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Recent Developments: *Vacco v. Quill*: Statute Banning Assisted Suicide Does Not Violate the Equal Protection Clause of the Fourteenth Amendment

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Vacco v. Quill:

The United States Supreme Court, in *Vacco v. Quill*, 117 S. Ct. 2293 (1997), upheld on Equal Protection grounds a New York statute making it a crime to assist another in committing suicide. In upholding the New York statute, the Court distinguished between refusing life-sustaining treatment and assisting suicide. The Court determined that the state's interest in preserving human life outweighs a patient's liberty interest in controlling the circumstances of his death. The same day the Court decided *Vacco v. Quill*, the Court also decided *Washington v. Glucksberg*, 117 S. Ct. 2258 (1997). In *Glucksberg*, the Court decided that Washington's assisted suicide statute did not violate the Due Process Clause of the Fourteenth Amendment because assisted suicide is not a fundamental right. The concurring opinions discussed below are common to both *Vacco* and *Glucksberg*.

Respondents ("Quill"), New York physicians, sought to prescribe lethal medication for the terminally ill. Because of the New York statute banning assisted suicide, respondents contended that they were deterred from assisting terminally ill patients who desired a doctor's aid in taking their own lives. The respondents' argument was based on the classification differences in New York statutes that allow a competent person to refuse life-sustaining treatment, but do not allow a competent, terminally ill

STATUTE BANNING ASSISTED SUICIDE DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

By Alexandra C. Clark

person to end his life through the administration of lethal drugs. According to the respondents, a competent, terminally ill patient who desires to end his life through the ingestion of lethal medication should be afforded the same statutory protection as a patient who refuses or withdraws life-sustaining treatment.

Challenging the assisted suicide statute as a violation of the Equal Protection Clause of the Fourteenth Amendment, Quill and three terminally ill patients (who wished to end their lives and who have since died) sued the New York Attorney General and other public officials in the United States District Court for the Southern District of New York. Noting the state's interest in preserving life, the district court upheld the New York statute.

Quill appealed to the United States Court of Appeals for the Second Circuit. Observing the unequal treatment given to competent terminally ill patients, the court of appeals reversed. The court of appeals noted that terminally ill patients may refuse or withdraw life-sustaining treatments in order to hasten

death, while terminally ill patients who are not on life support may not administer drugs to hasten death. The court held that the distinction was not rationally related to a legitimate state interest.

The United States Supreme Court granted certiorari to determine whether the New York statute prohibiting assisted suicide violated the Equal Protection Clause of the Fourteenth Amendment. *Vacco*, 117 S. Ct. at 2296. Chief Justice Rehnquist began by analyzing the Equal Protection Clause, which embodies the rule that states "must treat like cases alike, but may treat unlike cases accordingly." *Id.* at 2297 (citing *Plyer v. Doe*, 457 U.S. 202, 216 (1982)). According to the Court, if a legislative classification "neither burdens a fundamental right nor targets a suspect class, we will uphold [it] so long as it bears a rational relation to some legitimate end." *Id.* (quoting *Romer v. Evans*, 116 S. Ct. 1620, 1627 (1996)). The Court maintained that the assisted suicide statute neither infringed upon a fundamental right, nor involved a suspect class. *Id.* (citing *Glucksberg*, 117 S. Ct. 2267-71). Next, the Court considered the New York statute banning assisted suicide (N.Y. PENAL LAW § 125.15 (McKinney 1987)) and the statutes permitting patients to refuse life-sustaining treatment (N.Y. PUB. HEALTH LAW, Art. 29B § § 2960-2979 (McKinney 1993 & Supp. 1997)). *Id.* at 2296. The Court determined that the statutes do

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not treat one group of patients differently from another group of patients because everyone can refuse life-sustaining treatment, while no one can assist a suicide. *Id.* at 2297-98. Concluding that the law applied evenhandedly to all people, the Court determined that the assisted suicide statute complied with the Equal Protection Clause. *Id.* at 2298.

Continuing its analysis, the Supreme Court acknowledged the widely recognized and rational distinction between assisting suicide and withdrawing life-sustaining treatment. *Id.* The legal distinction between assisting suicide and withdrawing or withholding life support lay in the elements of causation and intent. *Id.* Addressing the underlying cause of death, the Court recognized that when a patient refuses life-sustaining treatment, the patient dies from a terminal illness. *Id.* On the other hand, if a patient consumes lethal medication, the patient dies from the medication, not the disease. *Id.*

Next, the Court distinguished between the intent of a doctor who withholds or withdraws life-sustaining treatment and the intent of a doctor who assists a suicide. *Id.* According to the Court, the doctor who withholds or withdraws life-sustaining treatment intends to honor the patient's wishes and to stop performing treatment that is non-beneficial to the patient. *Id.* (citing *Assisted Suicide in the United States: Hearing before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 104th Congress, 2d Session, 386 (testimony of Dr. Leon Krass) (1996)). Conversely, a doctor

who assists a suicide has the underlying intent to cause the patient to die. *Id.* at 2299. The Court further concluded that a patient who refuses life-sustaining treatment may not intend to die while a patient who commits suicide with a doctor's aid does intend to die. *Id.* Although the act of withholding or withdrawing life-sustaining treatment and the act of assisting suicide have the same result, the underlying intent of the doctor distinguishes the acts. *Id.* The Court noted that the law of homicide "distinguishes between a person who knows that another person will be killed as a result of his conduct and a person who acts with the specific purpose of taking another's life." *Id.* (quoting *United States v. Bailey*, 444 U.S. 394, 403-06 (1980)). In other words, the law recognizes a difference between acts taken to achieve a specified result versus acts taken that result in "unintended but foreseen circumstances." *Id.* (citing *Personnel Adm'r. of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979)).

