

Seeking Compassion in Dying: The Washington State Law Against Assisted Suicide

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In May of 1994, federal district Judge Barbara Rothstein ruled in *Compassion in Dying v. Washington*¹ that certain terminally-ill adults have a constitutional right to commit physician-assisted suicide. Six months later, Oregon voters narrowly approved a ballot initiative allowing certain terminally-ill adults to obtain physicians' prescriptions for lethal drugs.² These parallel legal actions moved the Pacific Northwest to center stage in the growing national debate over physician-assisted suicide (in which doctors supply patients with drugs or other means to commit suicide), and euthanasia (in which doctors administer a life-ending medication or procedure).

From a constitutional standpoint, the decision by Judge Rothstein is more significant than the Oregon initiative because her reasoning calls into question statutes against assisted suicide that are currently in effect in most American states and are part of traditional Anglo-American law.³ Her ruling goes far beyond the Oregon initiative (now the Death With Dignity Act), which created a narrow statutory exception in the law against assisted suicide.⁴ It establishes a broad,

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1. 850 F. Supp. 1454, 1467 (W.D. Wash. 1994), *rev'd*, 49 F.3d 586 (9th Cir. 1995).

2. *Voters in Oregon Allow Doctors To Help the Terminally Ill Die*, N.Y. TIMES, Nov. 11, 1994, at A12.

3. These laws are reviewed in ALAN MIESEL, THE RIGHT TO DIE 60-61 (Supp. No. 1 1994).

4. The Oregon Death With Dignity Act, *reprinted* in Kane v. Kulongoski, 871 P.2d 993, 1001-06 (Or. 1994). The narrowness of this exception is suggested by the section of the act that provides:

Nothing in this Act shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with this Act shall not, for any purpose, constitute suicide, *assisted suicide*,

new constitutional right that will restrict legislative efforts to address this controversial social issue. The decision was unprecedented; no prior court had limited a state's authority to outlaw assisted suicide.⁵ And it is unfortunate: By failing to properly balance the relevant issues at stake, the decision in *Compassion in Dying* threatens to make a mockery of its name by increasing the vulnerability of elderly and infirm patients without demonstrably aiding those who might independently choose death. Relying heavily on this point and raising several other serious concerns, the Ninth Circuit federal court of appeals reversed Judge Rothstein's holding in a split decision issued after this Article was written and initially edited.⁶

I. THE WASHINGTON STATUTE

The ruling involved a Washington State statute that is similar to laws in most other American jurisdictions. Like most other states, Washington does not criminalize suicide or attempted suicide. Rather, the law proscribes aiding or causing the suicide of another. It provides, in pertinent part, "[a] person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide."⁷ This is a broad prohibition. Nothing in the statute focuses on physicians as actors or on the terminally ill as recipients. It was intended to protect life and discourage suicide without regard to a patient's condition.⁸ Although a statute of this type has been on Washington's books since the region first became a territory, its current wording reflects the influence of the Model Penal Code, which included a strict ban against assisted suicide as a means to protect life in general.⁹

mercy killing or homicide, under the law.

Id. § 3.14, 871 P.2d at 1004 (emphasis added).

5. Judge Rothstein acknowledged this in a footnote, where she wrote, "[t]he court is aware of no other federal cases directly addressing the issue raised in this case." *Compassion in Dying*, 850 F. Supp. at 1462 n.5.

6. *Compassion in Dying v. Washington*, 49 F.3d 586, 592 (9th Cir. 1995).

7. WASH. REV. CODE § 9A.36.060(1)(1994). Thirty states currently outlaw assisted suicide by statute. MIESEL, *supra* note 3, at 60-61 (Supp. No. 1 1994).

8. See MODEL PENAL CODE justification discussed *infra* note 9.

9. The original Washington territorial law against assisted suicide was included within the territory's initial criminal statute, which was the second bill passed by the first territorial legislature. 1854 Wash. Laws 78, § 17. The text of the MODEL PENAL CODE provision on assisted suicide is in § 210.5(2), with the rationale for that provision discussed in comment 5. MODEL PENAL CODE § 210.5(2) cmt. 5 (1962). In the past thirty years, following the publication of the MODEL PENAL CODE, eight states passed new statutes specifically outlawing assisted suicide and eleven other states, including Washington in 1975, revised their existing statutes. Thomas Marzen et al., *Suicide: A Constitutional Right?*, 24 DUQ. L. REV. 1, 86, 100

