

**EXPLORING CASE LAW*****Washington, et al. v. Glucksberg, et al., 521 U.S. 702 (1997)***

The case was a challenge to Washington's assisted suicide law, which criminalized aiding someone in their wish to die. The argument was that the Washington law violated the due process clause.

1. What was the specific issue in this case?
2. Why did the Court decide that choosing where and when to die was not a fundamental liberty interest?
3. How can someone who is competent and terminally ill commit suicide in states that do not have Death with Dignity Acts? (Note: Washington State now has a Death with Dignity Law that allows doctors to assist in euthanasia.)

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**WASHINGTON ET AL. v. GLUCKSBERG ET AL.****521 U.S. 702 (1997)**

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CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented in this case is whether Washington's prohibition against "caus[ing]" or "aid[ing]" a suicide offends the Fourteenth Amendment to the United States Constitution. We hold that it does not.

It has always been a crime to assist a suicide in the State of Washington. In 1854, Washington's first Territorial Legislature outlawed "assisting another in the commission of self-murder." Today, Washington law provides: "A person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide." . . . "Promoting a suicide attempt" is a felony, punishable by up to five years' imprisonment and up to a \$10,000 fine. . . . At the same time, Washington's Natural Death Act, enacted in 1979, states that the "withholding or withdrawal of life-sustaining treatment" at a patient's direction "shall not, for any purpose, constitute a suicide." . . .

Petitioners in this case are the State of Washington and its Attorney General. Respondents Harold Glucksberg, M.D., Abigail Halperin, M. D., Thomas A. Preston, M.D., and Peter Shalit, M.D., are physicians who practice in Washington. These doctors occasionally treat terminally ill, suffering patients, and declare

that they would assist these patients in ending their lives if not for Washington's assisted-suicide ban. In January 1994, respondents, along with three gravely ill, pseudonymous plaintiffs who have since died and Compassion in Dying, a nonprofit organization that counsels people considering physician-assisted suicide, sued in the United States District Court, seeking a declaration that Wash. Rev. Code § 9A.36.060(1) (1994) is, on its face, unconstitutional. . . .

The plaintiffs asserted "the existence of a liberty interest protected by the Fourteenth Amendment which extends to a personal choice by a mentally competent, terminally ill adult to commit physician-assisted suicide." Relying primarily on *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992), and *Cruzan v. Director, Mo. Dept. of Health*, 497 U. S. 261 (1990), the District Court agreed, . . . and concluded that Washington's assisted-suicide ban is unconstitutional because it "places an undue burden on the exercise of [that] constitutionally protected liberty interest." . . . The District Court also decided that the Washington statute violated the Equal Protection Clause's requirement that "all persons similarly situated . . . be treated alike." . . .

A panel of the Court of Appeals for the Ninth Circuit reversed, emphasizing that "[i]n the two

hundred and five years of our existence no constitutional right to aid in killing oneself has ever been asserted and upheld by a court of final jurisdiction.” . . . The Ninth Circuit reheard the case en banc, reversed the panel’s decision, and affirmed the District Court. . . . Like the District Court, the en banc Court of Appeals emphasized our *Casey* and *Cruzan* decisions. . . . The court also discussed what it described as “historical” and “current societal attitudes” toward suicide and assisted suicide, and concluded that “the Constitution encompasses a due process liberty interest in controlling the time and manner of one’s death—that there is, in short, a constitutionally-recognized ‘right to die.’” After “[w]eighing and then balancing” this interest against Washington’s various interests, the court held that the State’s assisted-suicide ban was unconstitutional “as applied to terminally ill competent adults who wish to hasten their deaths with medication prescribed by their physicians.” . . . The court did not reach the District Court’s equal protection holding. . . . We granted certiorari, and now reverse.

We begin, as we do in all due process cases, by examining our Nation’s history, legal traditions, and practices. . . . The States’ assisted-suicide bans are not innovations. Rather, they are longstanding expressions of the States’ commitment to the protection and preservation of all human life. . . . Moreover, the majority of States in this country have laws imposing criminal penalties on one who assists another to commit suicide . . . .

