



# Supreme Court Upholds Oregon Assisted Suicide Law

## Bush Administration Sought to Punish Doctors Who Helped Patients Die

By ADRIENNE MAND LEWIN

**Jan. 17, 2006** — - Rejecting the Bush administration's argument that doctors should be punished for helping terminally ill patients die, the Supreme Court today upheld Oregon's physician-assisted suicide law.

In a 6-3 vote, justices said a federal drug law does not override the 1997 Oregon law used to end the lives of more than 200 seriously ill people. New Chief Justice John Roberts backed the administration, dissenting for the first time.

Justice Antonin Scalia, writing for himself, Roberts and Justice Clarence Thomas, said that federal officials have the power to regulate the doling out of medicine.

"If the term 'legitimate medical purpose' has any meaning, it surely excludes the prescription of drugs to produce death," he wrote.

The court majority said the administration improperly tried to use a drug law to punish Oregon doctors who prescribe lethal doses of prescription medicines.

"Congress did not have this far-reaching intent to alter the federal-state balance," Justice Anthony M. Kennedy wrote for himself, retiring Justice Sandra Day O'Connor and Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer.

The ruling was a reprimand to former Attorney General John Ashcroft, who in 2001 said that doctor-assisted suicide is not a "legitimate medical purpose" and that Oregon physicians would be punished for helping people die under the law.

### Victory for Advocates

For those like Nora Miller, whose lives have been affected by the law, the victory is important. Her husband, Rick Miller, suffered with small-cell lung cancer, which had spread to his bones, kidneys and brain, for more than seven months. He had lost his voice, endured frequent headaches and pain in his legs, and he was beginning to lose the ability to communicate clearly. His doctor said he had only a few weeks to live.

"Rick basically just said, 'I want to be able to control this process, and I want to be conscious and not a burden to my family at the end, and I can't face the pain and the degradation,'" said Miller, his wife of 31 years.

So late one night, with Nora, their son, Nathan, and Nathan's fiancée beside him at home, the Portland, Ore., resident ate some applesauce mixed with a lethal dose of Seconal prescribed by his doctor and soon fell into a deep sleep as they held his hands.

"It was very peaceful," Miller recalled. "It was really like his body was ready to go. There wasn't much fight left."

Rick Miller died early on Nov. 10, 1999. He was 52.

He was one of more than 200 people since 1997 who have used Oregon's Death with Dignity law -- the only one of its kind in the country -- which allows physician-assisted suicide for some terminally ill patients.

Jay Sekulow, chief counsel at the American Center for Law and Justice, a group founded by evangelist Pat Robertson, said in opening statements before the court in October that he believed the court would decide to overturn the Oregon law. The center filed an amicus brief in the case that sided with the U.S. government.

"I think the case is close," Sekulow told reporters after that hearing. "This is literally a life-and-death case. And at the end of the day, the question is, does the federal government have regulatory authority to engage in these life-and-death decisions? And I think the answer in the end will be yes, but it may be yes delayed."

Kathryn Tucker, director of legal affairs at Compassion and Choices, which supports physician-assisted suicide, represented the plaintiff-patients in the case. She told reporters after the October hearing she was disturbed that the government might close the door to what she said might be the most humane option for terminally ill patients -- to take their lives.

"There was a very perverse argument made by the federal government that patients should somehow be relegated to bring about death without the use of controlled substances, meaning by means that are not humane, are not certain, are not peaceful," Tucker said. "And that's a perverse position for our federal government to take."

Some physicians also hailed the decision. The ruling is "a real victory for palliative care ... [and] reassures physicians that they can manage care at the end of life without having the DEA involved," said Dr. Timothy Quill, director of the Center for Palliative Care and Clinical Ethics at the University of Rochester School of Medicine.

Similarly, Thomas Frantz, a grief expert at the University of Buffalo, said the ruling will help families of terminally ill patients. "I suspect the government officials who brought this lawsuit have been fortunate enough never to see their aging mother or father laying in agony ... praying for the peace that, given their long illness, could only come from death," Frantz said. "Thank heavens the court was able to strike a blow for humanness."

## **Long Debate**

The road to *Gonzales vs. Oregon* was a long one. The law had been challenged since Oregon voters approved it by a 51 percent to 49 percent margin in 1994 and voted by a 60 percent to 40 percent margin against a proposal to repeal it in 1997 -- a few weeks after it went into effect following a previous injunction.

