

Directions:

1. Mark your confusion.
2. Show evidence of a close reading.
3. Write a 1+ page reflection in your Writer's Notebook

Montana Court to Weigh In on Assisted Suicide Case

Source: Kirk Johnson, New York Times, September 1, 2009

HELENA, Mont. — Robert Baxter was by all accounts a tough man. Even in the end, last year, as lymphocytic leukemia was killing him, Mr. Baxter, a 76-year-old retired truck driver from Billings, Mont., fought on. But by then he was struggling not for life, but for the right to die with help from his doctor.

“He yearned for death,” his daughter, Roberta King, said in a court affidavit describing her father’s final agonized months.

Now, in death, Mr. Baxter is at the center of a right-to-die debate that could make Montana the first state in the country to declare that medical aid in dying is a protected right under a state constitution.

The state’s highest court on Wednesday will take up Mr. Baxter’s claim that a doctor’s refusal to help him die violated his rights under Montana’s Constitution — and lawyers on both sides say the chances are good that his case will prevail.

Washington and Oregon allow physicians to help terminally ill people hasten their deaths, but in those states the laws were approved by voters in statewide referendums, and neither state’s highest court has examined the issue of a constitutional right to die.

In Montana, the question will be decided by the seven-member State Supreme Court. A lower-court judge ruled in Mr. Baxter’s favor last December — on the very day Mr. Baxter died — and the State of Montana appealed the ruling.

The legal foundation for both sides is a free-spirited, libertarian-tintured State Constitution written in 1972 at the height of a privacy-rights movement that swept through this part of the West in the aftermath of the 1960s. Echoes of a righteous era are reflected in language about keeping government at bay and maintaining individual autonomy and dignity.

“The dignity of the human being is inviolable,” the drafters declared.

Lawyers on both sides say the Montana Supreme Court has a tradition of interpreting the State Constitution with that sentiment in mind, with privacy rights and personal liberty often outweighing other concerns. The court ruled in 1997, for example, that Montana’s anti-sodomy laws were unconstitutional invasions of privacy.

The United States Supreme Court followed Montana’s lead in 2003 in reversing one of its own decisions that had found no such protections for same-sex couples under the United States Constitution. In 1999 the Montana court held that a woman’s right to choose abortion was protected, including the choice of her medical provider.

Because the Baxter case involves only the State Constitution, the Montana Supreme Court will have the final word, with no appeal possible to the United States Supreme Court.

But a legal case like the one now under consideration ventures to the frontiers of the human experience — why people choose to die and what role government should play at such moments — and invariably pulls on diverse social and political threads. And here again, a list of unusual Montana factors have elevated and complicated the debate.

Montana already has one of the highest suicide rates in the nation, for example. As a huge state with a small population — about one million people in an area more than half the size of Texas — there are pockets of deep rural life where access to health care, in living or dying, is severely limited.

A substantial American Indian minority, with health care and suicide issues of its own, has also weighed in as to whether a right for some is a right for all.

“There are moral arguments, philosophical arguments on both sides, bioethical arguments on both sides, even medical and public health arguments on both sides,” Anthony Johnstone, the

state solicitor at the Montana attorney general's office, who will argue the case for the state, said in defense of current laws that prohibit physician-assisted death.

The state argues that the Constitution confers no right to aid in ending one's life.

Some people speaking out about the case, like Bob Liston, are also expressing sentiments that one might not expect.

Mr. Liston, 54, a research associate at the University of Montana who has spent most of the last 40 years in a wheelchair because of an auto accident, has been a passionate advocate for the disabled in arguing for autonomy and respect.

But this time he is arguing just as passionately on the other side, contending that aid in dying could backfire on people with debilitating conditions, leading not to more autonomy, but less. Mr. Liston, an organizer for a national disability-rights group called Not Dead Yet, said he envisioned people like himself being nudged toward life-ending choices by their doctors or families, out of compassion or perhaps convenience.

"People with disabilities don't get to live with dignity, let alone die with dignity," he said.

Other opponents of a "right to die well," as some are calling the argument made by Mr. Baxter and the group of physicians who joined him as plaintiffs, say that rural Montanans could be left out, too.

In places like Scobey, in the state's far northeast corner, where Julie French lives, the population density is about one person per square mile. Minimal health care is hours away.

"Before we deal with assisted suicide, we should make sure first and foremost that everybody has equal access," said Ms. French, a Democratic state legislator who opposes an expansion of death rights. "It is not simply whether everyone has a right to choose; it's whether they are given all the choices."

Religious divisions have also surfaced, with many Roman Catholics and evangelicals siding with the state — arguing that the homicide statutes could be weakened if a right to assisted death is affirmed by the court — while some liberal church leaders speak out on behalf of what they say are matters of choice.

"I don't think God created us to be string puppets," said John C. Board, an Episcopal deacon at a church in Helena who supports the Baxter claim. "If we say that God has given everyone free will, that means God has given you the opportunity to do things right and do things wrong."

Kathryn L. Tucker, co-counsel for Mr. Baxter's estate and the other plaintiffs, says this case is also about boundaries.

At a time when the limits, if not failings, of medicine are part of the national debate about health care reform, Ms. Tucker said, what is the power of the individual to set his or her own course?

"This case is part of a journey," said Ms. Tucker, who is director of legal affairs for Compassion and Choices, a national group that advocates to protect and expand the rights of the terminally ill and is also one of the plaintiffs. "It's about empowering patients and giving them the right to decide when they have suffered enough."