they feel their suffering has become unbearable.

- *They claim it singles out seniors and the disabled as people of lesser value.*

Those groups are treated the same as all others; their freedom is protected should they become terminally ill. The Montana Supreme Court decision only allows aid in dying for terminally ill adults.

“We believe that people with disabilities, who have struggled to control their own lives and bodies, must be allowed to maintain this control and autonomy throughout their lives, and especially at its end.”

*Autonomy Disability Rights
Organization*

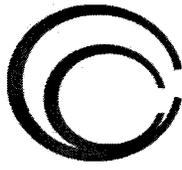
- *They claim greedy HMOs will choose to reduce costs by encouraging death.*

Only a patient can make the request and must control the process from beginning to end.

Patients must take their medication themselves.

www.compassionandchoices.org/montana

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Why Physicians Support Death with Dignity

Caring for dying patients includes the sacred duty to listen to their fears, communicate their options, and honor their choices for end of life care.

“The Baxter decision is enormous because it confirms that upon a terminal patient’s request, a physician can provide aid in dying. If a physician provides a prescription for medication and the patient decides for themselves whether to take the medication to achieve a peaceful death, the physician cannot be prosecuted. So, the physician is free to assist the terminal patient in dying should the patient request that.”

Stephen Speckart, M.D., Missoula

“What I hear over and over again from patients is ‘just don’t let me die in pain, don’t let me die out of control, don’t let me lose my mind as I am dying.’ I think with this ruling now those concerns that are expressed by patients, I am going to be able to, with much greater confidence, say that you will have control over your own passing, that it won’t be in my control or the control of the state. When you are ready you will be able to go.”

George Risi, M.D., Missoula

“It is important to recognize that the court’s decision set ethical boundaries on the right to physician aid in dying. The patient must be a terminally ill, mentally competent adult, and must self-administer the medication. Montanans should know this choice is available, and physicians should know they can provide aid in dying. Patients, families, doctors and hospices are beginning to integrate this into their practice and the Montana Medical Association should further the discussion among physicians and help establish the standard of care for aid in dying.”

*Deric Weiss, M.D.
Palliative Care and Ethics Expert, Billings*

“Physician aid in dying is an option available to mentally competent, terminally ill patients. If concerned about an unbearable dying process, the patient can request a prescription from their physician for medication they can consume to bring about a peaceful death. In Washington, this option was made legal through citizen initiative. The Montana Supreme Court recently ruled physicians can provide this option among other end-of-life treatments under Montana law.”

*Tom Preston, M.D.
Medical Director, Compassion & Choices
of Washington*

“Results of a national survey of 1,088 physicians revealed that a clear majority of physicians believe that it is ethical to assist an individual who has made a rational choice to die due to unbearable suffering.”

*Louis Finkelstein
Institute for Religious and Social Studies*

“A national survey of 677 physicians and 1,057 members of the general public by HCD Research in October 2005, revealed that the majority of both groups believe that physicians should be permitted to dispense life-ending prescriptions to terminally ill patients who have made a rational decision to die due to unbearable suffering. The survey indicated that nearly two-thirds of physicians (62%) believe that physicians should be permitted to dispense life-ending prescriptions.”

HCD Research (Independent Survey)

“To require dying patients to endure unrelievable suffering, regardless of their wishes, is callous and unseemly. Death is hard enough without being bullied. Like the relief of pain, this too is a matter of mercy.”

Marcia Angell, M.D.
Senior Lecturer, Harvard Medical School,
Former Editor-in-Chief, New England
Journal of Medicine

“I have treated scores of terminally-ill patients, and not one of them wanted to die. Not one of them wanted to ‘kill’ themselves. These patients wanted to live as long as they could experience life. They did not, however, want to prolong their deaths. As a physician, I resent the term ‘physician-assisted suicide.’ I have never felt I was assisting a suicidal patient, but rather aiding a patient with his or her end of life choice.”

Peter Goodwin, M.D. Professor Emeritus,
Dept. of Family Medicine,
Oregon Health Science University

“The relief from my terminally-ill patients and their families is palpable. I think I’ve also helped families accept their family members’ final wishes in the face of terrible illness. Aid in dying for terminal patients is an essential part of good, compassionate end of life care.”

Nicholas Gideonse, M.D.
Director, Primary Care Center,
Oregon Health Science University

“Most ... patients suffering from incurable cancer or other terminal diseases want the right to have some measure of control, or autonomy, at the end of their lives. Aid In Dying places that power to choose in the hands of the terminally ill patient. I believe it is our responsibility to listen to our patients; and if medically, morally and legally possible provide them with the comfort they request. It should be the patient’s decision and physicians should honor patients’ autonomy and choice. Dying is a private experience, and should be in the hands of the patient with support from the physician.”

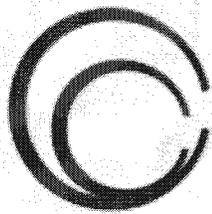
“We support Aid In Dying as a way to allow competent patients with terminal diseases to decide how to live the last moments of their lives. When all other approaches to relive the suffering of a terminal illness have failed...assisted death is an extension of compassionate medical care.”

American Medical Students Association

C. Ronald Koons, M.D., Chair,
Ethics Committee, UC Irvine Medical Center

Polls Show Physicians’ Support





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Montana Physicians Can Now Respect Dying Patients' Decisions, Prevent Violent Deaths, Provide Aid in Dying for Peaceful Deaths: Montana Legislators Should Respect Court's Decision, Not Erect Roadblocks

The Montana Supreme Court recognized that the statute empowering patients to make decisions about their end-of-life care, even when those decisions will precipitate death, reflects public policy in favor of patient autonomy.

The court ruled there could be no prosecution of physicians who provide aid in dying. The Montana Supreme Court remained true to its robust tradition of protecting private decisions concerning an individual's body, life and medical care from government control.

Compassion & Choices urges the Legislature to respect the court's decision, and trust the medical community to establish and maintain the standard of care for this patient choice, as it has for other end-of-life options.

The Legislature should affirm the court's guidelines, but should not place undue obstacles in patients' way.

The Legislature should affirm that physician participation is voluntary, and enact protections from civil liability and professional sanctions for physicians who practice within the court's guidelines.

- The government entrusts physicians with setting a standard of care for aid-in-dying practice, just as it has with other end-of-life practices like termination of ventilators and treatment of pain. The government need not take over this essential medical care function.
- The court set boundaries on physician aid in dying: the patient must be a terminally ill, mentally competent adult, who may self-administer prescribed life-ending medication. The court did not authorize medication administration by others, including a physician.
- Physicians in Montana need not be burdened by the elaborate paperwork requirements in place under the Death With Dignity Acts in Oregon and Washington. Oregon's reporting system has demonstrated the safety of the practice, but continued burdensome reporting is not necessary to ensure safety in Montana.
- The criminal laws of Montana still apply to actions outside the court's ruling. State police authority will effectively enforce the law, just as criminal law enforcement has for decades prevented unlawful discontinuation of life-sustaining machines. Certain boundaries recognized by the court are similar to requirements in Oregon and Washington. All three states require that the patient be terminally ill and mentally competent, and that the physician involvement be limited to providing a prescription for medication the patient may choose to self-administer.
- Opponents seek to have the Legislature override and void this decision; something that would deny terminal patients the comfort and peace of mind afforded by legal aid in dying.

The Montana Supreme Court granted Montanans the dignity and respect to make their own end-of-life decisions, without burdensome government interference. The Legislature should do the same.

For more information please visit www.compassionandchoices.org

Compassion & Choices is a nonprofit organization working to improve care and expand choice at the end of life.

We support, educate and advocate.



David Binder Research

44 Page Street, Suite 404 • San Francisco, California 94102
800-905-7330 • 415-621-7655 • f: 415-621-7663 • dbrresearch.com

April 5, 2010

Survey Summary Memo

Two recent surveys of likely voters in Montana¹ consistently found that a strong majority of voters support end of life choices. Three in five (60%) voters said they support end of life choices, while only 24% said they oppose. There is even greater support (63%) for the recent Supreme Court ruling, and nearly two in three voters (64%) want their own personal doctor to be able to comply with their end of life choices.

When asked about the possibility of the state legislature overturning the Supreme Court decision, voters are overwhelmingly opposed, with only one in four saying they want the state legislature to overturn the Supreme Court ruling.

¹ David Binder Research conducted two surveys of likely Montana voters: The first was conducted from January 20th to 24th of 600 likely voters. It has a margin of error of 4.0%. The second was conducted March 3rd to 5th with 350 likely voters. It has a margin of error of 5.2%. The most recent data is presented where possible.

Finding 1. A strong majority of voters support end of life choices.

Question: Recently, there has been some discussion in the news about the issue of end of life choice. Just in general, do you support or oppose allowing dying patients in severe distress to make their own end of life choice to receive a prescription for life-ending medication?

Montana voters are strongly supportive of dying patients in severe distress being able to make their own end of life choices.

The majority of voters – across political party – are supportive of end of life choices. Democrats are the strongest supporters, with more than two in three supporting end of life choices. Independent voters are similar to Democrats on this issue, with more than three in five supporting end of life choices. A strong majority of Republican voters are also supportive of end of life choices.

	Support	Oppose
All Voters	60%	24%
Democrat	69	16
Republican	53	35
Independent / Minor Party	61	23

**Data from March survey*

Finding 2. Support for a Supreme Court decision in favor of end of life choice is even stronger, at nearly 2/3 of voters.

Question: The Montana Supreme Court decided the Baxter case on New Year's Eve. The decision interprets existing law to mean that doctors cannot be prosecuted for providing prescriptions for life-ending medication to terminally ill adults. It applies to patients who have been found by a medical doctor to have less than six months to live, and to be mentally competent. It requires that patients must ingest medication themselves if they choose to use it. Do you support or oppose the Supreme Court ruling?

Support for the Supreme Court ruling is even higher than support for end of life choices, after respondents learn that the decision interprets existing law to mean that doctors cannot be prosecuted, and that it includes safeguards. Support is 63%, three points higher, while opposition is only 21% of all voters, three points lower.

	Support	Oppose
End of Life Choices	60%	24%
Supreme Court Ruling	63	21
Change	+3	-3

**Data from March survey*

There is an increase in support across demographic groups.

Finding 3.

Finding 4.

Finding 5. Nearly two in three voters – across ages – want their doctor to be able to comply with their end of life choices.

