1996-97

NATIONAL HEALTH LAW MOOT COURT COMPETITION

Transcript of Record
Docket No. 96-8748

SUPREME COURT OF THE UNITED STATES

October Term, 1996

STATE OF FLUX; ANNE J. STEVENS, ATTORNEY GENERAL OF FLUX,

Petitioner,

v.

CITIZENS UNITED FOR PHYSICIAN-ASSISTED SUICIDE,

Respondent.

SPONSORS:

Southern Illinois University School of Law

Southern Illinois University School of Medicine,
Department of Medical Humanities

American College of Legal Medicine

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF FLUX

CITIZENS UNITED FOR PHYSICIAN-ASSISTED SUICIDE, a non-profit corporation, Plaintiff, vs. STATE OF FLUX and ANNE J. STEVENS, Attorney General of Flux, Defendants.	)	CASE NO. 95-C-3281

MEMORANDUM OPINION AND ORDER
Korwin J. Roskos, District Judge

Plaintiff, Citizens United for Physician-Assisted Suicide ("CUPAS"), challenges the constitutionality of the Flux Death with Dignity Act, 27 FRS 129.000-129.700 (See Appendix). Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the parties have filed cross-motions for summary judgment.

I. FACTS

CUPAS is a Flux non-profit corporation dedicated to ensuring terminally ill, but mentally competent, citizens of Flux information on and access to physician-assisted suicide. CUPAS includes among its members physicians, terminally ill patients and family members of terminally ill individuals as well as others who share the goal of assuring safe and open access to physician-assisted suicide. This goal stems from the belief that terminally ill, but mentally capable, individuals have a constitutional right to hasten their own deaths in order to avoid prolonged suffering.

The Flux Death with Dignity Act ("the Act"), 27 FRS 129.000-129.700, took effect January 1, 1995. The Act places restrictions on an individual's right to physician-assisted suicide. Plaintiff asserts a challenge to the constitutionality of the Act, claiming that certain provisions of the Act place an "undue burden" on the exercise of the constitutional right to assisted suicide. The specific restrictions challenged are:

1. The limitation on access to physician-assisted suicide to individuals over eighteen (18) years of age, thus excluding minors, including so-called "mature minors." (27 FRS 129.100(1); 129.200);

2. A determination of the patient's mental capacity by a psychiatrist within thirty (30) days of the request for physician-assisted suicide (27 FRS 129.500); and

3. A waiting period of not less than fourteen (14) days after the initial written request for physician-assisted suicide (27 FRS 129.600).

Plaintiff's position is that any restriction on the "right" to physician-assisted suicide violates the Due Process Clause of the Fourteenth Amendment.

II. ANALYSIS

A. Protected Liberty Interest

The Fourteenth Amendment to the United States Constitution declares that the State may not "deprive any person of life, liberty, or property without due process of law." Plaintiff asserts the existence of a liberty interest, protected by the Fourteenth Amendment, which extends to include a personal choice by a mentally competent, terminally ill individual to commit physician-assisted suicide. CUPAS contends that individuals in those circumstances have a constitutionally protected right to be free from undue governmental intrusion on their decision to hasten death and avoid prolonged suffering.

1. In support of its claim, plaintiff cites *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 110 S. Ct. 2841, 111 L. Ed. 2d 224 (1990),[1] which held that a mentally competent individual has a constitutional right to refuse life saving hydration and nutrition. *Cruzan*, however, is inapposite to the case at bar. That case dealt with the refusal of life-sustaining treatment, while the case at bar deals with the active acceleration of death through artificial means. These situations are clearly different. The *Cruzan* decision recognized a narrow exception to the State's interest in preserving life. This court is unwilling to expand that exception at this time.

