

SUPREME COURT OF THE UNITED STATES

Nos. 96-110 AND 95-1858

WASHINGTON, ET AL., PETITIONERS
v.
96-110
HAROLD GLUCKSBERG ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

DENNIS C. VACCO, ATTORNEY GENERAL OF
NEW YORK, ET AL., PETITIONERS
95-1858
v.
TIMOTHY E. QUILL ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT

[June 26, 1997]

JUSTICE O'CONNOR, concurring.*

Death will be different for each of us. For many, the last days will be spent in physical pain and perhaps the despair that accompanies physical deterioration and a loss of control of basic bodily and mental functions. Some will seek medication to alleviate that pain and other symptoms.

The Court frames the issue in this case as whether the Due Process Clause of the Constitution protects a "right to commit suicide which itself includes a right to assistance in doing so," *ante*, at 18, and concludes that

*JUSTICE GINSBURG concurs in the Court's judgments substantially for the reasons stated in this opinion. JUSTICE BREYER joins this opinion except insofar as it joins the opinions of the Court.

our Nation's history, legal traditions, and practices do not support the existence of such a right. I join the Court's opinions because I agree that there is no generalized right to "commit suicide." But respondents urge us to address the narrower question whether a mentally competent person who is experiencing great suffering has a constitutionally cognizable interest in controlling the circumstances of his or her imminent death. I see no need to reach that question in the context of the facial challenges to the New York and Washington laws at issue here. See *ante*, at 18 ("The Washington statute at issue in this case prohibits '[aiding] 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"). The parties and *amici* agree that in these States a patient who is suffering from a terminal illness and who is experiencing great pain has no legal barriers to obtaining medication, from qualified physicians, to alleviate that suffering, even to the point of causing unconsciousness and hastening death. See Wash. Rev. Code §70.122.010 (1994); Brief for Petitioners in No. 95-1858, p. 15, n. 9; Brief for Respondents in No. 95-1858, p. 15. In this light, even assuming that we would recognize such an interest, I agree that the State's interests in protecting those who are not truly competent or facing imminent death, or those whose decisions to hasten death would not truly be voluntary, are sufficiently weighty to justify a prohibition against physician-assisted suicide. *Ante*, at 27-30; *post*, at 11 (STEVENSON, J., concurring in judgments); *post*, at 33-39 (SOUTER, J., concurring in judgment).

Every one of us at some point may be affected by our own or a family member's terminal illness. There is no reason to think the democratic process will not strike the proper balance between the interests of terminally

ill, mentally competent individuals who would seek to end their suffering and the State's interests in protecting those who might seek to end life mistakenly or under pressure. As the Court recognizes, States are presently undertaking extensive and serious evaluation of physician-assisted suicide and other related issues. *Ante*, at 11, 12-13; see *post*, at 36-39 (SOUTER, J., concurring in judgment). In such circumstances, "the . . . challenging task of crafting appropriate procedures for safeguarding . . . liberty interests is entrusted to the 'laboratory' of the States . . . in the first instance." *Cruzan v. Director, Mo. Dept. of Health*, 497 U. S. 261, 292 (1990) (O'CONNOR, J., concurring) (citing *New State Ice Co. v. Liebmann*, 285 U. S. 262, 311 (1932)).

In sum, there is no need to address the question whether suffering patients have a constitutionally cognizable interest in obtaining relief from the suffering that they may experience in the last days of their lives. There is no dispute that dying patients in Washington and New York can obtain palliative care, even when doing so would hasten their deaths. The difficulty in defining terminal illness and the risk that a dying patient's request for assistance in ending his or her life might not be truly voluntary justifies the prohibitions on assisted suicide we uphold here.