The Supreme Court concluded by disagreeing with the respondents' contention that the distinction between withholding or withdrawing life-sustaining treatment and assisting suicide is capricious and illogical. *Id.* at 2301. According to the Court, the New York statutes are based on a longstanding and rational distinction because the statutes permit everyone to refuse lifesaving treatment, but prohibit everyone from assisting a suicide. *Id.* Therefore, the Court stated that a state's interests in preserving life and prohibiting

intentional killings bore a rational relation to the distinction between withdrawing or withholding of life-sustaining treatment and assisting a suicide. *Id.* at 2302.

Concluding that assisted suicide was not a fundamental right, *Vacco*, 117 S. Ct. at 2302 (Souter, J., concurring), Justice Souter concurred in the Court's judgment in *Vacco* for the same reasons he set forth in *Glucksberg*, 117 S. Ct. at 2275-93. Justice Souter analogized assisted suicide to the right to abortion because both circumstances assume the right to bodily integrity and involve the role of the physician as an assistant and counselor. *Glucksberg*, 117 S. Ct. at 2288 (Souter, J., concurring). However, Justice Souter concluded that the state's interests in protecting life, discouraging suicide, and protecting patients from involuntary suicide and euthanasia outweigh the patients' interest in bodily integrity. *Id.* at 2290 (Souter, J., concurring). Additionally, Justice Souter noted the difficulty in assessing when a patient is competent and acting under his own will versus when a patient may be acting under the pressure imposed by family members or physicians. *Id.*

Justice O'Connor, joined by Justices Ginsberg and Breyer, concurred with the judgments of the Court in *Vacco* and *Glucksberg*, but stated that the justification for prohibiting physician assisted suicide lay in the state's interest in protecting terminally ill patients who are not competent or whose decisions may not be voluntary. *Glucksberg*, 117. Ct. at 2303

(O'Connor, J., concurring). According to Justice O'Connor, a person does not have a fundamental right to commit suicide. Thus, Justice O'Connor, like the majority, purposefully ignored the question presented by the respondents: whether a mentally competent, terminally ill patient has an interest in controlling the circumstances of his death. *Id.* at 2303 (O'Connor, J., concurring).

Unlike Justice O'Connor, Justice Stevens, in his concurring opinion, agreed with the Court's distinction between withholding and withdrawing life support and assisting suicide. *Id.* at 2309 (Stevens, J., concurring). However, Justice Stevens disagreed with the Court's focus on the intent of the patient, noting that whether the patient refuses life support or seeks assisted suicide, the patient is seeking to hasten death. *Id.* at 2310 (Stevens, J., concurring). The differences in causation and intent cited by the Court may not be applicable to all doctors and patients. *Id.* Seeming to agree with the respondents, Justice Stevens noted that a state's interest in preventing the abuse of patient's wishes does not apply to a competent person who makes a rational decision to end his life. *Id.* at 2307 (Stevens, J., concurring).

Acknowledging the respondents' argument, Justice Breyer's concurring opinion focused on the liberty interest of the patient, specifically, the right to die with dignity. *Id.* at 2311 (Breyer, J., concurring). He

concluded that a person has a right to control his manner of death and to avoid unnecessary pain. *Id.* Ultimately, however, Justice Breyer agreed with the Court's distinction between assisted suicide and withdrawing life support. *Id.*

In *Vacco v. Quill*, 117 S. Ct. 2293 (1997), the United States Supreme Court held that a New York statute banning assisted suicide is not a violation of the Equal Protection Clause of the Fourteenth Amendment. However, the Court failed to address the issue presented by the respondents: whether a mentally competent, terminally ill patient has a right to assisted suicide. The Court determined that the state's interests in protecting the vulnerable, the incompetent, and those under financial or family pressure to end their lives justified the prohibition of assisted suicide.

The Court's characterization of the differences in intent in assisting suicide and withholding or withdrawing life support is illusory. A doctor who assists suicide by administering lethal drugs and a doctor who withdraws or withholds life support may both be complying with the patient's request. Similarly, a patient who desires to be injected with lethal drugs and a patient who does not wish to be administered life-sustaining treatments may both be attempting to ease the suffering. A competent, terminally ill patient who desires to ease his suffering through the ingestion of lethal medication, assisted by a doctor who wishes to comply with the

patient's request, could present a strong challenge to the state's interests and classification distinctions articulated by the Court. A court may then be forced to decide the definition of a competent patient. Because the competent patient is conscious of his suffering, a court may also have to decide that a competent, terminally ill patient has a much greater liberty interest than does a patient in a persistent vegetative state in deciding the cause and circumstances of his death.

As a result of the Court's decision, mentally competent, terminally ill patients may not seek medical assistance in ending their own lives, even if treatment or medication cannot eliminate the discomfort associated with the disease. Although none of the Justices agreed that a patient has a fundamental right to assisted suicide, all of the Justices agreed that every patient has a right to seek palliative care, even if the result of such treatment would be to hasten death. The Court failed to recognize that palliative care is often insufficient to reduce a terminal patient's pain to an acceptable level of comfort while allowing the patient to remain alert. Frequently, in the final stages of a disease such as cancer, the patient can no longer endure the pain and suffering associated with the disease, notwithstanding medication and treatment. When the suffering becomes unendurable, a competent patient should be permitted to hasten death in a humane and certain manner.