Question: *If you were terminally ill and were expected to die within six months, would you want your personal doctor to be able to comply with your wish to end your own life?*

Almost two in three voters want their own personal doctor to be able to honor their choices at the end of life. This is true across age groups, with little opposition from any demographic.

	Yes	No
All Voters	64%	30%
Under 30 years old	70	29
30-39	65	29
40-49	68	28
50-64	65	31
65 and older	60	31

**Data from January survey*

Finding 6. Voters strongly oppose the state legislature overturning the Supreme Court decision.

Question: *Opponents of the Supreme Court decision have announced that they will seek to have the state legislature overturn this Supreme Court decision. With which statement do you most agree: The state legislature should overturn the Supreme Court decision, making doctor-assisted suicide a crime OR The state legislature should allow the Supreme Court decision, but enact additional safeguards such as waiting periods, psychological exams, and government reports OR The state legislature should allow the Supreme Court decision to take effect as written.*

Seven in ten voters do NOT want the legislature to overturn the Supreme Court decision. The plurality of voters want the legislature to allow the Supreme Court decision to take effect as written, while another 31% want it to take effect, with some additional safeguards. Only one in four voters wants the state legislature to overturn the Supreme Court decision.

Safeguards are more important to younger voters and less important to older voters.

	The state legislature should overturn the Supreme Court decision, making doctor-assisted suicide a crime	The state legislature should allow the Supreme Court decision, but enact additional safeguards such as waiting periods, psychological exams, and government reports	The state legislature should allow the Supreme Court decision to take effect as written.
All Voters	25%	31%	39%
Under 30 years old	23	49	25
30-39	19	35	42
40-49	25	38	34
50-64	26	23	46
65 and older	28	25	39

**Data from January survey*

Finding 7. Voters overwhelmingly trust their personal doctors more than they want safeguards from the government.

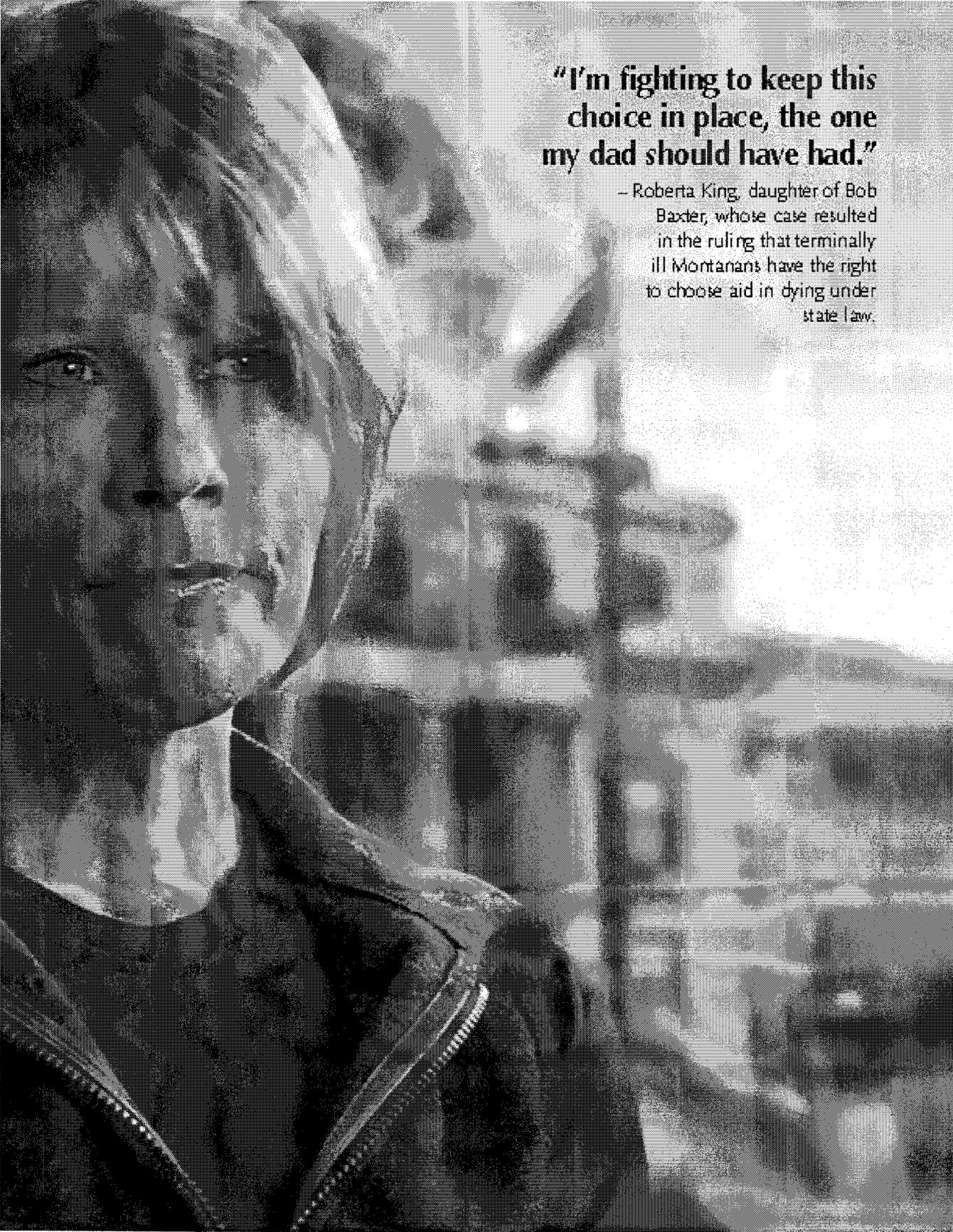
Question: *do you trust your personal doctor to aid patients in making their end of life choices, or do you believe that the government should enact additional safeguards for end of life choices?*

There is strong opposition to the idea of the government enacting additional safeguards. Only 18% of all voters choose this option and even among younger voters – who are more supportive of safeguards – only one in three is supportive. Older voters are the most opposed; with two in three saying they trust their personal doctors and only 14% saying they want additional safeguards.

There is little support for additional safeguards from any party, with less than one in four voters in any party saying they believe the government should enact additional safeguards.

	You trust your personal doctor to aid patients in making their end of life choices	You believe that the government should enact additional safeguards for end of life choices
All Voters	62%	18%
Democrat	66	22
Republican	55	19
Independent / Minor Party	65	15
Under 30 years old	52	34
30-39	64	18
40-49	60	18
50-64	62	15
65 and older	67	14

**Data from January survey*



**"I'm fighting to keep this
choice in place, the one
my dad should have had."**

— Roberta King, daughter of Bob
Baxter, whose case resulted
in the ruling that terminally
ill Montanans have the right
to choose aid in dying under
state law.

My Father Fought to Win the Right to Die with Dignity; Now, I'm Fighting to Keep It

Statement by Roberta King, Daughter of Bob Baxter, Missoula

My father was Bob Baxter, the plaintiff in *Baxter v. State of Montana*, the case that brought Montanans the choice to end a drawn-out death from terminal illness with a prescription from a physician. I'm proud that my father's name will be forever linked to this additional end-of-life choice.

My father was a typical Montanan: a proud and independent guy, a very patriotic ex-Marine. He liked to hunt and fish. He was a truck driver for as long as I can remember, and he loved the freedom of it. His whole life he wanted to do things the right way. My father had first been diagnosed with lymphocytic leukemia, a form of cancer, approximately 12 years before his death. He benefitted from multiple courses of chemotherapy, but it gradually became less and less effective in controlling his disease. During the last year of his life, he developed an aggressive form of lymphoma, which proved to be very difficult to treat, and was advised he had a very short time to live.

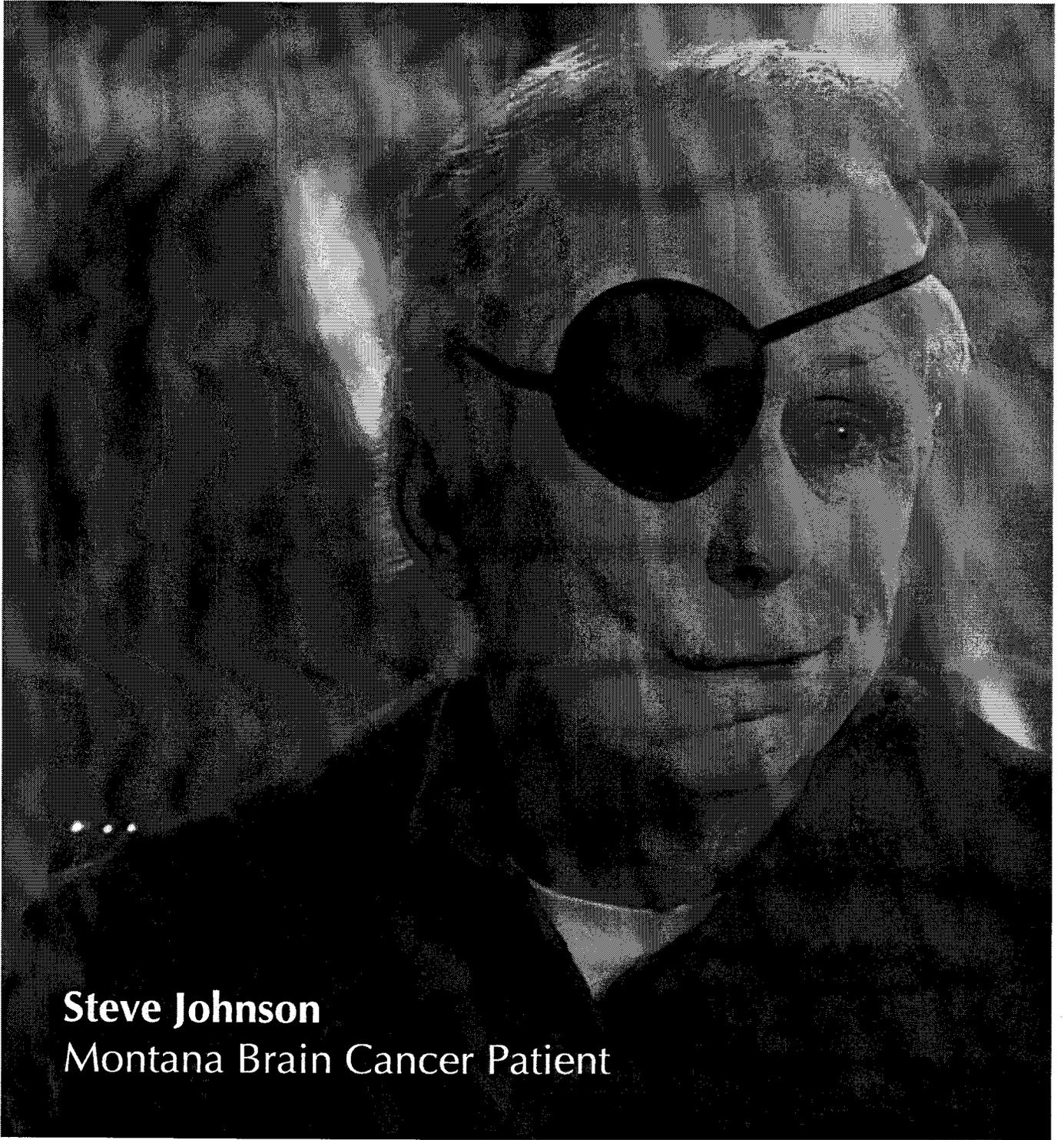
My father understood he had no hope of recovery, and that the only medical issues remaining were exactly when his death would occur, and how much suffering he would experience before he died. He said, "I don't know when I'm going to die but I know what I'm going to die of." And he was right. During the last few months of his life, my father's disease progressed to the stage where he suffered a great deal and was in a constant state of misery, which his doctors were unable to reduce. His symptoms included severely swollen glands; constant pain and aching that made it extremely difficult for him to sit up; problems breathing; chronic fatigue and weakness; persistent infections; inability to sleep; loss of appetite; weight loss; and horrible episodes of alternating sweating and cold. He had lost about 30 pounds from his normally thin frame by the time he died.