Before Judge Rothstein's recent decision, there was no hint in any published decision that Washington's law against assisted suicide or others like it were unconstitutional. Indeed, contrary to the implications of Judge Rothstein's decision, the U.S. Supreme Court in its 1990 decision involving the right to die, *Cruzan v. Director, Missouri Department of Health*,¹⁰ suggested that laws against assisted suicide were constitutional. *Cruzan* itself involved a federal constitutional challenge to a state requirement that the termination of life-sustaining medical treatment required clear and convincing evidence of the patient's wish to have treatment ended. In her decision, Judge Rothstein wrote:

In *Cruzan*, the Supreme Court considered whether a competent person has a constitutionally protected liberty interest in refusing unwanted life sustaining medical treatment including artificially-delivered food and water essential to life. In his majority opinion, Justice Rehnquist acknowledged that this principle "may be inferred from our prior decisions," and that "the logic of the cases . . . would embrace such a liberty interest." He then assumed for the purposes of the case before the Court that the United States Constitution would grant a competent person a constitutionally protected right to refuse life-sustaining hydration and nutrition.¹¹

Judge Rothstein went on to ask "whether a constitutional distinction can be drawn" between the situation in *Cruzan* involving the withdrawal of life-sustaining medical treatment and the case of a competent, terminally-ill patient who wants to hasten death with a doctor's aid.¹² "In other words," she added, "is there a difference for purposes of finding a Fourteenth Amendment liberty interest between refusal of unwanted treatment, which will result in death, and committing physician-assisted suicide in the final stage of life?"¹³

Judge Rothstein answered this question in the negative without noting that the *Cruzan* Court implied that its answer would be positive. As if qualifying its statement suggesting that patients have a right to refuse treatment, the Supreme Court added, "moreover, the majority of States in this country have laws imposing criminal penalties on one who assists another to commit suicide. We do not think a State is required to remain neutral in the face of an informed and voluntary

(1985).

10. 497 U.S. 261 (1990).

11. *Compassion in Dying*, 850 F. Supp. at 1461 (ellipses in original) (citations omitted).

12. *Id.*

13. *Id.*

decision by a physically able adult to starve to death."¹⁴ This observation suggests that the Supreme Court would uphold a clean bar against assisted suicide, such as the Washington State statute or the Model Penal Code provision, and that there is a constitutionally meaningful line between a patient's right to refuse medical treatment and his or her demand for assistance in committing suicide.

II. LIBERTY INTERESTS V. STATE INTERESTS

The Supreme Court's comment in *Cruzan* about laws against assisted suicide is especially important for assessing *Compassion in Dying* because Judge Rothstein relied heavily on that Supreme Court decision to justify her holding. In particular, *Cruzan* provided authority for Judge Rothstein's finding that a terminally-ill person has a "liberty interest protected by the Fourteenth Amendment" of the U.S. Constitution in choosing "to end his or her suffering and hasten an inevitable death."¹⁵ Rothstein then jumped, without further analysis, to the legal conclusion "that a competent, terminally-ill adult has a constitutionally guaranteed right under the Fourteenth Amendment to commit physician-assisted suicide."¹⁶ The *Cruzan* Court did not proceed this way. After inferring that "a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment," the *Cruzan* Court stated:

But determining that a person has a "liberty interest" under the Due Process Clause does not end the inquiry; "whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests."¹⁷

Under this approach, individual liberty interests are less than absolute rights, and must be balanced against competing societal interests to determine whether they prevail.¹⁸ This balancing should be done at the outset, to determine if a constitutional right exists, rather than later, as Judge Rothstein did here, simply to determine if a challenged statute imposes an undue burden on an established constitutional right.¹⁹ Further, Judge Rothstein's belated balancing rigged both sides of the scales in favor of physician-assisted suicide.

14. *Cruzan*, 497 U.S. at 280.

15. *Compassion in Dying*, 850 F. Supp. at 1461.

16. *Id.* at 1462.

17. *Cruzan*, 497 U.S. at 279 (citations omitted).

