

History of the Oregon Death with Dignity Act

In the late 1980s and early 1990s, Oregon State Senator Frank Roberts, suffering from prostate cancer, introduces three physician-assisted dying bills (1989, 1991, and 1993). None of these bills get out of committee, but they become templates for later bills.

Voters in Washington (1991) and California (1992) reject similar ballot initiatives.

1993

Businessman Elven "Al" Sinnard, attorney Eli Stutsman, JD, attorney Mark Trinchero, JD, Dr. Peter Goodwin, MD, and nurse Myriam Coppens establish the political committee Oregon Right to Die and bring together various stakeholders to review drafts of the bill that would be placed on the ballot the following year.

Stutsman is the law's lead author, drafting it together with Sinnard and Dr. Goodwin; Sinnard, Dr. Goodwin, and Coombs Lee are selected to be the chief petitioners. Unlike Initiative 119 in Washington in 1991 and Proposition 161 in California in 1992, Oregon's Measure 16 expressly prohibits euthanasia by lethal injection.

Later, nurse-attorney Barbara Coombs Lee, RN, JD, and attorney Cheryl K. Smith, JD, join the core group.

1994

- November 8 - Oregon voters approve Measure 16, Oregon Death with Dignity Act, by a margin of 51.31 percent (627,980 votes) to 48.69 percent (596,018 votes). Oregon thus becomes the first U.S. state with a physician-assisted dying statute.

Measure 16 is regarded as one of the most controversial ballot measures in Oregon's history. Despite its passage, implementation will be delayed by court challenges for several years.

November 23 - National Right to Life files a motion for injunction against Measure 16 in a federal district court. The case *Lee v. State of Oregon* becomes the Oregon law's first legal challenge. The plaintiffs in the case are doctors and patients who contend that the Oregon statute violates the Constitution's First and Fourteenth Amendments as well as several federal statutes.

- December 7 - U.S. District Court Judge Michael R. Hogan places a temporary restraining order on Measure 16.
- December 12 - Oregon Right To Die files a motion in support of Measure 16.
- December 19 - Judge Hogan extends the temporary restraining order.
- December 27 - Judge Hogan places a temporary injunction on the implementation of the Oregon Death with Dignity Act.
- Eli Stutsman, JD, creates the Oregon Death with Dignity Legal Defense and Education Center ("Oregon Death with Dignity") to defend and promote the new law.

1995

- January 13 - Oregon Right to Die files an emergency appeal with the Ninth Circuit Court of Appeals on behalf of Michael Vernon, a terminally ill Oregonian.
- January 17 - Ninth Circuit Court of Appeals denies the appeal.
- April 18 - Oral arguments take place in the case before Judge Hogan.
- August 1 - Michael Vernon, having met all the qualifications of Measure 16, requests Judge Hogan grant him relief from the injunction.
- August 3 - Judge Hogan denies Vernon's appeal, rules Measure 16 is unconstitutional, and makes the injunction on the implementation of the Oregon Death with Dignity Act permanent.
- November 24 - Oregon Death with Dignity files a brief with the Ninth Circuit Court of Appeals.

1996

- March 7 - Oregon Death with Dignity files an emergency motion with the Ninth Circuit Court of Appeals requesting a stay of the injunction on the Oregon Death with Dignity Act.
- March 11 - Ninth Circuit Court of Appeals denies the motion and sends the question back to Judge Hogan.
- May 9 - Judge Hogan denies the motion to stay the injunction.
- May 17 - Oregon Death with Dignity re-files its motion for a stay.
- July 9 - Ninth Circuit Court of Appeals hears oral arguments in the appeal of Judge Hogan's ruling that Measure 16 is unconstitutional.

1997

- January 28–29 - Family Law Subcommittee of the Oregon State House of Representatives Judiciary Committee holds informational hearings on the implementation of the Act.
- February 17 - After heavy lobbying from the Oregon Catholic Conference, 7 bills are introduced in the Oregon State Legislature to repeal, refer, delay, or alter the Death with Dignity Act.
- February 27 - Ninth Circuit Court of Appeals rules, in *Lee v. Oregon*, dismissing the lawsuit challenging the Death with Dignity Act, and orders Judge Hogan to lift the injunction within 21 days.
- March 13 - National Right to Life appeals the Ninth Circuit Court ruling. The case moves to the Supreme Court of the United States.
- April 23 - Family Law Subcommittee of the Oregon State House Judiciary Committee votes 4 to 3 to pass HB 2954, referring Measure 16 back to the voters for a repeal at the November 4 election.
- May 2 - Oregon House Judiciary Committee passes HB 2954 6 to 4.
- May 13 - After intense debate, Oregon House votes 32 to 26 to pass HB 2954.
- May 27–30 - A special Oregon State Senate committee holds hearings on HB 2954; the bill passes 3 to 2.
- June 9 - Oregon Senate votes 20 to 10 to pass HB 2954. Because the bill is a referral to voters, no signature by the governor is needed and no veto possible.
- June 26 - U.S. Supreme Court unanimously rules there is no constitutionally protected right to die, but leaves open the possibility of further litigation on the issue and it up to states to make their own physician aid in dying laws.
- November 4 - Measure 51, Oregon Repeal of Death with Dignity, asking Oregon voters to repeal the 1994 Death with Dignity Act, fails by a larger margin than the margin by which Measure 16 passed, 59.91 percent to 40.09 percent (666,275 to 445,830 votes).

