Religious Liberties

Assisted Suicide: Montana Supreme Court Avoids State Constitutional Issue; Holds Consent Defense Available for Homicide Prosecution

*By William L. Saunders**

> "In almost every State—indeed, in almost every western democracy—it is a crime to assist a suicide. The State's assisted-suicide bans are not innovations. Rather, they are longstanding expressions of the State's commitment to the protection and preservation of all human life."[1]

In *Baxter v. State*, decided December 31, 2009, the Montana Supreme Court did not "constitutionalize" a "right to die" as the lower court had done. Rather, the court held that physicians who prescribe lethal drugs upon the request of their patients are not subject to criminal liability under the "consent defense" to Montana's homicide law. Thus, technically, the court did not "legalize" assisted suicide; rather, someone who assists a suicide simply has a "defense" to homicide.

However, resting its reasoning on statutory grounds has not immunized the Court opinion from criticism. The consent defense to homicide is not applicable if such a defense would be against public policy. Thus, permitting a consent defense to a charge of assisting suicide, the court found there was no public reason against it. Doing so, it did not discuss some evidence to the contrary. Further, the decision does not preclude a future state constitutional challenge should the Montana legislature enact legislation clarifying that its law and policy do not permit physician assisted suicide.

I. Background of Baxter

In *Baxter v. State*, the named plaintiffs, two patients and four physicians,[2] sought to "establish their constitutional rights, respectively, to receive and provide aid in dying."[3] The plaintiffs' complaint defined "aid in dying" as "involv[ing] the right of a mentally competent, terminally ill adult patient to obtain a prescription for medication from a cooperating doctor, which the patient may choose to take to hasten an inevitable death in the face of unrelenting pain and misery at the end of life."[4]

The plaintiffs argued that rights granted by the Montana Constitution of privacy, individual dignity, due process, equal protection of the law, and the right to seek "safety, health and happiness in all lawful ways" guaranteed the right to "aid in dying."[5]

Robert Baxter, a named plaintiff, was a seventy-five-year old retired truck driver. He suffered from lymphocytic leukemia with diffuse lymphadenophathy, a form of cancer.[6] Lymphocytic leukemia is treated with multiple rounds of chemotherapy that become less effective over time. There is no known cure for the disease.

A second plaintiff in the case was Steven Stoelb. The complaint alleged Mr. Stoelb was terminally ill with Ehlers-Danlos Syndrome ("EDS").[7] There is no known cure for EDS. However, it is not a terminal illness.[8] Though Mr. Stoelb withdrew from the case as a party plaintiff because "during the hearing it became apparent that Mr. Stoelb's condition presented a contested issue of material fact," his initial inclusion as a plaintiff underscores the point that while the pleadings claim this "right" for the terminally ill, the "right" cannot be logically limited to those suffering *terminal* illnesses.

Suicide is not a crime in Montana. Neither Mr. Baxter, nor Mr. Stoelb, nor their estates would have been charged with any crime in Montana had they committed suicide.

The physician who prescribed a lethal drug for the plaintiffs could have faced criminal prosecution, however. Under Section 45-5-102, MCA, a person who purposely or knowingly causes the death of another human being in Montana commits the offense of deliberate homicide. Conduct is deemed the cause of another's death if the defendant's acts were committed purposely or knowingly, and the death would not have occurred without them.[9] Thus, a physician intentionally providing a lethal prescription could be prosecuted and convicted of homicide.

II. No Federal Right to Assisted Suicide

In 1997, the United States Supreme Court in *Washington v. Glucksberg*[10] and its companion case *Vacco v. Quill*[11] held that there is no right to assisted suicide under the Federal Constitution.

