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Right to Die

Introduction

Thesis statement

The choice to end one's life is not one that should be made lightly; at the same time, the right to make the choice should not be regulated by government authorities who do not take into account an individual's wishes. Currently in the United States only Oregon, Vermont and Washington have passed laws that allow for the practice of physician-assisted death. Montana has also passed a law that allows for physicians to prescribe medication that terminally ill may use to end their life. Governor Jerry Brown of California recently passed a bill that will allow for physician-assisted suicide in California. This new law will become effective in January 2016.

The court system in the United States has confirmed the right to refuse medical treatment as part of the right of privacy protected by both state and federal constitutions. The right to go beyond simply refusing medical treatment and make a choice to end one's life should also be recognized as part of both the Due Process Clause as well as the Equal Protection Clause of the Fourteenth Amendment; it is a fundamental right to decide as shown by the State of Oregon's enactment of the Oregon Death with Dignity Act in 1994.

Scope of the Paper

This paper will discuss the right of all individuals to make a determination to end their life with assistance from a physician as needed. In the states that allow physician-assisted

suicide a competent, terminally ill individual has the right to end their life with the assistance of a licensed physician. This right is not tied to the desire of society to rid itself of those who are sick due to any imperfection; it is, rather, allowing a terminally ill patient to end their life if they have six or less months to live. In the same way that a woman seeks a physician to assist with terminating a pregnancy; the terminally ill should have the right to seek a physician to assist with terminating their own life; this right should be guaranteed to all as a liberty protected by the Fourteenth Amendment of the Constitution. In the landmark case of *Roe v. Wade,* [1] the court relied upon the decision cited in *Griswold v. Connecticut* based upon the Due Process Clause of the Fourteenth Amendment of the Constitution; this line of reasoning clearly demonstrates that the terminally ill have the same rights as set forth for those requesting an abortion.

Cases detailing views both in favor of and against the right to die will be discussed, a review of the states that have legalized physician assisted suicide, the right of the states to interpret the law, and why this right should be protected by the Fourteenth Amendment. An examination of the Oregon Death with Dignity Act (DDA) will demonstrate that the legalization of physician assisted suicide provides a safe and regulated atmosphere for those who make the choice to end their life. Social and Cultural aspects of the right-to-die issue will also be reviewed. This paper will not discuss euthanasia of disabled or elderly individuals that have not made their wishes known to their physicians.

Right of Individuals to Choose to Die

Making the decision to end one's life is a private choice and one in which society should not have a say in or a concern. The right-to-die using the means of physician-assisted suicide is a choice that should be available at the request of an informed and competent individual. Not only should patients have the right to abstain from medical treatment, referred to as "passive

[1] Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147, 1973 U.S. LEXIS 159 (U.S. 1973)

euthanasia" which is currently legal, but if they have a terminal condition they should have the right to seek out the assistance of a physician to aid in ending their life with as little pain as possible.

Individuals have a right to liberty, freedom of choice, and self-determination as set forth in the Fourteenth amendment to the United States Constitution which is the basis for the plea for the right-to-die movement. The voluntary choice between life and death is a basic human right which the government should have no right to legislate.

Death with Dignity

Those who make the decision to die do not do so without contemplation, and research has determined that many make the decision for similar reasons. "In Oregon, at least eight in 10 say they made the choice to end their lives because they fear losing autonomy, losing dignity, or that they'll be less able to participate in activities that make life enjoyable. Less than 3 percent in Oregon said they were concerned about the financial implications of treatment." [2]

Government Status Regarding Right-to-Die

State Cases and Laws

There are currently four states that have laws allowing physician-assisted suicide. Oregon's Death with Dignity law went into effect in 1994 with the passage of Measure 16 in the general election of November 8, 1994, but was held up until 1997, followed by the state of Washington, which passed a law that became effective in March 2009. Vermont was the final state that approved a law in 2013, until 2015 when California's Governor Jerry Brown signed landmark legislation on October 5, 2015 that allows terminally ill patients to make the decision to end their lives. The California law will take effect in 2016.

[2] Millman, "Beyond Brittany Maynard: Who is choosing to die with dignity," 30, Oct. 2014 <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/10/30/beyond-brittany-maynard-who-is-choosing-to-die-with-dignity/>

In 1994 Oregon enacted the Oregon Death with Dignity Act (ODWDA) through a ballot measure; on October 27, 1997 the injunction which delayed implementation of the Act was lifted. This measure allowed Oregon to become the first state to legalize assisted suicide, by allowing "terminally-ill Oregonians to end their lives through the voluntary self-administration of lethal medications, expressly prescribed by a physician for that purpose." [3] The act exempts from civil or criminal liability those state-licensed physicians who, following the rules and safeguards set out in the ODWDA, provide or prescribe a lethal dose of drugs upon the request of a terminally ill patient.

