Luis Marron

IS PHYSICIAN ASSISTED SUICIDE A CONSTITUTIONAL RIGHT?

THESIS STATEMENT

Physician Assisted Suicide is not a Constitutional right based on the language of the Fourteenth Amendment of the United States Constitution.

INTRODUCTION

The debate of weather Physician Assisted Suicide is a Constitutional right under the rule of law is at the forefront of American social policy. States have the authority to create laws, amend laws and even renaming a certain act or policy in order to circumvent the Fourteenth Amendment of the U.S. Constitution to make Physician Assisted Suicide a Constitutional right under the Due Process Clause. Currently there is a trend or attempt by advocates to reshape the values and rights afforded to citizens by our Constitution to fit their narrative that Physician Assisted Suicide is a Constitutional right. In 1994 Oregon became the first state to legalize Physician Assisted Suicide by a voter ballot measure and in 1997 the injunction was lifted and the State of Oregon enacted the (Death with Dignity Act)[1] which allows residents of Oregon who are terminally-ill mentally competent with six months or less to live to end their lives through the voluntary self-administration of lethal medications expressly prescribed by a physician for that purpose(Public. Health.oregon.gov).[2] Following Oregon's lead four other states have enacted laws legalizing Physician Assisted Suicide and they are: CA, VT, WA via legislation and MT via court ruling (Euthanasia.procon.org)[3]. There isn't any evidence or fact in the language of the Fourteenth Amendment that Physician Assisted Suicide is a Constitutional right, rather the states just mentioned legalized Physician Assisted Suicide by other avenues of State law.

MAIN BODY

The proponents of Physician Assisted Suicide rely on the decision of Gonzales v. Oregon 546 U.S. 243 (January 17, 2006)[4] which makes Oregon the first State to legalize Physician Assisted Suicide by a voter approved ballot measure. The Court held that the Attorney General of the United States does not have the authority to prohibit doctors from prescribing class 2 control medications to assist in a person's suicide even though the control medication is listed in the Controlled Substance Act[5]; under state law permitting the procedure. The Court did not apply the Chevron Deference to aid the Attorney General's Interpretive Rule that assisting suicide is not a `legitimate medical purpose' within the meaning of (21 CFR 1306.04 2001)[6], However, the Supreme Court did not rule that a person has a fundamental right to end their own life based on Constitutional law, rather they used a loop hole through the Oregon Death with Dignity Act which allows terminally-ill mentally competent Oregonians to end their lives through the voluntary self-administration of lethal medications, expressly prescribed by a physician for that purpose. Scalia's dissent rings true that if the 'legitimate medical purpose has any meaning; it surely excludes the prescription of drugs to produce death. The Fourteenth Amendment Due Process Clause[7]

states: all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. In Quill v. Koppell 870 F.Supp. 78 (December 15, 1994)[8] The Court held that the plaintiffs have pointed to nothing in the historical record to indicate that even this form of limited assisted suicide has been given any kind of sanction in our legal history which would help establish it as a constitutional right. The Plaintiff's argument failed to prove a violation of the Equal Protection Clause because New York State used the rational in Dandridge v. Williams, 397 U.S. 471 (April 6, 1970)[9]: It is irrational for the State to recognize a difference between allowing nature to take its course, even in the most severe situations, and intentionally using an artificial death-producing device. The State has an interest in preserving lives and protecting vulnerable people. The State has the further right to determine how these crucial interests are to be treated when the issue is posed as to whether a physician can assist a patient in committing suicide. It is clear that the Court cannot justify under Constitutional law that Physician Assisted Suicide is legal and because of this they will leave it up to the states to decide. In Sampson v. Alaska 2001 31 P.3d 88 (September 21, 2001)[10]The Court held that Physician Assisted Suicide is not a fundamentally protected right because the manslaughter statute's assisted suicide prohibition regulates the conduct of the physician who assists in a suicide, not the conduct of the patient who commits the suicide. The Alaska's Statute 11.41.120(a)(2)[11] provides: "A person commits the crime of manslaughter if the person intentionally aids another person to commit suicide." The Court also held that Sampson and Doe's Equal Protection Rights were not violated because Physician Assisted Suicide is banned. Physicians ordinarily have no duty—indeed, no right—to treat patients who voluntarily reject medical treatment, the physician's omission of further treatment does not create liability for assisting a suicide. When a physician assists a terminally ill patient by prescribing medication to hasten the patient's death, the death is caused by the patient and is abetted by the physician's affirmative actions. The physician thus becomes liable because the physician actively participates in the patient's suicide. Sampson and Doe are therefore mistaken in suggesting that these different outcomes are anomalous or that they evidence an arbitrary scheme of regulation. While the law's traditional distinction between action and forbearance is neither perfect nor easily applied in all cases, it has nonetheless shown itself to be sensible and dependable in the vast majority of situations. Accordingly, the Court felt that the assisted-suicide statute's reliance on this distinction does not result in the imposition of over-inclusive or under-inclusive restrictions on terminally ill patients who seek to hasten death. In Washington v. Glucksberg 521 U.S. 702 (June 26, 1997)[12] The Court held that aiding in suicide is not a liberty interest protected by the U.S. Constitution's Fourteenth Amendment Due Process Clause. A State has an interest in the sanctity preservation of human life, to protect the mentally ill and the disabled from coercion and medical malpractice. Washington's ban on assisted suicide is at least reasonably related to their promotion and protection. We therefore hold that Wash. Rev. Code § 9A.36.060(1) (1994): "Promoting a suicide attempt" is a felony, punishable by up to five years' imprisonment and up to a $10,000 fine. §§ 9A.36.060(2) and 9A.20.021(1)(c). At the same time, Washington's Natural Death Act[13], enacted in 1979, states that the "withholding or withdrawal of life-sustaining treatment" at a patient's direction "shall not, for any purpose, constitute a suicide." Wash. Rev. Does not violate the Fourteenth Amendment, either on its face or "as applied to competent,

