

**IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
 TWENTIETH JUDICIAL DISTRICT, PART II**

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JOHN JAY HOOKER,)
DR. W. BARTON CAMPBELL, M.D.,)
DR. JEFFREY A. SOSMAN, M.D.,)
and DR. ROBERT BALLARD, M.D.,)

Plaintiffs,)

vs.)

FD-9
NO. 15-0615-II
 π

HERBERT SLATERY III,)
in his official capacity as Tennessee)
Attorney General;)
WILLIAM E. HASLAM, in his official)
capacity as Governor of Tennessee;)
and GLENN FUNK,)
in his official capacity as District)
Attorney for Davidson County,)
Tennessee,)

Defendants.)

MEMORANDUM and ORDER

Pursuant to T.R.C.P. 12.03, on July 10, 2015, Tennessee Attorney General and Reporter Herbert H. Slatery III (“Attorney General Slatery”), Governor William E. Haslam (“Governor Haslam”), and District Attorney for Davidson County Glenn Funk (“District Attorney Funk”), in their official capacities (collectively referred to as the “Defendants”), moved for Judgment on the Pleadings filed by Plaintiffs John Jay Hooker (“Mr. Hooker”), Dr. W. Barton Campbell, M.D., Dr. Jeffrey A. Sosman, M.D., and Dr. Robert Ballard, M.D.

("Physicians")(collectively referred to as the "Plaintiffs").

Defendants' Motion for Judgment on the Pleadings stated that the Plaintiffs seek an order to temporarily and permanently enjoin and prohibit the Defendants from prosecuting Mr. Hooker and the Physicians, and any other licensed physician, if the Physicians prescribe a life-terminating drug for Mr. Hooker, if and when Mr. Hooker decides to take the drug; that is, the Plaintiffs seek to avoid being prosecuted if they assist Mr. Hooker with "aid-in-dying," an act prohibited by Tenn. Code Ann § 39-13-216 (the "Act").¹ For the reasons set forth

¹ **Tenn. Code Ann. § 39-13-216. Assisted suicide; exceptions; damages**

(a) A person commits the offense of assisted suicide who:

- (1) Intentionally provides another person with the means by which such person directly and intentionally brings about such person's own death; or
- (2) Intentionally participates in a physical act by which another person directly and intentionally brings about such person's own death; and
- (3) Provides the means or participates in the physical act with:
 - (A) Actual knowledge that the other person intends to bring about such person's own death; and
 - (B) The clear intent that the other person bring about such person's own death.

(b) It is not an offense under this section to:

- (1) Withhold or withdraw medical care as defined by § 32-11-103;
- (2) Prescribe, dispense, or administer medications or perform medical procedures calculated or intended to relieve another person's pain or discomfort but not calculated or intended to cause death, even if the medications or medical procedures may hasten or increase the risk of death; or
- (3) Fail to prevent another from bringing about that person's own death.

(c) This section shall not in any way affect, impair, impede, or otherwise limit or render invalid the rights, privileges, and policies set forth in the Tennessee Right to Natural Death Act, compiled in title 32, chapter 11; the provisions for the durable power of attorney for health care, compiled in title 34, chapter 6, part 2; or the do not resuscitate (DNR) regulations of the Tennessee board for licensing health care facilities issued pursuant to § 68-11-224.

(d) A cause of action for injunctive relief may be maintained against any person who is reasonably believed about to violate or who is in the course of violating subsection (a), by any person who is:

- (1) The spouse, parent, child, or sibling of the person who would bring about such person's own death;
- (2) Entitled to inherit from the person who would bring about such person's own death;
- (3) A health care provider or former health care provider of the person who would bring about such person's own death; or
- (4) A public official with appropriate jurisdiction to prosecute or enforce the laws of this state.

(e) A cause of action for civil damages against any person who violates or attempts to violate subsection (a) may be maintained by any person given standing by subsection (d) for compensatory damages and exemplary damages, whether or not the plaintiff consented to or had prior knowledge of the violation or attempt. Any compensatory damages awarded shall be paid as provided by law, but exemplary damages shall be paid over to the department of revenue for deposit in the criminal injuries compensation fund, pursuant to § 40-24-107.