In *Glucksberg*, the plaintiffs challenged Washington State's assisted suicide ban. The Court was asked whether "liberty," specially protected by the United States Constitution, included a "right" to assisted suicide.[12] The Supreme Court found no such right, but rather a "consistent and almost universal tradition that has long rejected the asserted right and continues to explicitly reject it today, even for terminally ill, mentally competent adults."[13] The Court said finding a "right" to assisted suicide would "reverse centuries of legal doctrine and practice, and strike down the considered policy choice of almost every State."[14]

Advocates of assisted suicide and euthanasia often argue for their legalization because they are "deeply personal" choices. However, as the Supreme Court wrote in *Glucksberg*, "the decision to commit suicide 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."[15]

Seven years earlier, in the case *Cruzan v. Director, Missouri Department of Health*, the United States Supreme Court held that "refusing life-sustaining medical treatment" was a protected interest.[16] In *Glucksberg*, the Court explained *Cruzan* "was not simply deduced from abstract concepts of personal autonomy." Rather, it was based in "the common-law rule that forced

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medication was a battery, and the long legal tradition protecting the decision to refuse unwanted medical treatment," and was "entirely consistent with this Nation's history and constitutional traditions." However, in *Glucksberg*, the Court found that *Cruzan* and "the nation's history" did not support a right to assisted suicide or euthanasia.

The Supreme Court also explicitly rejected the argument that its definition of "liberty" in *Planned Parenthood v. Casey* included, or could be the basis for, a federal right to assisted suicide.[17] The Court stated, "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."[18] Simply put, under the Court's understanding of liberty and privacy, assisted suicide is not a fundamental right:

> 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.[19]

III. No Other State Court has Found a "Right" to Assisted Suicide

The Montana Constitution contains a "right to privacy" clause.[20] Courts in three states with constitutions similarly containing an explicit right to privacy have previously considered whether those provisions encompass the right sought in *Baxter*. All three have rejected the argument that a right to assisted suicide is contained in their privacy clauses.

In *Krischer v. Mciver* the Florida Supreme Court upheld the constitutionality of the state's statute prohibiting assisting suicide.[21] The court recognized the state's compelling interest in the preservation of life, preventing the affirmative destruction of human life, the prevention of suicide, and the maintenance of ethical integrity of the medical profession.[22] Likewise, in *Sampson v. State*, the Alaska Supreme Court determined that physician assisted suicide is not a fundamental right.[23] And in *Donaldson v. Lungren*, a California court held that the right to privacy does not create "a shield for third persons who end [the patient's] life."[24]

IV. Lower Court Decision

On December 5, 2008, Judge Dorothy McCarter of Montana district court issued an opinion holding that there was a right to assisted suicide in the Montana Constitution. The district court opinion acknowledged the United States Supreme Court decisions, and those of the Florida, Alaska, and California courts that all rejected the argument that such a right was contained in their constitutions. Judge McCarter, however, held that the Montana Constitution was distinguishable, and a combination of its privacy and dignity clauses mandated a right to assisted suicide.[25] In fact, these two provisions are so clearly intertwined for the court that it is somewhat difficult to separate them for purposes of this analysis.

The dignity clause of the Montana Constitution reads, "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws."[26] The lower court relied heavily upon one Montana case in particular to expound the meaning of this constitutional provision.

In 2003, in *Walker v. State*, the Montana Supreme Court applied the dignity clause. The case involved the treatment of a prison inmate, and the court quoted the following statement from a Montana Law Review article: "[T]reatment which degrades or demeans persons, that is, treatment which deliberately reduces the value of persons, and which fails to acknowledge their worth as persons, directly violates their dignity."[27]

The lower court concluded that not permitting physician assisted suicide would violate a patient's dignity because

> [i]f the patient were to have no assistance from his doctor, he may be forced to kill himself sooner rather than later because of the anticipated increased disability with the progress of his disease, and the manner of the patient's death would more likely occur in a manner that violates his dignity and peace of mind, such as by gunshot or by an otherwise unpleasant method, causing undue suffering to the patient and his family.[28]

The lower court found that Montana's constitutional right to privacy was also implicated.[29] The Montana Constitution states, "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."[30] Noting the importance of the right to privacy, the *Gryczan v. State*, the Montana Supreme Court explained that "its separate textual protection in our Constitution reflects Montanans' historical abhorrence and distrust of excessive governmental interference in their personal lives."[31]

The lower court cited *Armstrong v. State*, a case challenging the constitutionality of a statute prohibiting certified physician's assistants from performing abortions, as holding that this right includes "the right of each individual to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider free from the interference of the government."[32] The lower court found the decision to end one's life by assisted suicide to be a similar medical judgment and therefore held that the decision to commit assisted suicide "certainly is one of personal autonomy and privacy."[33]