18. *See id.*

19. Judge Rothstein followed the latter approach in *Compassion in Dying*, 850 F. Supp. at 1462-66.

Judge Rothstein exaggerated the weight of the liberty interest at stake. In defining the relevant liberty interest, she stated:

There is no more profoundly personal decision, nor one which is closer to the heart of personal liberty, than the choice which a terminally ill person makes to end his or her suffering and hasten an inevitable death.²⁰

Even assuming that this is true—and it appears to be a subjective observation—it does not answer the question of whether a terminally-ill person has a profound personal liberty interest in committing *physician-assisted* suicide. To make this connection, evidence should demonstrate that the person needs physician assistance to exercise his or her liberty interest in hastening death. If the evidence shows that a terminally-ill person can easily hasten death without a physician's assistance, such as by using traditional suicide methods or drug information readily available in the popular literature,²¹ then a law against physician-assisted suicide would not significantly burden the person's liberty interest. At most, the law would discourage people from choosing death, which the state is clearly free to do.²² If the evidence shows that most people who need a physician's assistance to commit suicide are physically unable to self-administer drugs, and therefore require lethal injections or other forms of active euthanasia, then Judge Rothstein's narrowly limited decision to allow "terminally-ill adult patients to hasten death by *prescribing* suitable medication for *self-administration* by the patient,"²³ rather than to permit physician-administered euthanasia, would not significantly advance their liberty interests.²⁴ In either event, Judge Rothstein's decision would lack justification. In fact, the justification necessary to connect a terminally-ill person's liberty interest in hastening death with physician-assisted suicide is utterly absent from the written opinion. The opinion simply jumps from one to the other.

20. *Id.* at 1461.

21. For example, suicide methods for the terminally ill are outlined in the best selling and widely available book, DEREK HUMPHREY, FINAL EXIT: THE PRACTICALITIES OF SELF-DELIVERANCE AND ASSISTED SUICIDE FOR THE DYING (1991).

22. For an analogous situation, see *Planned Parenthood v. Casey*, 112 S.Ct. 2791, 2816, 2821 (1992), where the opinion of the Court provides that the state is free "to persuade the woman to choose childbirth over abortion" and "show its concern for life" prior to fetal viability even though the woman maintains a constitutional right to obtain an abortion.

23. *Compassion in Dying*, 850 F. Supp. at 1459 (emphasis added).

24. In the Netherlands, where both physician-assisted suicide and physician-administered euthanasia are widely practiced, euthanasia is far more common than assisted suicide. See DAVID CUNDIFF, EUTHANASIA IS NOT THE ANSWER: A HOSPICE PHYSICIAN'S VIEW 102 (1992).

Judge Rothstein also diminished the weight of the relevant state interests that support a law against physician-assisted suicide.²⁵ In its defense of the statute, the state claimed an interest in preventing undue influence, duress, abuse, and mistake in the commission of physician-assisted suicide. Dismissing this defense, Judge Rothstein wrote that "protecting people from committing suicide due to undue influence or duress is also unquestionably a legitimate interest. But it is undisputed that plaintiffs in this case are mentally competent individuals who have reached a decision to commit physician-assisted suicide free from any undue influence."²⁶ However, her decision was not limited to the plaintiffs before the court, whose mental states were subject to judicial review. Her decision overturned the law against assisted suicide for everyone, without requiring judicial oversight of a patient's mental competence or other legal safeguards against undue influence.²⁷ Moreover, after noting that Washington State law allows individuals to refuse life-sustaining medical treatment, Judge Rothstein added, "[t]he potential risk of abuse and undue influence is often just as great and may be greater in certain cases for a patient who requests to be disconnected from a life support system."²⁸ But Judge Rothstein provided no evidence to support her opinion on this point, and her logic is far from self-evident given the obvious physical differences between persons who do and do not need ongoing medical treatment just to stay alive.

There is good reason for concern about the risk of undue influence in the administration of lethal drugs, especially when dealing with the elderly. University of Michigan constitutional-law expert Yale Kamisar analyzed the inevitable risk of unintended undue influence in this context. "Ageism," he wrote "the prejudices and stereotypes applied to the elderly solely on the basis of their age—may manifest itself in a failure to recognize treatable depression, a refusal to take an aggressive approach to pain management, the view that an elderly person's desire to commit suicide is more 'rational' than a younger patient's would be."²⁹ Ageism could lead physicians to accept

25. This side of the balance is discussed more fully in Yale Kamisar, *Are Laws Against Assisted Suicide Unconstitutional?*, 23 HASTINGS CENTER REP. 32, 38-39 (1993); and Edward J. Larson, *Prescription for Death: A Second Opinion*, 39 DEPAUL L. REV. (forthcoming 1995).

