

Oregon Moves to Fore on Right-to-Die Issue

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Because of an inoperable tumor in her skull, enfolding her left sinus and carotid artery in a coiling mass that will someday kill her, Barbara Oskamp has been watching the battle over Oregon's "Death With Dignity Act" with the deepest interest.

When, in 1994, Oregon became the only state to make it legal for doctors to help terminally ill patients die, Ms. Oskamp said: "It took away a little of the fear of the end. I can't explain the intensity of the relief, the feeling of, 'I've got a choice now about how I go.' "

In fact, however, that choice has never materialized.

Instead, the right-to-die law, passed as a ballot initiative by 51 percent of the voters, went into suspended animation as opponents took their case to the courts. This week, the Oregon Legislature voted to send the law back to voters in November for possible repeal.

With the United States Supreme Court scheduled to rule shortly on whether assisted suicide should be left up to the states, Oregon may become again, and with greater intensity, the principal arena in which the thorny ethical questions surrounding the issue are translated into a knock-down, drag-out political battle.

This piney green state of 3.2 million is not exactly typical of the nation. Opponents of assisted suicide point out that Oregon has traditionally liberal leanings and the second-lowest level of church membership in the country.

But because the battle is likely to presage others in states that are beginning their own agonizing over assisted suicide, it will be closely watched and hard fought. Rather than being quite different, to some extent the state mirrors the configuration of forces in the rest of the country, where polls show that a majority of the public favors physician-assisted suicide, but the American Medical Association and some churches oppose it.

"Both sides would agree this is a national campaign being waged here," said Gayle Atteberry, executive director of Oregon Right to Life and a leader of the camp seeking to repeal the assisted-suicide law. "It's a life issue. We are as passionate about the elderly and the weak as we are about the unborn."

Eli Stutsman, an appeals lawyer from Portland who has led the legal charge for the advocates of assisted suicide, said, "It will be a no-holds-barred campaign."

Mr. Stutsman predicted that opponents would run commercials that showed "physicians with needles chasing Grandma" and, with financial backing from the Roman Catholic Church, would overwhelmingly outspend his side, as in 1994.

The Oregon model, which other states may not exactly follow, allows a terminally ill patient, defined as having no more than six months to live, to request a prescription for a fatal dose of medication.

The patient has to make the request three times, both in writing and orally, with a 15-day waiting period after the first request. Two doctors have to agree that the patient is terminally ill. Witnesses have to attest to the voluntary desire to die, and if the patient seems incompetent or depressed, a psychologist has to be called in. The patient, not the doctor, must do the actual administering of the pills, and lethal injections are forbidden.

The law, known as Measure 16, includes other safeguards, as well. But they were not enough to convince Oregon Right to Life, which gathered plaintiffs; called in legal help from the National Right to Life group in Terre Haute, Ind., and sued the state to block the law as soon as it was passed.

Right to Life argued that the law violated the Constitution's guarantee of equal protection and that it set up the terminally ill as a class of people who were deprived of the same protection under the law, the law against helping someone commit suicide, that everyone else had.

A Federal judge in Eugene ruled for the opponents and barred the law from taking effect. But in February, the United States Court of Appeals for Ninth Circuit, in San Francisco, reversed that ruling. The appeals court ruled that the plaintiffs who had sued the state to stop the law from taking effect were in no personal danger of imminent injury from the law and lacked the legal standing to sue.

The plaintiffs are appealing to the Supreme Court, and the Justices could announce before the current term ends, in a few weeks, whether they will hear this case, which they almost certainly will not. Conceivably, if the Court turns down a review of the case, Measure 16 could go into effect, even before the November vote.

By the spring, the focus of the fight had begun shifting from the courts. In April, the House of Delegates of the Oregon Medical Association, which had formerly been neutral, voted to denounce Measure 16. With that vote, said Robert J. Castagna, executive director of the Oregon Catholic Conference and another leader of the opposition, "we believe we've turned the corner, because now there's a broad-based spectrum of opposition."

Turned the corner and steamed ahead. The Legislature, which has become more conservative since 1994, voted to send Measure 16 back to the

voters rather than tinkering with its flaws. In the floor debate, one state senator brandished a plastic bag as a reminder of the suffocation sometimes needed to bring death to a terminally ill patient when pills are not immediately enough.

That fact, arising from studies that show that in one-fourth of cases, oral medication alone does not bring quick and easy death in three hours, is the biggest gun in the arsenal of opponents of assisted suicide.

It figured prominently in the Oregon Medical Association vote, and the argument that the information was developed after 1994 was the basis of the Legislature's call for a second vote.

But advocates of assisted suicide scoff at the idea that it is new.

"That's just some political cover, that we now know people don't necessarily die of a barbiturate overdose in three hours," said Barbara Coombs Lee, a nurse, lawyer and physician's assistant who heads Compassion in Dying in Seattle. "What, we didn't know that? Everyone knew that."

Ms. Lee's side said the thrust of its campaign would be that the Legislature had shown flagrant disrespect for the will of the voters by sending back a measure that had already passed.

More substantive arguments will come from both sides, as well. Opponents contend that legalizing assisted suicide is a dangerous public policy, because of the likelihood that it will be abused, particularly against the poor, minorities, the disabled, the elderly and those lacking health insurance.

And it is ethically wrong, the critics say, because all life is sacred.

On their side are patients like Tommy Gholson, 49, a contractor from Corvallis who was given a diagnosis of advanced bladder cancer and told he had, perhaps, three months to live.

After he began aggressive chemotherapy in January, the cancer retreated, he said, and now appears to be gone. His testimony before lawmakers this spring touched on a tricky aspect, that it is often difficult to know for certain whether a patient is really terminal.

"I don't see death as an answer," Mr. Gholson, a religious Christian, said in an interview. "It's something to be conquered."

Advocates of assisted suicide can counter with patients like Ms. Oskamp, 65, a retired teacher who, though her memory is so impaired from radiation treatments that she has to write down when she last took a shower, has a very clear vision of how she does and does not want to die.

"I'm so afraid of pain and of being dependent, of not having my body parts work," she said. "I don't know if I could do it or would do it. But I want the feeling of having a choice of ending what may be a horrible situation."

Proponents of the law argue that people have a fundamental right to die with dignity and to have the option of obtaining the means to hasten their death if end-of-life suffering becomes intolerable. Patients should be able to die on their own terms in their own homes, the proponents say.

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