I was extremely close with my father. He shared with me a number of times during his last months his feelings about death and the situation he was confronting with his disease. His symptoms were so severe and his suffering so unrelenting that he yearned for death weeks before his life ended. From statements he made to me and other members of our family, it is clear my father would have availed himself of aid in dying if that choice had been legal in Montana and available to him. The fact it was not made his suffering and death much more painful and difficult than they otherwise could have been, and deprived him of the right to decide for himself how much suffering to endure before he died.

He wanted to do what was legal. There were a lot of options he could have taken, but he wanted to be an upstanding citizen. He wanted his doctor to aid in his dying. That's why he brought the lawsuit that made death with dignity legal in Montana. He didn't live to see the Supreme Court's decision. My father died at my parents' home in Billings, on December 5, 2008, the same day the district court ruled in his favor. He was 76 years old.

Now, Montanans do have the right to legal aid in dying. Some are already working to have the legislature take it away in January. I'm going to be fighting to keep this choice in place, the one my Dad should have had.

Roberta King worked as a hospice volunteer for two years at Hospice of Missoula, and is a spokesperson for Compassion & Choices Montana. She can be reached through montana@compassionandchoices.org.



Steve Johnson
Montana Brain Cancer Patient



It's My Life, My Death And My Choice

Statement by Steve Johnson, Brain Cancer Patient, Helena

I think I should have something to say about my ending.

I have spoken with my doctor about what is likely to happen as my brain cancer progresses. I am now fairly disabled and it is likely that I will go blind. I am very concerned about intense pain and loss of dignity as the cancer worsens.

Our Montana Supreme Court recently decided that our end-of-life medical choices are private. Terminally ill adults can request medication to bring about a peaceful death. It is a great comfort to know I can ask my doctor to honor my decision when the time comes.

I feel pretty good right now, but the cancer is not going away. I am 72 years old. I spent my working years as a large-animal veterinarian, farmer, rancher and schoolteacher. I had a very healthy life, until eight years ago.

I was feeding the cows and calves on our ranch that spring, carrying a hay bale in the fields, when I passed out. There was snow on the ground then, and I remember waking up wondering what had happened. My wife took me to the hospital, and tests revealed that I had brain cancer. Surgery removed much, but not all, of the cancer. I have undergone a series of radiation treatments, and even traveled to Stanford University for treatment using the newest technology. All these treatments carry risks. The repeated radiation has taken a toll on my mind and body. But I also hold out a chance of hope. I want to do anything within reason to prolong my life. My wife, daughter and two sons have been fantastic in supporting me through this fight with cancer.

The current phase of my illness feels like the last hurrah. After eight years of living under the gun while fighting it, it's becoming clear the cancer is not going away and my life is nearing its end. I've accepted my death as approaching and unavoidable, and my family and I have had a long time to deal with our grief. I approach the end of my life with a clear mind.

I was heartened when the Montana Supreme Court decided I have a choice on how I am allowed to die. Unfortunately, not everyone agrees this will be my decision to make. Opponents in our legislature have already announced they will try to pass a law to take away my end-of-life choice, and yours. We should reject those efforts. Government should stay out of the medical decisions between a doctor and a mentally competent, terminally ill adult. It's only compassionate to minimize unnecessary suffering at the end of life, and to let me make the choice about how much suffering to endure, based on my own values and beliefs. I am glad Compassion & Choices is leading the fight against those who want to decide how we are allowed to die.

I want my physician to be able to respect and honor my choice to die with dignity. Adults like myself should have the option, if terminally ill, to request physician assistance in dying. Even though I don't know whether I would ultimately take medication to end my life peacefully, I'd like to have the choice.

The Baxter decision allows physicians to support their dying patients

Statement By Stephen Speckart, M.D., Missoula

As an oncologist, I hope, as much as possible, to be able to take care of my patients while I am treating them, but also be able to care for them through the rest of their life until they die. Care that goes until the very end of life is necessary for what I believe good medical practice should be. That is why I appreciate our Montana Supreme Court's recent decision affirming that our end-of-life medical choices are private.

The *Baxter* decision is enormous because it confirms that upon a terminal patient's request, a physician can provide aid in dying. If a physician provides a prescription for medication and the patient decides for themselves whether to take the medication to achieve a peaceful death, the physician cannot be prosecuted. So, the physician is free to assist the terminal patient in dying should the patient request that.

The *Baxter* decision allows for that continuance of patient care, not abandoning, but being there as a physician should be: understanding and supportive of the patient who's dying and is suffering terribly. It's a much more complete, reasonable way to continue to take care of Montana patients than has been possible in the past. And much more satisfying for those dying patients who are fearful of what they may have to go through.

Palliation – treating pain, which we doctors do very well and increasingly better year by year, does resolve most things, for most patients, most of the time. This is largely done through hospice services. But there are unusual patients who cannot be palliated and who are miserable. Their symptoms (for example, bowel dysfunction or intractable pain) simply can't be dealt with by narcotics that essentially put people to sleep. Before the *Baxter* decision, when a patient would ask a physician to respond to their dire predicament, the doctor would have to dismiss their request, replying, for example, "I can't do that. We can't do that."

It had been feared, before *Baxter*, under Montana law that a physician who helped a patient in dying would be prosecuted. The fear of prosecution was great enough to stop physicians from providing aid in dying even if they felt it was the right thing to do. Even though you were still there for the patient, the patient would feel a sense of abandonment. Their physician, who they've been with and trusted, somehow now was blocked from continuing with them into a needed area of care. As a physician, you felt as though you were not complete in terms of what you could and should do in terms of your obligation to the patient, and to assist with their suffering. It's a medical, ethical dilemma when you can't go where you understand you should be able to go.

I've been with patients who've died. And each patient is unique. People can have the same physical problems that bring them to die, but the emotional texture and context of that family, that individual, are overwhelmingly unique because it's the end of their life. And to be there as a physician is very special. It is very private. It is very personal. The relationship that they have with their loved ones kind of comes together in their dying moments. And if the correct criteria are met for helping a patient in that situation, it's not right nor is it appropriate for any other group or party to disagree with what's happened there, in the privacy of that home, because it's such an enormous event.

Montanans are independent. Montanans are thoughtful. We believe in privacy. That's why the Montana constitution is written to guarantee personal privacy and dignity. The *Baxter* decision confirms the terminal patient's right to choice, privacy, and dignity at the end of life. The Legislature should respect the Supreme Court's decision, and preserve the patient's end-of-life choice, while providing safeguards to ensure free, informed patient choice, and protection for physicians who honor those choices.

Legal Aid in Dying Provides Peace of Mind

Statement by Dr. Tom Preston, Medical Director for Compassion & Choices of Washington

As the Medical Director for Compassion & Choices of Washington, I have worked with many terminally ill patients who have used our end-of-life consultation services since Washington's Death with Dignity Act (DWD) became law. As Montanans are today, Washingtonians then were discovering the peace of mind that comes from knowing they have the right to choose physician aid in dying if their end-of-life suffering becomes unbearable.

Physician aid in dying is an option available to mentally competent, terminally ill patients. If concerned about an unbearable dying process, the patient can request a prescription from their physician for medication they can consume to bring about a peaceful death. In Washington, this option was made legal through citizen initiative. The Montana Supreme Court recently ruled physicians can provide this option among other end-of-life treatments under Montana law.

More and more physicians are realizing that "death with dignity" is a humane part of medical practice. By helping patients gain release from the agonies of extended dying, physicians are staying with their patients and giving good end-of-life care. Patients, knowing they can talk with their doctors about peaceful dying after cures are exhausted, are able to have conversations about all the options available to them. Informed patients are better able to direct their end-of-life care, and gain great comfort from knowing they will not have to suffer unbearably.

Families also get peace of mind from the availability of aid in dying. I have worked as a volunteer advisor with some of the patients who have died under the Death with Dignity law. The patient's family and loved ones express overwhelming gratitude for the support their loved one is receiving. It is very important for both the patient and survivors to have a chance to be together and to reconcile any past differences before the patient dies. In too many cases, dying comes unexpectedly, or is drawn out so long family members cannot be present at the end. The family of a person accessing aid in dying is with them at the end, and all can say their goodbyes, which is a gift they cherish.

Also, the dying is peaceful. Patients escape the agony that often takes over the last days or hours of life, and they literally fall asleep at the end. It's worth noting that, as studies of the Oregon experience have found, families using the Death with Dignity law are more at peace afterward with the loved-one's death than families of other patients. Multiple independent studies of the Oregon experience have found that end-of-life care and communication have improved across the board: more patients enter hospice, and enter earlier; more patients die at home; more communication occurs between doctors and patients; and, pain treatment is more aggressive. There has been no evidence of any abuse of the law, contrary to opponents' predictions.

Unfortunately, tragic acts of violence can occur when patients and caregivers are not confident they can turn to their doctors for adequate pain and symptom management and candid exploration of all end-of-life options. The recent deaths in Libby, Montana, might have been prevented if this loving couple had felt comfortable discussing with their doctor their fears of unbearable suffering.