(f) Reasonable attorney's fees shall be awarded to the prevailing plaintiff in a civil action brought pursuant to this section. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, the court shall award reasonable attorney's fees to the defendant.

(g) Assisted suicide is a Class D felony.

below, the Court grants the Defendants' Motion for Judgment on the Pleadings, finding that Mr. Hooker and the Physicians lack standing, that this Court lacks jurisdiction to enjoin enforcement of a criminal statute, that the Act applies to the Plaintiffs' use of the phrase "aid-in-dying," and that the Act does not violate the Tennessee Constitution, is not void for vagueness, and does not violate the Plaintiffs' fundamental rights to due process and equal protection.

PROCEDURAL BACKGROUND

On May 19, 2015, the Plaintiffs filed a Verified Complaint for Declaratory and Injunctive Relief and Expedited Hearing ("Complaint"). They alleged that Mr. Hooker is a mentally competent, 84-year-old, prominent lawyer in Nashville, Tennessee, who was recently diagnosed with terminal stage IV metastatic cancer. They also alleged that the Tennessee Constitution affords Mr. Hooker and other competent adults who face a terminal illness a liberty right entitling them to die with dignity and utilize aid-in-dying services. They further allege that the Plaintiff Physicians are licensed to practice medicine in Tennessee and are willing to consider writing a prescription for medication for terminally ill adult patients, including Mr. Hooker, "to ease their suffering and provide comfort but for the exposure to felony criminal prosecution in doing so."

The Plaintiffs alleged a denial of a constitutional right to privacy, a denial of due process of law due to vagueness, a denial of equal protection, and a denial of inherent and

inalienable rights to liberty and happiness and sought a declaratory judgment as to the definition of assisted suicide as it relates to aid-in-dying. They prayed for a declaration that the Act violated their rights under the Tennessee Constitution as to privacy, due process, equal protection, and inherent and inalienable rights, and that aid-in-dying was exempt from prosecution under the Act. The Plaintiffs further sought an injunction to prohibit the Defendants from prosecuting the Plaintiffs and requested an expedited hearing in light of Mr. Hooker's terminal condition.

On June 18, 2015, the Defendants filed their Answer, denying the Plaintiffs' allegations that the Act violated the U.S. and Tennessee Constitutions and affirmatively raising the defenses that the Plaintiffs lacked standing and that Governor Haslam was not a real party-in-interest and should be dismissed as a party Defendant. Further, the Defendants countered that if the Court found that the Plaintiffs had standing, the Defendants alternatively sought a declaratory judgment that the Physicians' conduct "in providing what Plaintiffs have denominated as 'aid-in-dying' medication, which the [terminal patient] may self-administer if and when he or she chooses to bring about a quick and peaceful death" violates the Act, that the Act does not violate fundamental rights of privacy protected by the Tennessee Constitution, that the Act is not void for vagueness, and that the Act does not violate the due process or equal protection rights of the Plaintiffs.

When the Defendants concluded their arguments-in-chief at the hearing on July 10,

2015, the Plaintiffs orally moved for Judgment on the Pleadings before responding to the Defendants' arguments. The parties subsequently agreed that the Defendants would be entitled to file a responsive memorandum to the Plaintiffs' motion, and in turn, the Plaintiffs would be permitted to file their reply for the Court's consideration. The Defendants filed their memorandum on July 22, 2015 objecting to the Plaintiffs' oral motion.

In their Reply filed on July 24, 2015, the Plaintiffs submit that the case, in its simplest terms, requires only that the Court address the Defendants' Motion for Judgment on the Pleadings and only if the Court declined to grant the Defendants' motion would the Court proceed to decide the Plaintiff's Motion for Judgment on the Pleadings and the constitutional issues.

The Plaintiffs stated that once standing² is determined, none of the facts contained in their Petition require specific findings of fact by the Court.³ This Court agrees. Further, the Plaintiffs state that the Counts in their Petition are strictly matters of law and that the questions of law stand on their own. Again, this Court agrees.

