Teia Pom

Professor Jordan

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It's My Body and I Can Die If I Want To

Thesis Statement

Pain is inevitable. Everyone feels it at least once in their lifetime, whether it's emotional or physical. Sometimes it's by choice, sometimes it's not. But what happens when there is no medicine to help treat or cure a particular type of pain that only gives those people six or less months to live? The kind of pain that cause them to suffer day by day to the point where they feel that hastening death is the only way to help relieve it. Shouldn't they have just as much right to part this world if they are competent enough to make the choice to do? Shouldn't they have a right to seek a physician to properly hasten their death similar to the right given to a woman who wants an abortion? Physician assisted suicide is considered voluntary euthanasia, where the participating physician terminates a patient's life with their consent, while involuntary euthanasia is when a physician ends the patient's life without their consent.[1] It has been one of the greatest debates of all times alongside with abortion. Many argue that legalizing physician assisted suicide will cause a "slippery slope" to involuntary physician assisted suicide, while others argue that it is a right protected by the U.S. Constitution. But this has nothing to do with society wanting to get rid of sick people because of their imperfection; it is more of giving competent

[1] Robert M Walker, "Ethical Issues in End-of-Life Care," 20 Nov. 2011 <http://moffitt.org/moffittapps/ccj/v6n2/article4.htm>.

terminally ill patient the right to end their life if they have six or less months to live. A woman who wants an abortion cannot just simply terminate her pregnancy without an assistance of a physician. She will have to seek a physician in order to properly perform a safe and effective procedure. Competent terminally ill patient has just as much right to ask a physician for assistance to hasten their death and should be a liberty interest protected by the Fourteenth Amendment, the same interest given to a woman who wants an abortion.

Scope of the paper

In this paper, I will discuss the three states that legalize physician assisted suicide, and that it is up to the state interpretation to legalize it. Next, I will discuss the U.S. Supreme court ruling for the right to abortion and how physician assisted suicide is similar to it and why it should also be a liberty interest protected by the Fourteenth Amendment. What this paper will not discuss is the right to die for incompetent terminally ill patient, Hippocratic Oath and religious argument against physician assistant suicide, argument for or against abortion, and whether life begin at conception or not.

Death with Dignity

There are various assisted suicide laws that are handled at state level in lieu of federal level. This means that it is up to the state law and its interpretation to determine whether or not legalizing physician assisted suicide is in the best interest of the terminally ill patient who has six or less months to live, and whether it is legal for the resident of the states to vote for it. Currently there are only three states in the U.S. that legalize physician assisted suicide: Oregon, Washington, and Montana. Both Oregon and Washington pass the Death with Dignity Act, and Montana case law

ruled in favor of physician assisted suicide.[2] Oregon was the first state ever to approve the Death with Dignity Act, enacted in 1997, which was chosen by a margin of 60% to 40% by Oregon voters.[3] As defined within the state of Oregon, this Act allows terminally-ill patient, who established a legal resident in Oregon, to voluntary end their life through lethal medications prescribed by a physician in which they administer themselves. In order to participate, a patient must be 1) 18 years of age or older, 2) a resident of Oregon,3) capable of making and communicating health care decisions for him/herself, and 4) diagnosed with a terminal illness that will lead to death within six months as determined by the physician.[4] On November 4, 2008, the state of Washington passed Initiative 1000, Washington Death with Dignity Act. This act went into effect on March 5, 2009. The criteria's to participate is similar to the requirement set forth in the Oregon Death with Dignity Act which outlines the requirements and responsibility in order to adhere to state regulation.[5] In *Baxter v. State of Montana*, the issue at hand was whether a competent terminal ill individual can seek assistance from physician to end their life. The court held, that Montana resident have the legal right to physician assisted suicide.[6] It concluded that "in the context of this case, Article II, Section 10 of the Montana Constitution, broadly guarantees each individual the right to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider free from government interference."[7] According to procon.org, "thirty-six states have specific laws prohibiting all

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[2] <http://euthanasia.procon.org/view.resource.php?resourceID=000132>.

