



GOVERNMENT

Georgia high court strikes down assisted suicide law

State prosecutors must dismiss a case against a doctor and three others charged with helping a patient kill himself in 2009.

By **ALICIA GALLEGOS AND KEVIN B. O'REILLY**, *amednews staff*. *Posted Feb. 20, 2012.*

The Supreme Court of Georgia has struck down -- on First Amendment grounds -- a state law intended to prevent assisted suicide. Reversal of the law means that a physician and three others who were charged with helping a man take his own life in 2009 are free from prosecution.

The wording of the law was too broad, encompassing not just the act of assisting a suicide but also related and constitutionally protected speech acts, the state Supreme Court ruled on Feb. 6.

Retired Baltimore anesthesiologist Lawrence D. Egbert, MD, and three nonphysician members of the Final Exit Network were charged with assisted suicide under a 1994 Georgia statute that outlawed advertising or offering to help people kill themselves. Dr. Egbert did not have a direct role in the death of John Celmer, 58, who had oral cancer and an arthritic hip. But as Final Exit Network's medical director, he approved Celmer for assisted-suicide services.

Final Exit argued that the Georgia law prohibited speech related to assisted suicide, instead of directly targeting the act of assisted suicide. In April 2011, a trial court judge ruled for the state, allowing the case to continue. Final Exit appealed that ruling.

In its Feb. 6 opinion, the high court said the state failed to provide an adequate explanation for or evidence about why a public advertisement or an offer to assist in an otherwise legal activity was sufficiently problematic to justify an intrusion on protected speech rights.

"It is not all assisted suicides which are criminalized but only those which include a public advertisement or offer to assist," justices said. "This distinction takes the statute out of the realm of content-neutral regulations and renders it a selective restraint on speech with a particular content."

The ruling means that assisted suicide now is legal in Georgia without regulations to police the activity, said Penny Penn, district attorney for Forsyth County, Ga., where Final Exit members were prosecuted. She is concerned that Final Exit now has more freedom to provide its services and that more patients who cannot adequately consent to suicide are at risk.

"I find it hard to believe that Georgia is one of the few states where assisted suicide is going to be legal, under any and all circumstances," she said. "I would certainly hope some thought would be given to the law to protect those who are vulnerable because of physical or mental health" disabilities.

Final Exit says it does not aid or assist in suicides, but offers information, education and emotional support to those who they say are dealing with intolerable suffering. The ruling discourages prosecutors nationwide from filing similar charges against Final Exit members and allows the group to continue helping those who need support, said Robert Rivas, Final Exit's general counsel.

"When people are at the end of their rope and suffering terribly, they can't find support in very many places," he said. "They don't get support from the medical community. They need support from somebody."

Final Exit has been involved in more than 200 deaths in which people used helium tanks and plastic hoods to end their lives. The organization's volunteers instruct applicants on how to acquire the helium tanks, and they come to people's homes and remove the tanks and hoods after they are dead. In 2011, Dr. Egbert and three other volunteers from the group were found not guilty of assisted suicide in the 2007 death of Jana van Noorhis, 58, of Phoenix.

Few states allow assisted suicide

Not Dead Yet, an advocacy organization for people with disabilities, called on the Georgia General Assembly to enact a new assisted-suicide law that can withstand constitutional muster.

"It's important to rewrite the law so that it becomes very clear that assisted suicide is not legal in Georgia," said Eleanor Smith, director of Not Dead Yet's Georgia chapter. "We were very shocked and surprised to learn that our [prior] Georgia law could be read in a way that assisted suicide could be legal. This was absolutely news to us and to a lot of people."

State legislators have expressed interest in rewriting the law before the end of the remaining session. Majority Whip Edward Lindsey and Sen. Bill Hamrick, both Republicans, have proposed revising the law.

At least 30 states have laws explicitly criminalizing assisted suicide. Another nine states criminalize the practice through common law.

In Oregon and Washington state, physician-aided suicide is available to patients who have been judged terminally ill by at least two physicians. A patient must make an oral request and a witnessed written request. Another oral request must be made 15 days later.

In Montana, the state Supreme Court ruled in December 2009 that physicians who prescribe life-ending medication to patients with terminal illnesses are not subject to state homicide statutes. But the court declined to rule on the question of whether physician-assisted suicide is a right guaranteed under Montana's Constitution.

American Medical Association policy "strongly opposes any bill to legalize physician-assisted suicide" because the practice is "fundamentally inconsistent with the physician's role as healer."

ADDITIONAL INFORMATION:

Case at a glance

Is a state law banning advertising of assisted suicide services constitutional?

The Supreme Court of Georgia said no. The court overturned the law, ruling that the state had failed to provide adequate explanation or evidence as to why an advertisement or an offer to assist in an otherwise legal activity was sufficiently problematic to justify an intrusion on protected speech rights.

Impact: Assisted suicide is now technically legal in Georgia, with no rules or regulations forbidding the practice.

Final Exit Network Inc. v. the State of Georgia, Supreme Court of Georgia, Feb. 6 (www.gasupreme.us/sc-op/pdf/s11a1960.pdf)

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