STANDARD OF REVIEW

In addressing a Motion for Judgment on the Pleadings, the Court must construe the complaint liberally in the plaintiff's favor by taking all factual allegations in the complaint as true and by giving the plaintiff the

² The Plaintiffs note that since they did not raise the issue of standing, should the Court address their Oral Motion for Judgment on the Pleadings, standing will not be an issue.

³ The Plaintiffs stated that the only issue raised by the Defendants that requires any significant factual determination relates to standing and that in deciding that issue, the Plaintiffs correctly state that the Court must view the facts as alleged in the Complaint in a light most favorable to the Plaintiffs. The Court discusses the standing of the Plaintiffs, *infra*, but does not find that any of them have standing, even when all factual allegations are viewed in a light most favorable to each of them.

benefit of all the inferences that can be reasonably drawn from the pleaded facts.

Satterfield v. Breeding Insulation Co., 266 S.W.3d 347, 352 (Tenn. 2008)(citing *Lanier v. Rains*, 229 S.W.3d 656, 660 (Tenn. 2007)).

ISSUES

Defendants contend that (1) the Plaintiffs do not have standing to seek an injunction to prevent the Defendants from prosecuting the Plaintiffs pursuant to the Assisted Suicide Act, Tenn. Code Ann. §32-13-216(a), should the Physicians provide aid-in-dying medication to Mr. Hooker, (2) the Physicians' claims should be dismissed because they lack standing as a matter of law, (3) Mr. Hooker's claims should be dismissed because he lacks standing as a matter of law, and (4) the Governor is not a real party in interest and should be dismissed from this lawsuit as he has no authority to enforce the criminal law at issue.

Should the Court find that the Plaintiffs have established standing, the Defendants assert that the Court should grant their motion for judgment on the pleadings by declaring that the Physicians' aid-in-dying conduct violates the Act by prescribing life-ending medication which the patient may self-administer if and when the patient chooses to bring about a quick and peaceful death. Further, contend the Defendants, if the Plaintiffs have standing, the Court should declare as a matter of law that the Act, which prohibits aid-in-dying, does not violate the fundamental rights of privacy protected by the Tennessee Constitution, is not void for vagueness under Article I, § 8 of the Tennessee Constitution, and does not violate the equal protection provision or the due process clause under Article 1, § 8

of the Tennessee Constitution or any of its other provisions.

The Plaintiffs argue that they have standing not simply to enjoin enforcement of a criminal statute, but also to assert that the criminal statute, the Act, is inherently unconstitutional because it is vague, violates their fundamental right to privacy, violates their fundamental rights of equal protection and due process or alternatively, that they are entitled to a declaratory judgment that aid-in-dying conduct does not violate the Act and that aid-in-dying conduct is exempt from prosecution under the Act.

DISCUSSION

At the outset, the Court notes that the Plaintiffs use the term “aid-in-dying.” This phrase or term is not defined by statute. Instead, the Plaintiffs challenge a statute that prohibits “assisted suicide,” a phrase that is defined by statute. Given that the challenge is to the language of the statute, the Court will use the term “assisted suicide,” since it is that language that is challenged and not a term that has no statutory basis.

Next, two issues raised by the parties should be addressed, although their disposition will not resolve the Defendants’ motion.

First, the Plaintiffs request that this Court temporarily and permanently enjoin the Defendants from prosecuting the Defendant Physicians for engaging in or advising Mr. Hooker about assisted suicide. This Court lacks jurisdiction to enjoin the enforcement of Tennessee’s criminal law, including the criminal statute banning assisted suicide. The Defendants are correct that

[p]ermitting a court of equity to interfere with the administration of this state's criminal laws, which that court is without jurisdiction to enforce, would cause confusion in the preservation of peace and order and the enforcement of the State's general police power.

Clinton Books, Inc. v. City of Memphis, 197 S.W.3d 749, 752 (Tenn. 2006)(citing *J.W. Kelly v. Conner*, 122 Tenn. 339, 123 S.W. 622, 637 (1909)).

