



## Legal Issues regarding HB1454

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### **I. There is No Constitutional Right to Assisted Suicide**

- On June 26, 1997, the United States Supreme Court ruled unanimously in Vacco v. Quill and Washington v. Glucksberg that there is no constitutional right to PAS. In two opinions, written by Chief Justice William Renquist, the Court cited many of the compelling legal, medical and social reasons why states prohibit PAS.
- The Court also reiterated the vast legal difference between a right to refuse unwanted medical treatment and the right to assistance in committing suicide.
- Chief Justice Renquist noted the state's interest in preserving the integrity of the medical profession and protecting vulnerable groups "including the poor, elderly, and disabled persons" who face a "real risk of subtle coercion" (Washington v. Glucksberg, 1997, pp.27-28).

The Chief Justice also commented on the Netherlands writing:

- Euthanasia in the Netherlands has not been limited to competent, terminally ill adults who are enduring physical suffering, and that regulation of the practice may not have prevented abuses in cases involving vulnerable persons, including severely disabled neonates and elderly persons suffering from dementia (Washington, p. 30).

### **II. Assisted Suicide is Manslaughter under Hawaii Law**

- Under current Hawaii law, PAS is classified as manslaughter (HRS sec. 707-702), which is a class A felony, punishable by an indeterminate term of imprisonment. PAD is classified as murder in the second degree (HRS sec. 707-701.5), punishable by life in prison with the possibility of parole.
- Current Hawaii law **so disfavors assisted suicide that both the use of force and the use of confinement are authorized to prevent another from committing suicide.**

### **III. Once Assisted Suicide is Legalized, Euthanasia MUST Follow Per Equal Protection Principles**

- A frightening case out of Oregon, the only state with legalized physician assisted suicide, illustrates how when assisted suicide is legalized, euthanasia will follow. Patrick Matheny was a 43 year old man who was apparently unable to swallow the suicide pills because of the paralysis caused by Lou Gehrig's disease. Although not legal under Oregon's so-called 'safeguards', Matheny's brother in law Joe Hayes 'helped' him. Authorities determined Haye's help didn't violate the law.

- However, the investigation into Matheny's death triggered a frightening statement from Oregon Deputy State Attorney General David Schuman. In a letter to State Senator Neil Bryant, Schuman concluded that the **Oregon law may discriminate against "persons who are unable to self-administer medication" a fact that makes it "vulnerable to challenge" under both state and federal laws that protect the rights of persons with disabilities.**
- Under this legal reasoning, it is only a matter of time before 'self-administration' becomes lethal injection. Once that threshold is crossed, there will be no opportunity left to protect the vulnerable from abuse coercion and mistake.

#### **IV. Pending Department of Justice Case May Make HB1454 Moot**

- There is a pending petition for certiorari in *Ashcroft v. Oregon*, No. 04-623 (U.S.). At issue is the scope of the Attorney General's authority under the federal Controlled Substances Act (CSA). Under the CSA, the Attorney General has the authority to deny or revoke the prescription-writing authority or 'registration' of a physician or other health care practitioner if the AG determines that issuance of the registration would be 'inconsistent with the public interest.' 21 U.S.C. 823(f), 824(a)(4). In 2001, the Office of Legal Counsel of the DOJ issued a memorandum advising that "assisting in suicide is not a legitimate medical purpose that would justify a physician's dispensing controlled substances consistent with the CSA."
- On Nov. 9, 2001, the AG published an interpretive rule adopting the analysis of the OLC memorandum. 66 Fed. Reg. 56, 607 (2001). The AG made clear that assisting suicide is not a legitimate medical purpose under the CSA 'regardless of whether state law authorizes or permits such conduct. . .'
- The interpretive ruling was challenged in federal court. By a 2-1 vote, a panel of the Ninth Circuit upheld a lower court judgment striking down the rule. *Oregon v. Ashcroft*, 368 F 3d 118 (2004). On November 9, 2004, the Acting Solicitor General filed in the United States Supreme Court a petition for certiorari seeking review of the Ninth Circuit's decision.

There has as yet been no decision on the petition. The case has not yet been scheduled for conference among the Justices.

#### **Bottom line:**

If the U. S. Supreme Court agreed to hear the Oregon case and reverses the Ninth Circuit (as it unanimously reversed the earlier Ninth Circuit case on assisted suicide), **then assisted suicide with the use of federally controlled substances would be unlawful everywhere in the U.S., notwithstanding state law to the contrary.**

It would be unwise to proceed, if, for no other reason, than consideration of HB1454 or other proposals like it should wait until the U. S. Supreme Court has reached a decision.

## **V. HB1454 Creates a New Tort with Different Legal Standard than All other Medical Procedures**

In part IV section (1) of the bill sets forth a standard of physician accountability that is different for this one particular act than it is for all others. HB1454 provides immunity for physicians acting in 'good faith'. This subjective standards treats assisted suicide conduct by physicians differently from the standard required for all other medical conduct leading to professional malpractice – the standard of negligence.

If proponents are asking assisted suicide to become simply another medical option, why is a different legal standard being proposed?

The provision ALONE renders useless the rest of the so-called safeguards in the bill and instead provides a safeguard for suicide physicians.

## **VI. No State Legislature has Ever Legalized Assisted Suicide**

- When one considers all of the opposition to assisted suicide from the health care and disability rights community, it is no wonder that no state legislature has ever legalized assisted suicide.
- In fact, between 1992 and 2000, at least 11 states enacted new laws banning assisted suicide or strengthening existing bans with statutory language affirming the use of pain medication for the purpose of pain control, even if such pain control unintentionally hastens death.
- Data from the Drug Enforcement Administration on morphine use for these 11 states show that per capita use of morphine subsequently increase in every case, sometimes dramatically.

Euthanasia and assisted suicide have been practiced in the Netherlands for decades and the experience serves as a warning to policymakers considering the practices. (See additional submitted testimony.)