More specifically, for over 700 years, the Anglo-American common-law tradition has punished or otherwise disapproved of both suicide and assisting suicide . . . . In the 13th century, Henry de Bracton, one of the first legal-treatise writers, observed that “[j]ust as a man may commit felony by slaying another so may he do so by slaying himself.” . . . The real and personal property of one who killed himself to avoid conviction and punishment for a crime were forfeit to the King; however, thought Bracton, “if a man slays himself in weariness of life or because he is unwilling to endure further bodily pain . . . [only] his movable goods [were] confiscated.” . . . Thus, “[t]he principle that suicide of a sane person, for whatever reason, was a punishable felony was . . . introduced into English common law.” Centuries later, Sir William Blackstone, whose Commentaries on the Laws of England not only

provided a definitive summary of the common law but was also a primary legal authority for 18th- and 19th-century American lawyers, referred to suicide as “self-murder” and “the pretended heroism, but real cowardice, of the Stoic philosophers, who destroyed themselves to avoid those ills which they had not the fortitude to endure . . . .” . . . . *[some discussion omitted]*

For the most part, the early American Colonies adopted the common-law approach. . . .

Over time, however, the American Colonies abolished these harsh common-law penalties. William Penn abandoned the criminal-forfeiture sanction in Pennsylvania in 1701, and the other Colonies (and later, the other States) eventually followed this example. . . .

That suicide remained a grievous, though non-felonious, wrong is confirmed by the fact that colonial and early state legislatures and courts did not retreat from prohibiting assisting suicide. Swift, in his early 19th-century treatise on the laws of Connecticut, stated that “[i]f one counsels another to commit suicide, and the other by reason of the advice kills himself, the advisor is guilty of murder as principal.” . . . This was the well-established common-law view, . . .

The earliest American statute explicitly to outlaw assisting suicide was enacted in New York in 1828, . . . and many of the new States and Territories followed New York’s example. . . . By the time the Fourteenth Amendment was ratified, it was a crime in most States to assist a suicide. . . .

Though deeply rooted, the States’ assisted-suicide bans have in recent years been reexamined and, generally, reaffirmed. Because of advances in medicine and technology, Americans today are increasingly likely to die in institutions, from chronic illnesses. . . . Public concern and democratic action are therefore sharply focused on how best to protect dignity and independence at the end of life, with the result that there have been many significant changes in state laws and in the attitudes these laws reflect. Many States, for example, now permit “living wills,” surrogate health-care decision making, and the withdrawal or refusal of life-sustaining medical treatment. . . . At the same time, however, voters and legislators continue for the most part to reaffirm their States’ prohibitions on assisting suicide.

The Washington statute at issue in this case, . . . was enacted in 1975 as part of a revision of that State’s

criminal code. Four years later, Washington passed its Natural Death Act, which specifically stated that the “withholding or withdrawal of life-sustaining treatment . . . shall not, for any purpose, constitute a suicide” and that “[n]othing in this chapter shall be construed to condone, authorize, or approve mercy killing . . .” . . . In 1991, Washington voters rejected a ballot initiative which, had it passed, would have permitted a form of physician assisted suicide. Washington then added a provision to the Natural Death Act expressly excluding physician-assisted suicide. . . .

California voters rejected an assisted-suicide initiative similar to Washington’s in 1993. On the other hand, in 1994, voters in Oregon enacted, also through ballot initiative, that state’s “Death With Dignity Act,” which legalized physician-assisted suicide for competent, terminally ill adults. Since the Oregon vote, many proposals to legalize assisted-suicide have been and continue to be introduced in the States’ legislatures, but none has been enacted. And just last year, Iowa and Rhode Island joined the overwhelming majority of states explicitly prohibiting assisted suicide. . . . Also, on April 30, 1997, President Clinton signed the Federal Assisted Suicide Funding Restriction Act of 1997, which prohibits the use of federal funds in support of physician-assisted suicide. . . . *[some discussion omitted]*

Thus, the States are currently engaged in serious, thoughtful examinations of physician-assisted suicide and other similar issues. . . . *[some discussion omitted]*

Attitudes toward suicide itself have changed since Bracton, but our laws have consistently condemned, and continue to prohibit, assisting suicide. Despite changes in medical technology and notwithstanding an increased emphasis on the importance of end-of-life decision making, we have not retreated from this prohibition. Against this backdrop of history, tradition, and practice, we now turn to respondents’ constitutional claim.