A trial court must exercise its extraordinary powers for injunctive relief sparingly. *See Vintage Health Res., Inc. v. Guiangan*, 309 S.W.3d 448, 467 (Tenn. Ct. App. 2009). If the Court erroneously issues an injunction, irreversible harm may occur, especially when the challenge is to an act of the legislature that has criminalized conduct which terminates the lives of its citizens. Although Plaintiffs contend that this Court nonetheless should issue the injunctive relief sought because the statute is unconstitutional, they provide no authority that the mere challenge to a statute's constitutionality confers jurisdiction on a court of equity to enjoin prosecution of criminal acts. Finding no jurisdiction or authority to issue the injunctive relief sought, the Plaintiffs' request is denied.

Second, the Defendants contend that the Governor, as the state's Chief Executive, is not a real party in interest as he has no direct authority to enforce the criminal law at issue and should be dismissed. The Defendants take the posture that the enforcement of criminal statutes is the responsibility of local law enforcement authorities and prosecutors. The Defendants cite no Tennessee case law that holds that the Governor should be dismissed because he does not have direct enforcement responsibility with respect to the challenged statutory provisions; instead, they seek support from federal case law.

The Plaintiffs state that Governor Haslam is a proper party defendant, in his official capacity, because the Tennessee Constitution, Art, III, § 10, states that the Governor, in his official capacity, “shall take care that the laws be faithfully executed.” This Court agrees. Tennessee case law and its legal history is replete with lawsuits in which the sitting Governor is named as a party defendant in his official capacity when various Plaintiffs have challenged the enforcement of statutes.⁴ This argument is thus without merit, although such determination has no effect on the outcome of the Defendants’ motion.

The two remaining issues center on the standing of the plaintiffs to bring this action. The doctrine of standing is employed by courts to determine whether a claimant is “properly situated to prosecute the action.” *Petty v. Daimler/Chrysler Corp.*, 91 S.W.3d 765, 767 (Tenn. Ct. App. 2002)(quoting *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn. 1976)).

The Defendants contend that the Plaintiff Physicians have no standing to bring this lawsuit, either on their own behalf or on behalf of their patients. In support of this contention, they assert that the challenged statute is a prohibition directed at individuals who actively and intentionally assist another person with committing suicide. It is not directed at action by patients who may commit suicide, and patients who seek to commit suicide are not

⁴ See, *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292 (Tenn. 2005); *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 775 (Tenn. 2000); *Cnty. of Shelby v. McWhorter*, 936 S.W.2d 923 (Tenn. Ct. App. 1996); *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975); *Bates v. Alexander*, 749 S.W.2d 742 (Tenn. 1988); *Walker v. Dunn*, 498 S.W.2d 102 (Tenn. 1972); *S. Ry. Co. v. Clement*, 57 Tenn. App. 54, 415 S.W.2d 146 (1966); *Clements v. Roberts*, 144 Tenn. 129, 230 S.W. 30 (1921); *State v. Buchanan*, 52 S.W. 480 (Tenn. Ch. App. 1898); *Malone v. Peay*, 157 Tenn. 429, 7 S.W.2d 40 (1928); *Bates v. Taylor*, 87 Tenn. 319, 11 S.W. 266 (1889).

subject to prosecution under the Act. Thus, the Physicians' patients, including Mr. Hooker, have no standing to challenge enforcement of the Act. Mr. Hooker's contention that the Act infringes on his rights is discussed below, but the statute does not place any person who seeks to commit suicide in fear of state prosecution. Given that no prosecution pursuant to the Act may be brought against the patient – in this case, Mr. Hooker - the Physicians lack standing to challenge the statute on behalf of their patients.

The Defendants also argue that the Physicians have no independent standing to challenge the Act because they have not demonstrated an injury in fact resulting from the action which they seek to have the court adjudicate. *ACLU of Tenn. v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006). The Plaintiffs contend that the doctrine of standing “requires the court to determine whether the party seeking relief has a sufficiently personal stake in the outcome to warrant the exercise of the court’s power.” *Planned Parenthood of Middle Tennessee v. Sundquist*, No. 01A01-9601-CV-00052, 1998 WL 467110, at *5 (Tenn. Ct. App. Aug. 12, 1998) *aff'd in part, rev'd in part*, 38 S.W.3d 1 (Tenn. 2000)(citing *Browning-Ferris Indus. Inc. v. City of Oak Ridge*, 644 S.W.2d 400, 402 (Tenn. Ct. App. 1982)). According to the Plaintiffs, they have standing if they show that “they have sustained some actual or threatened injury, that the injury was caused by the challenged conduct, and that the injury is one for which a judicial remedy is available.” *Planned Parenthood of Middle Tennessee*, 1998 WL 467110, at *6. They identify the three “essential elements” necessary to establish standing that they must prove as (1) a distinct and palpable injury rather than a