[3] Oregon Revised Statute, 11 Dec 2011, <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx>.

[4]http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx>.

[5] Washington State Death with Dignity Act, 11 Dec 2011, <http://www.doh.wa.gov/dwda/>

[6] http://euthanasia.procon.org/view.resource.php?resourceID=000132

[7] *Baxter v. State of Montana* , Cause No. ADV-2007-787 (1st Jud. Dist. Ct., Dec. 5, 2008)

assisted suicides, seven states prohibit all assisted suicides under common law, four states (and the District of Columbia) have no specific laws regarding assisted suicide, and do not recognize common law in regard to assisted suicide."[8] Part of this statistics have change since then due to the State Supreme Court ruling in *Final Exit Network v. State of Georgia*. On March 2010, four members of the Final Exit Network were charged with assisting a cancer patient to commit suicide in the state of Georgia. Under Georgia code, section 16-5-5(b), it reads, "[a]ny person who *publicly* advertises, offers, or holds himself or herself out as offering that he or she will intentionally and actively assist another person in the commission of suicide and commits any overt act to further that purpose is guilty of a felony…"[9] The group challenged the state ban on assisted suicide, stating that it violates their first amendment right to free speech due to the wording "publicity," equal protection and due process clause of the Fourteenth Amendment. The trial court rejected their argument, and the case appealed to the Georgia Supreme Court to determine as to whether or not the states assisted suicide law is unconstitutional.[10] On February 2, 2012, the Court concluded that while the state compelling interest is to prevent assisted suicide, however, the statute limiting free speech under section 16-5-5(b) does not have a compelling interest.[11] The court ruled that section 16-5-5(b) is unconstitutional because (1) it does not ban all suicide assistance, (2) it does not render all advertisements or offers to assist in a suicide illegal, and (3) if the state really want to ban all assisted suicide, the statute should have clearly state so with no limitation on protected speech. The indictments on the four individuals

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[8]State Laws on Assisted Suicide, 11 Dec 2011, <http://euthanasia.procon.org/view.resource.php?resourceID=000132>.

[9] http://www.lexisnexis.com/hottopics/gacode/Default.asp, 11 Dec 2011

[10] Melissa Barber, "Georgia Supreme Court Hears Assisted Death Case" (http://www.deathwithdignity.org/2011/11/30/georgia-supreme-court-hears-assisted-death-case/, Nov. 2011), 11 Dec 2011.

[11] Final Exit Network, Inc. v. State, Georgia (2012)

were reversed.[12] This is another reason that legalizing physician assisted suicide to competent terminally ill patient is up to the state interpretation of their own law.

Liberty Interest or Not?

Liberty is defined as the "quality or state of being free, and thus enable one the power to do as one pleases, freedom from physical restraint, freedom from arbitrary or despotic control, the positive enjoyment of various social, political, or economic rights and privileges, and the power of choice."[13] The Due Process clause of the Fourteenth Amendment of the United States Constitution reads, "[n]o State shall…deprive any person of life, liberty, or property, without due process of law."[14] The liberty protected by the Due Process Clause held by the U.S. Supreme Court, includes "the right to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion", including the right to refuse unwanted lifesaving medical treatment.[15] But why wouldn't a liberty interest given to competent terminally patient who wants to end their life and need a physician to assist them with it? A physician would not have this liberty interest to assist in suicide but it is the choice of the competent terminally ill patient who only has six months or less to live that should be protected by the fourteenth amendment.