The Due Process Clause guarantees more than fair process, and the “liberty” it protects includes more than the absence of physical restraint. . . . The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. . . . In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the “liberty” specially protected by the Due Process Clause includes the rights to marry; to have

children; to direct the education and upbringing of one’s children; to marital privacy; to use contraception; to bodily integrity, and to abortion. We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted life saving medical treatment.

But we “ha[ve] always been reluctant to expand the concept of substantive due process because guide posts for responsible decision making in this uncharted area are scarce and open-ended.” . . . By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore “exercise the utmost care whenever we are asked to break new ground in this field,” . . . , lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court, . . . .

Our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, “deeply rooted in this Nation’s history and tradition,” . . . Second, we have required in substantive-due-process cases a “careful description” of the asserted fundamental liberty interest. . . . Our Nation’s history, legal traditions, and practices thus provide the crucial “guide posts for responsible decision-making,” that direct and restrain our exposition of the Due Process Clause. As we stated recently in *Flores*, the Fourteenth Amendment “forbids the government to infringe . . . ‘fundamental’ liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” . . .

Justice Souter, relying on Justice Harlan’s dissenting opinion . . . would largely abandon this restrained methodology, and instead ask “whether [Washington’s] statute sets up one of those ‘arbitrary impositions’ or ‘purposeless restraints’ at odds with the Due Process Clause of the Fourteenth Amendment,” . . . In our view, however, the development of this Court’s substantive-due-process jurisprudence, . . . has been a process whereby the outlines of the “liberty” specially protected by the Fourteenth Amendment—never fully clarified, to be sure, and perhaps not capable of being fully clarified—have at least been carefully refined

by concrete examples involving fundamental rights found to be deeply rooted in our legal tradition. This approach tends to rein in the subjective elements that are necessarily present in due process judicial review. In addition, by establishing a threshold requirement—that a challenged state action implicate a fundamental right—before requiring more than a reasonable relation to a legitimate state interest to justify the action, it avoids the need for complex balancing of competing interests in every case.

Turning to the claim at issue here, the Court of Appeals stated that “[p]roperly analyzed, the first issue to be resolved is whether there is a liberty interest in determining the time and manner of one’s death,” or, in other words, “[i]s there a right to die?” Similarly, respondents assert a “liberty to choose how to die” and a right to “control of one’s final days,” and describe the asserted liberty as “the right to choose a humane, dignified death,” and “the liberty to shape death.” As noted above, we have a tradition of carefully formulating the interest at stake in substantive due-process cases. For example, although *Cruzan* is often described as a “right to die” case, . . . we were, in fact, more precise: We assumed that the Constitution granted competent persons a “constitutionally protected right to refuse lifesaving hydration and nutrition.” . . . The Washington statute at issue in this case prohibits “aid[ing] another person to attempt suicide,” . . . , and, thus, the question before us is whether the “liberty” specially protected by the Due Process Clause includes a right to commit suicide which itself includes a right to assistance in doing so.

We now inquire whether this asserted right has any place in our Nation’s traditions. Here, . . . we are confronted with a consistent and almost universal tradition that has long rejected the asserted right, and continues explicitly to reject it today, even for terminally ill, mentally competent adults. To hold for respondents, we would have to reverse centuries of legal doctrine and practice, and strike down the considered policy choice of almost every State. . . .

Respondents contend, however, that the liberty interest they assert *is* consistent with this Court’s substantive-due process line of cases, if not with this Nation’s history and practice. Pointing to *Casey* and *Cruzan*, respondents read our jurisprudence in this area as reflecting a general tradition of “self-sovereignty,”

. . . and as teaching that the “liberty” protected by the Due Process Clause includes “basic and intimate exercises of personal autonomy,” . . . According to respondents, our liberty jurisprudence, and the broad, individualistic principles it reflects, protects the “liberty of competent, terminally ill adults to make end-of-life decisions free of undue government interference.” . . . The question presented in this case, however, is whether the protections of the Due Process Clause include a right to commit suicide with another’s assistance. With this “careful description” of respondents’ claim in mind, we turn to *Casey* and *Cruzan*.