2. Plaintiff also relies on *Planned Parenthood of Southeastern Pennsylvania v. Casey*, __U.S. __, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992), which suggests

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1. See also *Jacobson v Massachusetts*, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905); *Washington v Harper*, 494 U.S. 210, 110 S. Ct. 1028, 108 L. Ed. 2d 178 (1990); *Vitek v Jones*, 445 U.S. 480, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980).

that a woman's right to choose an abortion falls within the Fourteenth Amendment's liberty interests.

Casey is clearly distinguishable from the case at hand. The right to seek an abortion is completely different than the right to terminate one's life. Absent precedential authority, this court refuses to read the right to physician-assisted suicide into the rights discussed in *Casey*. *See Quill v. Koppell*, 870 F. Supp. 78 (S.D.N.Y. 1994); but see *Compassion in Dying v. Washington*, 850 F. Supp. 1454 (W.D. Wash. 1994).

3. Plaintiff further claims that the Act has the purpose or effect of presenting a substantial obstacle to persons seeking to engage in physician-assisted suicide, imposing an "undue burden" on that right and it is thus invalid under *Casey*. Because this court finds that there is no constitutional right, however, it is unnecessary to reach the plaintiff's argument that the Flux Act impinges upon that right.

Having failed the "fundamental right" test, the State would be free to ban physician-assisted suicide outright, but instead has created a system of restrictions. Because Flux's power to ban the activity entirely necessarily includes the lesser power of restricting access to this "right," the restrictions enunciated in 27 FRS 129.000-129.700 are constitutionally permissible consistent with the Due Process Clause of the Fourteenth Amendment. *Posadas De Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 106 S. Ct. 2968, 92 L. Ed. 2d 266 (1986).

B. The Equal Protection Issue

Plaintiff next argues that even if there is no fundamental right to physician-assisted suicide, the Act violates the Equal Protection clause of the Fourteenth Amendment because the restrictions are not enforced against individuals seeking to refuse life-sustaining medical treatment. Plaintiff claims that refusal of such treatment is tantamount to committing suicide and that the disparate treatment of these acts under the laws of Flux violates Equal Protection.

The issue is whether the distinction drawn by this statute has a reasonable and rational basis. *Dandridge v. Williams*, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1969). The State obviously has a legitimate interest in preserving life. Here, the State has chosen to create a new statutory right, completely different from the right to refuse life-sustaining medical treatment, and as such has placed reasonable restrictions on this right that this court is unwilling to negate.

For these reasons the court holds that plaintiff has not demonstrated a violation of the Equal Protection Clause of the Fourteenth Amendment. Although the Western District of Washington in *Compassion in Dying v. Washington*, 850 F.

Supp. 1454 (W.D. Wash 1994)[2] took a contrary position on both the equal protection and due process issues, this court is persuaded by the contrary analysis in *Quill v. Koppell*, 870 F. Supp 78 (S.D.N.Y. 1994).[3]

III. CONCLUSION

Plaintiff's Motion for Summary Judgment is denied. Defendants' Motion for Summary Judgment is granted. The court therefore directs the Clerk of the Court to enter judgment and that the plaintiff take nothing.

SO ORDERED.

DATE: March 20, 1995

/s/ Korwin J. Roskos
Honorable Korwin J. Roskos

ENTERED: March 20, 1995

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2. In *Compassion in Dying*, a statute banning physician-assisted suicide by mentally competent, terminally ill adults was found unconstitutional. The court held that: (1) there was a protected liberty interest in physician-assisted suicide; (2) the statute placed an undue burden on this liberty interest; and (3) it violated equal protection by prohibiting terminally ill persons from seeking physician-assisted suicide but allowing withdrawal of life-support systems.

3. In *Quill*, physicians challenged the constitutionality of a New York statute criminalizing aiding an individual in suicide or attempted suicide. The court held that there was no fundamental right to assisted suicide and that the statute did not violate equal protection.

APPENDIX TO OPINION
FRS 129.000 THE FLUX DEATH WITH DIGNITY ACT (1995)

[1995 Flux Revised Statutes
Cite as 27 FRS 129.000]

129.000 Preamble.

The State of Flux in no way condones suicide, but with this Act creates a narrow exception to its general prohibition on assisting individuals in suicide attempts.