To participate in the act one must be a resident of the State, at least 18 years of age, capable of making and communicating understanding of health care decisions, and have been diagnosed with a terminal illness and have six months or less to live. Physicians are not required to participate in the act; participation by physicians is voluntary.

The process of obtaining a prescription from a participating physician includes the following steps:

- Patient must make two oral requested to the physician, separated by at least 15 days.
- Patient must provide a written request, signed in the presence of two witnesses, to the physician.
- Physician and another consulting physician must confirm patient's diagnosis and prognosis.
- Physician and another consulting physician must determine that the patient is capable of making and communicating health care decisions for him/herself.

[3] Oregon Health Authority Public Health, Oregon Revised Statute, 14, May 2015 <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx>

- Physician may refer patient for a psychological examination if physician believe the patient's judgment is impaired.
- Physician must provide patient with information regarding feasible alternatives.
- Physician must request, but not require, patient to notify their next of kin of the prescription request. The request may be rescinded at any time in any manner. The physician will also provide another opportunity for the patient to rescind the request at the end of the 15-day waiting period following the initial request.[4]

In December of 2009 the Montana Supreme Court determined, by a ruling of 5-2, that a physician would not be held liable under their state law for providing a terminal patient with drugs that the patient administered himself to end his own life. While the court did not address doctor assisted suicide it did provide the basis for the provision of end of life drugs. State Justice John Warner, in an opinion concurring with the majority in the case, stated "The state has failed to explain what interest the government has in forcing a competent, incurably ill person who is going through prolonged suffering and slow, excruciating physical deterioration to hang on to the last possible moment," he wrote. "Moreover, the state has not come close to showing that it has any interest, much less a 'compelling' one, in usurping a competent, incurably ill individual's autonomous decision to obtain a licensed physician's assistance in dying so that she might die with the same human dignity with which she was born."[5] While Montana has now established that a physician may provide aid to a terminally ill patient they have not established a law as Oregon, Washington, and Vermont have done by creating Death with Dignity bills.

Federal rulings

[4] Oregon Health Authority Public Health, Oregon Revised Statute, 14, May 2015, supra
[5] Baxter v. State, 2009 MT 449, 354 Mont. 234, 224 P.3d 1211, 2009 Mont. LEXIS 695 (Mont. 2009)

In the case of *Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261 (U.S. 1990)* the Supreme Court held that passive euthanasia was legal but only for competent adults or those who were incompetent but had previously prepared a living will stating their wishes. [6] The Cruzan case did not provide support for active euthanasia or physician-assisted suicide yet set the stage for the court battles to come.

In the case of *Washington v. Glucksberg, 521 U.S. 702 (1997)* the court determined that Washington's prohibition against assisting a suicide did not offend the Fourteenth Amendment of the United States Constitution. The court ruled that the right to "assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause."[7] The lengthy process ended by determining that Washington's ban on assisted suicide was rational and that assisted suicide was not a fundamental liberty interest. Interestingly less than a decade later in 2008 the voters of Washington State would approve the Washington Death with Dignity Act by a margin of 58% to 42%. This act established the guidelines to be used when working with a physician to end one's life.

The case of *Oregon v. Ashcroft, 368 F.3d 1118 (2004)* challenged an interpretive rule that was issued by then Attorney General John Ashcroft which declared that "physician assisted suicide violates the Controlled Substances Act of 1970…"[8] This was termed the Ashcroft directive and in effect criminalized the conduct that was authorized by Oregon's Death with Dignity Act. The court determined that "the Ashcroft directive is unlawful and unenforceable because it violates the plain language of the CSA, contravenes Congress' express legislative

[6] Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 110 S. Ct. 2841, 111 L. Ed. 2d 224, 1990 U.S. LEXIS 3301, 58 U.S.L.W. 4916 (U.S. 1990)
[7] Wash. v. Glucksberg, 521 U.S. 702, 117 S. Ct. 2258, 117 S. Ct. 2302, 138 L. Ed. 2d 772, 1997 U.S. LEXIS 4039, 65 U.S.L.W. 4669, 97 Cal. Daily Op. Service 5008, 97 Daily Journal DAR 8150, 11 Fla. L. Weekly Fed. S 190 (U.S. 1997)
[8] Oregon v. Ashcroft, 368 F.3d 1118, 2004 U.S. App. LEXIS 10349 (9th Cir. Or. 2004)

intent, and oversteps the bounds of the Attorney General's statutory authority."[9] By attempting to place additional limitations on physicians through the regulation of controlled substances under the CSA Ashcroft was in effect nullifying Oregon's Death with Dignity Act which was enacted in November 1997 and authorized physicians to prescribe lethal doses of controlled substances, according to specific procedures, to terminally ill in the state of Oregon. In 2006 the Supreme Court decided by a vote of 6-3 in favor, that the U.S. attorney general could not prosecute doctors that assisted in suicides under the Oregon Death with Dignity Act.

