

Center for American Progress



Role Reversal: The Supreme Court on Physician Aid-in-Dying

by Barbara Coombs Lee January 20, 2006

The U.S. Supreme Court this week proved itself a surprising, and strong, ally in the ongoing fight against the Bush administration's desire to play doctor. As we honor *Roe v. Wade*'s legacy of the right to conscience, bodily autonomy, and government non-interference with private decisions, it is appropriate that we celebrate this latest victory for personal freedom in the case of *Gonzales v. Oregon*.

Eleven years ago, Oregon citizens voted to make physician aid-in-dying an option for the terminally ill - with clear guidelines, strict safeguards, and state oversight.

In 2001, Attorney General John Ashcroft, by regulatory "directive" (read: fiat), declared that doctors who complied with the new law violated federal law. This week, the Supreme Court, with a stunning 6-3 majority, struck down the Justice Department's extraordinary abuse of power, thwarting the federal government's improper attempt to use national drug trafficking and control laws to usurp state regulation of medical practice.

In the process, the Court's conventional liberals offered instruction to the conventional conservatives on what judicial conservatism actually means: careful and restrained statutory construction, deference to the traditional role of the states, and firm checks on executive power.

The Bush administration's assault on the traditional doctor-patient relationship and the historic prerogative of states to regulate medical practice has been disturbing, and damaging. Unfortunately, the 2001 "Ashcroft Directive" authorizing the Drug Enforcement Agency to investigate and punish doctors who prescribe medication consistent with the Oregon aid-in-dying law was but an early example.

In another matter, enforcement of the so-called "partial-birth abortion" ban, the Justice Department went as far as subpoenaing patients' medical records from clinics and hospitals as part of a fishing expedition into whether medical

procedures women had undergone arguably violated the federal ban on abortion. The predictable protests ensued, and the Department reversed course. But its ultimate decision to act with restraint is the exception, rather than the rule, and seems to come only after receiving outside pressure. Witness, for example, the government's raids on cannabis clubs that provide patients with medicinal marijuana. After all, why rely on doctors' judgment when lawyers and police are available to assume the role of medical decision makers when dealing with terminally ill patients seeking a measure of dignity in their final chapter? Instead, the Department pursued its desire to exercise police power against these vulnerable Americans all the way to the Supreme Court.

But the Department lost, and resoundingly. And that decision confirms what Americans across this country already believe—a free people must limit the federal government's ability to insert itself into, or undermine an individual's right to make, important personal medical decisions. Patients must be free of government intrusion into private counsel with their doctor, their family, and their faith.

Support for physician aid-in-dying is both deep and wide. Consistently, polls tell us that 75 percent or more of the public supports the right of competent, terminally ill patients to make end-of-life decisions for themselves, including the right not to extend the dying process if they choose. And this supports cuts across all lines: old and young, liberal and conservative.

A rich irony of this week's high court decision is that the declared conservatives on the Court - Antonin Scalia, Clarence Thomas and John Roberts - abandoned conservative principles, while the liberals and moderates (including the opinion's author, Justice Anthony Kennedy) exalted them.

We've heard from the federalists and conservatives for decades, including in recent nomination hearings, about the importance of checking unitary Executive Branch power, leaving decisions to the states, getting the government "off the backs" of our families and property, and strictly construing statutes. But, sadly, when the pen meets the parchment, even Supreme Court justices will abandon those principles when they lead to a substantive result - in this case, terminally ill patients taking control of their own dignity - that is inconsistent with their own ideology.

At Compassion & Choices, we are working to provide accurate, honest information to families around the nation grappling with one of the most wrenching decisions we deal with in life: the question of how we die. So I'm gratified that the Court reached this principled conservative decision, even without the participation of the so-called conservative justices.

We must continue to support efforts to pass aid-in-dying legislation in California and Vermont to ensure that more Americans have access to the much-needed

safeguards offered in Oregon. We must continue to provide education to Americans about the importance of end-of-life care planning, from preparing advanced directives to aid-in-dying. We call on our conservative friends who agree with our position to stand up for their conservative principles and support us as we fight to give more Americans the excellent care and broad choices Oregonians have. As Americans, such freedoms belong to us all.

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