129.100 Definitions.

The following words and phrases, whenever used in 27 FRS 129.000 to 129.700, shall have the following meanings:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(4) "Incapable" means that in the opinion of a licensed psychiatrist, as provided for in 27 FRS 129.500, a patient lacks the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available. Capable means not incapable.

(5) "Informed Decision" means one made by a capable, terminally ill individual based on all relevant considerations and upon being fully informed, by the attending physician, of:

(a) His or her medical diagnosis;

(b) His or her prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

(d) The probable result of taking the medication to be prescribed;

(e) The feasible alternatives, including, but not limited to, comfort care, hospice care and pain control.

(6) "Patient" means a person who is under the care of a physician.

(7) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the Board of Medical Examiners for the State of Flux.

(8) "Qualified patient" means a capable adult who is a resident of Flux and has satisfied the requirements of 27 FRS 129.000 to 129.700 in order to obtain a prescription for medication to end his or her life in a humane and dignified manner.

(9) "Terminal illness" means an incurable and irreversible medical condition that is reasonably likely to result in death within six months.

129.200 Coverage of Statute:

Any capable adult citizen of the State of Flux diagnosed as suffering from a terminal illness may voluntarily make the informed decision to request that a lethal dose of medication be prescribed by his or her attending physician in accordance with 27 FRS 129.000 to 129.700.

129.300 Requirements of Request

(1) An individual requesting that a lethal medication be prescribed must express such desire in both verbal and written requests.

(2) A valid written request for medication under 27 FRS 129.000 to 129.700 shall be dated and shall be witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

(a) One of the witnesses shall be a person who is not:

(i) A relative of the patient by blood, marriage or adoption;

(ii) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or

(iii) An owner, operator or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(b) The patient's attending physician at the time the request is signed shall not be a witness.

(c) If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the Department of Human Resources by rule.

(3) Such written request shall be made part of the individual's medical record.

129.400 Verification of Terminal Illness

The individual's terminal illness must be verified in writing by the individual's attending physician and a consulting physician. Such written verification shall be made part of the individual's medical record.

129.500 Determination of Capacity

Individuals making a request under 27 FRS 129.000 to 129.700 must submit themselves for a determination of capacity by a licensed psychiatrist. Such determination shall be made in writing within 30 days of the written request under 27 FRS 129.300 and shall be made part of the individual's medical record.

129.600 Waiting Period

No less than 14 days shall elapse between the individual's written request and no less than 72 hours shall elapse between the individual's oral request and the writing of a prescription for a lethal dose of a medication under 27 FRS 129.000 to 129.700.

129.700 Enforcement

Failure to follow these procedures shall result in a punishment of the offending physician of not more than one year in jail and/or a $50,000 fine.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF FLUX

CITIZENS UNITED FOR PHYSICIAN-ASSISTED SUICIDE, a non-profit corporation, Plaintiff, vs. STATE OF FLUX; ANNE J. STEVENS, Attorney General of Flux, Defendants.	)	CIVIL NO. 95-C-3281

JUDGMENT

This matter coming before the court on the parties' motions for summary judgment, it is hereby ordered and adjudged that summary judgment is entered for defendant, State of Flux and that plaintiff take nothing.

DATE: March 20, 1995

/s/ Mark A. Ludolph
CLERK OF THE COURT

IN THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

No. 95-2467

CITIZENS UNITED FOR PHYSICIAN-ASSISTED
SUICIDE,

Plaintiff-Appellant,

vs.

