

PROFESSION

Impact of Oregon ruling: Will more states allow assisted suicide?

■ The Supreme Court finds that the U.S. attorney general can't ban Oregon physicians from prescribing life-ending drug doses. But the debate isn't over.

By KEVIN B. O'REILLY ([HTTP://WWW.AMEDNEWS.COM/APPS/PBCS.DLL/PERSONALIA?ID=KOREILLY](http://www.amednews.com/apps/pbcs.dll/personalia?id=koreilly)) amednews staff — Posted Feb. 6, 2006

For the second time in a decade, the U.S. Supreme Court refused to overturn the unique Oregon law that allows physicians to prescribe life-ending drug doses to terminally ill patients who ask for them.

The ruling in *Gonzales v. Oregon* upheld a well-rooted notion that the practice of medicine should be left to the states, with justices saying the U.S. attorney general doesn't have the power to ban the use of controlled substances in physician-assisted suicides. If the court had ruled the opposite way, it would have effectively gutted Oregon's Death With Dignity Act without actually overturning it.

The court's 6-3 ruling upholding the law might jump-start efforts to copy Oregon's law in states that have physician-assisted suicide legislation pending, including California, Hawaii, Vermont and Wisconsin. Supporters concede that the legislation would be harder to sell politically, ethically and aesthetically if patients' deaths were hastened in a way other than by physicians prescribing a large dose of sleeping pills.

The ruling turned on the question of whether former U.S. Attorney General John Ashcroft exceeded his authority under the Controlled Substances Act when he issued the directive in 2001. The court decision might allow Congress to amend the act to specify that physician-assisted suicide is not a legitimate medical purpose for which physicians can prescribe federally regulated drugs.

"What the court simply said was that under the Controlled Substances Act, the attorney general can't determine what's medically legitimate," said Paul G. Arshagouni, MD, director of the health law program at the Michigan State University College of Law. "This ruling leaves the door wide open for Congress to step in and say, 'We want to legislate that issue.' This is a win for people who support physician-assisted suicide, but it's not a slam dunk. It doesn't end the debate."

Supporters of physician-assisted suicide claimed victory on this particular legal issue, while recognizing that the larger campaign will continue.

"Our opponents are not going away," said Eli Stutsman, a lawyer who co-authored Oregon's Death With Dignity Act and filed a brief on behalf of a patient and physician who joined the state's suit against the attorney general.

Physician opponents of the Oregon law called the *Gonzales* ruling tragic.

"With narcotics free to be used for purposes that have no medical benefit whatsoever, the 'do no harm' requirement of medicine -- a long-standing protection for patients -- is lost," said David Stevens, MD, who serves as executive director of the Christian Medical & Dental Assns. "The ethical foundation of medicine is crumbling under the court's jackhammer."

Will other states follow?

Dr. Stevens said proponents of physician-assisted suicide would be "emboldened" by the court's ruling. "They will increase their efforts in Vermont, Hawaii and California. They pushed hard last year, and they'll push hard again this year."

Those supporters, though, had mixed views on how much the *Gonzales* ruling would aid the task of bringing another state on board.

"Unquestionably, efforts in California and Vermont and other states will be invigorated by this decision," said Robert Brody, MD, who serves as chair of the San Francisco General Hospital ethics committee and backs an effort to duplicate the Oregon law in California.

Another leading advocate of physician-assisted suicide was not so optimistic.

"[The ruling] is not a green light for other states," said Timothy Quill, MD, director of the University of Rochester Medical Center's palliative care program and author of *The Case for Physician-Assisted Suicide*. "We have the same playing field that was there before this case came up. It will probably take a referendum in another state, and it's a big job to do that."

Stutsman, who sits on the board of the Portland, Ore.-based Death With Dignity National Center, said passing a law like Oregon's elsewhere will be an uphill climb.

"You have to do more than just copy it and put your state's name on it," he said. "You have to do the political work as well."

Since 1994, ballot initiatives that would have legalized physician-assisted suicide have failed in Washington, Maine, Michigan and California. Bills have been voted down or stalled in Maryland, Vermont, Hawaii and Michigan. At press time, there had been no movement on any other related legislation.

The push in the states could be halted by Congress, as conservative groups called on Capitol Hill to amend the Controlled Substances Act to outlaw the use of federally regulated drugs in physician-assisted suicides.

"Right now we don't have a specific piece of legislation," said David Christensen, director of congressional affairs for one of those groups, the Family Research Council. "It's kind of back to the drawing board."

Both Oregon senators -- Democrat Ron Wyden and Republican Gordon Smith -- announced their opposition to any congressional attempt to overturn the court's ruling.

Palliative effect

A number of medical groups, including the California Medical Assn., filed *amicus* briefs on Oregon's side, not because they supported physician-assisted suicide, but because they feared a *Gonzales* victory would empower the federal government to determine legitimate medical practice, taking that power from the states. Physician groups also feared a ruling against the law would frighten physicians out of providing pain treatment and palliative care.