The tired argument that Measure 16 was passed by too slim a margin in 1994 became irrelevant.

—ELI STUTSMAN, JD

Exit polls reveal 72 percent of Democrats, 51 percent of Republicans, and 83 percent of non-affiliated Independents support the Act. Support also cuts across gender lines (60 percent of women and 70 percent of men). Although the majority of Catholics (56 percent) and Protestants (60 percent) vote against the repeal, it is "No Religion" voters who vote against it overwhelmingly (89 percent).

- November - Some members of U.S. Congress try to block implementation of Measure 16, but fail. Senator Orin Hatch (R-Utah) and Representative Henry Hyde (R-Illinois) urge the U.S. Drug Enforcement Administration to investigate and penalize doctors who prescribe federally controlled drugs for dying patients to hasten their death.
- December - Drug Enforcement Administration Chief Thomas Constantine says that Oregon physicians participating under the law's guidelines will be in violation of the Controlled Substances Act ("CSA"). U.S. Attorney General Janet Reno agrees to review the matter.

1998

- April - AG Reno issues a reversal of the DEA's position, saying that the Department of Justice will not prosecute physicians who assisted in their patients' deaths in compliance with the Oregon law. Reno argues that:
 - The Controlled Substances Act was designed to prevent the illegal sale and diversion of drugs.
 - The Controlled Substances Act was not intended to supplant individual states as the regulators of medical practice.
 - The Oregon Death with Dignity Act, as written, is well beyond the regulatory purview of the CSA.
- Senator Don Nickles (R-Oklahoma), an opponent to physician-assisted dying, introduces the Lethal Drug Abuse Prevention Act (HR 4006/S 2151), designed to overturn the Oregon law, as an amendment to the 1998 Omnibus Spending Bill. President Bill Clinton says he will not sign the bill, and Senator Ron Wyden (D-Oregon) threatens to filibuster.
- Newspaper editorials throughout the country attack Congress' attempt to overturn the will of Oregon voters.
- A coalition of 57 healthcare organizations opposes the Lethal Drug Abuse Prevention Act on grounds that it would prevent dying patients from receiving adequate pain management. The American College of Physicians-American Society of Internal Medicine helps lead the lobbying effort against the Lethal Drug Abuse Prevention Act. Harold C. Sox, its president, writes, "Ideology inspired this bill, and its chief sponsors didn't seem to understand our concerns about the harm it might cause. But we could also see its defeat as an uplifting civics lesson: Many legislators changed their minds when they realized that the bill could put their constituents at risk."
- As legislators back away, some of the bill's co-sponsors drop their support; Senator Nickles withdraws his bill as the session comes to a close.

1999

U.S. House passes the Pain Relief Promotion Act ("PRPA") 271 to 156 to bar physicians from prescribing medications under the Oregon Death with Dignity Act. National organizations, including the American Bar Association, the American Cancer Society, and the American Pain Foundation come out against the bill; national editorial boards lambast Congress' assault on pain management; and President Clinton, a long-standing opponent of physician aid-in-dying, expresses reservations about the PRPA's negative impact.

2000

At the beginning of the U.S. Senate session, passage of the PRPA appears imminent. But opponents press for an honest examination of the bill's true costs and intentions, and the PRPA fails to reach the Senate floor.

2001

- November 6 - The new U.S. Attorney General, John Ashcroft, attempts to block the Oregon Death with Dignity Act by issuing his "Ashcroft Directive," authorizing DEA agents to investigate and prosecute doctors who prescribe federally controlled drugs to help terminally ill patients die.
- November 8 - U.S. District Court Judge Robert Jones issues an injunction against the Attorney General's order until arguments are heard.

2002

- March - Arguments regarding the Ashcroft Directive are heard in a U.S. District Court.
- April 17 - Judge Robert Jones ruled that the U.S. Justice Department lacks the authority to overturn an Oregon law allowing physician-assisted deaths.
- September 23 - AG. Ashcroft files an appeal with the U.S. Ninth Circuit Court of Appeals.

2003

- May 7 - Oral arguments are heard in the Ninth Circuit Court of Appeals in *Oregon v. Ashcroft*.