STATE OF FLUX; ANNE J. STEVENS,
Attorney General of Flux,

Defendants-Appellees

Appeal from the United States
District Court
for the Western District of Flux
Civil No. 95-C-3281-- Korwin J. Roskos,
District Judge

Argued April 17, 1996 -- Decided May 15, 1996

Before MORRIS, Chief Judge,
GARCEAU and BUTCHER, Circuit Judges

MORRIS, Chief Judge. This action comes before the court on appeal from the district court's grant of summary judgment for the defendant on plaintiff's challenge to the constitutionality of the Flux Death with Dignity Act. The district court's judgment is reversed.

I. FACTS

The district court's opinion adequately sets forth the facts of this case. We merely summarize them here as necessary for our analysis.

The appellant, Citizens United for Physician-Assisted Suicide ("CUPAS"), challenged the constitutionality of the Flux Death with Dignity Act ("the Act"), 27 FRS 129.000 to 129.700, claiming that the restrictions constituted an "undue burden" on the right to determine the time and manner of one's own death through physician-assisted suicide. The district court decided that there was no Due Process right to physician-assisted suicide, that this was merely a statutory right created by the state. Further, because there was no fundamental right to physician assisted suicide, the "undue burden analysis" was inapplicable. The district court also held that the restrictions were not violative of Equal Protection by applying different standards to mentally competent, terminally ill individuals on life support and those not yet on life support. Summary judgment was granted to defendant, upholding the constitutionality of the Act.

CUPAS is a Flux non-profit organization dedicated to ensuring terminally ill, but mentally competent citizens of Flux, information on and access to physician assisted-suicide. While CUPAS recommends guidelines for physician-assisted suicide similar to those in question, it opposes any formal restrictions.

The Act specifically allows terminally ill, but mentally competent citizens of Flux access to physician-assisted suicide. However, the Act places restrictions on both this access and the manner in which physician-assisted suicide may be conducted.

II. ANALYSIS

Liberty Interest

Whether the Act violates the Due Process clause of the Fourteenth Amendment, by placing an "undue burden" on the right to seek physician-assisted suicide, depends, first and foremost, on determining whether there is a liberty interest in terminally ill, but mentally competent individuals choosing to hasten their own deaths in order to avoid prolonged suffering. Appellant claims that such a right is consistent with the Due Process Clause of the Fourteenth Amendment. Appellee claims that there is no such right under the Fourteenth Amendment and because Flux chooses to recognize this right under its own law, it is entitled to place whatever restrictions it chooses on that right.

The district court sided with Flux holding that no such liberty interest exists. In so holding, the district court was in error. The court too narrowly defined the liberty interest in question. It is not merely the right to physician-assisted suicide, it is the right to die. Physician-assisted suicide is merely a means to this end.[1]

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1. This analysis is also made in *Compassion in Dying v. State of Washington*, 79 F.3d 790 (9th Cir. 1996). The Ninth Circuit, en banc, decision, while not controlling, is highly instructive on the inquiry into the existence of a liberty interest in the hastening of one's own death in order to avoid prolonged suffering.

The right to die is among those "matters involving the most intimate and personal choices a person may make in a lifetime. Choices central to personal dignity and autonomy are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the state." *Planned Parenthood v. Casey*, __ U.S. __, 112 S. Ct. 2791, 2807, 120 L. Ed. 2d 674, 698 (1992). These rights are "implicit in the concepts of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319, 325-26, 58 S. Ct. 149, 151-52, 82 L. Ed. 288 (1937). Additionally, *Casey* citing *Poe* indicates:

> The full scope of the liberty guaranteed by the Due Process clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. . . . It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints. *Planned Parenthood v. Casey*, __ U.S. __, 112 S. Ct. 2791, 2805, 120 L. Ed. 2d 674, 696 (1992).

This right was also recognized by the Supreme Court in *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 110 S. Ct. 2841, 111 L. Ed. 2d 224 (1990). There, the Court recognized the right to be free of unwanted medical treatment even when the certain result of this refusal is death.

