

SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

DR. SANG-HOON AHN, DR. LAURENCE)
BOGGELN, DR. GEORGE DELGADO,)
DR. PHIL DREISBACH, DR. VINCENT)
FORTANASCE, DR. VINCENT NGUYEN,)
and AMERICAN ACADEMY OF MEDICAL)
ETHICS, d/b/a CHRISTIAN MEDICAL)
AND DENTAL SOCIETY,)

Plaintiff,)

vs.)

Case No. RIC 1607135)

MICHAEL HESTRIN, in his official)
capacity as District Attorney of)
Riverside County; ATTORNEY GENERAL)
OF THE STATE OF CALIFORNIA,)
KAMALA D. HARRIS, and the STATE OF)
CALIFORNIA by and through the)
CALIFORNIA DEPARTMENT OF PUBLIC)
HEALTH,)

Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE DANIEL A. OTTOLIA

May 15, 2018

APPEARANCES:

For the Plaintiffs:

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-and-

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(Appearances continued)

Reported by:

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For more information, visit <http://www.compassionandchoices.org>

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RIVERSIDE, CALIFORNIA; MAY 15, 2018

BEFORE THE HONORABLE DANIEL A. OTTOLIA

THE COURT: Good morning. Let me call the case of Ahn versus Hestrin. If I could have appearances for the record, please.

MR. LARSON: Good morning, your Honor. Stephen Larson and Katie Short for the plaintiffs.

MR. SPENCE: Good morning, your Honor. Deputy Attorney General Darrell Spence on behalf of the state defendants.

MS. FITZPATRICK: Good morning, your Honor. Ivy Fitzpatrick on behalf of District Attorney, Michael Hestrin.

THE COURT: Good morning.

All right. The matter is here this morning on a motion for judgment on the pleadings by the plaintiff, and it's opposed by the Attorney General of the State of California.

There is no joinder by the district attorney's office; is that correct?

MS. FITZPATRICK: Correct.

THE COURT: On August 26, 2016, this Court denied plaintiffs' motion for preliminary injunction to enjoin the district attorney from complying with the Act and enjoining the State of California from recognizing or enforcing the Act.

The Court also ruled on the district attorney's demurrer to the complaint, rejecting the district attorney's argument regarding lack of standing and ripeness.

On June 16, 2017, the Court denied intervenor

1 defendants' motion for judgment on the pleadings, which
2 attacked all three causes of action alleged in the complaint
3 based on arguments similar to the ones made in the district
4 attorney's demurrer.

5 Plaintiffs now move for judgment on the pleadings,
6 declaring the Act void under the third cause of action for
7 violation of Article 4, Section 3, of the constitution,
8 permanently enjoining defendant State of California from
9 recognizing or enforcing the Act and permanently enjoining the
10 district attorney from recognizing any exceptions to the
11 criminal law created by the Act in the exercise of the
12 district attorney's criminal enforcement duties.

13 Plaintiffs argue that the Act violates Section 3
14 because it is not supported by any reasonable construction of
15 Governor Brown's proclamation of June 16, 2015.

16 First off, with respect to the affirmative defense
17 of lack of standing, the Court finds that this affirmative
18 defense lacks merit. As this Court has previously noted,
19 where a constitutional challenge is involved, a party whose
20 own rights are not impacted, but whose challenge is raised on
21 behalf of absent third parties, has sufficient standing if the
22 relationship between the litigant and the absent third party
23 whose rights the litigant asserts is so close that the
24 litigant is fully or very nearly as effective a proponent of
25 the right as would be the absent party, and there are
26 obstacles to prevent the third parties from bringing suit
27 themselves.

28 The plaintiffs in this case are doctors whose

1 actions are not only covered under the Act, but who have a
2 close enough relationship to their patients to bring them
3 within the ambit of the Act.