Thus, the lower court held that the dignity and privacy clauses mandated a right to assisted suicide for "qualified patients":

> Taken together . . . the right of personal autonomy included in the state constitutional right to privacy, and the right to determine "the most fundamental questions of life" inherent in the state constitutional right to dignity, mandate that a competent terminally ill person has the right to choose to end his or her life.[34]

The court concluded that the "right" created by these provisions "necessarily incorporates the assistance of [the patient's] doctor."[35]

Who would be a "qualified patient" was not clearly defined. Lower court pleadings of appellees indicate that anyone

who survives on life-sustaining medication would be eligible. Critics point out that this logically includes anyone on blood-pressure medication, diabetics taking insulin, or asthmatics with inhalers.

Furthermore, critics say, the district court opinion does little to address the needs of the depressed. The opinion states that "[c]ompetency is easily determined by the patient's doctor."[36] However, many doctors are not equipped to diagnose and treat depression, and studies show that people requesting suicide are often suffering from this treatable mental illness. The Royal College of Psychiatrists in England observed in 2006 that systematic studies have "clearly shown" the wish for assisted suicide among terminally ill patients is "strongly associated with depression."[37] It concluded that most physicians cannot diagnose (and are thus unable to treat) depression and that ninety-eight to ninety-nine percent of those patients would subsequently change their minds about wanting to die once their depression had been treated. It seems indisputable that patients whose requests for assisted suicide are attributable to untreated clinical depression are not exercising the "autonomous" choice that advocates frequently offer as justification for legalization of physician assisted suicide.

V. Montana Supreme Court Decision

The Montana Supreme Court did not rule on the constitutional question, citing the judicial principle to "decline to rule on the constitutionality of a legislative act if we are able to decide the case without reaching constitutional questions."[38] Instead, it held that the consent defense to homicide "shields physicians from homicide liability if, with the patient's consent, the physicians provide aid in dying to terminally ill, mentally competent adult patients."[39]

The consent defense, however, as noted above, does not apply if it would be against "public policy."[40] The majority opined that there was "no indication" in Montana law that physician assisted suicide is against public policy and therefore no reason not to apply the consent defense. [41]

The court first set out to define what is meant by "against public policy." The court began by concluding that the "against public policy" exception is not limited to cases of aggravated assault. In order to determine whether Montana did have a public policy against assisted suicide, the court then analyzed a Montana statute, the Montana Rights of the Terminally Ill Act (hereafter, the "Act").[42] The Act requires respect for a patient's determination that he does not want to undergo treatment, or that he wants to be removed from life support—a health care provider must follow the patient's directive or transfer the patient to a provider willing to follow the directive.[43]

In its analysis, the court conflated physician assisted suicide with withholding treatment or withdrawing life support. However, the United States Supreme Court has emphasized that, while a request in each instance similarly comes from the patient, what is being requested in physician assisted suicide is different: with a request to withhold treatment, a patient asks that a doctor not prolong dying, but with assisted suicide, a person asks that a doctor provide the tools to bring about death.

The majority centered their analogy between what the Act allows and physician assisted suicide on the fact that these are both "autonomous" requests by a patient.[44] The court stated there is a "very narrow set of circumstances in which a terminally ill patient *himself* seeks out a physician and asks the physician to provide him the means to end his own life."[45] However, the court did not bring up the fact that euthanasia, for example, can also result from a voluntary request, and, as the court admitted, euthanasia is against public policy.[46] Montana does not require physicians to follow all "autonomous" requests by a patient about "end-of-life" scenarios. In the Act, Montana's legislature drew a distinction between letting a patient choose to die of their underlying condition and letting a doctor kill the patient. This distinction may call into question the court's reliance on the Act to support its decision.

VI. The Public Policy Question

While finding that physician assisted suicide was not against public policy, the court did not discuss much evidence that it is.

Not only did the U.S. Supreme Court in *Glucksberg* note there was no basis in history for creating a "right to die," it also identified several state interests against creating such a right. First and foremost, the state has an interest in protecting life.[47] A fundamental purpose of society is mutual protection.

