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The constitutionality of physician-assisted suicide: the cases and issues before the US Supreme Court

The right-to-die issue has been fervently debated ever since the mid-1970s, when the parents of Karen Ann Quinlan asked that their daughter (who was in a persistent vegetative state as a result of a car accident) be removed from life support equipment. In 1990, the US Supreme Court ruled that a competent individual had a constitutional right to refuse medical treatment, implying a right to refuse life-sustaining treatment.

But the legality of physician-assisted suicide—in which a physician assists a patient's active efforts to end his or her own life — has proved even more controversial, as illustrated by the fierce debate over the actions of Jack Kevorkian, who has assisted in the suicides of 38 people.

Now the issue has reached the US Supreme Court, which in October 1996 agreed to decide on the constitutionality of physician-assisted suicide by reviewing two appellate court decisions, both of which struck down state statutes that prohibit assisted suicide.

How the Court decides will be one of the most important rulings of the current Supreme Court session, and could spur further legal debate for decades.

THE CONSTITUTIONAL ISSUES

Although the legal, ethical, social, and philosophical issues surrounding physician-assisted suicide are many, the Supreme Court will consider the case on constitutional grounds. There are two basic constitutional principles the Court will consider in evaluating the cases: due process and equal protection. Each of these concepts has its roots in section 1 of the 14th Amendment to the US Constitution, which provides, in part "...nor shall any State deprive any person of life, liberty, or property without due process of law; nor...deny to any person within its juristiction the equal protection of the laws."

Is access to physician-assisted suicide a "liberty" guaranteed by the due-process clause?

Courts have identified very few rights that are so fundamental that they qualify as "liberties" protected by the 14th Amendment. This list of fundamental liberties includes those in the Bill of Rights (e.g. freedom of speech, freedom

of religion) and some that are unwritten, such as the right to vote, the right to travel between states, and the right to privacy.

Privacy encompasses personal decisions regarding marriage, procreation, family relationships, and abortion. Fundamental liberties are those with deep national roots; if they are sacrificed, neither liberty nor justice would exist.

The court must decide if access to physician-assisted suicide should be added to the list of fundamental liberties.

Does outlawing physician-assisted suicide deny equal protection of the laws?

The 14th Amendment also requires that state laws treat all persons who are similarly situated in a similar manner. Different treatment of two different groups of persons is lawful only if the difference is rationally related to a legitimate state interest, eg, the preservation of life.

Proponents of physician-assisted suicide argue that if the practice is illegal, terminally ill people who are not connected to life support systems are being treated differently than terminally ill people who are connected to life support systems, since the latter patients can legally hasten their death by ordering that they be disconnected from the life support equipment.

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THE CASES

The Supreme Court will consider two cases, one against the state of Washington and the other against New York state, in which US courts of appeals ruled that state laws banning assisted suicide were unconstitutional when applied to physicians who prescribed lethal medication for terminally ill, competent adults who wished to end their lives. The two appellate courts used different legal rationales in deciding the cases—one ruling that physician-assisted suicide was a "liberty," the other that it was not a liberty, but that laws banning the practice violate the equal-protection clause of the Constitution.

The states appealed the decisions, and the Supreme Court blocked the rulings and agreed to hear the cases.

Compassion in Dying v Washington

The first case was brought by Compassion in Dying, an activist group composed of retirees, AIDS activists, and physicians who counsel persons who are terminally ill. The group sued on behalf of three patients to overturn a Washington statute that made assisting in a suicide a felony.

One patient was a 69-year-old female pediatrician with metastatic cancer. She suffered from pain that could not be fully alleviated, and from swollen legs, bedsores, anorexia, nausea, vomiting, impaired vision, fecal incontinence, and weakness. The second patient was a 44-year-old male artist in the terminal stages of AIDS. He had experienced two bouts of pneumonia, chronic severe skin and sinus infections, and grand mal seizures, and had lost 70% of his vision to cytomegalovirus retinitis. This patient was especially cognizant of the suffering imposed by a lingering illness, as he had cared for his long-term companion who died of AIDS. The third plaintiff was a 69-year-old salesman with emphysema and heart failure, who required morphine to calm panic reactions associated with feelings of suffocation.

On March 6, 1996, the Ninth Circuit Court of Appeals ruled that patients have a liberty interest in choosing how and when they die, and that the Washington law banning physician-assisted suicide deprived them of due process. Having found a constitutional basis for physician-assisted suicide, the court did not rule on the equal-protection issue.

Quill v Vacco

In this case the plaintiffs were three physicians and three patients (two dying of AIDS and one of cancer) who sued to overturn a New York state law prohibiting physicians from prescribing drugs to hasten a terminally ill patient's death.

On April 2, 1996, the Second Circuit Court of Appeals in New York City agreed with the plaintiffs. But unlike the Ninth Circuit Court, the Second Circuit Court of

Appeals held that patients did not have a "liberty" interest in physician-assisted suicide. Rather, it ruled that the New York law violated the equal-protection clause, since terminally ill patients attached to life support equipment could hasten their death, while those who were not connected to such equipment had no option to end their suffering.

THE ARGUMENTS

Opponents of physician-assisted suicide will argue before the US Supreme Court that the practice is the first step on a slippery slope to state-sanctioned homicide, in which step one is giving a patient pills, step two is giving lethal injections to terminally ill patients unable to swallow, and step three is giving lethal injections to people who are not terminally ill, such as those in the early stages of Alzheimer's disease.

Proponents will argue that the ability to choose the time and method of one's death is intimate and personal and should be a fundamental right. Otherwise, they will argue, many terminally ill adults will take matters into their own hands, with tragic consequences, such as botched suicide attempts or prosecution of an assisting spouse.

THE US SUPREME COURT'S DILEMMA

The Supreme Court could reverse both cases, upholding the state laws against physician-assisted suicide, or it could overturn the laws, or it could find a middle ground.

Should the Court uphold the legality of physician-assisted suicide, the legal rationale it uses—due process or equal protection—could determine how much authority states would have to regulate the practice. If the Court affirms the rulings of the appellate courts and legalizes physician-assisted suicide, it may spend many years defining the permissible and impermissible boundaries of the new constitutional right. ■

SUGGESTED READING

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