Court Cases

In the case of *Bouvia v.Los Angeles County, 179 Cal.App.3d 1127 (1986)* The California Court of Appeals heard a case in which the petitioner, Elizabeth Bouvia, fought for the right to refuse medical treatment from a public hospital. The court determined that Bouvia did have the right to make this determination and issued a writ of mandate granting Bouvia's request for a preliminary injunction to have the medical treatment ceased.[10] Of note were the comments by Justice J. Compton who concurred with the decision of the court and yet wished to expand on the topic. Compton stated: "The right to die is an integral part of our right to control our own destinies so long as the rights of others are not affected. That right should, in my opinion, include the ability to enlist assistance from others, including the medical profession, in making death as painless and quick as possible."[11] Compton expounded the belief that all individuals have the right to effectuate this very private decision.

In the case of *Vacco v. Quill et al. (1997)* a contingent of physicians from New York petitioned the court on the basis that as New York permits a "competent person to refuse life-

[9] Oregon v. Ashcroft, 368 F.3d 1118, 2004, supra
[10] Bouvia v. Superior Court, 179 Cal. App. 3d 1127 - Cal: Court of Appeal, 2nd Appellate Dist., 2nd Div. 1986
[11] Bouvia v. Superior Court, 179 Cal.App.3d 1127 (1986), supra

sustaining medical treatment, and because the refusal of such treatment is 'essentially the same thing' as physician-assisted suicide, New York's assisted-suicide ban violates the Equal Protection Clause."[12] The court ruled against the physicians and determined the State of New York's prohibition on assisted suicide did not violate the Equal Protection Clause of the Fourteenth Amendment. While the court did find that States were moved to protect and promote patients' dignity at the end of life, they remained opposed to physician-assisted suicide.

Social and Cultural Opinions

Church/Religious and Medical Profession Views

One of the fiercest opponents of the right-to-die movement is the Catholic Church, whose bishops have called suicide a "grave offense against love of self, one that also breaks the bonds of love and solidarity with family, friends, and God."[13] There has also been a strong reaction from the American Medical Association with the organization saying that "physician-assisted suicide is fundamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks."[14]

Public Views

One of the most publicized cases to occur recently has been that of Brittany Maynard, a 29-year old woman who suffered from terminal brain cancer. Maynard moved to Oregon in 2014 to facilitate legally ending her life; she made a decision to move so that she could choose death on her own terms. Oregon is one of three states that has laws that allow physicians to prescribe terminally ill patients with medications to provide them with the autonomy to choose when they die. Ms. Maynard began a campaign to bring the choice to die with dignity to the

[12] Vacco v. Quill, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834, 1997 U.S. LEXIS 4038, 65 U.S.L.W. 4695, 97 Cal. Daily Op. Service 5027, 97 Daily Journal DAR 8122, 11 Fla. L. Weekly Fed. S 174 (U.S. 1997)
[13] Rosenwald, "NPR host Diane Rehm emerges as key force in the right-to-die debate," 14, Feb. 2015 < http://www.washingtonpost.com/local/npr-host-diane-rehm-emerges-as-a-key-force-in-the-...4/24/2015>
[14] Rosenwald, supra

forefront of the public's attention; she said "I did this because I want to see a world where everyone has access to death with dignity, as I have had. My journey is easier because of this choice." [15]

Much activity has been prompted among various state lawmakers due to the notoriety of the Maynard case; many are now pursuing what is referred to as death-with-dignity laws and are of the opinion that the country is now ready for a conversation about the subject.

Diane Rehm, NPR host, has been very outspoken about the right to die with dignity and has experienced the trauma personally of watching her husband, John Rehm who suffered from Parkinson's, starve himself to death without being able to ease his suffering. "Rehm is becoming one of the country's most prominent figures in the right-to-die debate. And she's doing so just as proponents are trying to position the issue as the country's next big social fight, comparing it to abortion and gay marriage. The move puts Rehm in an ethically tricky but influential spot with her 2.6 million devoted and politically active listeners."[16]

Conclusion

The Fourteenth Amendment guarantees one's rights to liberty, freedom of choice, and self-determination. The choice each must face between life and death is personal, private, and must be allowed to be made by each individual freely. The states that currently allow physician-assisted suicide have seen that the general public is in favor of legalization of the process; a process that will protect doctors from civil suits and will protect patients from abuse by doctors who will attempt to force decisions upon them. The Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment should be interpreted to show that the right to die with dignity is a fundamental right of every individual.

[15] Millman, supra
[16] Rosenwald, supra

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