Another reason the court offered to prohibit assisted suicide is "protecting the integrity and ethics of the medical profession."[48] A "right to die" can be seen as converting the medical profession from one of healing to one of killing. As the Supreme Court observed, the policies of multiple medical organizations state that assisted suicide threatens to undermine the fundamental ethical healing directive of the medical profession itself.[49] "[T]he American Medical Association, like many other medical and physicians' groups, has concluded that 'physician-assisted suicide is fundamentally incompatible with the physician's role as healer.'"[50]

Protecting vulnerable groups, "including the poor, the elderly, and disabled persons," is another important state interest identified by the Court in *Glucksberg*. It noted that these groups experience a "real risk of subtle coercion and undue influence in end-of-life situations."[51] The Court then explained that the state's interest goes further than protecting against coercion: "[I]t extends to protecting disabled and terminally ill people from prejudice, negative and inaccurate stereotypes, and 'societal indifference.'"

In *Glucksberg*, the Court also reasoned that "the State may fear that permitting assisted suicide will start it down the path to voluntary and perhaps even involuntary euthanasia." The "expansive reasoning" of the court of appeals decision on appeal in *Glucksberg* "provide[d] ample support" for this fear.[52] The Supreme Court concluded, "Thus, 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."[23]

The Court in *Glucksberg* added evidence about the practice of euthanasia in the Netherlands that supported the state's concern:

> The Dutch government's own study revealed that in 1990, there were 2,300 cases of voluntary euthanasia (defined as "the deliberate termination of another's life at his request"), 400 cases of assisted suicide, and more than 1,000 cases of euthanasia without an explicit request. In addition to these latter 1,000 cases, the study found an additional 4,941 cases where physicians administered lethal morphine overdoses without the patients' explicit consent. Physician-Assisted Suicide and Euthanasia in the Netherlands: A Report of Chairman Charles T. Canady, at 12-13 (citing Dutch study). This study suggests that, despite the existence of various reporting procedures, euthanasia in the Netherlands has not been limited to competent, terminally ill adults who are enduring physical suffering, and that regulation of the practice may not have prevented abuses in cases involving vulnerable persons, including severely disabled neonates and elderly persons suffering from dementia. . . . The New York Task Force, citing the Dutch experience, observed that "assisted suicide and euthanasia are closely linked," and concluded that the "risk of . . . abuse is neither speculative nor distant."[53]

What has been revealed about legalized assisted suicide and euthanasia post-*Glucksberg* adds to the cause for alarm. The Dutch purport to allow euthanasia and assisted suicide only at the "explicit request" of the patient to put an end to "unbearable suffering." But evidence shows the guidelines and limitations have been widely flouted.[54] Sick patients are now urged to let a doctor know if they do *not* wish to be euthanized when they become incompetent.[55]

Dr. Els Borst, the former Health Minister and Deputy Prime Minister who pushed the law through the Dutch Parliament has said, "In the Netherlands, we first listened to the political and societal demand in favor of euthanasia, obviously this was not in the proper order."[56]

Baroness Finlay, a professor of palliative care who opposes the legalization of assisted suicide in Great Britain, notes,

> You have to ask why is it that so many people working in palliative medicine in this country see what is going on in places such as Oregon as being so fundamentally dangerous. The reason is that we are looking after terminally-ill patients day in and day out—and we know how frightened they are.[57]

Conscience Questions

The Montana majority opinion may restrict the conscience rights of healthcare providers who do not want to participate in physician assisted suicide. The court's discussion by its literal words indicates that such a physician is akin to the doctor who fails to follow a patient's request to withhold or withdraw treatment under the Act. Such conduct may be subject to criminal liability.[58]

Conclusion

It is still true that no state supreme court has held that there is a state constitutional right to physician assisted suicide. Yet the decision in *Baxter v. Montana* is not in step with decisions of other federal and state courts. While Montana's legislature may respond with legislation clarifying that assisted suicide is against public policy and intended to be illegal, the court did not close the door to a future state constitutional challenge which argues that the dignity and privacy clauses *do* give a right to assisted suicide.

Endnotes

1 Washington v. Glucksberg, 521 U.S. 702, 710 (1997).

2 The organization "Compassion & Choices" was also a listed plaintiff in the case.

3 Complaint at 1, Baxter v. State, 2008 Mont. Dist. LEXIS 482 (Mont. Dist. Ct. 2008).

4 *Id.*

5 *Id.*

6 *Id.* at 11.