After other legal challenges and a failed measure in Congress to overturn the law, the current case stemmed from Ashcroft's 2001 directive that doctors who prescribe the lethal drugs would be prosecuted under the Controlled Substances Act. An injunction was issued to prevent that, and the law was eventually upheld in 2004 by a federal appeals court.

Strong opposition remains among critics -- including some doctors, religious groups and people with disabilities -- for what one physician says is a simple reason. "It's not what doctors do," said Dr. Kenneth Stevens, a radiation oncologist from Portland, Ore., and one of the founders of Physicians for Compassionate Care, which opposes the law. "Basically, it turns medicine upside down."

Among other concerns, Stevens said his group is particularly worried that once a patient has been given a prescription for lethal medicine there is less incentive for doctors to provide palliative care, and the law can be used as an economic quick fix. He also said depressed patients are not always given psychological consideration in their requests for assisted suicide, despite provisions to prevent that from happening.

He cited the death of Michael P. Freeland, a lung cancer patient whose case was presented at a 2004 meeting of the American Psychiatric Association. According to records, Freeland, who had been hospitalized for depression, was released despite the knowledge that he possessed a prescription from his doctor for a lethal dose of medicine, which critics say he should not have received in the first place because of his mental state. He later died from lung cancer.

### **Limited Cases**

A limited number of people have actually used the Death with Dignity law to end their lives. According to a report released in March by Oregon's Department of Human Services, about one of every 800 deaths in Oregon last year resulted from physician-assisted suicide, and 208 people had used the law overall through the end of last year.

Oregon residents 18 or older with terminal illnesses must voluntarily request physician-assisted suicide. The person must state his intentions -- once in writing and twice verbally -- and must be determined to be fully competent and be certified by two physicians to have six months or less to live. He or she also must be made aware of other treatment options.

Doctors must report all prescriptions for the medications to the Department of Human Services. They and their patients are protected from prosecution, and the decision does not affect patients' health or life insurance policies. Doctors can prescribe the drugs but cannot administer them.

According to the report, 37 people in 2004 ingested medications prescribed under provisions of the law -- five fewer than in 2003, though the numbers have increased since legalization.

In addition, the report found that 40 physicians wrote a total of 60 prescriptions for lethal doses last year, the first decrease in the annual total of prescriptions written under the law. Thirty-five of the prescription recipients died after ingesting the medication, and of the 25 who did not ingest it, 13 died from their illnesses and 12 were alive at the end of the year. The other two people who died had received prescriptions in 2003.

Rasmussen said "a small number of people" ask him about assisted suicide -- 150 of his patients have seriously inquired over the years, and he estimates more than a dozen have carried out their suicides.

## Legal Issues, Not Moral

The question before the court was whether the attorney general has "permissibly construed" the Controlled Substances Act and its regulations to prohibit the distribution of federally controlled substances to facilitate an individual's suicide, regardless of the state law allowing it.

At opening arguments, people on both sides said much was at stake, beyond just the ethics of the law.

Eli D. Stutsman, a Portland lawyer representing the physician and pharmacist in the case, said Attorney General Alberto Gonzales does not have the right under the Controlled Substances Act to criminally prosecute doctors because, unlike in medical marijuana cases, the drugs are not federally banned outright, though they are controlled.

"In Oregon we're not using illegal substances," Stutsman said. "We're using lawful substances, and what he's doing is disagreeing with the practice of medicine."

The barbiturates prescribed for assisted suicide are considered Schedule II drugs under the Controlled Substances Act, which recognizes that they have accepted medical use but requires that their distribution be closely monitored by the Drug Enforcement Administration because of their high potential for abuse.

Stutsman said the attorney general's office has no history of opposing the use of these drugs. "In all other cases, the attorney general is regulating drugs because of the nature of the drug itself," he said.

But Greg Lynch, a lawyer from Bend, Ore., who wrote briefs on behalf of Physicians for Compassionate Care, said the attorney general's position is correct.

"The physician has always been seen as a healer," Lynch said, "so the attorney general said that that is not a legitimate medical purpose."

Lynch also opposes the law's provision that doctors can prescribe the medication if they are acting in "good faith," arguing that assisted suicide does not fall under the acceptable standards of care. Good faith is subjective, he said, and the provision exempts them from being prosecuted, sued or censured, which goes against medical standards.

"Good faith is a term unknown in a medical sense," he said.

*The Associated Press and Dr. Mark Wernick of Beth Israel Deaconess Medical Center in Boston contributed to this report.*

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