26. *Compassion in Dying*, 850 F. Supp. at 1465.

27. *Id.* at 1467. Indeed, two of the three terminally-ill plaintiffs died before Judge Rothstein issued her decision. *Id.* at 1456 n.2.

28. *Id.* at 1467.

29. Kamisar, *supra* note 25, at 39. For an early presentation of Kamisar's views on this issue, see Yale Kamisar, *Some Non-Religious Views Against Proposed 'Mercy-Killing' Legislation*, 42 MINN. L. REV. 969 (1958).

physician-assisted suicide by physically ill senior citizens without sufficient investigation of their motives. In a recent book on suicide cited by Kamisar, George Colt observed, "[a]lthough we shrink from the idea of elderly suicide and euthanasia, we encourage it by our neglect and indifference."³⁰ Similarly, sociologist Menno Boldt wrote, "[s]uicidal persons are succumbing to what they experience as an overpowering and unrelenting coercion in their environment to cease living."³¹ This sense of coercion could be increased by condoning physician-assisted suicide. In her analysis of the related issue of euthanasia, ethicist Sissela Bok concluded that "the possibility of abuses and errors," especially in cases involving the "senile" or the "powerless," outweigh the potential benefits of the practice for some compelling cases.³²

Based on such expert testimony, state legislators reasonably could find that this coercion might intensify in a state that sanctioned physician-assisted suicide. Indeed, legislators could conclude that, if physician-assisted suicide becomes legal, freely discussed, and openly practiced, more people, especially the infirm and the elderly, will see it as the socially accepted way to save society, their families, and themselves from the burdens of old age and serious illness. Yet it is up to legislatures and the public to establish such societal norms, as Oregon did, rather than for federal courts to impose them by judicial fiat. Washington state voters considered the legalization of physician-assisted suicide in 1991, and rejected it.³³ Even if legislators could not prove that legalizing physician-assisted suicide for the terminally ill would unduly encourage these and other people to take their own lives, and increase the likelihood of duress and mistake in this context, they surely have a reasonable basis for addressing these concerns by outlawing the procedure. Indeed, this state interest should be great enough to sustain the statute unless it can be protected adequately in some less burdensome way. Judge Rothstein's decision failed to make this calculation other than by simply professing that the legislature could still "devise regulations" designed to prevent "abuse, coercion or undue influence from third parties" in the practice of assisted

30. GEORGE COLT, *THE ENIGMA OF SUICIDE* 394 (1991), cited in Kamisar, *supra* note 25, at 39.

31. Kamisar, *supra* note 25, at 39.

32. Sissela Bok, *Euthanasia and the Care of the Dying*, in *THE DILEMMAS OF EUTHANASIA* 1, 8-9 (John A. Behnke & Sissela Bok eds. 1975).

33. See Jane Gross, *Voters Turn Down Mercy Killing Idea*, N.Y. TIMES, Nov. 7, 1991, at B16.

suicide.³⁴ Yet her ruling struck down just such a regulation, and she did not suggest any workable alternative.

III. EQUAL PROTECTION FOR UNEQUAL ACTS

Judge Rothstein's holding did not rest solely on the liberty interests of the terminally ill. It also invoked claims to equal protection. As she explained:

Plaintiffs in this case contend that Washington State law unconstitutionally distinguishes between two similarly situated groups of terminally-ill adults. Under current state law, those terminally ill persons whose condition involves the use of life-sustaining equipment may lawfully obtain medical assistance in terminating such treatment, including food and water, and thereby hasten death, while those who also suffer from terminal illnesses, but whose treatment does not involve the use of life support systems are denied the option of hastening death with medical assistance.³⁵

In short, plaintiffs equated a dying patient whose life is being prolonged through medical treatment with a terminally-ill person who remains able to live without treatment. Without providing *any* authority for her holding on this crucial point, Judge Rothstein concluded, "[t]he court finds the two groups of mentally competent, terminally-ill adults at issue here to be similarly situated."³⁶ Of course, as the Ninth Circuit would later note when reversing Judge Rothstein's ruling,³⁷ this conclusion ignores the many situations in which the law distinguishes between an action that causes a result and a failure to act in a situation which foreseeably leads to a similar result.³⁸

The lack of authority for equating the two groups at issue here is particularly telling in this context because it involves a central issue in medical ethics. Although some modern medical ethicists and physicians agree with Judge Rothstein's conclusion,³⁹ the great weight of authority maintains that there is a *fundamental* difference between allowing patients to die by withdrawing or withholding medical treatment and hastening death through a medical intervention. This distinction dates at least as far back in Western medical tradition as the

34. *Compassion in Dying*, 850 F. Supp. at 1465 n.10.

