

## U.S. SEN. SAM BROWNBACK

May 25, 2006

### Senate Judiciary Constitution Subcommittee Hearing “The Consequences of Legalized Assisted Suicide & Euthanasia”

#### Opening Statement

The fundamental duty of American government—indeed, any government—is to protect and defend the sanctity of life. It thus becomes the duty of every lawmaker to examine closely any policy that undermines—either directly or indirectly—the importance and value of each individual’s life.

As Chairman of this Subcommittee, I have held hearings examining important issues such as abortion and the death penalty—both of which are legal in the United States—to examine whether they promote or inhibit a culture of life. Today, we will take the next step in this inquiry and focus on assisted suicide and euthanasia’s affect on society and how we view fellow human beings.

To be sure, the constitutional question has long been resolved. In a 1997 case called Washington v. Glucksberg,<sup>1</sup> the United States Supreme Court ruled that the Fourteenth Amendment to the Constitution does not protect a fundamental right to assisted suicide. Recognizing that the state has an interest in protecting human life, the Glucksberg Court upheld Washington State’s ban on assisted suicide.

To hold otherwise, wrote the majority, would require the invalidation of “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.” In order to invent this right, the Court “would have to reverse centuries of legal doctrine and practice, and strike down the considered policy choice of almost every State.” While the decision in Glucksberg left the door open for states to permit and regulate assisted suicide, it kept it firmly shut on those who demanded the novel discovery of this so-called individual right.

On the state level, legalized assisted suicide is still in its infancy in the United States. Only one state, Oregon, has allowed the practice. Thirty-eight states have formally criminalized assisted suicide and seven more states prohibit the practice under common law. This reflects a clear, enduring consensus of the People that assisted suicide is wrong and morally objectionable. Nonetheless, a small but vocal minority have continued to push states to permit the practice, claiming that assisted suicide is nothing more than a modern expression of individual “liberty.”

The Oregon law, which was narrowly approved by voters in 1994, permits physician-assisted suicide in cases involving competent, terminally-ill patients. According to official reports from doctors assisting patients who have committed suicide, the Oregon law has hastened the death of 246 people. Some suggest this number may be understated because some doctors under-report how often they have prescribed a lethal dose of medication for the purpose of assisting suicide.

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<sup>1</sup> 521 U.S. 702 (1997).

Five years ago, the federal government determined that the Oregon law was inconsistent with the Controlled Substances Act (CSA). The CSA authorizes physicians to prescribe federally controlled substances to patients when used for a legitimate medical purpose. It also authorizes the Attorney General to revoke a physician's prescription privileges if the physician's actions render his registration inconsistent with the public interest.

In 2001, then-Attorney General John Ashcroft issued a directive that physician-assisted suicide as permitted by the Oregon law did not qualify as a "legitimate medical purpose" under the CSA. As a result, physicians who prescribed lethal doses of controlled substances to patients to induce suicide could be prosecuted and their license to prescribe drugs could be revoked. The State of Oregon sued in federal court to block this interpretation.

In January of this year, the United States Supreme Court held in Gonzales v. Oregon<sup>2</sup>—wrongly, in my opinion—that the CSA did not permit the Attorney General to prohibit doctors in Oregon from prescribing regulated drugs for use in physician-assisted suicide.

In his dissent, Justice Scalia rightly observed that the Attorney General's directive was an appropriate interpretation of the CSA. He found it illogical to consider a prescription of a controlled substance to kill another person to be a "legitimate medical purpose."

The legalization of assisted suicide and euthanasia would be problematic for numerous reasons. The first and foremost danger is involuntary euthanasia, as shown by the ominous experience with the practice in the Netherlands.

In the Netherlands, which has legalized assisted suicide, there have been numerous cases reported of doctors literally killing their patients without consent. In 2001, a Dutch doctor was found guilty of murder for euthanizing a patient, but was given no penalty for his action. The court said that he made an error in judgment, but acted in what he believed to be the best interest of his patient.

I think most Americans would be quite disturbed that a doctor could act with such blatant disregard and lack of respect for human life, yet not be penalized. Patients who oppose euthanasia would have much to fear if they could no longer trust their own doctor. This nightmare scenario is antithetical to the proper role of a doctor as healer and caregiver.

A second and related danger drawn from the Dutch experience is the slippery slope leading to general disrespect for life, particularly when it involves the defenseless. Doctors in the Netherlands moved to allow euthanizing infants with terminal illnesses, highlighting how assisted suicide and euthanasia target the weakest among us.

Such policies devalue the lives of those who are ill and those who have disabilities. But even more insidious is the devaluation of our own lives when we deem a certain population as having little worth. If we fail to recognize the significant contributions to society made by persons with disabilities, the notions that we are all blessed to be alive, that we are a compassionate society,

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<sup>2</sup> \_\_\_ U.S. \_\_\_, 126 S. Ct. 904 (2006).

and that above all, we are equal, are all meaningless. I doubt, again, whether Americans want government to decide which life is worth preserving and which can be destroyed.

Third, insurance companies may have a financial incentive to encourage prematurely ending the lives of those in need of long term care. Their goal would not be to nurse a patient back to health if it is cheaper to end their life. From a strictly business perspective, it might make perfect sense.

Finally, expanding the use of assisted suicide would discard our considered judgment about self-destructive behavior, which is that it is a cry for psychological help. It is for this reason we usually seek to those who attempt suicide. Often it is not death that someone in this situation seeks, but the reassurance that his or her life has value and is worth living. Particularly when one considers the prominent role played by depression and other psychological conditions, it cannot necessarily be said that a person seeking physician-assisted suicide is making a truly independent decision.

There are many important issues related to this topic that I plan to explore with our panel today. It is my hope that we can carve out the proper role for lawmakers in fulfilling the government's duty to promoting life and protecting individual liberty.

We have an excellent panel of witnesses today. First we will hear from my colleague Senator Wyden of Oregon. I appreciate him coming today to talk to us about the law in Oregon and its effects. On our second panel we have Julie McMurchie from Portland, OR. Next we will hear from Mr. Henk Reitsema. Mr. Reitsema's grandfather was a victim of legalized euthanasia in the Netherlands. Last on this panel is Jonathan Imbody, a Senior Policy Analyst at the Christian Medical Association. Mr. Imbody has done significant research on personal experiences with euthanasia in the Netherlands.

On our last panel we will hear from Wesley Smith, a Senior Fellow at the Discovery Institute. Mr. Smith is a widely recognized expert in the field of assisted suicide and euthanasia and has authored numerous books and articles on these topics. Next will be Kathryn Tucker, the Director of Legal Affairs at Compassion and Choices in Seattle Washington. Ms. Tucker has long been involved with the movement to legalize assisted suicide. Next, we will hear from Rita Marker, Executive Director of the International Taskforce on Euthanasia and Assisted Suicide. The International Taskforce is a widely recognized leader in the on-going debate on this important issue. Next is Ann Jackson, Executive Director of the Oregon Hospice Association. And last we will hear from Diane Coleman founder of Not Dead Yet, an organization giving a voice to persons with disabilities in this debate.