terminally ill adults who wish to hasten their deaths by obtaining medication prescribed by their doctors. In Vacco v. Quill 521 U.S. 793 (June 26, 1997)[14] The Court held that New York has an interest in preserving life and protecting vulnerable people. The Court applied the intent standard to distinguish that a doctor when requested by a terminally ill mentally competent patient that refuses life sustaining medical treatment, the person dies from an underlying fatal disease or pathology; but if a patient ingests lethal medication prescribed by a physician; he is killed by that medication. Because of this distinction the Court ruled that there is no violation of the Equal Protection Clause in the Fourteenth Amendment of the U.S. Constitution. The trend of Physician Assisted Suicide may lead us down a social policy road which we may never come back from. In 2009 politicians sparred over a provision in the Affordable Care Act concerning end-of-life consultations-called “death panels” by critics-to help control health-care costs. (Roughly 28%, or $170 billion, of Medicare is spent on patients’ last six months of life (time.com).[15] Mrs. S. is one of many stories about the potential consequences of Physician Assisted Suicide. Mrs. S. from Oregon had been struggling with a malignant lymphoma for three years. In spite of the best efforts of her several physicians, it had spread from her lymph nodes to her bones, brain and spinal cord. She had vigorous chemotherapy and radiation therapy. She had considerable pain, but this was kept under adequate control with medication. She was repeatedly discouraged, and this was helped somewhat by use of an antidepressant. In a final visit with her primary physician, he gently confronted the fact that there was nothing more that could be done for the disease, though comfort measures could be continued. At the end of the visit, he said, "Well, I could write a prescription for an extra-large amount of pain medication for you." She declined the offer and left the office. Mrs. S. and her husband were devastated. She kept saying, "He wants me to kill myself!" They interpreted his offer as saying "Your life is no longer worth living. You would be better off dead." Their longstanding good relationship with this seemingly caring physician was shattered by this new understanding of his values. Mrs. S. died comfortably at home several days later. Such an offer by a physician is illegal under the Oregon law.(wrti.org)[16]

CONCLUSION

Physician Assisted Suicide has many names: Death with Dignity, Voluntary Self-Administration, Assisted Death, euthanasia and all have one thing in common; intent to take a person’s life. The Fourteenth Amendment states: a citizen may not be deprived of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protections of the laws. The key word here is “life” not a liberty right to end ones’ own life. Some proponents of Physician Assisted Suicide state that the language in the Fourteenth Amendment is ambiguous about the legality of this kind of medical procedure; even so it is the government’s responsibility to promote life. The Supreme Court has punted the Physician Assisted Suicide football to the states for them to decide this issue; because Physician Assisted Suicide is not a protected right of the Fourteenth Amendment of the U.S. Constitution.

ENDNOTES

[1]Death with Dignity Act.

[2]Health.oregon.gov

[3]Euthanasia.procon.org

[4]Gonzales v. Oregon 546 U.S. 243 (January 17, 2006

[5]Controlled Substance Act.

[6]21 CFR 1306.04 2001

[7]The Fourteenth Amendment Due Process Clause

[8]Quill v. Koppell 870 F.Supp. 78 (December 15, 1994

[9]Dandridge v. Williams, 397 U.S. 471 April 6, 1970

[10]Sampson v. Alaska 2001 31 P.3d 88 September 21, 2001

[11]Alaska's Statute 11.41.120(a)(2)

[12]Washington v. Glucksberg 521 U.S. 702 June 26, 1997

[13]Washington's Natural Death Act.

[14]Vacco v. Quill 521 U.S. 793 June 26, 1997

[15]time.com

[16]wrti.org