4 Furthermore, the Act impacts terminally ill patients
5 who are not in a position to challenge the law because their
6 illnesses and their shortened life expectancy present
7 significant obstacles in bringing suit themselves.

8 Therefore, the Court rejects the lack of standing
9 argument.

10 All right. With respect to the merits of the
11 motion, the parties dispute whether the enactment of the Act
12 was within the scope of Governor Brown's proclamation. The
13 governor's call for special session was to address the
14 extraordinary circumstances caused by California's
15 implementation of the Affordable Care Act. Governor Brown
16 convened the legislature to assemble an extraordinary session
17 on June 19, 2015, for the following purposes: To consider and
18 act upon legislation necessary to enact permanent and
19 sustainable funding from a new managed care organization tax
20 and/or alternative fund sources to provide sufficient funding
21 of in-home supportive services and sufficient funding to
22 provide additional rate increases for providers of Medi-Cal
23 and developmental disability services.

24 The special session also was to consider and act
25 upon legislation necessary to improve the efficiency and the
26 efficacy of the healthcare system, reduce the cost of
27 providing healthcare services, and improve the health of
28 Californians.

1 Based on the plain reading of the proclamation, the
2 enactment of the Act does not fall within the scope of
3 legislative power prescribed therein. The special call of the
4 legislature was prompted by a funding shortage in certain
5 low-income and developmentally disabled support programs. The
6 legislature was called to consider and enact permanent and
7 sustainable funding from a new managed care organization tax
8 and/or alternative fund sources and to improve the efficiency
9 and efficacy of the healthcare system, reduce the cost of
10 providing healthcare services, and improve the health of
11 Californians.

12 Giving terminally ill patients the right to request
13 aid-in-dying prescription medication and decriminalizing
14 assisted suicide for doctors prescribing such medications have
15 nothing to do with healthcare funding for Medi-Cal patients,
16 the developmentally disabled, or in-home supportive services,
17 and does not fall within the scope of access to healthcare
18 services, improving the efficiency and efficacy of the
19 healthcare system, or improving the health of Californians.

20 The Act is not a matter of healthcare funding, and
21 the consideration and enactment of the Act is not supported by
22 a reasonable construction of the language of the proclamation.

23 Intervenor defendants' argument that the emergency
24 session was convened to broadly address healthcare issues is
25 not persuasive.

26 Though intervenor defendants argue that expansion of
27 end-of-life choices affects the psychological well-being of a
28 terminal patient, the session's stated aim to improve the

1 health of Californians must be read in the context of the
2 session's overriding aim to expand access to services while
3 improving the efficiency of the healthcare system as a whole,
4 and without sacrificing healthcare outcomes for Californians.

5 The facts of this case are distinguishable from
6 *Martin versus Riley*. The decriminalization of suicide and
7 doctor-assisted suicide does not relate to, is not reasonably
8 germane to, or have a natural connection to patients' access
9 to healthcare services, improving the efficiency and efficacy
10 of the healthcare system, or improving the health of
11 Californians.

12 Defendant's argument that the legislature is
13 authorized to address all other matters incidental to the
14 session is also without merit. The full text of the
15 constitution states that the legislature has the power to
16 legislate in emergency sessions only on subjects specified in
17 the proclamation, but may provide for expenses and other
18 matters incidental to the session. The legislation
19 decriminalizing assisted suicide cannot be deemed a matter
20 incidental to the purpose of the emergency session.

21 So for those reasons, the Court finds that the Act
22 violates Article 4, Section 3, of the California Constitution
23 and is thus void as unconstitutional.

24 The Court has taken judicial notice of the documents
25 presented by plaintiff and also the documents presented by the
26 defendants. Both requests for judicial notice were unopposed.

27 Do you wish to be heard, Mr. Spence?

28 MR. SPENCE: Yes, I do. Before, your Honor, I get

1 into the enactment argument, did the Court make a ruling on
2 the Code of Civil Procedure 439 argument that state defendants
3 asserted?