7 *Id.* at 14 ("Mr. Stoelb is terminally ill with Ehlers-Danlos Syndrome ('EDHS').").

8 "Life expectancy can be shortened with the Vascular Type of EDS due to the possibility of organ and vessel rupture. Life expectancy is usually not affected in the other types." Ehlers-Danlos National Foundation, *What is EDS?*, http://www.ednf.org/index.php?option=com_content&task=view&id=1347&Itemid=88888968.

9 Mont. Code Ann. § 45-2-201.

10 521 U.S. 702 (1997).

11 521 U.S. 793 (1997).

12 The plaintiffs described the question before the Court broadly:

> 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 Court rejected such a sweeping statement and defined the question more specifically as "whether the protections of the Due Process Clause include a right to commit suicide with another's assistance." *Glucksberg*, 521 U.S. at 724.

13 *Id.* at 723.

14 *Id.*

15 *Id.* at 725. The Court explicates this point in *Vacco* as well: "[T]he distinction between assisting suicide and withdrawing life support, a distinction widely recognized and endorsed by the medical profession, and in our legal traditions, is both important and logical; it is certainly rational." 521 U.S. 793, 800-801 (1997).

16 497 U.S. 261 (1990).

17 The district court and court of appeals had relied on *Casey* in their opinions against the Washington law: "Like the decision of whether or not to have an abortion, the decision how and when to die is one of 'the most intimate and personal choices a person may make in a lifetime,' a choice 'central to personal dignity and autonomy.'" 79 F.3d at 813-814. Respondents in their arguments to the Supreme Court emphasized the following statement in *Casey*: "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, 505 U.S. 833, 851 (1992).

18 *Glucksberg*, 521 U.S. at 727-28 (citing San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 33-35 (1973).

19 *Id.*

20 Mont. Const. art. II, § 10.

21 697 So. 2d 97 (Fla. 1997).

22 The legislature, however, could possibly craft a law permitting assisted suicide: "We do not hold that a carefully crafted statute authorizing assisted suicide would be unconstitutional." *Id.* at 104.

23 31 P.3d 88 (Alaska 2001).

24 2 Cal. App. 4th 1614, 1622; 4 Cal. Rptr. 2d 59, 63 (1992).

25 "It is also this addition of the personal integrity clause to the privacy clause that distinguishes the analysis in this case from that of the Florida, Alaska, and California decisions." Baxter v. State, 2008 Mont. Dist. LEXIS 482, at 17 (Mont. Dist. Ct. 2008).

26 Mont. Const. art. II, § 4.

27 2003 MT 134, ¶81, 316 Mont. 134 ¶81, 68 P.3d 872, ¶81.

28 Baxter v. State, 2008 Mont. Dist. LEXIS 482, at 19 (Mont. Dist. Ct. 2008).

29 The Montana Supreme Court has not yet addressed application of the dignity clause without the inclusion of other fundamental rights.

30 Mont. Const. art. II, § 10.

31 942 P.2d 112, 125 (Mont. 1997). The district court also cited *Planned Parenthood v. Casey* for the proposition that a "right" to assisted suicide is "a logical extension of the meaning of 'the most intimate and personal choices a person makes in a lifetime' stated by the *Casey* Court." Baxter v. State, 2008 Mont. Dist. LEXIS 482, at 16 (Mont. Dist. Ct. 2008). However, as discussed above, the United States Supreme Court has already explicitly rejected the notion that *Casey* stands for a right to assisted suicide.

32 1999 MT 261, 296 Mont. 361, 989 P.2d 364 at 16.

33 Baxter v. State, 2008 Mont. Dist. LEXIS 482, at 16 (Mont. Dist. Ct. 2008).

34 *Id.* at 17.

35 *Id.* at 19.

36 *Id.* at 22.

37 The Royal College of Psychiatrists, Statement from the Royal College of Psychiatrists on Physician Assisted Suicide (2006), *available at* http://www.rcpsych.ac.uk/pressparliament/collegeresponses/physicianassistedsuicide.aspx.