In *Vacco v. Quill*, the question presented by this case is whether New York's prohibition on assisting suicide violates the Equal Protection Clause of the Fourteenth Amendment. After going through a series of affirmed and reversed, the U.S. Supreme Court, in a 9-0 ruling, upheld the

[12] Final Exit Network (2012)
[13] < http://www.merriam-webster.com/dictionary/liberty>, 11 Dec 2011
[14] http://caselaw.lp.findlaw.com/data/constitution/amendment14/, 11 Dec 2011.
[15] Washington v. Glucksberg, 521 US 702 (1997).

constitutionality of New York's ban on physician-assisted suicide.[16] The court here, note that the choice for assisted suicide is a personal decision similar to the personal decision to refuse unwanted medical treatment, however, both choice do not have the same legal protection. It is true that the right to hasten death and the right to refuse unwanted medical treatment are different, but under the definition of liberty, "we the people" have the "power of choice," and if a person only have a few months left to live, and choose to hasten death, then it fits the definition of liberty, free from government interference.

In *Washington v. Gluckesburg*, the court ruled that the "asserted 'right' to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause," relying their decision on the history of law and majority of the state prohibition on assisted suicide. Their choice to do so, similar to *Vacco v. Quill* case, was also to protect the poor, minority, and the disabled individual from abuse of the process, leading to a slippery slope of involuntary euthanasia.[17] But if the state interest or law to protect these individual remain in full, strict force, involuntary euthanasia can be prevented. In *Baxter v. State of Montana*, the state has an interest in preserving human life but concluded "that competent terminal patient's rights of privacy and dignity overcome the state's general interest in preserving human life," and that such abuses can be enforced by state law such as the Oregon Death with Dignity Act.[18]

In *Cruzan v. Director, Missouri Dept. of Health*, the body of the case reads"[a] competent person has a liberty interest under the Due Process Clause in refusing unwanted medical treatment…

[16] Vacco v. Quill, 526 US 793 (1997).
[17] Glucksberg, 521 US 702
[18] Baxter, Cause No. ADV-2007-787, 1st Jud. Dist. Ct.

however, the question whether that constitutional right has been violated must be determined by balancing the liberty interest against relevant state."[19]

So currently patient has the right to refuse medical treatment. If they refuse medical treatment, for example, chemotherapy for cancer, then they will eventually die a slow and painful death. This is the same thing as allowing a patient to die, except the only difference is that the physician is not prescribing them anything to expedite the process.

The U.S. Supreme court ruling in *Washington v. Gluckesburg* rely part of their decision on majority of the state ruling that assisted suicide is considered a felony and homicide--but the prohibition on abortion falls under the same shoe hundreds of years ago when abortion was illegal. Until the famous landmark case ruled in Roe v. Wade prior to 1973, "about two-thirds of the states banned abortion except when it was necessary to save a mother's life," other state allows abortion only if it's a result of rape or incest.[20] In *Roe v. Wade*, the court allows a woman to have an abortion within the first two trimesters of the pregnancy relying its decision on the Due Process Clause of the Fourteenth Amendment and the right to privacy cited in Griswold v. Connecticut.[21] Below is the criteria's that must be met in order to terminate a pregnancy:

"(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

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[19] *Cruzan v. Director, Missouri Dept of Health,* 497 US 261 (1990).
[20] "How Did Abortion Become legal?," 11 Dec 2011 < http://public.findlaw.com/abaflg/flg-17-4b-1.html >.
[21] "Right to Abortion?" 11 Dec 2011, <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/abortion.htm>.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother...."[22]

The trimester framework did not change until *Planned Parenthood v Casey* came into play. It did not overturn the decision in *Roe v. Wade* case but it did change the trimester criteria as to when abortion can be given. Here, the court uses an "undue burden" test to ensure that state regulation did not interfere with a woman's right to terminate nonviable fetus, and give the state interest to regulate the viability of the fetus to see if abortion is appropriate.[23] But what about competent terminally ill patient right to end their life? Shouldn't they have just as much right to make their own decision to end their life since they are competent? A fetus would not have the capacity or competency to make its own decision to die but its mother does. When a woman seeks an abortion, she is seeking for a physician to assist in the death of her fetus. In Griswold v. Connecticut, "the court referred to United States Supreme Court cases which recognized that the special relationship between patients and their physicians will often be encompassed within the domain of private life protected by the Due Process Clause."[24] So this "private life" protection is no different than the choice between a competent terminally ill patient and their primary physician to choose how or when to end their life.