In *Cruzan*, we considered whether Nancy Beth Cruzan, who had been severely injured in an automobile accident and was in a persistent vegetative state, “ha[d] a right under the United States Constitution which would require the hospital to withdraw life-sustaining treatment” at her parents’ request. . . . We began with the observation that “[a]t common law, even the touching of one person by another without consent and without legal justification was a battery.” We then discussed the related rule that “informed consent is generally required for medical treatment.” After reviewing a long line of relevant state cases, we concluded that “the common-law doctrine of informed consent is viewed as generally encompassing the right of a competent individual to refuse medical treatment.” Next, we reviewed our own cases on the subject, and stated that “[t]he principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions.” Therefore, “for purposes of [that] case, we assume[d] that the United States Constitution would grant a competent person a constitutionally protected right to refuse life saving hydration and nutrition.” . . . We concluded that, notwithstanding this right, the Constitution permitted Missouri to require clear and convincing evidence of an incompetent patient’s wishes concerning the withdrawal of life-sustaining treatment. . . .

. . . [some discussion omitted]

The right assumed in *Cruzan*, however, was not simply deduced from abstract concepts of personal autonomy. Given the common-law rule that forced medication was a battery, and the long legal tradition protecting the decision to refuse unwanted medical treatment, our assumption was entirely consistent with

this Nation's history and constitutional traditions. The decision to commit suicide with the assistance of another may be just as personal and profound as the decision to refuse unwanted medical treatment, but it has never enjoyed similar legal protection. Indeed, the two acts are widely and reasonably regarded as quite distinct. . . .

Respondents also rely on *Casey*. There, the Court's opinion concluded that "the essential holding of *Roe v. Wade* . . . should be retained and once again reaffirmed." . . . We held, first, that a woman has a right, before her fetus is viable, to an abortion "without undue interference from the State"; second, that States may restrict post viability abortions, so long as exceptions are made to protect a woman's life and health; and third, that the State has legitimate interests throughout a pregnancy in protecting the health of the woman and the life of the unborn child. In reaching this conclusion, the opinion discussed in some detail this Court's substantive-due-process tradition of interpreting the Due Process Clause to protect certain fundamental rights and "personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education," and noted that many of those rights and liberties "involv[e] the most intimate and personal choices a person may make in a lifetime." . . .

. . . [some discussion omitted]

By choosing this language, the Court's opinion in *Casey* described, in a general way and in light of our prior cases, those personal activities and decisions that this Court has identified as so deeply rooted in our history and traditions, or so fundamental to our concept of constitutionally ordered liberty, that they are protected by the Fourteenth Amendment. . . . That many of the rights and liberties protected by the Due Process Clause sound in personal autonomy does not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected, . . . and *Casey* did not suggest otherwise.

The history of the law's treatment of assisted suicide in this country has been and continues to be one of the rejection of nearly all efforts to permit it. That being the case, our decisions lead us to conclude that the asserted "right" to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause. . . .

[Paragraphs describing the state's interest in protecting life omitted.]

The State also has an interest in protecting the integrity and ethics of the medical profession. . . . the American Medical Association, like many other medical and physicians' groups, has concluded that "[p]hysician-assisted suicide is fundamentally incompatible with the physician's role as healer." . . .

Next, the State has an interest in protecting vulnerable groups—including the poor, the elderly, and disabled persons—from abuse, neglect, and mistakes. . . . We have recognized, however, the real risk of subtle coercion and undue influence in end-of-life situations. . . .

. . . The State's assisted-suicide ban reflects and reinforces its policy that the lives of terminally ill, disabled, and elderly people must be no less valued than the lives of the young and healthy, and that a seriously disabled person's suicidal impulses should be interpreted and treated the same way as anyone else's. . . .

Finally, the State may fear that permitting assisted suicide will start it down the path to voluntary and perhaps even involuntary euthanasia. . . . it turns out that what is couched as a limited right to "physician-assisted suicide" is likely, in effect, a much broader license, which could prove extremely difficult to police and contain. Washington's ban on assisting suicide prevents such erosion.

. . . [some discussion omitted]

We need not weigh exactly the relative strengths of these various interests. They are unquestionably important and legitimate, and Washington's ban on assisted suicide is at least reasonably related to their promotion and protection. We therefore hold that Wash. Rev. Code § 9A.36.060(1) (1994) does not violate the Fourteenth Amendment, either on its face or "as applied to competent, terminally ill adults who wish to hasten their deaths by obtaining medication prescribed by their doctors." . . .

Throughout the Nation, Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician-assisted suicide. Our holding permits this debate to continue, as it should in a democratic society. The decision of the en banc Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

[Concurring and dissenting opinions omitted. Footnotes and citations omitted.]