

## *Assisted Suicide*

### **No Assisted Suicide Right, New York Court Says**

There is no fundamental constitutional right to assisted suicide, or aid-in-dying as it is known to proponents, an influential state court has said (*Myers v. Schneiderman*, 2017 BL 314454, N.Y., No. 77, 9/7/17).

The New York Court of Appeals, the state's highest judicial body, Sept. 7 said New York's assisted suicide laws prohibit aid-in-dying, even as it is defined by the plaintiffs. The court said applying the laws to mentally competent terminally ill patients and to doctors who provide them with prescriptions for lethal drugs with the intention that they'll use the drugs to take their lives doesn't violate their equal protection and due process rights under the New York Constitution. The court's ruling came in a brief unsigned opinion, but several judges provided a more thorough analysis in their concurring opinions.

A handful of states, including Oregon, Washington, Vermont, Colorado, the District of Columbia, and California, specifically allow doctors to provide terminally ill mentally competent people with lethal drugs, while the Montana Supreme Court has said nothing in its state law prohibits the practice. This is a leading policy issue that many more states are struggling with.

**Aid-in-Dying Is Assisted Suicide** Aid-in-dying is distinguishable from assisted suicide, the plaintiffs said, because it involves the right of a mentally competent and terminally ill person to obtain a prescription for a lethal drug dose from a physician to be taken to cause death. The plaintiffs asked the court to rule physicians can't be prosecuted under criminal assisted suicide laws for prescribing the medication.

The court rejected the distinction. Suicide is defined as the act of voluntarily and intentionally taking one's own life, and assisted suicide is defined to include an intentional act of providing a person with the means or medical knowledge to commit suicide, the court said.

Aid-in-dying "falls squarely within" these definitions, it said. The laws at issue apply to anyone who assists in a suicide, including physicians who supply lethal drugs. "There are no exceptions," the court said.

**Constitutional Claims** The court said the assisted suicide laws as applied to the plaintiffs didn't violate either equal protection or due process under the state constitution. New York's laws didn't unconstitutionally distinguish between individuals who choose to take their own

lives and those who refuse life-sustaining medical treatment, which state law permits, the court said.

The court also said the right to die, or obtain assistance in dying, wasn't a fundamental right protected by the state constitution's due process clause. So long as the assisted suicide laws were rationally related to a legitimate government interest they were constitutional.

The state had a "legitimate purpose" in preventing abuse or mistakes leading to unintended deaths by trying to prevent distribution of prescription drugs that could be deliberately or accidentally misused, the court said. New York also had a "significant interest in preserving life and preventing suicide."

The court recognized that the Legislature might see the issue differently and consider adopting laws to regulate assisted suicide and define the conditions under which it would be allowed. Other states have done so, it noted.

The court affirmed a May 2016 decision by the New York Supreme Court Appellate Division.

**Legislative Push Coming** Assisted suicide proponents likely will "redouble their efforts" to try to "push assisted suicide through in a hurry next year," Adam Prizio, an attorney with the Center for Disability Rights Inc. in Washington, told Bloomberg BNA. The center, a nonprofit, community-based advocacy and service organization for people with all types of disabilities, "will be there to push back when they do, because this issue is life and death for the disability community," Prizio said.

Prizio said his organization was "tremendously heartened by today's decision." The plaintiffs had asked the court to rewrite the state's assisted suicide laws to add an exception that the Legislature neither created nor intended. "The court rightly declined to do this," he said. The Center for Disability Rights filed a friend-of-the-court brief supporting the argument that there is no right to assisted suicide in New York.

Compassion & Choices, which filed a friend-of-the-court brief supporting the plaintiffs, confirmed that it is turning its attention to a legislative solution.

"While we were supportive of the plaintiffs in this case, now we urge the legislature and Gov. Andrew Cuomo (D) to honor the wishes of more than three-quarters of their constituents by enacting a law in 2018 authorizing medical aid in dying as an option for terminally ill adults to end unbearable suffering," Corinne Carey, New York State campaign director for Compassion & Choices, said in a statement emailed to Bloomberg BNA.

The organization's "job is to educate them that while a very low percentage of terminally ill New Yorkers will

utilize this option, similar laws in six other states have improved end-of-life care for many dying people, by spurring conversations about all end-of-life care options, resulting in better utilization of hospice, pain control and palliative care,” Carey said. Compassion & Choices is based in Denver, Colo.

Diane Coleman, president and chief executive officer of Not Dead Yet, an organization that opposes assisted suicide, told Bloomberg BNA she is concerned about the “deadly mix between the pressures to cut health care and public policy of medically assisted suicide.”

“Elders and people with disabilities too often face pressure to get out of the way,” Coleman said. Health-care coverage may be denied or become more expensive for the terminally ill if “assisted suicide becomes an accepted practice,” she said.

**Other States** A trial court in another influential state, California, June 16 denied a pretrial motion for judgment on the pleadings in a lawsuit to undo the state’s End of Life Option Act, which took effect in June 2016. A trial setting conference is scheduled for Oct. 20.

Bills similar to California’s law have been introduced in 26 states since January. The states are Alaska, Arizona, Connecticut, Delaware, Hawaii, Indiana, Iowa,

Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Utah, and Wisconsin, according to Compassion & Choices. There also is a proposed November 2018 ballot initiative in South Dakota, the organization said.

Judges Jenny Rivera, Leslie E. Stein, Eugene M. Fahey, Michael J. Garcia, and Rowan D. Wilson agreed with the judgment. Rivera, Fahey, and Garcia each filed a separate concurring opinion. Stein signed on to Garcia’s opinion. Chief Judge Janet DiFiore and Judge Paul Feinman didn’t participate in the case.

Edwin G. Schallert, of Debevoise & Plimpton, New York, represented the plaintiffs. Anisha S. Dasgupta, of the New York Attorney General’s Office, Albany, represented the state.

BY MARY ANNE PAZANOWSKI

To contact the reporter on this story: Mary Anne Pazanowski in Washington at [mpazanowski@bna.com](mailto:mpazanowski@bna.com)

To contact the editor responsible for this story: Peyton M. Sturges at [PSturges@bna.com](mailto:PSturges@bna.com)

---

*The opinion is at <http://src.bna.com/sla>.*

To request permission to reuse or share this document, please contact [permissions@bna.com](mailto:permissions@bna.com). In your request, be sure to include the following information: (1) your name, company, mailing address, email and telephone number; (2) name of the document and/or a link to the document PDF; (3) reason for request (what you want to do with the document); and (4) the approximate number of copies to be made or URL address (if posting to a website).