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Using a Hypothetical Case to Teach about Supreme Court Decision Making

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ABSTRACT: This article presents a hypothetical set of facts that can be used as a device to analyze the workings of the Supreme Court, and the theories of judicial restraint, judicial activism and originalism. It also offers students an opportunity to analogize the facts of this case with Roe v. Wade and other Supreme Court decisions.

KEYWORDS: Supreme Court, originalism, judicial restraint, judicial activism, assisted suicide.

INTRODUCTION

One of the challenges faced by instructors at the University level is engaging students in learning law-related material.

Most professors use the abbreviated cases in textbooks that relate to topics covered in the chapters. Often cases are of little interest to students.

What engages students are hypothetical fact situations that mirror real life problems or drawn from stories in the news media. That is the basis of the following case study:

CASE STUDY

Wiley Colton is a 55-year-old man who lives in the state of Arcadia. Wiley suffers from an advanced case of Parkinson's disease and his doctors have informed him that there are no further treatments available to arrest the illness. Furthermore, Wiley has been diagnosed with an early stage of ALS/Lou Gehrig's disease, for which there is no cure. Wiley wants to make a decision about ending his life with his wife, Ellen, administering a drug to end his suffering at an appropriate time. Wiley's lengthy illness has taken its toll on his family emotionally and financially. He fears that Ellen will be prosecuted criminally for helping him to end his life, leaving their three children without a parent.

Thwarting Wiley's plan to end his life of poor quality and suffering is a law passed by the Arcadia state legislature which bans all forms of assisted suicide. The law provides: "Any person, including a doctor…who shall assist, aid or plan the death of any person or who provides medication or opiates to aid in a patient's death shall face up to 5 years imprisonment, and a $500,000 fine. A doctor shall also face permanent loss of his/her medical license."

The Arcadia state legislature acted in the wake of a poll which showed the majority of the adult population of the state opposed to assisted suicide. Arcadia is located in the Bible belt and has a large number of evangelicals in the legislature. The Governor, a fundamentalist Christian. Signed the bill into law.

Wiley Colton is suing the state of Arcadia claiming that this law violates his right to privacy and his freedom to make decisions about his healthcare and his right to end his life if he chooses to do so.

STUDENT PROJECT

The students are put in the position of being law clerks to a newly appointed Supreme Court Justice, Fenton Rutledge, who considers himself a potential swing vote on the Court. The justice is relying on his clerk to draft a memo arguing the issues in the case from the activist and restraintist points of view.

Students should be provided with some basic information about the difference between these two judicial philosophies. The instructor can also recommend some readings on the subject. A judicial restraintist believes that the courts should defer to the judgments of legislative bodies, that courts should not make policy, leaving policy-making to the political branches of government. In this case it is clear that the legislature has banned all forms of assisted suicide and therefore, if Justice Rutledge takes the

restraintist point of view, he will vote to uphold the law as an expression of the view of the people of Arcadia, reflected in the legislature's decision to ban the practice. If the law is upheld, it means that Wiley cannot end his life with Ellen's assistance nor can his doctor prescribe medication which would assist him in doing so.

If the law clerk writes a memo from the activist point of view, he or she would maintain that the law violates Wiley's right to privacy found in the penumbral and emanations in the Bill of Rights but not explicitly among the rights enumerated in the First Ten Amendments. See Griswold v. Connecticut (1965), Roe v. Wade (1973) and its progeny. An activist would argue that the law impermissibly intrudes on a personal decision and that the state should have no interest in determining if Wiley lives or dies.

Another approach to the Constitution that has gained prominence since the 1980's: originalism. This theory posits that a Supreme Court Justice should interpret the meaning of the Constitution consistent with the intent of the Framers. If Justice Rutledge adopts this point of view, he would argue that because the Founding Fathers authored the Constitution, justices must interpret the law as the Framers intended. The issue of originalism came up in the confirmation hearings of Amy Comey Barrett. When asked about the issue she stated: "…that means I interpret the Constitution as a law. The text is text and I understand it to have the meaning that it had at the time people ratified it. it does not change over time and it is not up to me to update it or infuse my own views into it." (Zimmer, 2020).

The "jurisprudence of original intention" was first promulgated by Attorney General Edwin Meese in a speech before the American Bar Association in 1985: "In the cases we file and those we join as amicus, we will endeavor to resurrect the original meaning of constitutional provisions and statutes as the only reliable guide for judgment. Any other method suffers the defect of pouring new meaning into old words, there creating new powers and new rights to rally at odds with the logic of our Constitution and its commitment to the rule of law." (Marcus, 52).

Justice William Brennan countered Meese's pronouncement by stating: "It is arrogant to pretend that from our vantage we can gauge accurately the intent of the framers on application of principle to specific contemporary questions." (Marcus, 52).

If Rutledge embraces 'originalism', there can be no doubt that he would rule in favor of Arcadia. Clearly the framers of the Constitution could not have anticipated the developments of modern medicine that can prolong the life of those like Wiley who suffer from devastating illnesses. Also, the clear intent of the Arcadia state legislature was to unequivocally ban assisted suicide consistent with the beliefs of the people of the state and its elected representatives. Why should the Supreme Court substitute its judgment for that of a popularly elected legislature?

On the other hand, the Supreme Court has struck down laws passed by state legislatures that limited personal freedoms. The many examples include the Connecticut law that barred married couples from access to contraception, (Griswold) state laws that banned abortion, (Roe), a state law called the Racial Integrity Act that barred interracial couples from marrying (Loving v. Virginia) (1965), laws that criminalized private homosexual conduct (Lawrence v. Texas) (2003) and laws that limited marriage to members of the opposite sex (Obergefell v. Hodges, 2015).

Decisions such as the latter would have been unthinkable even as recently as the 1990s. Surely the Founding Fathers could not have anticipated such developments in 1787 when the Constitution was written or in 1791 when the Bill of Rights was ratified.

Students can ponder the import of these decisions in weighing the validity of Arcadia law.

There is a more pertinent case that would be a precedent for Rutledge to uphold Arcadia's law. Washington v. Glucksberg (1997). A 5-4 majority of the Supreme Court rejected the argument that there is a constitutional right to assisted suicide. Chief Justice William Rehnquist stated that "unenumerated rights would be recognized by the courts only if they were "deeply rooted" in the nation's history and tradition" (Marcus 37). The Glucksberg decision regarding unenumerated rights is certainly inconsistent with decisions like Roe v. Wade and other decisions reaffirming it like Planned Parenthood v. Casey (1992). Glucksberg reflects the judicial restraint philosophy that the Court should not be a vehicle for making social policy.

If Rutledge and the other members of the Court were to declare Arcadia's law unconstitutional would this not be in the words of Chief Justice John Roberts "stealing the issues from the people?"
Is a more proper interpretation, to rely on the words of Justice Anthony Kennedy, "The Constitution's framers knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact only serve to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom." (Marcus, 54).

CONCLUSION

Students can research cases decided by the Supreme Court to help support their arguments on either side of the issue in the case of Wiley Colton. The instructor might ask students to consider the ethical and moral issues posed by a law favored by a majority that harms the interests of the few. For whom would the students decide: the law of Arcadia or for the creation of creating new rights

that the framers could never have envisioned.

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