It is my hope that Montana physicians treating patients at the end of life will learn how aid in dying can be incorporated into their standard of practice. I wish for a future where no one need fear a death of unbearable suffering. I hope that Montanans will reap the benefits of this important new right, and that it will bring more peaceful deaths and better end-of-life communication to terminally ill patients and their families.

Death with Dignity: The Facts of Oregon's Experience

Statement by Ann Jackson, M.B.A., Former Director of the Oregon Hospice Association

At the end of 2009, the Montana Supreme Court found that physician aid in dying (PAD) was not prohibited by law. As Montanans work to implement this new legal and medical reality, it is useful to look at the facts from Oregon, where PAD has been legal under the Oregon Death with Dignity Act (ODDA) for over twelve years. Oregon hospice workers offer a unique perspective and experience in understanding those facts.

I was the director of the Oregon Hospice Association (OHA) between 1988 and 2008; for ten years prior to the implementation of ODDA and for the ten years following. The perspective of hospice workers is significant because (1) they visit patients and families frequently in the last weeks and months of life; and (2) they are able to compare hospice patients who hasten death with hospice patients who do not. Their experience is important because 86% of persons who have used the Oregon Death with Dignity Act (ODDA) were enrolled in hospice.

I had regular meetings as director of the OHA during the first 10 years' experience with PAD. Behind closed doors, hospice workers were frank in expressing their beliefs. One area where they were unanimous in agreement was that the ODDA improved the quality of meaningful, important conversations about the end of life. I will not offer an opinion on whether PAD is right or wrong. That no longer matters in a state where the practice is a legal end-of-life option, especially to hospices and others caring for people facing life-threatening illnesses. I am interested in doing what I can to make sure that people who are dying, and their families, are not inadvertently hurt as public policy related to this option evolves.

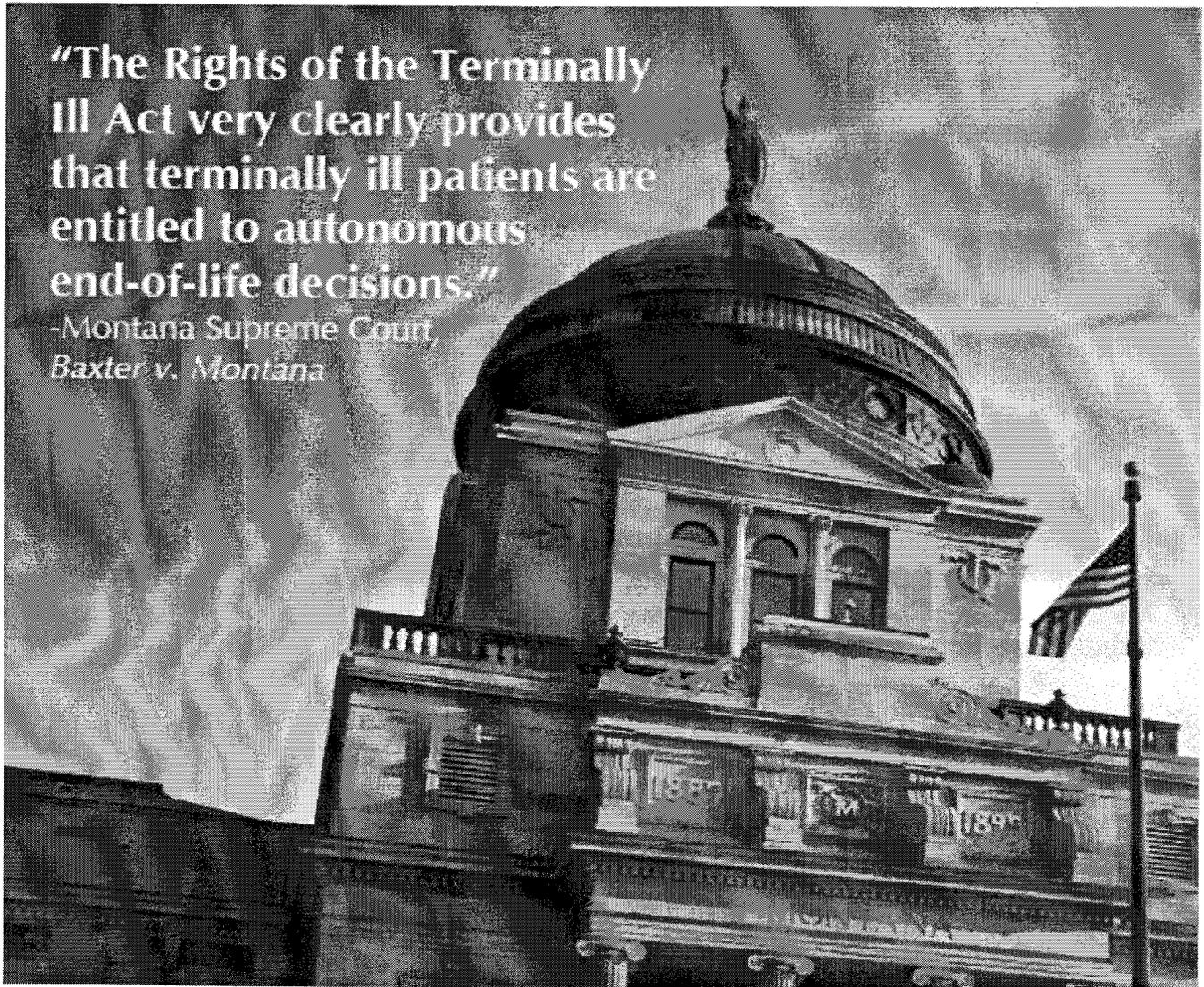
Following voters' first approval of the ODDA in 1994, a series of challenges, in court, in the legislature and through the federal government, impeded the full implementation of the law. The challenges to the ODDA all have one thing in common: effectively increasing an already chilling impact of regulatory scrutiny on physician willingness to provide aggressive pain relief. Oregon's health care community is especially watchful for threats against physicians, real and perceived, and especially vigilant in its efforts to monitor, measure, and prevent pain. Uncontrolled pain was a frequent reason given for supporting the ODDA during the public debates in and remains a reason for supporting similar laws to this day.

As Montanans debate how best to implement PAD, it is likely some will question whether it will deflect attention from providing adequate pain and symptom management. Fortunately in this matter, Oregon's experience shows the opposite. Before the implementation of the ODDA, end-of-life care in Oregon ranked high in almost all indicators. Contrary to the predictions of the law's opponents, it has remained at the top among U.S. states. Oregon's hospital death rate is among the lowest; its home death rate among the highest. Oregon's advanced planning rate is highest by a wide margin. In 2002, nearly 80% of dying Oregonians had an advance directive, and the likelihood that an advance directive would be respected was high. Oregon's end-of-life care has continued to improve under the ODDA and it can be expected the same will prove true in Montana.

Research in Oregon reveals that only one of 200 individuals who are considering a request for PAD will ever ingest medication to carry it out. Research confirms, too, that it is an anticipated fear, rather than an actual fear, that will prompt a request. Whether health care professionals personally support or oppose PAD or the concept behind it, they do not want patients to use it because end-of-life care is inadequate. It is one thing for people to access PAD because they are concerned about pain, and another for them to use it because they are experiencing pain. It is one thing to request PAD after exploring all end-of-life options, and another to use it out of ignorance of other options. It is one thing for people to use PAD because they value autonomy, and another to use it because their values are dismissed.

"The Rights of the Terminally Ill Act very clearly provides that terminally ill patients are entitled to autonomous end-of-life decisions."

*-Montana Supreme Court,
Baxter v. Montana*



We, the undersigned citizens of Montana, declare:

Our Montana Supreme Court said my end-of-life choices are between me and my doctor. If I have a terminal illness, I want to be able to talk to my doctor about all my choices including treatment options, comfort care and aid in dying.

The legislature should not put obstacles in the way of this end-of-life choice. Doctors in Montana do not need the burden of elaborate paperwork requirements in place in Oregon and Washington. Oregon reporting systems have demonstrated the safety of the practice, but continued burdensome reporting is not necessary to ensure safety.

The legislature should protect doctors from liability and sanctions if they practice within the court guidelines.

