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Doctor-assisted suicide: California ban challenged in court

By Howard Mintz

Opening a new front in the right-to-die debate, a San Francisco leukemia patient and her doctors are now trying to achieve through the California courts what voters and state legislators have for decades been unable to do -- give physicians the legal right to help dying people end their lives.

Through a lawsuit filed last week in San Francisco, lawyers for 53-year-old Christie White and her doctors have joined an emerging legal strategy aimed at going state-by-state to challenge bans on physician-assisted suicide.

Right-to-die advocates continue to press their cause in the political arena, but White's case has applied a new legal tactic against California's laws, similar to ones already deployed in states such as New Mexico, Montana and, most recently, New York.

The crux of the legal argument is that most state laws forbidding doctor-aided end-of-life treatments are vague and outdated; California's has been on the books for 140 years. The suit also contends that denying patients such treatment by their doctors and threatening doctors with criminal prosecution violates state constitutional protections, which in California covers privacy, "personal dignity" and autonomy in medical decision-making.

"The point of the case is to bring into focus the reality that (choosing end-of-life treatment) is no kind of suicide," said Kathryn Tucker, a Disability Rights Legal Center attorney representing White in the lawsuit.

White's case comes amid the ongoing, supercharged debate over physician-assisted suicide, highlighted by Brittany Maynard, whose viral video last year portraying her desire to "die with dignity" revealed how

she was forced to move from San Francisco to Oregon to receive life-ending treatment for terminal brain cancer. Oregon is one of three states where doctor-aided suicide is legal.

In a lengthy statement posted on the Disability Rights Legal Center's website, White outlined why she does not want to be forced into Maynard's situation, saying if she loses her seven-year battle with leukemia she wants to be able to get her doctors' help in allowing her to die in her own community.

"I do not want to have to leave my husband, my family and my friends and move to Oregon," White wrote. "It is time for the State of California to get out of the way and let qualified patients make our own end-of-life decisions."

Legal experts say the approach in the San Francisco case and across the country is similar to the legal strategy used to challenge bans on same-sex marriage, going from state to state in the courts to chip away at the issue over time. The U.S. Supreme Court has previously found that doctor-assisted suicide regulations should be decided by the states, for now forcing advocates to steer clear of arguing that forbidding aid-in-dying violates federal constitutional rights.

"They are the two civil rights issues of the decade," Robert Schwartz, a University of New Mexico law professor, said of gay marriage and physician-assisted suicide. "I think it's a new strategy (in the California case) and an appropriate strategy."

The San Francisco lawsuit targets Attorney General Kamala Harris and San Francisco District Attorney George Gascon, who would presumably be responsible for prosecuting White's San Francisco doctors if they prescribed life-ending medications. State lawyers declined to comment on the lawsuit.

There is, however, precedent for courts to side with the legal arguments raised in the challenge to California's 1874 assisted-suicide statute. A

New Mexico judge last year found doctors in that state could not be prosecuted for aiding a dying patient, a ruling now being reviewed by a state appeals court.

The Montana Supreme Court in 2009 likewise barred the prosecution of doctors who provided end-of-life treatment, citing state constitutional protections for patients. The California legal arguments mirror the claims raised in New Mexico and Montana.

Groups aligned against doctor-assisted suicide have jumped into those court cases to defend bans on the practice, and are expected to do so in California. Tim Rosales, a spokesman for Californians Against Assisted Suicide, views the lawsuit as part of a broader strategy to legalize the use of drugs to hasten death.

"From my perspective, this is kind of (like) throwing spaghetti against the wall to see what sticks," he said.

Even as the court case unfolds, attempts to legalize assisted suicide continue in California. Two Democratic senators, Bill Monning, D-San Luis Obispo, and Lois Wolk, D-Davis, introduced a bill last month modeled after Oregon's law, and committee hearings are expected soon.

In the meantime, White's lawyers say they want to accelerate her case in the courts, raising the argument there is a "fundamental right" in the state constitution for patients to get life-ending treatment from their doctors if they have terminal illnesses.

"I want to be in control of my life and die a peaceful death here in California, my home," White says of her decision to back the lawsuit while she fights her illness. "When and if my time comes, I want to be able to gather my loved ones and meet my death with some dignity."

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