38 Baxter v. State, 2009 MT 449, at 10 (Mont. 2009).

39 *Id.* at 12.

40 Mont. Code Ann. § 45-2-211(2) states, "Consent is ineffective if: . . . (d) it is against public policy to permit the conduct or the resulting harm, even though consented to."

41 Baxter v. State, 2009 MT 449, at 13 (Mont. 2009).

42 "The Terminally Ill Act expressly immunizes physicians from criminal and civil liability for following a patient's directions to withhold or withdraw life-sustaining treatment. Section 50-9-240, MCA." The Act defines "life-sustaining treatment" as any medical procedure or intervention that "serves only to prolong the dying process." Mont. Code Ann. § Section 50-9-102(9).

43 Mont. Code Ann. § 50-9-206.

44 "There is no indication in the Rights of the Terminally Ill Act that an additional means of giving effect to a patient's decision—in which the patient, without any direct assistance, chooses the time of his own death—is against public policy." Baxter v. State, 2009 MT 449, at 28 (Mont. 2009). "[T]here is no indication in the statutes that another choice—physician aid in dying—is against this legislative ethos of honoring the end-of-life decisions of the terminally ill." *Id.* at 37.

45 *Id.* at 23.

46 "This chapter does not condone, authorize, or approve mercy killing or euthanasia." Mont. Code Ann. § 50-9-205(7).

47 *Glucksberg*, 521 U.S. at 728 (Washington has an "unqualified interest in the preservation of human life.").

48 *Id.* at 731

49 *Id.*

50 American Medical Association, Code of Ethics § 2.211 (1994); *see* Council on Ethical and Judicial Affairs, *Decisions Near the End of Life*, 267 JAMA 2229, 2233 (1992) ("The societal risks of involving physicians in medical interventions to cause patients' deaths is too great."); New York State Task Force on Life and the Law, When Death Is Sought: Assisted Suicide and Euthanasia in the Medical Context 103-109 (1994) (discussing physicians' views).

51 *Glucksberg*, 521 U.S. at 731-32 (citing *Cruzan,* 497 U.S. at 281).

52 For example, that appellate decision noted

> that the "decision of a duly appointed surrogate decision maker is for all legal purposes the decision of the patient himself," that "in some instances, the patient may be unable to self-administer the drugs and . . . administration by the physician . . . may be the only way the patient may be able to receive them," and that not only physicians, but also family members and loved ones, will inevitably participate in assisting suicide.

Glucksberg, 521 U.S. (quoting court of appeals opinion).

53 *Glucksberg*, 521 U.S. at 734.

54 Dutch law has expanded to encompass mental suffering, and authorities have proposed to accept "tired of life" as an indication for euthanasia. John Keown, Considering Physician-Assisted Suicide: An Evaluation of Lord Joffe's Assisted Dying for the Terminally Ill Bill 6 (Care Not Killing Alliance 2006), *available at* http://www.carenotkilling.org.uk/pdf/Keown_report.pdf; *see also* Tony Sheldon, *Dutch Euthanasia Law Should Apply to Patients "Suffering Through Living" Report Says*, 330 Brit. Med. J. 61 (2005). The Dutch Supreme Court declared that a woman's suffering from grief at the death of her two sons qualified her for euthanasia or assisted suicide. John Keown, Euthanasia, Ethics and Public Policy: An Argument Against Legalisation 87, 109, 131 (2002).

55 John Keown, Considering Physician-Assisted Suicide: An Evaluation of Lord Joffe's Assisted Dying for the Terminally Ill Bill 6 (Care Not Killing Alliance 2006), *available at* http://www.carenotkilling.org.uk/pdf/Keown_report.pdf.

56 Dr. Borst's remarks were made in an interview with researcher Dr. Anne-Marie The, who has studied euthanasia for fifteen years, for a book on the history of euthanasia called *Redeemer Under God*.

57 Tom Rawstorne, *The Chilling Truth About the City Where They Pay People to Die*, Daily Mail Online, August 10, 2009, http://www.dailymail.co.uk/debate/article-1205138/The-chilling-truth-city-pay-people-die.html.

58 "Indeed the legislature has criminalized *failure* to act according to the patient's wishes." Baxter v. State, 2009 MT 449, at 27 (Mont. 2009).