Diana Abell
Billings, MT 59101

Jesse Abell
Billings, MT 59101

Bet Ackels
Winston, MT 59647

Dale Ackels
Winston, MT 59647

M.Anne Affleck
Billings, MT 59105

Daphne Ahrendes
Bozeman, MT 59715

Rae Aickuson
Helena, MT 59601

Gloria Albright
Billings, MT 59102

Linda Albright
Butte, MT 59701

Chauncy Albro
Great Falls, MT 59405

Reiko Albro
Great Falls, MT 59405

Valerie Alonsolo
Miles City, MT 59301

Bonnie Andersen
Cascade, MT 59421

Hugo Andersen
Cascade, MT 59421

Bernese Anderson
Great Falls, MT 59404

Caroline Anderson
Anaconda, MT 59711

Charles Anderson
Butte, MT 59701

Eugene Anderson
Billings, MT 59105

M.C. Anderson
Lolo, MT 59847

Marge Anderson
Billings, MT 59105

Patricia Anderson
Butte, MT 59701

Sally Anderson
Butte, MT 59701

Vickie Anderson
Helena, MT 59601

Dorothy Antonich
Butte, MT 59701

Linda Argeris
Butte, MT 59701

Roberta Armont
Scobey, MT 59263

Allen Armstrong
Helena, MT 59602

Ellen Armstrong
Helena, MT 59602

Robyn Arntson
Ease Helena, MT 59635

Tony Arntson
Ease Helena, MT 59635

Glory Artis
Missoula, MT 59803

Gerald Ashmore
Missoula, MT 59803

Marlyn Atkins
Clancy, MT 59634

Annette Bacheller
Billings, MT 59102

Jeanne Bailey-Martin
Kremlin, MT 59532

Floyd Bain
Troy, MT 59935

Jane Bain
Troy, MT 59935

Claire Reichert Baiz
Great Falls, MT 59403

Lynda Baker
Great Falls, MT 59404

Merle Baker
Victor, MT 59875

Patsy Baker
Victor, MT 59875

Candace Balcom
Billings, MT 59101

Helen A. Ballinger
Helena, MT 59601

W.G. Ballinger
Helena, MT 59601

Robert Ballou
Missoula, MT 59802

Carol Barclay
Bozeman, MT 59715

Georgia Barker
Helena, MT 59602

Philip Barnes
Lewistown, MT 59457

Della Barrett
Missoula, MT 59802

Mark Barrett
Missoula, MT 59802

Mike Bartleson
Billings, MT 59101

Drake Barton
Helena, MT 59601

Edwin Bascom
West Yellowstone, MT 59758

Karen Basta
Great Falls, MT 59404

Martin Basta
Great Falls, MT 59404

Debbie Bauer
Kila, MT 59920

Dennis Bauer
Kila, MT 59920

Larry Beagley
Butte, MT 59701

Mark Beals
Billings, MT 59105

Patricia Beard
Hamilton, MT 59840

Connie Beatty
Helena, MT 59602

John Beatty
Helena, MT 59602

Jack Beavers
Butte, MT 59701

Marjorie Beavers
Butte, MT 59701

Al Beavis
Butte, MT 59701

J. Bruce Beckwith
Missoula, MT 59802

Donald Bedker
Great Falls, MT 59405

Gloria Bedker
Great Falls, MT 59405

Linda Been
Cascade, MT 59421

Mildred Bell
Helena, MT 59602

Leon Beluille
Helena, MT 59601

Marsha Beluille
Helena, MT 59601

Madeline Bender
Billings, MT 59106

Edna Bennett
Big Arm, MT 59910

Patricia Bentley
Billings, MT 59101

Eric Berdette
Bozeman, MT 59718

Dale & Kandy Bergland
Bozeman, MT 59718

Sherry Bergland
Bozeman, MT 59718

Renee Berglund
Missoula, MT 59803

Patty Bergquist
Great Falls, MT 59401

Stacey Bergquist
Great Falls, MT 59401

Sharon Bertelsen
Froid, MT 59226

Les Bertsch
Billings, MT 59102

Nichole Bessette
Lolo, MT 59847

Joanne Best
Billings, MT 59101

Mary Lou Bickford
Laurel, MT 59044

Donald Biehl
Belgrade, MT 59714

Carolyn Bird
Helena, MT 59601

Lynne Blackburn McDonald
Livingston, MT 59047

Andy Blair
Stevensville, MT 59870

Barbara Blomeley
Ennis, MT 59729

Bill Blomeley
Ennis, MT 59729

Donna Boeck
Billings, MT 59102

Robert Bonder
Kalispell, MT 59901

Ervin Booth
Roundup, MT 59072

Sheryl Border
Kalispell, MT 59901

John Borgreen
Great Falls, MT 59405

Sally Bostrom
Clancy, MT 59634

George Bousliman
Lewis and Clark, MT 59601

Joan Bousliman
Lewis and Clark, MT 59601

Evan Bowen
Anaconda, MT 59711

Janet Bowen
Anaconda, MT 59711

Betty Bowler
Butte, MT 59701

Sonja Box
Helena, MT 59601

David Boyer
Thompson Falls, MT 59873

Rita Bradley
Harlem, MT 59526

Paula Brady
Havre, MT 59501

Nancy Brancamp
Butte, MT 59701

Larry Breeton
Butte, MT 59701

Betty Brennan
Great Falls, MT 59404

Stella Breshears
Billings, MT 59102

Kent Brewer
Billings, MT 59105

Dorothy Brock
Helena, MT 59601

Amy Broden
Great Falls, MT 59404

Harold Brooks
Helena, MT 59602

Patrica Brooks
Helena, MT 59602

Alanson Brown
Pendroy, 59467

Bill Brown
Helena, MT 59601

Jan Brown
Helena, MT 59601

Jeannie Brown
Helena, MT 59601

Nancy Brown
Missoula, MT 59802

Nancy Browning
Missoula, MT 59802

Fran Brubaker
Choteau, MT 59422

Jean Brubaker
Terry, MT 59349

Kent Brubaker
Terry, MT 59349

Clara Bruck
Butte, MT 59701

Carol Bruderer
Helena, MT 59602

Evelyn Bruins
Missoula, MT 59802

Beverly Brumbaugh
Front Creek, MT 59874

Richard Brumbaugh
Front Creek, MT 59874

Bret Brunner
Helena, MT 59601

Susan Brunner
Helena, MT 59601

Louis Bryant
Great Falls, MT 59405

Glenna Buck
Helena, MT 59602

Clyde Buell
Helena, MT 59601

Patricia Buell
Helena, MT 59601

Karen Buley
Missoula, MT 59803

Dolores Burrese
Thompson Falls, MT 59873

Ethel Byrnes
Missoula, MT 59802

Magdalena Capalfomo
Dayton, MT 59914

Paul Cartwright
Helena, MT 59601

L Christenson-Linssen
Black Eagle, MT 59414

JoAnn Clark
Browning, MT 59417

Mary Clements
Belgrade, MT 59714

Victoria Cleveland
Helena, MT 59601

Milann Combs
Wise River, MT 59762

Frank Cooper
Helena, MT 59601

Judy Cyr
Butte, MT 59701

Judy Daluiso
Ennis, MT 59729

Laurie DeLong
Helena, MT 59624

Rob Dickey
Mt City, MT 59634

Mildred Dobeas
Great Falls, MT 59404

Lora Lee Donovan
Great Falls, MT 59405

Geri Dorvall
Whitehall, MT 59759

Douglas Drew
Butte, MT 59701

Dave Duel
East Helena, MT 59635

Shirley Elliott
Boulder, MT 59632

Carol Ellison
Helena, MT 59602

Norma Engleson
Havre, MT 59501

Dean Flanagan
Helena, MT 59602

Jackie Fowler
Great Falls, MT 59404

Barbara Franklin
Anaconda, MT 59711

Cindy Gahagan
Black Eagle, MT 59414

Debra Garcia
Sula, MT 59871

Peter Garth
Great Falls, MT 59401

Kate Gaspar
Great Falls, MT 59401

Charles Gates
Helena, MT 59602

Marnee Gates
Helena, MT 59602

Jerri Gearhart
Billings, MT 59101

Eileen Geehan
Townsend, MT 59644

Alan Gelman
Florence, MT 59833

Donna Gelman
Florence, MT 59833

Pat George
Missoula, MT 59803

Jacqueline Gibson
Helena, MT 59601

Karen Gibson
Billings, MT 59105

Barbara Gies
Billings, MT 59102

Robyn Giesecke
Bozeman, MT 59715

Christy Gilbert
Libby, MT 59923

Claudia Godlevsky
Helena, MT 59602

Danielle Godlevsky
Helena, MT 59602

Beverly Gohn
Billings, MT 59102

Myra Golden
Wolf Creek, MT 59648

Ray Golden
Wolf Creek, MT 59648

Cheryl Goodman
Alder, MT 59710

Darrel Goodman
Alder, MT 59710

Reginald Goodwin
Clancy, MT 59634

Sandra Goodwin
Clancy, MT 59634

Laura Gooley
Missoula, MT 59802

James Gore
Missoula, MT 59803

Georgiana Graf
Missoula, MT 59802

Karen Graham
Chester, MT 59522

Mary Grant
Helena, MT 59604

Barbara Granzow
Billings, MT 59101

Nora Gray
Great Falls, MT 59403

Randy Gray
Great Falls, MT 59403

Ken Graybeal
Hall, MT 59837

Nikki Graybeal
Hall, MT 59837

Gretchen Grayum
Lewis & Clark, MT 59601

Barbara Green
Helena, MT 59602

Brian Green
Helena, MT 59601

Dorothy Green
Wyola, MT 59089

Harvey Green
Anaconda, MT 59711

Tammie Green
Anaconda, MT 59711

Anne Greene
Missoula, MT 59801

Jim Greene
Lewis & Clark, MT 59601

Kara Anne Grenfeel
Corvallis, MT 59828

LaVonne Grenz
Stevensville, MT 59870

Samuel Grenz
Stevensville, MT 59870

Glenda Griffiee
Billings, MT 59101

Barb Griffith
Helena, MT 59602

Judy Griffith
Helena, MT 59602

Celia Grohmann
Stevensville, MT 59870

Kelli Anne Gruchalla
Belgrade, MT 59714

Bill Grunloh
Polson, MT 59860

Mary Gunderson
Missoula, MT 59801

Gary Gvay
Butte, MT 59701

Virginia Haar
Billings, MT 59105

Clara Hacker
Great Falls, MT 59404

Deborah Hahm
Butte, MT 59701

Graden Hahn
Helena, MT 59601

Donna Hale
Helena, MT 59601

Ed Hale
Helena, MT 59601

Auldeen Hall
Helena, MT 59601

Sherry Hall
Great Falls, MT 59405

Jerry Halter
Polson, MT 59860

Shana Hammer
Kalispell, MT 59901

Sharon Hancock
Vaughn, MT 59487