merely hypothetical or speculative one, (2) a causal connection between the injury and the challenged conduct and (3) a showing that the court can redress the injury with a favorable decision. *Petty v. Daimler/Chrysler Corp.*, 91 S.W.3d at 767; *see also, ACLU of Tenn.*, 195 S.W.3d at 620. Although the Plaintiff Physicians are not faced with prosecution for violating the Act, they have alleged in their complaint

a special interest in the question of the constitutionality of the penal statute described in the bill, distinct from the interest of the public generally, in that their investment and property rights will be directly affected and injured by its enforcement.

Campbell v. Sundquist, 926 S.W.2d 250, 256 (Tenn. Ct. App. 1996).

The Physicians acknowledge that they have been guarded in their declarations in the pleadings because they fear being prosecuted for violating the Act and for facilitating or attempting to violate the Act. Unlike the physicians in *Planned Parenthood*, 1998 WL 467110, at *6, in which the Tennessee Supreme Court specifically accorded the doctors standing to sue, there is no precedent that allows the Physicians herein to challenge the Act's constitutionality.

Nonetheless, the Physicians assert that to the extent the Act is enforced and they are charged with a felony if they give Mr. Hooker aid-in-dying, it will directly affect their rights and each of them may be injured by its enforcement. The Plaintiffs, though, have not defined how a claim to fundamental rights of privacy and freedom warrant violation of a criminal statute so as to justify their standing.⁵ This Court cannot make the case for the Plaintiffs'

⁵ In their brief, the Plaintiff Physicians rely upon *Lee v. State*, 869 F. Supp. 1491 (D. Ore. 1994) because it confers standing if the

claim to fundamental rights of privacy and freedom, nor can it usurp the province of the legislature or of this country's forefathers who drafted the U.S. Constitution or the Tennessee Constitution. Absent a clearly defined and discernible right, the Physicians lack standing to assert such a right.

Second, the Plaintiff Physicians have not affirmatively stated that they will provide Mr. Hooker with aid-in-dying. They suggest that they might take action to cause Mr. Hooker's death, but they have not pled specific intent beyond innuendo, speculation or conjecture. To have standing, the Physicians must show a causal connection between their conduct and the challenged conduct; in the complaint and their affidavits, they have not established that connection. A plaintiff may satisfy this element by establishing the existence of a "fairly traceable" connection between the alleged injury in fact and the defendant's challenged conduct. *ACLU v. Darnell*, 195 S.W.3d at 620. The facts submitted by the Physicians lack an actual injury-in-fact; Mr. Hooker is still alive and no one has been or is threatened with criminal prosecution. The Physicians have not given the Court a legal basis upon which to find a causal relationship.

Instead, the Physicians have alleged that they would prescribe medication for assisted suicide solely with the intent to relieve Mr. Hooker's pain caused by the cancer. The Act permits this conduct. The Physicians have not declared that they will prescribe a life-ending medication with the intent to terminate Mr. Hooker's life. Instead, the Complaint states that

litigant (the Physicians) proves a close relationship to the third party. Tennessee case law differs, requiring the Plaintiffs to prove a causal connection between the injury and the challenged conduct as its second element.

the Physicians

[a]re willing to consider writing a prescription for medication for aid-in-dying to mentally competent and terminally ill adult patients *to ease their suffering and provide comfort* but for the exposure to felony criminal prosecution for doing so.

and

have treated mentally competent and terminally ill adult patients who requested access to aid-in-dying, but ...were deterred from providing such treatment by the potential for prosecution under the Assisted Suicide Statute if the patient did ultimately self-administer life-ending medication.

and

would prescribe plaintiff Hooker the medication for aid-in-dying solely with the intent to *relieve plaintiff Hooker's pain* caused to his body by the malignant cancer.