[22] Roe v. Wade, 410 US 113 (1973).
[23] *Planned Parenthood* v. *Casey*, 505 US 833 (1992).
[24] Griswold v. Connecticut, 381 US 479 (1965).

Conclusion

Prior to the 1973 case in Roe v. Wade, abortion was illegal. A woman who wish to terminate their pregnancy, undergo an illegal abortion or even went out of the country to get it. Both U.S Supreme court cases for *Vacco v. Quill* and *Washington v. Gluckesburg* held that physician assisted suicide is not a liberty interest and it does not violate the Equal Protection Clause, but it did not say that physician assisted suicide is completely illegal, and that it is up to the states interest to governed the process. Only three states had legalized physician assisted suicide: Oregon, Washington, and Montana, with Georgia ruling that their law on assisted suicide is unconstitutional. Like abortion, in a matter of years from now, other state will also legalize physician assisted suicide. If the state interest or law is in full forced to protect those individual that are vulnerable from physician assisted suicide, it can prevent slippery slope from occurring. The choice between the right to life or the right to die may not appear to be the same thing-- but it is that liberty interest, the right to control their own body according to their choice is what should be protected and free of government interference. If a woman can seek a physician to assist in the death of her fetus, this right should also be given to competent terminally ill patient who wish to seek a physician to peacefully and properly hasten their death.

Endnotes

[1] Robert M Walker, "Ethical Issues in End-of-Life Care," 20 Nov. 2011 <http://moffitt.org/moffittapps/ccj/v6n2/article4.htm>.

[2] <http://euthanasia.procon.org/view.resource.php?resourceID=000132>.

[3] Oregon Revised Statute, 11 Dec 2011, <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx>.

[4]http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx>.

[5] Washington State Death with Dignity Act, 11 Dec 2011, <http://www.doh.wa.gov/dwda/>
[6] http://euthanasia.procon.org/view.resource.php?resourceID=000132
[7] *Baxter v. State of Montana* , Cause No. ADV-2007-787 (1st Jud. Dist. Ct., Dec. 5, 2008)
[8]State Laws on Assisted Suicide, 11 Dec 2011, <http://euthanasia.procon.org/view.resource.php?resourceID=000132>.

[9] http://www.lexisnexis.com/hottopics/gacode/Default.asp, 11 Dec 2011
[10] Melissa Barber, "Georgia Supreme Court Hears Assisted Death Case" (http://www.deathwithdignity.org/2011/11/30/georgia-supreme-court-hears-assisted-death-case/, Nov. 2011), 11 Dec 2011.
[11] Final Exit Network, Inc. v. State, Georgia (2012)
[12] Final Exit Network (2012)
[13]< http://www.merriam-webster.com/dictionary/liberty>, 11 Dec 2011
[14] http://caselaw.lp.findlaw.com/data/constitution/amendment14/, 11 Dec 2011.
[15] Washington v. Glucksberg, 521 US 702 (1997).

[16] Vacco v. Quill, 526 US 793 (1997).
[17] Glucksberg, 521 US 702
[18] Baxter, Cause No. ADV-2007-787, 1st Jud. Dist. Ct.
[19] *Cruzan v. Director, Missouri Dept of Health,* 497 US 261 (1990).
[20] "How Did Abortion Become legal?," 11 Dec 2011 < http://public.findlaw.com/abaflg/flg-17-4b-1.html >.
[21] "Right to Abortion?" 11 Dec 2011, <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/abortion.htm>.

[22] Roe v. Wade, 410 US 113 (1973).
[23] *Planned Parenthood* v. *Casey*, 505 US 833 (1992).
[24] Griswold v. Connecticut, 381 US 479 (1965).