Taylor Hanrahan
Corvallis, MT 59828

Adell Hansen
Polson, MT 59860

Jay Hardman
Dupuyer, MT 59432

Bill Harrington
Billings, MT 59102

Joe An Harris
Helena, MT 59602

Myrtle Hart
Kalispell, MT 59901

Peggy Hart
Sidney, MT 59270

Terry Hatfield
Kalispell, MT 59901

Carole Hatley
Great Falls, MT 59404

Joseph Haubrich
Deer Lodge, MT 59722

Jessica Hauk
Billings, MT 59101

Marilau Hauk
Billings, MT 59101

Jeanne Hawk
Clinton, MT 59825

Danette Hawkins
Florence, MT 59833

Winston Hayden
Hamilton, MT 59840

Joyce Haynes
Wilsall, MT 59086

Barbara Hays
Billings, MT 59101

Norman Heath
Belgrade, MT 59714

Merlin Hecock
Butte, MT 59701

Sandra Hecock
Butte, MT 59701

Edna Hedges
Billings, MT 59102

Sharon Heinz
Great Falls, MT 59401

Karen Henderson
Billings, MT 59106

Sharon Henderson
Helena, MT 59602

Linde Hennessy
East Helena, MT 59635

Edward Henry
Bozeman, MT 59718

Gloria Henry
Bozeman, MT 59718

Fred Heppner
Forsyth, MT 59327

Sandra Heppner
Forsyth, MT 59327

Janet Herman
Billup, MT 59101

Tanis Hernandez
Libby, MT 59923

Bobbie Hicks
Toston, MT 59643

Robert Higgs
Billings, MT 59105

Ken High
Helena, MT 59601

Lucille Hill
Billings, MT 59105

Dana Hillyer
Helena, MT 59602

Sandy Jo Hobby
Billings, MT 59102

Annette Hoffman
Billings, MT 59105

John Holmes
Victor, MT 59875

Melinda Holom
Townsend, MT 59644

Beverly Holum
Great Falls, MT 59404

Tena Holzendorf
Townsend, MT 59644

Maxine Homer
Helena, MT 59601

Mary Beth Honsky
Missoula, MT 59808

F. Malcolm Horn
Billings, MT 59102

Lloyda Hosman
Corvallis, MT 59828

Poul Houlberg
Kalispell, MT 59901

Richard Howe
Missoula, MT 59808

Sydney Hoy
Helena, MT 59601

Sharon Hubacka
Butte, MT 59701

Ann Hudson
Clancy, MT 59634

W.C. Hull
Roberts, MT 59070

Gene Huntington
Helena, MT 59601

Julie Huntington
Helena, MT 59601

Bill Huttinger
Great Falls, MT 59404

Sandy Huttinger
Great Falls, MT 59404

Robin Ann Hutton
Helena, MT 59601

Nita Ibara
Townsend, MT 59644

Carol Izett
Whitefish, MT 59937

Craig Izett
Whitefish, MT 59937

Sue Jackson
East Helena, MT 59635

Don Jacobson
Billings, MT 59102

Phyllis Jakonoc
Helena, MT 59601

Emily James
Billings, MT 59101

Linda James
Belgrade, MT 59714

Pete Jansen
Shelby, MT 59474

Mary Janson
Butte, MT 59701

Lauri Johns
Ronan, MT 59864

Donna Johnson
Philipsburg, MT 59858

Douglas Johnson
Great Falls, MT 59404

Duane Johnson
Neihart, MT 59465

Geneva Johnson
Kalispell, MT 59901

John Johnson
Anaconda, MT 59701

K.M Johnson
Helena, MT 59624

Mary Johnson
Neihart, MT 59465

Mary Johnson
Neihart, MT 59465

Richard Johnson
Philipsburg, MT 59858

Robin Johnson
Great Falls, MT 59401

Vera Johnson
Anaconda, MT 59701

William Johnson
Columbus, MT 59019

Rick Johnston
Lewis and Clark, MT 59602

Pat Jones
Missoula, MT 59802

Karen Joyce
Helena, MT 59601

Charles Junkerman
Helena, MT 59601

Allyson Kane
Billings, MT 59106

Sheryl Katayama
Missoula, MT 59801

Charles Kaudy
Missoula, MT 59802

Larry Kaul
Billings, MT 59101

Don Kaveshan
Missoula, MT 59804

Linda Kaveshan
Missoula, MT 59804

Clare Kearns
Melena, MT 59602

Sandra Keasler
Ease Helena, MT 59635

Dorothy Keck
Bozeman, MT 59715

Bill Kehler
Billings, MT 59102

David Keller
Billings, MT 59101

Debra Keller
Billings, MT 59101

Mary Kelley
Helena, MT 59601

Carla Kelly
Kalispell, MT 59901

Jui Kelly
Marion, MT 59925

Kurt Kelly
Whitefish, MT 59937

Susan Kelly
Whitefish, MT 59937

Leslie Kemp
Helena, MT 59601

Jack Kempner
Missoula, MT 59801

Thomas Kendley
Polson, MT 59860

Deanne Kendrick
Missoula, MT 59804

Thomas Kent
Billings, MT 59106

Michael Kern
Missoula, MT 59808

Frances Kessner
Stockett, MT 59480

Robert Kessner
Stockett, MT 59480

Erland Kiddie
Miles City, MT 59301

Tiffany Kilgore
Billings, MT 59101

Janet Killam
Hamilton, MT 59840

Glenn Kimball
Corvallis, MT 59828

Paulette Kimball
Corvallis, MT 59828

Garry King
Denton, MT 59430

Kathy Kingman
Billings, MT 59102

Jerry Kinzel
Lame Deer, MT 59043

Janice Kirkpatrick
Helena, MT 59601

Stewart Kirkpatrick
Helena, MT 59601

Maureen Klaboe
Billings, MT 59106

Dorothy Klein
Dutton, MT 59433

Heidi Klein
Bozeman, MT 59715

Jonathan Klein
Ennis, MT 59729

Marianne Klein
Ennis, MT 59729

Vern Klingman
Billings, MT 59102

Bernabette Kneefe
Missoula, MT 59807

Jerry Knetzger
Chester, MT 59522

Marilyn Knox
Polson, MT 59860

Dennis Kopitzke
Forsyth, MT 59327

Bob Kortuem
De Borgia, MT 59830

Tami Kraft
Billings, MT 59106

Willard Kramlich
Great Falls, MT 59404

Joseph Kranitz
Eureka, MT 59917

Bob Kudrula
Great Falls, MT 59405

Jennifer Kuehn
Missoula, MT 59803

Jim Kuehn
Missoula, MT 59803

Robert Kuhr
Billings, MT 59102

Kenneth Kung
Billings, MT 59105

Kenneth Kunz Sr.
Billings, MT 59105

Anita Kurtz-Magee
Missoula, MT 59801

Mike Kusiak
Ronan, MT 59864

Robbin Kusiak
Ronan, MT 59864

Jerry Kustich
Twin Bridges, MT 59754

Gayle Lablanc
Butte, MT 59701

Antonette LaBrant
Corvallis, MT 59828

Chase Laine
Corvallis, MT 59828

Conner Laine
Hamilton, MT 59840

Sam Laine
Hamilton, MT 59840

Teresa Laine
Hamilton, MT 59840

Cynthia LaLiberte
Miles City, MT 59301

Lisa Lamb
Helena, MT 59602

Rick Lamb
Helena, MT 59602

Deborah Lamoreux
Helena, MT 59602

Gary Lamoreux
Helena, MT 59602

Arlie Lane
Havre, MT 59501

Sue Lane
Helena, MT 59602

Fern Lang
Helena, MT 59601

Recie Lanthier
Jefferson City, MT 59638

Dominic Laporta
Dutton, MT 59433

Karen Larsen
Butte, MT 59701

S. Scott Larsen
Butte, MT 59701

Don Larson
Seeley Lake, MT 59868

Marie Leaf
Helena, MT 59601

Colleen Lean
Butte, MT 59701

Dan Lean
Butte, MT 59701

Rhonda Ledbetter
Cut Bank, MT 59427

Denise LeDuc
Whitehall, MT 59759

Bryant Lee
Sidney, MT 59270

Caroline Lee
Sidney, MT 59270

Karole Lee
Clancy, MT 59634

Diane Leiker
Great Falls, MT 59401

Jack Leistiko
Missoula, MT 59812

Terri Leite
Billings, MT 59102

Lisa Lenhardt
Billings, MT 59106

Mark Lenhardt
Billings, MT 59106

Marilyn Lindsay-Brass
Helena, MT 59601

Alfred Lingjerde
Great Falls, MT 59405

Petra Lingjerde
Great Falls, MT 59405

Eldon Lipp
Helena, MT 59602

Virginia Lisac
Butte, MT 59701

Warren Little
Missoula, MT 59807

John Ilgenfritz
Helena, MT 59601

Kathy Lloyd
Helena, MT 59601

Amelia Locke
Missoula, MT 59801

Carol Lockwood
Polson, MT 59860

Beth Loehnen
Missoula, MT 59808

Betty Loendorf
Fromberg, MT 59029

Sonia Loeser
Bozeman, MT 59715

Diana Longdon
Helena, MT 59601

Wallace Longpre
Plains, MT 59859

Richard Looby
Havre, MT 59501

Kathleen Lorang
Helena, MT 59601

Thomas Loue
Billings, MT 59102

Betty Lovelady
Helena, MT 59601

Bill Lovelady
Helena, MT 59601

Beda Lovitt
Helena, MT 59601

Beth Lowitt
Hamilton, MT 59840

Gloria Lueck
Billings, MT 59105

Sue Luedecke
Libby, MT 59923

Gloria Lund
Billings, MT 59102

Richard Lundell
Helena, MT 59604

Everett Lynn
Helena, MT 59601

Wanda Lynn
Helena, MT 59601

Mike Lyons
Polson, MT 59860

Nancy MacDonald
Helena, MT 59624

Rod MacDonald
Helena, MT 59624

Daniel Magstadt
Billings, MT 59102

Helen Maichel
Butte, MT 59701

James Mallard
Elliston, MT 59728

Diane Maloney
Helena, MT 59602

John Maloney
Helena, MT 59602

Nancy Marks
Townsend, MT 59644

Barbara Martin
Billings, MT 59106

Glenn Mason
Glasgow, MT 59230

Deborah Massett
Helena, MT 59601

Ronald Matelich
Bozeman, MT 59715

Emily Millie Mathews
Anaconda, MT 59711

Owen Matt
Charlo, MT 59824

Phil Mawassa
Seeley Lake, MT 59868

Virginia May
Hysham, MT 59038

Walter Mayer
Whitefish, MT 59937

Avis McAlister
Great Falls, MT 59405

Ruth McArtle
Helena, MT 59601

Chris McBee
Belgrade, MT 59714

Lillian McCammon
Townsend, MT 59644

Kim McCarroll
Darby, MT 59829

Randy McCarroll
Darby, MT 59829

Bobbie McCauley
Hamilton, MT 59840

Frank McCauley
Hamilton, MT 59840

Erin McCoun
Great Falls, MT 59401