Nothing in the Act bars the Physicians from such conduct; indeed, the Act clearly states that it is not an offense to

- (1) Withhold or withdraw medical care as defined by § 32-11-103;
- (2) Prescribe, dispense, or administer medications or perform medical procedures calculated or intended *to relieve another person's pain or discomfort* but not calculated or intended to cause death, even if the medications or medical procedures may hasten or increase the risk of death; or
- (3) Fail to prevent another from bringing about that person's own death.

Tenn. Code Ann. § 39-13-216(b)(emphasis added).

Given their statements in the Complaint, the Physicians have not announced or declared an intention to violate the Act and its provisions. Unlike the physicians in *Planned Parenthood* who faced criminal prosecution if they ignored the law and performed the procedure, the Physicians herein have declared actions that constitute lawful conduct. They

have not made any statement that would subject them to prosecution under the Act. The Act focuses on the **intent** of the physician who prescribes life-ending medication; none of the Physicians have declared that they have or will prescribe a medication for Mr. Hooker with the purpose or intent to end his life. As the Physicians have failed to make any assertions that could form the basis for a credible threat of prosecution, they have failed to prove a distinct and palpable injury rather than a merely hypothetical or speculative one. As there is no palpable injury, there is also no causal connection to an injury and the Plaintiffs have failed to meet the second criteria for establishing standing.

The third essential element to establish standing requires the Physicians to prove that this Court could redress their anticipated injury with a favorable decision, i.e., enjoining the District Attorney from prosecuting them for assisting Mr. Hooker with suicide. If the Physicians affirmatively stated that they would prescribe life-ending medication for Mr. Hooker with the sole intent to end his life and for no other reason, this Court lacks jurisdiction to afford them a favorable decision. *See Tennessee Downs, Inc. v. Gibbons*, 15 S.W.3d 843, 847-848 (Tenn. Ct. App. 1999)(Courts of equity have no jurisdiction to enjoin the enforcement of state criminal laws.) Therefore, under the three-part test in *Petty v. Daimler Chrysler, supra*, the Plaintiffs lack standing to bring the present action.

In addition to injunctive relief, Mr. Hooker and the Physicians also seek a Declaratory Judgment that the Act is invalid. They assert standing to challenge the Act, claiming that the alleged injury is an infringement of their fundamental rights to privacy and freedom as

defined by the Tennessee Supreme Court in interpreting the provisions of Tennessee's Constitution. They acknowledge that this court should not render advisory opinions when an actual case or controversy is missing from a particular constitutional challenge, but assert, citing *Colonial Pipeline*, 263 S.W.3d at 837-38, that the Plaintiffs need not necessarily show a particular injury, so long as a distinct future injury is possible.

In *Colonial Pipeline*, the Tennessee Supreme Court recognized that the purpose of a declaratory judgment action is to settle important questions of law before the controversy has reached a more critical state. *Id.* at 837. A party seeking a declaratory judgment has the burden of establishing the existence of an actual case or controversy, that is, some real interest must be in dispute. *Id.* According to the Plaintiffs, the real interest in dispute is Mr. Hooker's fundamental right to privacy and right to freedom under the Tennessee Constitution.⁶ In their brief, the Plaintiffs allege that Mr. Hooker's constitutional right to privacy and freedom provide him with a right to self-determination, and correspondingly, Mr. Hooker, as a terminally ill patient, has a right to make end-of-life care and treatment decisions with the assistance of his doctor because these decisions are "sufficiently similar in character to those personal and private decisions and activities identified in state and federal precedent to implicate a cognizable privacy interest." *Planned Parenthood v. Sundquist*, 38 S.W.3d at 11.