35. *Id.* at 1466.

36. *Id.* at 1467.

37. *Compassion in Dying*, 49 F.3d at 593-94.

38. See, e.g., WILLIAM L. PROSSER, PROSSER ON THE LAW OF TORTS § 54 (3rd ed. 1964).

39. E.g., Marcia Angell, *Euthanasia*, 319 NEW ENG. J. MED. 1348, 1350 (1988).

ancient Hippocratic Oath.⁴⁰ Referring to this Oath, the U.S. Supreme Court, in *Roe v. Wade*, observed, "[i]t represents the apex of the development of strict [ethical] concepts in medicine, and its influence endures to this day."⁴¹ Under the Hippocratic Oath, which is attributed to the 4th century B.C. Greek physician Hippocrates, a physician may refrain from treating patients but may never prescribe any "deadly medicine," even if asked.⁴²

The major Anglo-American medical associations vigorously maintain this distinction today. Thus, for example, the American Medical Association condemns physician-assisted suicide as "contrary to that for which the medical profession stands" while it condones the withdrawal of life-sustaining treatment if it conforms to "the decision of the patient and/or his immediate family."⁴³ The British Medical Association assumed a similar stance in its 1988 *Euthanasia Report*, which concluded, "[t]here is a distinction between an active intervention by a doctor to terminate life and a decision not to prolong life (a nontreatment decision)."⁴⁴

Medical ethicists endorse this distinction. For example, the Hastings Center, America's preeminent institute for the study of medical ethics, concluded in a 1987 report that helped shape the right to refuse life-sustaining treatment:

Some persons who accept this right of patients to decide to forgo treatment are concerned nevertheless that the values supporting it, and in particular self-determination, necessarily imply that voluntary euthanasia and assisted suicide are also justified. We disagree. Medical tradition and customary practice distinguish in a broadly accepted fashion between the refusal of medical intervention and intentionally causing death by assisting suicide.⁴⁵

40. The text of the Hippocratic Oath is widely reprinted. The source used for purposes of this Article is *Hippocratic Oath*, in 12 COLLIER'S ENCYCLOPEDIA 137 (1994).

41. *Roe v. Wade*, 410 U.S. 113, 131 (1973).

42. *Hippocratic Oath*, *supra* note 40, at 137. For commentary on this distinction, see Willard Gaylin et al., *Doctors Must Not Kill*, 259 JAMA 2139, 2139 (1988).

43. This statement is quoted from a 1973 resolution of the American Medical Association House of Delegates and is reprinted in Thomas D. Sullivan, *Active and Passive Euthanasia: An Impertinent Distinction?*, in EUTHANASIA: THE MORAL ISSUE 53, 54 (Robert M. Baird & Stuart E. Rosenbaum eds., 1989). For reference to a similar position taken by the Judicial Council of the American Medical Association in 1986, see Gaylin, *supra* note 42, at 2139.

44. *Conclusions of a British Medical Association Review of Guidelines on Euthanasia*, in EUTHANASIA: THE MORAL ISSUE, *supra* note 43, at 155.

45. HASTINGS CENTER, GUIDELINES ON THE TERMINATION OF LIFE-SUSTAINING TREATMENT AND THE CARE OF THE DYING 129 (1987).

Four of America's premier physician-ethicists, Willard Gaylin, Leon R. Kass, Edmund D. Pellegrino, and Mark Siegler, jointly declared, "[g]enerations of physicians and commentators on medical ethics have underscored and held fast to the distinction between ceasing useless treatments (or allowing to die) and active, willful, taking of life."⁴⁶ In a statement that utterly *denounces* Judge Rothstein's position, these four influential scholars added, "[n]either legal tolerance nor the best bedside manner can ever make medical killings medically ethical."⁴⁷ An exhaustive study of the issue by the official New York State Task Force on Life and the Law reached a similar conclusion in 1994.⁴⁸

