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. 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.	Case No. RIC 1607135

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE DANIEL A. OTTOLIA

May 15, 2018

APPEARANCES:

For the Plaintiffs:

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(Appearances continued)

Reported by: SUSAN L. NORRIS, CSR No. 5167

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For State of California:

STATE OF CALIFORNIA
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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

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

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

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

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

The plaintiffs in this case are doctors whose

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

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

Therefore, the Court rejects the lack of standing argument.

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

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

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

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

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

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

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

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

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

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

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

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

Do you wish to be heard, Mr. Spence?

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

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

THE COURT: What's the 439 argument?

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

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

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

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

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

THE COURT: That's correct.

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

the enactment argument.

THE COURT: Okay.

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

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

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

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

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

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

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

MR. SPENCE: Okay.

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

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

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

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

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

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

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

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

can the Court find the Act unconstitutional.

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

THE COURT: Thank you, Mr. Spence.

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

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

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

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

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

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

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

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

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

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

MR. SPENCE: Okay.

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

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

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

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

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

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

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

THE COURT: That's my ruling.

MR. SPENCE: Understood.

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

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

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

MR. LARSON: I understand.

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

THE COURT: Yes.

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

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

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

MR. SPENCE: Okay.

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

MR. LARSON: Thank you, your Honor.

MR. SPENCE: Thank you, your Honor.

THE COURT: Notice waived?

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, 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.	)	

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