4 THE COURT: What's the 439 argument?

5 MR. SPENCE: The requirement for written -- excuse
6 me, a meet-and confer, and then the filing of a
7 meet-and-confer declaration along with the moving papers.

8 THE COURT: This motion was previously set, and I
9 did notice there was not a meet-and-confer. However, since we
10 continued the motion, the Court did not consider the
11 meet-and-confer. That's not a jurisdictional argument. The
12 Court has the authority to either consider the meet-and-confer
13 requirement or not consider the meet-and-confer requirement.

14 MR. SPENCE: The defendants -- the state defendants
15 would disagree with that assertion. Obviously, we understand
16 that's your ruling. But that is your ruling, just to be
17 clear?

18 THE COURT: That's my ruling. There will be no
19 ruling regarding the meet-and-confer requirement.

20 MR. SPENCE: Just to be clear for the record, it's
21 your ruling that this Court has discretion to disregard Code
22 of Civil Procedure 439 in terms of the fact that there was not
23 a meet-and-confer declaration filed with the motion,
24 contemporaneously with the motion?

25 THE COURT: That's correct.

26 MR. SPENCE: Okay. So your Honor touched on the
27 standing argument. I won't repeat that. This Court has heard
28 that argument a number of times. So I'll just jump right into

1 the enactment argument.

2 THE COURT: Okay.

3 MR. SPENCE: So the guiding principle, as the Court
4 is well aware, in *Martin v. Riley* stated as such. The same
5 presumptions in favor of a constitutionality of an act that
6 passed at regular session apply to acts passed in special
7 session. So the presumptions are all in favor of finding the
8 Act constitutional.

9 I'm not sure the Court is doing this, but to be
10 clear, the analysis isn't pick the best possible or the most
11 reasonable interpretation of the proclamation and then see
12 whether the Act falls within the scope or outside of the
13 scope. It's actually -- we almost work backwards. The
14 analysis should be try to find the Act constitutional, try to
15 find the Act falling within the scope by using any reasonable
16 interpretation of the proclamation.

17 Again, the proclamation, as it says in *Martin v.*
18 *Riley*, the proclamation shouldn't be viewed in its narrowest
19 sense, as the plaintiffs have articulated. In fact, it should
20 be viewed in its broadest sense.

21 And, again, this isn't a competition between the
22 most reasonable interpretation. It's any reasonable
23 interpretation. And here, as long as there's one reasonable
24 interpretation, the Act should be found constitutional.

25 Now, the Court previously in response -- or in
26 hearing the preliminary injunction matter found that the Act
27 was within the scope of the proclamation. So clearly the
28 Court -- I presume acting in good faith -- read the

1 proclamation and determined that, you know what? There is an
2 interpretation that is reasonable that places the Act within
3 its scope.

4 THE COURT: The hearing on the injunction was quite
5 a while ago.

6 MR. SPENCE: Okay.

7 THE COURT: The answers weren't in at that time. I
8 believe the DA had not filed its answer. So the Court
9 considered the admissions made in the answers in this
10 particular motion.

11 In addition, there were new documents presented in
12 the request for judicial notice today. So I understand it
13 looks like there's an inconsistency there between the Court's
14 ruling on the injunction and today's hearing.

15 MR. SPENCE: I'm not even saying that the Court is
16 bound by that previous ruling. I'm not saying it has
17 preclusive effect. What I am saying is the same rationale
18 that the Court used to decide that the Act fell within the
19 scope, the same interpretation the Court used, clearly that
20 first interpretation wasn't unreasonable.

21 Now, maybe the Court has decided that plaintiffs'
22 interpretation -- has subsequently decided that plaintiffs'
23 interpretation is the more reasonable interpretation. That
24 may be the case. However, the fact that the Court at one time
25 looked at the plain language of the proclamation and decided
26 that the Act fell within the scope demonstrates that there's
27 more than one interpretation that's reasonable, at least. And
28 what we're saying is, as long as there's more than one

1 reasonable interpretation, and one of those reasonable
2 interpretations, even if it's not the most reasonable
3 interpretation, would put the Act within the scope of the
4 proclamation, then that's the interpretation the Court must
5 use.