2004

- May 26 - Ninth Circuit Court of Appeals rules in favor of the Oregon Death with Dignity Act, asserting, "We hold that the Ashcroft Directive is unlawful and unenforceable because it violates the plain language of the Controlled Substances Act, contravenes Congress' express legislative intent, and oversteps the bounds of the Attorney General's statutory authority." The Court thus affirms that the "Attorney General lacked Congress' requisite authorization" to suspend the license of doctors who prescribe drugs covered in the CSA under the Oregon Death with Dignity Act.

- July 12 - AG John Ashcroft appeals the appellate court's ruling and requests that an 11-member panel rehear *Oregon v. Ashcroft*.
- August 11 - Ninth Circuit Court of Appeals rejects Ashcroft's request.
- November 9 - Ashcroft files his petition with the U.S. Supreme Court. Because his term is up, Ashcroft announces his retirement from the Department of Justice.

2005

- February - U.S. Supreme Court grants the Department of Justice's request for a hearing in *Gonzales v. Oregon* (formerly *Oregon v. Ashcroft*; Alberto Gonzales succeeded Ashcroft as Attorney General).
- October 5 - Oral arguments in *Gonzales v. Oregon* are heard.

The legal question in *Gonzales v. Oregon* is: "Whether the Attorney General has permissibly construed the Controlled Substances Act, 21 U.S.C. 801 et seq., and its implementing regulations to prohibit the distribution of federally controlled substances for the purpose of facilitating an individual's suicide, regardless of a state law purporting to authorize such distribution."

The U.S. Department of Justice, represented by U.S. Solicitor General Paul Clement, argues that:

- The Controlled Substances Act establishes a comprehensive and uniform national system for regulating controlled substances, and the Attorney General's interpretive ruling implementing the CSA is supported by the overwhelming weight of authority.
- The Ninth Circuit Court of Appeal's rejection of the Attorney General's ruling was based on a fundamental misunderstanding of the applicable principles of statutory construction, i.e. was invalid.

The State of Oregon, represented by Senior Assistant Attorney General Robert Atkinson, argues that:

- The AG's threatened action would nullify the Oregon Death with Dignity Act.
- The Controlled Substances Act does not itself prohibit the uses of controlled substances permitted by the Act, and it does not authorize the US Attorney General to do so.
- The Court should reject this unprecedented attempt by a federal agency to resolve an issue that is reserved to the states; reemphasize the vital role state sovereignty plays in our federal system; and call on Congress to speak clearly when it intends to interfere with the states' role.

On behalf of Death with Dignity National Center, Eli Stutsman, JD, a board member and lead author of Oregon's Death with Dignity law, is Counsel of Record, representing the physician and pharmacist named in the Supreme Court case. He argues that:

- The Attorney General's enforcement directive violates the plain language of the Controlled Substances Act; oversteps the bounds of the Attorney General's statutory authority; and contravenes Congress's express legislative intent.
- The states, not the Attorney General acting through the CSA, regulate medicine.
- The power to regulate commerce between the States does not authorize federal usurpation of medical practice in the states, or the manner in which Oregonians die.

2006

- January 17 - U.S. Supreme Court votes 6 to 3 to uphold the Oregon physician-assisted suicide law in the case *Gonzales v. Oregon*, ruling that former AG John Ashcroft overstepped his authority in seeking to punish doctors who prescribed drugs to help terminally ill patients end their lives.

The Supreme Court says that the Oregon law supersedes federal authority to regulate physicians and that the Bush administration, via Ashcroft, improperly attempted to use the CSA to prosecute Oregon physicians who assist in patient suicides.

In the majority opinion, supported by Justices O'Connor, Stevens, Souter, Bader Ginsburg and Breyer, Justice Kennedy writes that the federal government can regulate prescriptions through the Controlled Substances Act but only in relation to prohibiting doctors from engaging in illegal drug dealing.

"Beyond this, the statute manifests no intent to regulate the practice of medicine generally, [T]he authority claimed by [Ashcroft] is both beyond his expertise and incongruous with the statutory purposes and design," Kennedy writes. He further states that had the Bush administration's position been upheld, it would have "delegate[d] to a single Executive officer the power to effect a radical shift of authority from the states to the federal government to define the medical practice in every locality." Kennedy adds that, when Congress passed the Controlled Substances Act, it "did not have this far-reaching intent to alter the federal-state balance."

- August 4 - Senator Sam Brownback (R-Kansas) introduces the Assisted Suicide Prevention Act, which would prohibit doctors from prescribing federally-controlled substances for the purpose of physician-assisted suicide.
- September 6 - Senator Ron Wyden (D-Oregon) moves to block Senator Brownback's attempt to derail Oregon's landmark law. Wyden announces he will block the bill indefinitely through a legislative hold. The bill is withdrawn. Since then the Death with Dignity Act has been a stable, unchallenged part of Oregon statutes.

2012

Eighty percent of Oregonians support the Death with Dignity Act.