"The Supreme Court has now said the [Controlled Substances Act] does not apply to the legitimate practice of medicine," said Michael Williams, MD, a neurologist and chair of the Johns Hopkins Hospital Ethics Service. "Physicians ought to see that as reassuring."

Dr. Williams said he hoped physicians would overcome fears about prescribing narcotics for the appropriate care of chronic pain or for palliative care. "Many physicians have expressed fear about that, but it looks like the Supreme Court has said, 'Fear not.' "

The AMA did not file an *amicus* brief in the case. AMA policy asks physicians to respect a patient's end-of-life directive to withhold or withdraw treatment, though doctors are duty-bound to ease suffering as much as possible even when directives are in place. AMA delegates have on multiple occasions passed policy stating that physician-assisted suicide is "fundamentally inconsistent with the physician's role as healer."

ADDITIONAL INFORMATION

Case at a glance

Gonzales, Attorney General, et al. v. Oregon, et al.

Venue: U.S. Supreme Court

At issue: Whether former U.S. Attorney General John Ashcroft exceeded his authority under the Controlled Substances Act when, in 2001, he issued a directive stating that physician-assisted suicide was not a "legitimate medical purpose" for which doctors could prescribe federally controlled drugs. In a 6-3 opinion, the court said he did exceed his authority.

Impact: Oregon physicians can continue to prescribe life-ending drug doses to certain terminally ill patients under the state's Death With Dignity Act. The ruling also reaffirmed the state's traditional primary role of regulating medical practice.

Oregon trail

1994: Voters approve Death With Dignity Act, 51% to 49%. *Lee v. State of Oregon* stops the law from taking effect.

1996: The U.S. 9th Circuit of Court of Appeals rules in *Washington v. Glucksberg* the earlier ban is unconstitutional.

June 1997: The U.S. Supreme Court rules in *Washington v. Glucksberg* and *Vacco v. Quill* that there is no constitutional right to die and the issue is best addressed at the state level.

November 1997: A ballot measure to repeal the Death With Dignity Act loses, 60% to 40%.

December 1997: A Drug Enforcement Agency policy statement prohibits the use of controlled substances in physician-assisted suicides.

1998: 15 people use Oregon's law to end their lives.

April 1998: U.S. Attorney General Janet Reno reverses the DEA policy and promises that physicians who follow the Oregon law won't be prosecuted.

December 1998: Congress fails to pass the Lethal Drug Abuse Prevention Act, aimed at prohibiting physician-assisted suicide nationally.

1999: The U.S. House passes the Pain Relief Promotion Act, 271-156, which would overturn the Oregon law. The bill fails to reach the Senate floor.

Nov. 8, 2001: U.S. Attorney General John Ashcroft issues a directive barring physicians from prescribing federally controlled drugs to help patients kill themselves.

Nov. 8, 2001: The U.S. District Court of Oregon issues an injunction preventing Ashcroft's order from going into effect until *Ashcroft v. Oregon*, later *Gonzales v. Oregon*, is heard.

2002: The U.S. District Court upholds Oregon's law. Ashcroft appeals.

2004: The U.S. 9th Circuit Court of Appeals also upholds Oregon's law. Ashcroft appeals to the U.S. Supreme Court.

2005: The Oregon Dept. of Human Services reports that from 1998 to 2004, physicians wrote 325 prescriptions for life-ending drug doses; 208 patients used them.

2006: The U.S. Supreme Court upholds Oregon's law.

Source: Death With Dignity National Center

What the court said

U.S. Supreme Court Justice Anthony Kennedy penned the majority opinion in *Gonzales v. Oregon*. Justices John Paul Stevens, Sandra Day O'Connor, David Souter, Ruth Bader Ginsburg and Stephen Breyer joined the decision excerpted below:

"If the Attorney General's argument were correct, his power to deregister [a physician's DEA license] necessarily would include the greater power to criminalize even the actions of registered physicians, whenever they engage in conduct he deems illegitimate."...

"The [federal] Government, in the end, maintains that the prescription requirement delegates to a single Executive officer the power to effect a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality. The text and structure of the CSA [Controlled Substances Act] show that Congress did not have this far-reaching intent to alter the federal-state balance and the congressional role in maintaining it."

Justice Clarence Thomas dissented in a separate opinion. Justice Antonin Scalia argued, in a dissent joined by Chief Justice John Roberts:

"Virtually every relevant source of authoritative meaning confirms that the phrase 'legitimate medical purpose' does not include intentionally assisting suicide." ...

"Virtually every medical authority from Hippocrates to the current American Medical Association confirms that assisting suicide has seldom or never been viewed as a form of 'prevention, cure or alleviation of disease,' and (even more so) that assisting suicide is not a 'legitimate' branch of that 'science and art.' Indeed, the AMA has determined that '[p]hysician-assisted suicide is fundamentally incompatible with the physician's role as healer.' "