Myrla McCoy
Cinook, MT 59523

Crol McCracken
Billings, MT 59102

E McCracker
Butte, MT 59701

Phyllis McCullar
Helena, MT 59601

Mike McDonald
Missoula, MT 59802

Mike McGiboney
Great Falls, MT 59406

Nancy McGrade
Roberts, MT 59070

Alice McKenzie
Whitefish, MT 59937

Desiree McLean
Missoula, MT 59801

Colette McMahan
Great Falls, MT 59405

Joseph McMahan
Great Falls, MT 59405

Lela McMichael
Dillon, MT 59725

Georgiana McNaughton
Missoula, MT 59801

Jane Mears
Hamilton, MT 59840

Marilyn Meehan
Helena, MT 59602

Barbara Meek
Great Falls, MT 59405

Richard Meeker
Helena, MT 59601

Maxey Megrue
Billings, MT 59102

Emma Meinert
Great Falls, MT 59405

Vida Melstad
Helena, MT 59601

Michael Hill Michael Hill
Shelby, MT 59474

John Middlemiss, Sr
Trout Creek, MT 59874

Robert Mielnik
Bozeman, MT 59718

Carol Miller
Billings, MT 59102

Charlie Miller
Missoula, MT 59808

Lee Miller
Billings, MT 59102

Paul Miller
Gardiner, MT 59030

Richard Miller
Billings, MT 59102

Sally Miller
Lavina, MT 59046

Sue Miller
Hamilton, MT 59840

Susan Miller
Boulder, MT 59632

Larry Mitchell
Helena, MT 59601

Judy Moehle
St Ignatius, MT 59865

Anthony Moler
Billings, MT 59105

Jacklyn Moler
Billings, MT 59105

Carol Moore
Havre, MT 59501

May Moore
Helena, MT 59601

Terry Moore
Billings, MT 59102

Charlotte Moran
Hungry Horse, MT 59919

Bruce Morey
Hamilton, MT 59840

Sylvia Morey
Hamilton, MT 59840

Joyce Morgan
Great Falls, MT 59404

Jane Morison
Victor, MT 59875

Claudia Morley
Helena, MT 59602

Ron Morley
Helena, MT 59602

Curtis Morris
Libby, MT 59923

Mary Lou Morris
Libby, MT 59923

Diane Mosolf
Dillon, MT 59725

Marjorie Mott
Billings, MT 59102

Barbara Moy
Helena, MT 59601

John Muckey
Great Falls, MT 59404

Ellin Mulcare
Lincoln, MT 59639

Jane Muller
Townsend, MT 59644

Amy Munoz
Missoula, MT 59803

Mike Munoz
Missoula, MT 59803

Renee Murdock
Billings, MT 59105

Brooke Murphy
Victor, MT 59875

Ellyn Murphy
Bozeman, MT 59715

James Myers
Libby, MT 59923

Ella Neibauer
Billings, MT 59106

Jim Neibauer
Billings, MT 59106

Derek Neilson
Billings, MT 59108

Chari Nelson
Helena, MT 59601

Jim Nelson
Clancy, MT 59634

Norma Nevine
Miles City, MT 59301

Joan Newman
Missoula, MT 59804

Marissa Newman
Butte, MT 59701

Rod Newman
Missoula, MT 59804

Lori Newton
Billings, MT 59102

Colleen Nicholson
Seeley Lake, MT 59868

Dora Nielsen
Cascade, MT 59421

William Nielsen
Cascade, MT 59421

Martha Noack
Ennis, MT 59729

E.Terrill Nobles
Corvallis, MT 59828

Bob Nordberg
Missoula, MT 59803

Suzan Nordberg
Missoula, MT 59803

Keith Nordrum
Havre, MT 59501

Jerry Nordstrom
Billings, MT 59102

Patti Nordstrom
Billings, MT 59102

Shari Nordstrom
Red Lodge, MT 59068

Wally Nordstrom
Red Lodge, MT 59068

Bernadette Norton
Billings, MT 59101

Victoria Novak
Missoula, MT 59804

Margaret Novotny
Belgrade, MT 59714

R. Anthony Novotny
Belgrade, MT 59714

Jan Novy
Helena, MT 59601

Ronald Nutt
Belgrade, MT 59714

Sheryl Nutt
Belgrade, MT 59714

Marilyn Nyberg
Conrad, MT 59425

Vern Nyberg
Conrad, MT 59425

Lois O'Brien
Butte, MT 59701

Michael O'Brien
Butte, MT 59701

C O'connell
Missoula, MT 59801

Jennifer O'Laughlin
Helena, MT 59601

Mike O'Mary
Whitefish, MT 59937

Melanie O'Reilly
Anaconda, MT 59711

Faye Oberlituer
Polson, MT 59860

John Oberlituer
Polson, MT 59860

Brenda Old Turtle
Great Falls, MT 59403

Michael Old Turtle
Great Falls, MT 59403

Lisa Olmstead
Colstrip, MT 59323

Robert Olson
Livingston, MT 59047

G. Nannette Oltrogge
Red Lodge, MT 59068

Elaine Ooley
Billings, MT 59102

Naomi Orestad
Miles City, MT 59301

Kevin Orrino
Anaconda, MT 59711

Colleen Owen
Helena, MT 59601

Tina Oxley
Billings, MT 59101

Barbara Paharik
Lakeside, MT 59922

John Paharik
Lakeside, MT 59922

Cecilia Palin
Hamilton, MT 59840

Sallie Palmer
Roundup, MT 59072

Geri Pankowski
Great Falls, MT 59405

Paula Parcheta
Missoula, MT 59801

Tom Parcheta
Missoula, MT 59801

Shirlee Parini
Butte, MT 59701

Charles Park
Libby, MT 59923

Lynn Park
Libby, MT 59923

Sandra Parocai
Dupuyer, MT 59432

Noor Parwana
Butte, MT 59701

Lee Pate
Great Falls, MT 59404

Dee Pattinson
Dewey, MT 59727

Matthew Pattinson
Dewey, MT 59727

Martha Pauly
Helena, MT 59601

Louis Pavek
Ashland, MT 59003

Bonnie Paynich
Great Falls, MT 59401

Susan Peacock
Billings, MT 59105

Les Pederson
Helena, MT 59601

Ruth Pagar
Big Sandy, MT 59520

Susan Pencoske
Great Falls, MT 59405

Linda Pepper
Libby, MT 59923

Arliss Pereau
Billings, MT 59105

John Pereau
Billings, MT 59105

Kay Persons
East Helena, MT 59635

Dawn Peterson
Anaconda, MT 59711

Marquita Peterson
Libby, MT 59923

Larry Petty
Helena, MT 59602

Hazel Pflueger
Florence, MT 59833

Drury Phebus
Baker, MT 59313

Donald Pickering
Willow Creek, MT 59760

Mary Lou Pickering
Willow Creek, MT 59760

Lori Pike
Great Falls, MT 59401

Beverly Pinnick
Billings, MT 59102

Charles Pinnick
Billings, MT 59102

Linda Pittman
Polebridge, MT 59928

Paula Pival
Libby, MT 59923

Judy Plaza
Helena, MT 59601

Liberty Plouffe
Pablo, MT 59855

Dan Poland
Anaconda, MT 59711

Betty Poor
Helena, MT 59601

Dotty Porter
Lincoln, MT 59639

Rick Porter
Lincoln, MT 59639

Sheri Postma
Missoula, MT 59802

Sheri Postma
Missoula, MT 59802

Steve Postma
Missoula, MT 59802

Bonnie Potter
Roundup, MT 59072

Anita Power
Havre, MT 59501

Lido Preston
Missoula, MT 59806

Ray Price
Miles City, MT 59301

Marsha Prince
Lavina, MT 59046

Lisa Printy-Warren
Butte, MT 59701

Madeline Ragland
Fort Benton, MT 59442

Betty Ratiff
Fairfield, MT 59436

Robert Ratiff
Fairfield, MT 59436

Jay Read
Helena, MT 59602

Karen Redman
Anaconda, MT 59711

Kim Reed
Montana City, MT 59634

Rick Reed
Montana City, MT 59634

Shirley Reed
Billings, MT 59102

Frank Reese
Butte, MT 59701

Alvina Reidy
Missoula, MT 59803

Patty Reineke
Missoula, MT 59802

Roy Reineke
Missoula, MT 59802

Phyllis Reno
Billings, MT 59101

Shirley Reynolds
Great Falls, MT 59404

John Richards
Missoula, MT 59803

Sharon Richey
Billings, MT 59106

Jane Richmond
Kalispell, MT 59901

Irene Ricker
Billings, MT 59105

Sherri Rickman
Helena, MT 59601

Dale Riggin
Fairfield, MT 59436

Janice Riggin
Fairfield, MT 59436

Charlotte Ringleb
Huson, MT 59846

Richard Ringleb
Huson, MT 59846

Debra Rivey
Missoula, MT 59803

Kay Roach
Hamilton, MT 59840

Tony Roach
Hamilton, MT 59840

W.E. Roberson
Vaughn, MT 59487

Beryl Roberts
Dillon, MT 59725

Janine Roberts
Gallatin Gateway, MT 59730

David Robertson
Billings, MT 59101

Dorothy Robertson
Billings, MT 59101

Harvey Robertson
Butte, MT 59701

Russell Robillard
Billings, MT 59105

Ruthy Robillard
Billings, MT 59105

Beverly Robinson
Helena, MT 59601

Loretta Robinson
Missoula, MT 59804

Freda Roef
Billings, MT 59106

Isabelle Rom
Roundup, MT 59072

Rhonda Roma
Corvallis, MT 59828

Edward Romero
Billings, MT 59101

Catherine Rosa
Butte, MT 59701

Marilyn Ross
Missoula, MT 59802

Peter Rosten
Darby, MT 59829

Jo Ann Roullier
Helena, MT 59602

Renee Roullier-Madrigal
Ronan, MT 59864

Joanne Rubie
Missoula, MT 59802

Evelene Rucinsky
Havre, MT 59501

David Rusoff
Helena, MT 59601

Kelly Rusoff
Helena, MT 59601

Winfield Russell
Lame Deer, MT 59043

Norine Ruzevich
Helena, MT 59601

Judi Saarinen
Boulder, MT 59632

Sandra Salisbury
Deer Lodge, MT 59722

Pam Samp Diede
Joliet, MT 59041

Pearl Sams
Helena, MT 59601

Raymond Sams
Helena, MT 59601

Mary Jo Samuelson
Kalispell, MT 59901

Teri Sanddal
Manhattan, MT 59741

Linda Sandman
Helena, MT 59601

John Sandor
Kalispell, MT 59901

Clare Sands
Lakeside, MT 59922

Elizabeth Saneagenhauser
Lakeside, MT 59922

P Sangster
Bozeman, MT 59718

Phyllis Sanguine
Kalispell, MT 59901

Dennis Sattler
Kalispell, MT 59901

Lynda Saul
Helena, MT 59601