6 First of all, the best evidence of the fact that the
7 Act is within the scope of the governor's proclamation is the
8 fact that the governor signed it himself. But even setting
9 that aside, again, let me just get to the ejusdem generis
10 argument.

11 The fact that the plaintiffs are pulling out a tool
12 of statutory construction in order to argue that their
13 interpretation is the most reasonable is a tell in a way, to
14 use a poker term. It's a tell that the proclamation is
15 susceptible to more than one reasonable interpretation.

16 So, again, I mean, I think I could go on further,
17 but I think I pretty much laid out our thinking and thought
18 process on this, and I think I've articulated the analysis
19 that we think the Court should adopt. In other words, unlike
20 a contract matter or a matter where two parties are arguing
21 that one interpretation of a statute or contract is the better
22 one, here, we're not looking at it as a competition between
23 two competing interpretations. It's simply as long as there
24 is an interpretation out there that puts the Act within the
25 scope of the proclamation, that's the one we have to select.
26 We have to basically -- the Court has to almost try, make an
27 effort, actually affirmatively make an effort, to find the Act
28 unconstitutional, and only if it's just simply not possible

1 can the Court find the Act unconstitutional.

2 Again, given that the Court has already looked at
3 this issue and has already decided that the language of the
4 proclamation pulls the Act within its scope, even if the Court
5 subsequently has decided that plaintiffs' interpretation is
6 the more reasoned, better interpretation, again, it doesn't
7 take away from the fact that there is this reasonable
8 interpretation out there that puts the Act within the scope.

9 THE COURT: Thank you, Mr. Spence.

10 All right. Who would like to address that issue?
11 Mr. Larson?

12 MR. LARSON: Yes, your Honor. I heard the Court's
13 order, the decision, the tentative, but I would be happy to
14 address anything raised here.

15 As far as the meet-and-confer is concerned, your
16 Honor, CCP section 439(a) (4) expressly states that, "A
17 determination by the Court that the meet-and-confer process
18 was insufficient is not grounds to grant or deny the motion
19 for judgment on the pleadings."

20 The Court has already indicated that given the time
21 involved here, the multiple filings, meet-and-confer has been
22 satisfied.

23 Your Honor, the plaintiffs agree and respect the
24 decision by the Court on the interpretation of this
25 proclamation. We think it is quite clear, and the
26 interpretation the Court has given it is the only
27 interpretation that, frankly, is reasonable, given the express
28 language of the proclamation.

1 Unless there's anything further from the Court, I
2 would submit on the Court's decision.

3 THE COURT: The Court, obviously, gives it a fair
4 amount of time when I look over these cases. Now, I was
5 disturbed, in light of the fact the Court ruled a certain way
6 at the injunction. But even back at the hearing on the
7 injunction, I think the Court said that the Court was not
8 happy the way this Act had been enacted.

9 MR. LARSON: You did, your Honor. In fact, you made
10 it quite clear at that time that this was just based on the
11 unique procedural process at the beginning of a case when
12 neither the Court, nor the parties, for that matter, frankly,
13 had had the opportunity to fully brief it.

14 This is a matter which I know -- I'm not going to
15 repeat, as counsel has done, what's already been submitted at
16 length in our papers. I know the Court has carefully
17 considered this. I defer to the Court's order.

18 THE COURT: The Court's ruling would be without
19 leave to amend.

20 MR. SPENCE: Okay.

21 THE COURT: So what the Court can do, if you'd like,
22 is I can hold off on entering the order for five days if you
23 want to seek an emergency writ, perhaps, at the DCA.