The district court claims that there is a distinction between withholding unwanted medical treatment (as in *Cruzan*) and actively accelerating death through artificial means (the present case). This distinction is illusory. In each situation, the result is the same -- the individual dies. The withdrawal of life support is the same as prescribing a lethal dose of medication, an affirmative act resulting in death. From this analysis, it seems clear that there is a liberty interest in the hastening of death in order to avoid prolonged suffering that is protected by the Due Process clause of the Fourteenth Amendment.

Determining the existence of a liberty interest under the Due Process clause of the Fourteenth Amendment, is merely the first step of our analysis. Whether there has been a violation of constitutional rights depends on balancing this liberty interest against the state's interests. *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 110 S. Ct. 2841, 2852, 111 L. Ed. 2d 224 (1990); *Youngberg v. Romeo*, 457 U.S. 307, 321, 102 S. Ct. 2452, 2461, 73 L. Ed. 2d 28 (1982).

The state's primary interest is the preservation of life. On this point, the Supreme Court's abortion cases have been highly instructive. From *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), through *Casey*, the Supreme Court has balanced the state's interest in life against the woman's liberty interest in terminating an unwanted pregnancy. As in the abortion cases, the greater the potential for life, the weaker the liberty interest in terminating that life and vice versa.

In the case of a terminally ill individual, the state's interest in preserving life pales in comparison to the individual's liberty interest in avoiding prolonged suffering and agonizing death. Thus, there is little doubt that a complete ban on physician-assisted suicide for terminally ill, but mentally competent individuals would violate the Due Process Clause of the Fourteenth Amendment.

Undue Burden

While a ban on physician-assisted suicide would clearly violate the Due Process Clause of the Fourteenth Amendment, that is not what the State of Flux has done in the present case. Instead, Flux has set up a set of restrictions on access to physician-assisted suicide. The restrictions to which appellant specifically objects are:

(1) The limitation on access to physician-assisted suicide to individuals over eighteen (18) years of age, thus excluding minors, including so-called "mature minors" (27 FRS 129.100; 129.200);
(2) A determination of the patient's mental competence within 30 days of the request for physician assisted suicide by a psychiatrist (27 FRS 129.500); and
(3) A waiting period of not less than 14 days after the initial written request for physician-assisted suicide (27 FRS 129.600).

As in *Casey*, the next step is to determine whether the restrictions impose an "undue burden" on terminally ill, but mentally competent individuals' right to hasten death in order to avoid prolonged suffering. 112 S. Ct. at 2819. *Casey* indicates:

> A finding of an undue burden is a shorthand for the conclusion that a state regulation has a purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of an nonviable fetus. A statute with this purpose is invalid because the means chosen by the State to further the interest in potential life must be calculated to inform the woman's free choice, not hinder it and a statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of a woman's choice cannot be considered a permissible means of serving its legitimate ends. *Planned Parenthood v. Casey*, __ U.S. __, 112 S. Ct. 2791, 2820, 120 L. Ed. 2d 674, 714-15. (1992).

We apply a similar analysis here.

In a series of cases involving abortion laws, the Supreme Court has recognized that minors, like adults, have fundamental rights. See *Planned Parenthood. Danforth* 428 U.S. 52, 96 S. Ct. 2381, 49 L. Ed. 2d 788 (1976). However, because minors "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," the Court has held that states "may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious

consequences." *Bellotti v. Baird,* 443 U.S. 622, 635, 99 S. Ct. 3035, 3044, 61 L. Ed. 2d 797, 808 (1979).

For most health care matters, the law has recognized that parents are authorized to make important decisions for their children. See *Parham v. J.R,.* 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979). Some minors however, may have the right to make their own decisions under the "mature minor" doctrine. Thus, in *In re E.G.*, 133 Ill. Ed 98, 549 N.E.2d 322 (1989) using this doctrine, the court allowed a trial judge to determine whether a minor may be mature enough to make her own decision to refuse life-sustaining medical treatment. The test is, "if the evidence is clear and convincing that the minor is mature enough to appreciate the consequences of her actions, and that the minor is mature enough to exercise the judgment of an adult, then the mature minor doctrine affords her the common law right to consent to or refuse medical treatment." *Id.*

The Flux Death with Dignity Act prevents all minors, including mature minors, from making a decision to request physician-assisted suicide. This obstacle not only presents an undue burden, but more significantly acts as a complete bar on any minor's exercise of the right in question. Whether examined under the balancing test or the "undue burden" standard, the state has not established any basis upon which to support such a complete ban. The restriction must therefore be stricken.

