Minority Views

H.J. Res 27, Disapproving the action of the District of Columbia Council in approving the Death with Dignity Act of 2016

We strongly oppose H.J. Res. 27 because it would nullify legislation approved by the duly elected District of Columbia Council. We acknowledge that Congress has authority under the U.S. Constitution to legislate on local District matters, but we reject the majority's view that Congress has a duty or obligation to do so.

In 1973, Congress passed the Home Rule Act (HRA) to establish an elected District government and to delegate authority to the District government to legislate on local matters.[1] The HRA expressly prohibits the District from legislating on a small number of matters. Medical aid-in-dying is not among those prohibitions.

The D.C. Council's Committee on Health and Human Services held a hearing on the Death with Dignity Act of 2016 (DWDA) and heard testimony from nearly 70 expert and lay witnesses. The Committee approved the DWDA by a vote of 3 to 2. The Council approved the DWDA twice, as required by the HRA, each time by a vote of 11 to 2. The Mayor signed the DWDA on December 19, 2016.[2]

The DWDA was transmitted for congressional review on January 6, 2017. We are disappointed that the majority did not afford the District government an opportunity to testify on the DWDA prior to the markup of H.J. Res. 27, which was held more than one month after the DWDA was transmitted to Congress.

We do not take a position on the merits of the DWDA, nor should this Committee take a position on such local District matters. However, we note that since medical aid-in-dying first became legal in Oregon in 1997, there have been no documented abuses in states in which it is legal. Today, medical aid-in-dying is legal in six states—five by statute and one by court ruling. The DWDA is substantially similar to those state statutes. Further, the majority of Americans support medical aid-in-dying.[3]

The DWDA allows doctors authorized to practice medicine in the District to prescribe lethal medication to mentally competent, terminally ill, adult District residents. The patient must make three separate requests (two oral and one written), separated by at least 15 days, for the medication. Two doctors must confirm that the patient has an incurable and irreversible disease that will, within reasonable medical judgment, result in death within six months, is mentally competent, and is acting voluntarily. The patient must be informed of alternatives, such as hospice care. Two people must attest in writing that the patient is not acting under duress. A person who willfully coerces or unduly influences a patient is punishable as a Class A felony.

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[1] District of Columbia Home Rule Act of 1973, Pub. L. No. 93-198.

[2] D.C. Act 21-0577, Council Period 21 (2016).

[3] Gallup, *Euthanasia Still Acceptable to Solid Majority in U.S.* (Jun. 24, 2016).

Participation under the DWDA is voluntary for patients, doctors, pharmacists, health care entities, and health insurers.

The DWDA is not a significant change in medical practice or law related to hastening death. Medical aid-in-dying has long been part of medical practice, even in states where it is illegal.[4] In *Washington v. Glucksberg*, the U.S. Supreme Court noted that it has "assumed, and strongly suggested," that a mentally competent person has a constitutional right to refuse or withdraw medical treatment, nutrition, and hydration.[5] Patients may even have a constitutional right to terminal sedation. In a concurring opinion in the case, Justice O'Connor noted: "There is no dispute that dying patients … can obtain palliative care, even when doing so would hasten their deaths."[6]

The majority asserts that vulnerable populations will disproportionately use the DWDA. However, the evidence is to the contrary. According to a study in the Journal of Medical Ethics, patients who died under Oregon's medical aid-in-dying law "appeared to enjoy comparative social, economic, educational, professional and other privileges."[7] In Oregon, 71.9% of patients who died under the law had attended college, 45.5% had a baccalaureate or higher degree, and 98.6% had health insurance—all rates higher than in the general population.[8]

The majority asserts that under the DWDA, insurance providers will stop covering expensive, experimental, life-saving treatments in favor of lethal medication, which is less costly. There is no evidence to support this assertion. According to a study in the New England Journal of Medicine, medical aid-in-dying "is not likely to save substantial amounts of money in absolute or relative terms, either for particular institutions or for the nation as a whole."[9] More than 90% of patients in Oregon who have died under its medical aid-in-dying law were enrolled in hospice care, which, by definition, means they were not receiving life-saving treatment. In addition, Oregon's experience suggests that patients rarely utilize medical aid-in-dying, even when it is legally available.[10]

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[4] *Compassion in Dying v. Washington*, 79 F.3d 790 (9th Cir. 1994).

[5] *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

[6] *Id.* at 737-38.

[7] Margaret P. Battin, et al., *Legal Physician-Assisted Dying in Oregon and the Netherlands: Evidence Concerning the Impact on Patients in "Vulnerable" Groups*, Journal of Medical Ethics (2007).

[8] Oregon Public Health Division, *Oregon Death with Dignity Act: 2015 Data Summary* (Feb 4, 2016).

[9] Ezekiel J. Emanuel and Margaret P. Battin, *What Are the Potential Cost Savings From Legalizing Physician-Assisted Suicide*, New England Journal of Medicine (July 16, 1998).

[10] Oregon Public Health Division, *Oregon Death with Dignity Act: 2015 Data Summary* (Feb 4, 2016).

The majority incorrectly asserts that the Assisted Suicide Funding Restriction Act of 1997 prohibits the District government from spending its local funds to pass or implement the DWDA.[11] The Act, in pertinent part, prohibits the use of federal funds appropriated to the District pursuant to an authorization of appropriations under Title V of the HRA for medical aid-in-dying. Title V, which was repealed later that year, authorized the appropriation of a payment of federal funds to the District. Even if Title V had not been repealed, however, the District would have had authority under the Act to use its own local funds—which consist of taxes and fees—to pass and implement the DWDA.

The 670,000 residents of the District of Columbia deserve the right of self-government. That is reason enough to oppose H.J. Res. 27.

Elijah E. Cummings
Ranking Member

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Carolyn Maloney

William Lacy Clay

Gerald Connolly

Robin Kelly

Brenda Lawrence

Bonnie Watson Coleman

Stacey Plaskett

Val Demings

[11] Assisted Suicide Funding Restriction Act of 1997, Pub. L. No. 105-12.

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