24 MR. SPENCE: Okay. Thank you, your Honor. But just
25 to go -- because the 439(a) (4) issue was raised, let me just
26 address that.

27 439(a) (4) assumes that there was a meet-and-confer.
28 What it says is that the Court can't grant or deny a motion

1 based on insufficient meet-and-confer. So, in other words,
2 that process there, that provision there, what it's saying is
3 we don't want the Court to look at a meet-and-confer and say,
4 oh, well, that wasn't a good meet-and-confer or that is a good
5 meet-and-confer. We don't want that. But what it is saying
6 is that there has to be at least a meet-and-confer, even if
7 it's pro forma.

8 THE COURT: The Court is very familiar with 439.
9 The reason I wasn't aware of that section is because it's
10 usually 430. We deal with demurrers. Demurrers and motions
11 for judgment on the pleadings essentially are treated the
12 same. But we go through 430s on a daily basis. It is a
13 meet-and-confer requirement. It usually requires personal
14 communication or telephonic communication. But I can tell
15 you, seeing these on a daily basis, the Court has jurisdiction
16 to waive the 430 requirement. It's not jurisdictional.

17 I didn't look at the motion today to see if you had
18 done further meet-and-confer because we had already continued
19 the motion, and it was clear to the Court that there was no
20 purpose for the meet-and-confer. There was no way you were
21 going to resolve this by picking up the phone and talking
22 about it. So that's the reason the Court did not even address
23 the 439 issue.

24 MR. SPENCE: My understanding from reading 439 is
25 that there is no futility component to 439. It's simply meet
26 and confer. It's not an excuse to say that a meet-and-confer
27 wouldn't have worked.

28 THE COURT: That's my ruling.

1 MR. SPENCE: Understood.

2 THE COURT: You have submitted the order, I believe;
3 correct?

4 MR. LARSON: Yes. Thank you, your Honor.

5 THE COURT: Although I'll hold off for five days
6 before entering the order.

7 MR. LARSON: I understand.

8 MR. SPENCE: Your Honor, can I go further?

9 THE COURT: Yes.

10 MR. SPENCE: Can I request this Court issue a stay
11 until we file an appeal?

12 MR. LARSON: Your Honor, five days, I think, is
13 sufficient. This is as important to us as it is to them,
14 Frankly, from our perspective, some of the clients that we
15 have present here in the room, this is a matter of life and
16 death. We understand the Court -- the five-day opportunity.
17 We anticipate a writ. But I would argue strongly against a
18 stay.

19 THE COURT: That's the idea behind the five days, so
20 you can prepare a writ. When the Court enters the order in
21 five days, essentially you can head over to the DCA and file
22 your paperwork.

23 MR. SPENCE: Okay.

24 THE COURT: All right. So the Court has the order,
25 and I'll enter the order in five days from today.

26 MR. LARSON: Thank you, your Honor.

27 MR. SPENCE: Thank you, your Honor.

28 THE COURT: Notice waived?

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Counsel, is notice waived?

MR. LARSON: Yes.

THE COURT: Thank you.

(Proceedings concluded.)

REPORTER'S CERTIFICATE

DR. SANG-HOON AHN, DR. LAURENCE
BOGGELN, DR. GEORGE DELGADO,
DR. PHIL DREISBACH, DR. VINCENT
FORTANASCE, DR. VINCENT NGUYEN,
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I, SUSAN L. NORRIS, Certified Shorthand Reporter of
the Superior Court of the State of California, County of
Riverside, do hereby certify:

That on May 15, 2018, in the County of Riverside,
State of California, I took in shorthand a true and correct
report of the proceedings had in the above-entitled case, and
that the foregoing pages, 1 through 14, inclusive, are a true
and accurate transcription of my shorthand notes.

DATED: Riverside, California, May 16, 2018.

/s/ Susan L. Norris

SUSAN L. NORRIS, CSR NO. 5167