The U.S. Supreme Court has ruled that an individual's asserted right to assistance in

⁶ The Plaintiffs submit that the Act violates Tennessee Constitution Art. 1, §§ 3.7, 19 and 27, which expressly grants rights to

committing suicide is not a fundamental liberty interest protected by the Due Process Clause. *Washington v. Glucksberg*, 521 U.S. 702, 728, 117 S. Ct. 2258, 2271, 138 L.Ed.2d 772 (1997). The Plaintiffs, however, assert that the Court reversed its decision and effectively overruled *Glucksberg* in *Obergefell v. Hodge*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015). Their assertion is not correct. On June 26, 2015, the U.S. Supreme Court reaffirmed that *Glucksberg*

insist[ed] that liberty under the Due Process Clause must be defined in a most circumscribed manner, with central reference to specific historical practices. Yet while that approach may have been appropriate for the asserted right there involved (physician-assisted suicide), it is inconsistent with the approach this Court has used in discussing other fundamental rights.

Obergefell v. Hodges, *supra* at 2602. In *Obergefell*, the U.S. Supreme Court examined the history of marriage, the legal traditions, and marital practices to evaluate the scope of the fundamental right to marry. The Plaintiffs assert that *Obergefell* thus expanded substantive due process by changing the framework used to identify fundamental rights. To the extent that their expansion argument relates to the issues before this court, they are not correct. While the *Obergefell* Court focused on “the right to marry in its comprehensive sense,” thus eschewing the narrow analysis that would be entailed by examining “the right to same-sex marriage,” this reasoning does not apply in an analysis of an Act prohibiting all assisted suicides. As an example, in *Obergefell*, the Court stated that when “sincere, personal opposition becomes enacted law and public policy, the necessary consequence is to put the

citizens like Mr. Hooker, and that it also violates Art. 1, §§ 2 and 8, which grants liberty to citizens.

imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied.” *Id.* at 2602. The Court recognized that couples would be disparaged for their choices and their personhood would be diminished if they were denied the right to marry. *Id.* However, the consequences of being stigmatized and denied benefits are far different than the potential consequences of State-sanctioned assisted suicide. The Court finds that the *Obergefell* decision did not alter the holding, reasoning, and analysis of *Glucksberg* that there is no fundamental right to assisted suicide. *Id.*

The Plaintiffs contend that even if *Obergefell* does not recognize a fundamental right to assisted suicide, the broad interpretation of fundamental rights under the Tennessee Constitution does. The Defendants submit that the provisions in the Tennessee Constitution for due process and equal protection are synonymous with their federal counterparts and that the holdings in *Glucksberg* and *Vacco*⁷ compel rejection of a fundamental right to assisted suicide. The Plaintiffs can cite no Tennessee case that has extended the privacy right protections under the Tennessee Constitution to assisted suicide, including physician-assisted suicide. An alleged privacy interest in assisted suicide is not the same as the limited fundamental privacy interests protected by the Tennessee Constitution to procreational autonomy (in vitro fertilization), the parents’ right to care for their children without

⁷ In *Vacco v. Quill*, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834 (1997), the U.S. Supreme Court upheld New York’s assisted suicide ban against an Equal Protection Clause challenge.

unwarranted state intervention, and the right to consensual, adult, non-commercial sexual activities in one's own home. *Davis v. Davis*, 842 S.W.2d 588, 599-602 (Tenn. 1992); *Hawk v. Hawk*, 855 S.W.2d 573, 579 (Tenn. 1993); *Campbell v. Sundquist*, *supra* at 260-62. The

Defendants submit that

the decision to commit suicide with the assistance of another is 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.

Glucksberg, 521 U.S. at 725.

Despite the Plaintiffs' desire to engage in assisted suicide and to proceed contrary to existing law, their allegations of the facts and all inferences do not create a viable cause of action and do not withstand the examination invoked by a Motion for Judgment on the Pleadings. The Plaintiffs have failed to prove that there is a fundamental right to assisted suicide under the U.S. Constitution or the Tennessee Constitution. Accordingly, the Plaintiffs' claims fail.

Even if the Plaintiffs had persuaded the Court that a fundamental right was at issue, the Court would examine the Act under the standard of strict scrutiny to determine if the State has a compelling interest that permits interference with that fundamental right. The standard of strict scrutiny requires that the State's interest in the Act must be sufficiently compelling to be upheld as constitutional.