Given the overwhelming weight of medical and ethical authority against her position, it was tactful of Judge Rothstein not to cite any basis (other than the plaintiffs' complaint) for equating physician-assisted suicide with terminating life-sustaining medical treatment. Physicians and medical ethicists typically view the two situations as fundamentally different, and no amount of subtle judicial writing can make it appear otherwise. The *only* evidence that Judge Rothstein offered in support of her equal-protection holding was the irrelevant observation that Washington State law permits patients to refuse life-sustaining treatment. "Thus," she reasoned, "the State has already recognized that its interest in preventing suicide does not require an absolute ban."⁴⁹ Of course, Washington State does not ban suicide—the state simply tries to discourage it through a law against assisted suicide. Further, the state law she cited, the Washington Natural Death Act, expressly provides that the termination of life-sustaining treatment under the Act "shall not, for any purpose, constitute a suicide . . .," which suggests that the lawmakers did not intend to equate refusing life-sustaining treatment with suicide.⁵⁰ Moreover, that Act incorporates an absolute ban against "mercy

46. Gaylin, *supra* note 42, at 2139.

47. *Id.*

48. NEW YORK STATE TASK FORCE ON LIFE AND THE LAW, WHEN DEATH IS SOUGHT; ASSISTED SUICIDE AND EUTHANASIA IN THE MEDICAL CONTEXT (1994). Also in 1994, in the litigation spawned by Dr. Jack Kevorkian's practice of physician-assisted suicide, a Michigan appellate court accepted this distinction in the context of considering the constitutionality of a state law against assisted suicide. *Hobbins v. Attorney General*, 518 N.W.2d 487, 493 (Mich. Ct. App. 1994), *aff'd in part, rev'd in part, remanded*, *People v. Kevorkian*, 527 N.W.2d 714 (Mich. 1994), *cert. denied sub nom.*, *Hobbins v. Kelley*, 115 S. Ct. 1795 (1995).

49. *Compassion in Dying v. Washington*, 850 F. Supp. 1454, 1467 (W.D. Wash. 1994), *rev'd*, 49 F.3d 586 (9th Cir. 1995).

50. WASH. REV. CODE § 70.122.070(1) (1994).

killing,"⁵¹ which presumably includes physician-assisted suicide.⁵² Finally, as noted above, mainstream medical and ethical opinion does not equate terminating life-sustaining treatment with assisted suicide. As the 1987 Hastings Center report concluded, "a reasonable, if not unambiguous, line can be drawn between foregoing life-sustaining treatment on the one hand, and active euthanasia or assisted suicide on the other."⁵³ Judge Rothstein ignored this line and wrongly ordered the state to do likewise.

IV. CONCLUSIONS

Terminally-ill persons may have a liberty interest in committing physician-assisted suicide. Certainly there is some apparent similarity between a terminally-ill person who no longer wishes to prolong his or her life through medical technology and one who wishes to hasten his or her death through lethal drugs. This similarity may support a legislative enactment authorizing physicians to prescribe lethal drugs, like the Oregon initiative. In 1991, however, voters in Washington State rejected a less-restrictive initiative that would have generally authorized physician-assisted suicide.⁵⁴ Judge Rothstein's decision provided an insufficient constitutional basis to overrule this judgment of the people—to do by judicial fiat what they chose not to do by legislation. The decision fails to seriously address either the societal interests served by outlawing physician-assisted suicide or the widely accepted distinction between refusing medical treatment and prescribing lethal drugs. Constitutional jurisprudence, especially an unprecedented decision to overturn a long-established statute, requires a stronger justification than the text of this decision provides.⁵⁵

51. *Id.* § 70.112.100 (1994).

52. Of course, Washington State expressly bans all forms of assisted suicide. WASH. REV. CODE § 9A.36.060 (1994).

53. HASTINGS CENTER, *supra* note 45, at 6.

54. See Jane Gross, *supra* note 33, at B16.

55. See, for example, the extensive analysis and justification employed by the Supreme Court in two landmark decisions involving long-established statutes that profoundly impacted society: *Brown v. Board of Education*, 347 U.S. 483 (1954) (barring school segregation); *Roe v. Wade*, 410 U.S. 113 (1973) (legalizing abortion).