Fran Saunders
Kalispell, MT 59903

Alfred Sazonick
Butte, MT 59701

Terri Schaak
Billings, MT 59101

Linda Schalkham
Clancy, MT 59634

Tim Scheuer
Helena, MT 59602

Cheryl Schmidt
Helena, MT 59602

Mary Schmidt
Victor, MT 59875

Robert Schmidt
Victor, MT 59875

Mary Schoendaller
Great Falls, MT 59404

Donnette Schoepke
Stevensville, MT 59870

Ellen Schouten
Lincoln, MT 59639

John Schouten
Lincoln, MT 59639

Arthur Schulkowsky
Great Falls, MT 59404

John Scott
Vaughn, MT 59487

Lauerna Scott
Vaughn, MT 59487

Jacque Scriver
Hamilton, MT 59840

Dean Seifert
Miles City, MT 59301

Sheila Seifert
Miles City, MT 59301

Delbert Sell
Laurel, MT 59044

James Senecal
Avon, MT 59713

June Severns
Hamilton, MT 59840

Jim Sevores
Missoula, MT 59804

Gary Shanks
Havre, MT 59501

Vicki Shanks
Havre, MT 59501

Patricia Sharp
Helena, MT 59601

Connie Shea
Butte, MT 59701

Theresa Shea
Whitehall, MT 59759

Joseph Shellenberger
Missoula, MT 59808

Louella Shellenberger
Missoula, MT 59808

Georgia Sheridan
Butte, MT 59701

Richard Sheridan
Butte, MT 59701

Mary Sherlock
Helena, MT 59601

Anna Sherman
Butte, MT 59701

Ann Shesne
Billings, MT 59102

S.Kenneth Shesne
Billings, MT 59102

Andrew Shirey
Geyser, MT 59447

Tom Shively
Helena, MT 59601

Earl Sholey
Butte, MT 59701

Sandra Shull
Helena, MT 59601

Pat Sicotte
Helena, MT 59601

Emma Silva
Swan Lake, MT 59911

Tony Silva
Swan Lake, MT 59911

Judy Silver
Avon, MT 59405

Sue Silverberg
Missoula, MT 59801

Karen Simons
Missoula, MT 59807

Marla Simpson
Hamilton, MT 59840

Wayne Skaggs
Darby, MT 59829

Rosana Skelton
Helena, MT 59601

Elizabeth Skinner
Helena, MT 59601

Earl Slade
Malta, MT 59538

Frances Slade
Malta, MT 59538

Dorothy Slapnik
Great Falls, MT 59405

Rhodetta Sloan
Helena, MT 59602

Jerry Smidt
Butte, MT 59701

Mary Smidt
Butte, MT 59701

Bonnie Smith
Missoula, MT 59808

Bruce Smith
Sheridan, MT 59749

Bruce Smith
Sheridan, MT 59749

Catherine Smith
Helena, MT 59604

David Smith
Helena, MT 59601

Diana Smith
Sheridan, MT 59749

Jennifer Smith
Stevensville, MT 59870

Lucille Smith
Polson, MT 59860

Ronald Smith
Stevensville, MT 59870

Henrietta Smithson
Billings, MT 59105

Thomas Smithson
Billings, MT 59105

Lee Snow
Anaconda, MT 59711

Margaret Snow
Anaconda, MT 59711

Marina Snow
Missoula, MT 59801

John Sobrepena
Bozeman, MT 59715

Kathy Sobrepena
Bozeman, MT 59715

Kathy Sobrepena
Bozeman, MT 59715

Connie Sorrels
Helena, MT 59601

Dennis Sorrels
Helena, MT 59601

Suzanne South
Miles City, MT 59301

Mary Southey
Columbia Falls, MT 59912

James Southworth
Billings, MT 59102

Tim Speyer
Helena, MT 59601

Merle Spogis
Bozeman, MT 59713

Carole Spolar
Havre, MT 59501

Gordon Spring
Missoula, MT 59803

Patsy Spring
Missoula, MT 59803

Betty St. Clair
East Helena, MT 59635

Lynn Starkel
Polson, MT 59860

Suzanne Steffans
Belfry, MT 59008

Cheryl Stern
Libby, MT 59923

Lori Stetzel
Superior, MT 59872

Kalmar Stevenson
Anaconda, MT 59711

Shawna Stevenson
Butte, MT 59701

Jo Anne Stewart
Lolo, MT 59847

Lee Stewart
Billings, MT 59106

Mary Stiegler
Missoula, MT 59801

Christy Stiles
Helena, MT 59601

Craig Stiles
Helena, MT 59601

Nadine Stillings
Butte, MT 59701

Chris Stinauer
Kalispell, MT 59901

Nikki Stinauer
Kalispell, MT 59901

Dolores Stock
Hamilton, MT 59840

Robert Stock
Hamilton, MT 59840

Grace Stoebe
Billings, MT 59102

Julieanne Stoner
East Helena, MT 59635

Jim Storkson
Great Falls, MT 59403

Melvin Strauch
Billings, MT 59102

Gary Strever
Billings, MT 59101

Hazel Stull
Great Falls, MT 59405

Erna Sudbrock
Lewiston, MT 59457

Eloise Sundberg
Butte, MT 59701

Carrol Swanson
Great Falls, MT 59404

Colleen Swanson
Billings, MT 59106

Jerry Swanson
Billings, MT 59106

Mary Swenson
Chinook, MT 59523

Joyce Swingendorf
Missoula, MT 59803

Marla Synness
Helena, MT 59601

James Talifson
Great Falls, MT 59401

Lauren Tallant
Eureka, MT 59917

Harriet Tammainga
Bozeman, MT 59715

Anthony Tangaro
Bozeman, MT 59715

Syndi Tangaro
Bozeman, MT 59715

Dennis Tate
Missoula, MT 59803

Barbara Teberg
Great Falls, MT 59401

Ruth Teddy
Great Falls, MT 59405

Gary Thaut
Deer Lodge, MT 59722

Martha Thayer
Missoula, MT 59801

Paula Thiede

Bill Thomas
Elliston, MT 59728

Gary Thomas
Billings, MT 59102

Joyce Thomas
Great Falls, MT 59405

David Thompson
Hamilton, MT 59840

Gayla Thompson
Hamilton, MT 59840

Joel Thompson
Helena, MT 59601

Lisa Thompson
Helena, MT 59601

Paul Thompson
Missoula, MT 59801

Roberta Thompson
Missoula, MT 59801

Rod Thompson
Vaughn, MT 59407

Ruth Thormahlen
Billings, MT 59101

Terry Thormahlen
Billings, MT 59101

Mary Ann Thorsen
Bozeman, MT 59718

Helen Thrasher
Stevensville, MT 59870

Terry Tietge
Victor, MT 59875

Shauna Tinker
Lavina, MT 59046

Pat Tinnegan
Butte, MT 59701

Ethel Tippie
Kalispell, MT 59901

Dorothy Tode
Helena, MT 59601

Chuck Tolson
Clancy, MT 59634

Vanessa Tolson
Clancy, MT 59634

Maeiej Tomaszewski
Billings, MT 59106

Nina Tomaszewski
Billings, MT 59106

Kristine Tomlinson
Kalispell, MT 59901

Roger Toren
Conrad, MT 59425

Judy Trevor
Helena, MT 59602

Mike Trevor
Helena, MT 59602

Jim Tromly
Billings, MT 59105

Marion Trueax
Butte, MT 59701

Diedre Turner
Helena, MT 59601

Jo Ann Turner
Kalispell, MT 59901

Karen Turner
Troy, MT 59935

William Turner
Troy, MT 59935

Barba Tuss
Bozeman, MT 59718

Marion Tuss
Great Falls, MT 59405

Everett Tyrrel
Havre, MT 59501

Harvey Urness
Helena, MT

Joyce Urness
Helena, MT

Steven Van Blaricom
Helena, MT 59601

Cassandra Van Hoorn
Bozeman, MT 59715

Lois Van Schoyck
Billings, MT 59102

Eris Vejtasa
Circle, MT 59125

Ed Venetz
Great Falls, MT 59401

Elaine Villeburn
Great Falls, MT 59405

Bill Visser
Helena, MT 59601

Stacie Visser
Helena, MT 59601

Joyce Vogel
Hamilton, MT 59840

Martha Vogt
Lewis & Clark, MT 59601

Kristine Vosberg
Hamilton, MT 59840

Clara Wacker
Great Falls, MT 59404

Frances Wade
Big Fork, MT 59911

Audley Waiton
Bozeman, MT 59718

Giles Walker
Helena, MT 59602

Jacqueline Walker
Missoula, MT 59801

David Wall
Polson, MT 59860

Lovella Wall
Plentywood, MT 59254

Terrence Wall
Polson, MT 59860

Gordon Wallace
Billings, MT 59102

Deborah Walter
East Helena, MT 59635

Carol Walund
Butte, MT 59701

Tom Walund
Butte, MT 59701

Carol Waniata
Helena, MT 59601

Dale Waniata
Helena, MT 59601

Sandi Ward
Anaconda, MT 59711

Pat Warden
Billings, MT 59101

Helen Warehime
Cascade, MT 59421

Edith Wark
Stevensville, MT 59870

Sandra Watson
Billings, MT 59102

Jolene Weamer
Helena, MT 59601

Mozelle Weast
Absarokee, MT 59001

Bob Weaton
Missoula, MT 59804

Roxann Weaver
Kalispell, MT 59901

Barbara Webb
Anaconda, MT 59711

Marilyn Weber
Billings, MT 59106

Amy Weckworth
Great Falls, MT 59405

Kate Weiss
Bozeman, MT 59715

Carol Werner
Ronan, MT 59804

Kirwin Werner
Ronan, MT 59804

LeRoy Wesche
Great Falls, MT 59404

Phyllis Wesche
Great Falls, MT 59404

Jennie Marvin White
Lewis & Clark, MT 59602

Sharon Whitten
Polson, MT 59860

Stephanie Wier
Great Falls, MT 59404

Kathleen Wilcox
Billings, MT 59106

Carol Williams
Helena, MT 59604

Donald Williams
Virginia City, MT 59755

Peggy Williams
Missoula, MT 59803

Ron Williams
Cascade, MT 59421

Sally Williams Smith
Dillon, MT 59725

Darlene Wilson
Butte, MT 59701

Kathy Ann Wilson
Bonner, MT 59823

Anna Wiltzen
Lolo, MT 59847

John Wiltzen
Lolo, MT 59847

Suzanne Wistrom
Stanford, MT 59479

Susan Wolcott
Helena, MT 59601

Lela Wolenetz
Helena, MT 59624

Karl Wolf
Townsend, MT 59644

Dinah Woods
Great Falls, MT 59405

W. Dewey Worth
Stevensville, MT 59870

L. Wayne Yankoff
Helena, MT 59601

Carla Zahn
Butte, MT 59701

Joe Zderick
Butte, MT 59701

Katie Zderick
Butte, MT 59701

Al Zolver
Bozeman, MT 59715

Gene Zook
Missoula, MT 59802