The Plaintiffs allege that the Defendants have failed to assert any legitimate interest of

the State in the Assisted Suicide Statute. They dismiss the State's interests,⁸ asserting that they are not as compelling as the interests of a terminally-ill, mentally competent adult. This Court does not agree. The Plaintiffs contend that a terminally ill adult patient may be fearful about unknown consequences, that the terminally ill patient may desire to continue a brave fight for life if he or she has the option of assisted suicide, and that the terminally ill patient may have more family involvement if the patient has the right to assisted suicide. These arguments do not negate the State's rationale, but invoke sympathy rather than reason. The Defendants have articulated sound and compelling reasons to justify legislation that bans assisted suicide.

In addition to the four interests identified in footnote 8, the State also asserted two other objectives of the Assisted Suicide Act: (5) protecting the integrity of the medical profession and (6) avoiding future movement toward euthanasia and other abuses. The Plaintiffs concede that these two reasons may be more compelling than the four State interests identified in footnote 8, but they argue that they are less persuasive than (a) promoting the terminally ill patient's desire to have an honest discussion with his or her physician about assisted suicide and (b) having one of many end-of-life options. This Court disagrees. The State has the most compelling interest, that is, preserving life, which the Act clearly does. As the Defendants submit, the State is not required to devalue one's life upon that person receiving a diagnosis of a terminal illness. The Tennessee Supreme Court has

⁸ The State identified six interests promoted by the Act: The first four are (a) preserving life, (b) preventing suicide, (c) avoiding the

held that there is a compelling State interest in protecting the life and promoting the health of its citizens. *See State ex rel. Swann v. Pack*, 527 S.W.2d 99, 113 (Tenn. 1975). In addition to the six compelling State interests set out above, the Defendants also submit that the Act promotes additional State interests by preventing coercion of terminally-ill patients to seek assisted suicide, protecting vulnerable groups such as the poor, the elderly and the disabled from unfair, or undue influence or coercion and further protects such groups from prejudice, negative and inaccurate stereotypes and societal indifference. When the Court examines the Act under the strict scrutiny test, the State's interests are found to be compelling and constitutional under both the U.S. Constitution and the Tennessee Constitution.

The Plaintiffs have also argued that the Act is void for vagueness because it fails to give sufficient notice to men of common intelligence of its meaning. They contend that physicians must be able to determine what conduct is specifically prohibited and to understand whether or not the law forbids them to engage in some aspects of the practice of medicine, even when they believe it is of benefit to their patients. The Defendants responded that the Act is clear that the practice of aid-in-dying or assisted suicide falls within the prohibitions of the Act. The aid-in-dying prescription involves a script for a lethal dose of medication to cause quick death, not to provide palliative care to relieve physical pain and discomfort, as is allowed under the Act. If the Physicians intend to provide lethal drugs to end their patients' lives, they engage in criminal conduct. The argument that the statute turns

involvement of third parties and the abuse of arbitrary, unfair or undue influence over physically, emotionally, mentally, or medically-impaired individuals, and (4) protecting family members and loved ones.


on the intent of the Physicians does not render the statute void. As the Defendant states, it is typical for criminal prohibitions to define violations or to enhance penalties based upon "intent." Juries are instructed on how to determine intent for most criminal offenses. *See* Tenn. Code Ann. § 39-11-301 (General Requirement of Mental State for Criminal Code). For purposes of criminal prosecution, the word "intentional" applies to a person who acts intentionally "with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result." Tenn. Code Ann. § 39-11-302(a). The Plaintiffs' contention that the statute is unconstitutionally vague is without merit.

CONCLUSION

The Defendants' Motion for Judgment on the Pleadings is granted. The Plaintiffs do not have standing to bring this action, this Court has no jurisdiction to enjoin enforcement of a criminal statute, the Assisted Suicide Statute is constitutional, is not void for vagueness and does not violate any of the Plaintiffs' fundamental rights under the Tennessee or U.S. Constitutions. The Plaintiffs' oral motion for Judgment on the Pleadings is denied in light of the grant of the Defendants' motion.

Costs are taxed to the Petitioners.

IT IS SO ORDERED.



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RULE 58 CERTIFICATION

A copy of this order has been served by U.S. Mail upon all parties or their counsel named above.

T. L.
Deputy Clerk and Master
Chancery Court

9-29-15
Date