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Physician-Assisted Suicide: Rights and Risks to Vulnerable Communities

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INTRODUCTION

PHYSICIAN-ASSISTED SUICIDE: RIGHTS AND RISKS TO VULNERABLE COMMUNITIES

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On June 26, 1997, the United States Supreme Court ruled in *Washington v. Glucksberg*[1] that a state law criminalizing physician-assisted suicide did not violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution,[2] and in *Vacco v. Quill*[3] that such a law did not violate the Fourteenth Amendment's Equal Protection Clause.[4] This Symposium was held on February 26, 1997, after the Supreme Court had heard oral arguments in *Glucksberg* and *Quill*, but before the Court had decided these cases. The effect of these decisions is to place in a different posture many of the contributions to this panel on physician-assisted suicide. The most relevant issue is no longer the constitutional status of the alleged right to physician-assisted suicide. The Court has decided, at least for the moment,[5] that there is no constitutional right to physician-assisted suicide, and that, therefore, each state may decide for itself how to accommodate the legal and ethical concerns fueling the debate over physician-assisted suicide. The effect of these decisions is not, however, to foreclose debate on the issues raised at our Symposium concerning physician-assisted suicide. On the contrary, these issues now become vitally important at a different level, for each state is now charged with the privilege and the responsibility of deciding how to design its laws regarding individual decisionmaking at the end of life.

The array of approaches that states may take to these problems is illustrated by, at one end of the spectrum, the laws in *Glucksberg*

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1. 117 S. Ct. 2258 (1997).
2. *Id.* at 2261.
3. 117 S. Ct. 2293 (1997).
4. *Id.* at 2296.
5. *See* Ronald Dworkin, *Assisted Suicide: What the Court Really Said*, N.Y. REV. BOOKS, Sept. 25, 1997, at 40 (arguing that careful analysis of individual justices' votes and opinions suggests that "the Court might well change its mind in a future case when more evidence of the practical impact of any such right was available.").

and *Quill* that forbid physician-assisted suicide, and at the other end of the spectrum, *Lee v. State of Oregon*,[6] in which the Ninth Circuit Court of Appeals declined (on procedural grounds) to strike down an Oregon statute that expressly permits physician-assisted suicide under some conditions.[7] The Supreme Court recently denied the *certiorari* petition in *Lee*,[8] effectively allowing Oregon's permissive physician-assisted suicide statute to stand.[9] Today, states have ample decisionmaking authority in the assisted suicide area.

The title of this panel of the Symposium is *Physician-Assisted Suicide: Rights and Risks to Vulnerable Communities.* Within the past few decades, advocates for the poor and disempowered have engaged in civil rights crusades typically aimed, in part, at diminishing the state's ability to cut off certain avenues of choice for individuals; voting rights, educational rights, and employment rights are examples of this movement, and reproductive rights are obviously the most contentious example. At first blush, the alleged right to control the circumstances of one's own death and suffering would come within the ambit of these concerns, which are rooted in autonomy, liberty, and equality. Many civil rights organizations, and many fine scholars, including two of the contributors to this symposium—Professor Alan Meisel and Professor James Fleming— adopt roughly this position, and this was clearly part of what animated the thinking of the Ninth Circuit and Second Circuit Courts of Appeals (in the decisions reversed by the Supreme Court), and the state of Oregon in its statute permitting physician-assisted suicide.

On the other hand, numerous advocates for the poor and disabled have taken the opposite view, and they too have been joined by eloquent scholarly voices, including four on our panel—Ellen Moskowitz, Esq., Professor and Rabbi David Bleich, Professor Cheryl Mwaria, and Professor Norton Spritz. Their concerns are diverse, but in significant part derive from the belief that the legalization of physician-assisted suicide would in fact create intolerable risks, particularly to those in our community who are most vulnerable: the poor, the elderly, and the mentally and physically disabled or ill. These very concerns were cited by the Supreme Court in

6. 107 F.3d 1382 (9th Cir. 1997).

7. *Id.* at 1391.

8. Lee v. Harcleroad, 118 S. Ct. 328 (1997).

9. *See also* David J. Garlow, *The Oregon Trail*, N.Y. TIMES, Nov. 6, 1997, at A31 (Oregon voters chose not to repeal law permitting physician-assisted suicide).

Glucksberg[10] and *Quill*[11] as a legitimate reason for state regulation of physician-assisted suicide.

As the debate now moves fully into the state legislatures and courts, we may hope that the proponents of both of these points of view will speak as clearly and cogently as the contributors to our panel have spoken.

10. 117 S. Ct. 2258, 2273 (1997).
11. 117 S. Ct. 2293, 2302 (1997).