Likewise, the second and third restrictions appear to place an "undue burden" on terminally ill, but mentally competent individuals' access to physician-assisted suicide. In order to qualify for access to physician-assisted suicide under the statute, an individual must have six months or fewer remaining to live (27 FRS 129.100). The time requirements (up to 30 days for a determination of capacity and a 14 day waiting period), coupled with the requirement that a licensed psychiatrist evaluate the individual's capacity, impose substantial and unacceptable obstacles to the right to physician-assisted suicide.

Finding no way to enforce the Act absent the age limit, the waiting period, the time period for determining the individual's capacity, and the psychiatric evaluation requirement, we must strike down the statute as a whole as violative of the Due Process Clause of the Fourteenth Amendment.

Equal Protection

While the district court addressed the issue of an Equal Protection violation, we find it unnecessary to address this issue on appeal. The finding of a Due Process Clause violation is sufficient to support striking down the Flux Death with Dignity Act.

III. CONCLUSION

We hold that a liberty interest exists in allowing terminally ill, but mentally competent individuals, including "mature minors," access to physician-assisted suicide in order to hasten

their own deaths and avoid prolonged suffering. Further, we hold that 27 FRS 129.100(1) and 129.200 (the limit on access to adults), 27 FRS 129.500 (the 30-day period for a determination of mental capacity by a psychiatrist) and 27 FRS 129.600 (the 14-day waiting period) are violative of the Due Process clause of the Fourteenth Amendment by placing an undue burden on individuals seeking to exercise this right. In so holding, we see no reasonable way of enforcing the statute absent these provisions. Thus, the Act as a whole is stricken as unconstitutional. The district court's judgment is REVERSED.

BUTCHER, Circuit Judge, dissenting.

I believe that the district court was correct in its original determination of these issues. I would hold that terminally ill, but mentally competent adults do not have a fundamental right to physician assisted suicide. This is a right created by the State of Flux and, as such, the state may place whatever restrictions on that right it so chooses. The district court made this argument clearly enough that there is no need to repeat it here.

Similarly, I agree with the district court's assessment that the Flux Death with Dignity Act does not violate the Equal Protection Clause of the Fourteenth Amendment. Again, the district court's opinion on this issue does not bear repeating here. However, I question this court's failure to reach the Equal Protection issue in its opinion, the issue was briefed and argued to this court and will surely be appealed. This court faces the prospect of being confronted with this same issue again in the future. This court's failure to address the issue when it had the chance is the height of judicial inefficiency.

I do not join the majority's rush to create new fundamental rights under the Due Process Clause of the Fourteenth Amendment. Therefore, I respectfully dissent.

No. 96-8748
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1996

STATE OF FLUX; ANNE J. STEVENS, ATTORNEY GENERAL OF FLUX,

Petitioner,

v.

CITIZENS UNITED FOR PHYSICIAN-ASSISTED SUICIDE,
A Not-for-Profit Corp.,

Respondent.

ORDER GRANTING CERTIORARI

Upon consideration of the Petition for Certiorari the Court hereby **GRANTS** the petition on the following issues:

1. Whether mentally competent, terminally ill individuals have a constitutionally protected right to engage in physician-assisted suicide.

2. Whether the restrictions on physician-assisted suicide established by the Flux Death with Dignity Act are violative of the Fourteenth Amendment.

IT IS SO ORDERED.

Date: June 26, 1996.