Testimony of

The Honorable Ron Wyden

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Testimony of U.S. Senator Ron Wyden
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Subcommittee on the Constitution, Civil Rights and Property Rights
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Mr. Chairman, when Oregonians first adopted the Death With Dignity Act and then defended it on a second ballot initiative, they sent their government a clear message. When the American people resisted government interference in the tragic case of Terri Schiavo, they sent their government a clear message. That message is that death is an intensely personal and private moment, and in those moments, the government ought to leave well enough alone. The government ought not to attempt to override or preempt the individual's and the family's values, religious beliefs, or wishes.

I have testified before, and it bears repeating: I opposed physician aide in dying both as an Oregon voter and as a senator. As the former Director of the Oregon Gray Panthers I witnessed first hand how many poor and vulnerable individuals receive inadequate health care. I worried primarily about the adequacy of the Oregon ballot measures' safeguards to protect the poor elderly, and as a result, I voted against the Oregon ballot measure - not once, but twice as a private citizen.

Despite my personal objections, I firmly believe that my election certificate does not give me the authority or the right to substitute my personal and religious beliefs for judgments made twice by the people of Oregon. I will continue to strongly oppose any legislative or administrative effort to overturn or nullify the will of Oregon's voters on this matter.

Had Oregon acted hastily or without thorough examination and debate, I might not be in a position defend the Oregon law. No one can accuse Oregonians of acting precipitously in approving the measure: the voters of Oregon did so only after two lengthy and exhaustive debates that dominated water cooler and dinner table conversation for the better part of two years.

The issue of physician aid in dying is settled as far as my state of Oregon is concerned. My state has endured two legal ballot initiatives, court challenges to stop the implementation of the law, attempts in Congress to overturn the law, an attempt to overturn the law through administrative action by the Federal government, and, most recently, a challenge that went to the U.S. Supreme Court. Each time, the will of a majority of Oregonians prevailed.

During the eight years the law has been in effect, its opponents have combed through the law looking for possible pitfalls to exploit. However, the law still stands.

During the eight years the law has been in effect, its opponents have warned there would be abuses and a stampede to Oregon. The law has not been abused. In fact, over eight years, an average of about 30 Oregonians a year have used lethal prescriptions. This, of course, is a tiny fraction of Oregonians who faced terminal illness during that time.

While I do not know how I would vote were the issue to appear on the Oregon ballot once more, I believe it is time for me to acknowledge that my fears concerning the poor elderly were thankfully never realized, and the safeguards appear to have worked quite well in preventing potential abuses.

What is often not discussed by opponents of the Oregon law is the Oregon Death With Dignity Act has brought about many improvements in end of life care in Oregon. Pain management has improved. My state remains the only state to discipline a physician for the under-treatment of pain. However, perhaps the most important side effect of the law is that families, health professionals and patients know they can, and should have conversations about how they want to die and what their wishes are concerning treatment.

In 1997, the U.S. Supreme Court decided two important cases that should inform this discussion. The Court in Washington v. Glucksberg and Vacco v. Quill rejected any constitutional right of terminally ill patients to physician aid in dying, but, equally important, the Court in those decisions left the states free to permit or prohibit assistance in dying. Indeed, the high Court encouraged states to proceed with their various initiatives in this area. Oregon has done just that.

Historically and constitutionally, states have always possessed the clear authority to determine acceptable medical practice within their borders. States are responsible for regulating medical, pharmacy and nursing practice. Even the preamble to Medicare (42 USC 1395) states that "Nothing in this title shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided..."

The scientific health literature is full of studies documenting how medical practice differs from region to region, state to state and sometimes from medical institution to medical institution. End of life care should be no different.

While other states have considered physician aid in dying since Oregon passed and implemented the Death With Dignity Act, they have not adopted it. That is their choice. Yet, no one challenged their decisions in court. Neither the Congress nor the Administration attempted to overturn their decisions. Oregon's decision, reached through legal means, should be respected as well. Fair-weather friends of States' rights should be reminded that States' rights does not mean just when you think the state is right.

Mr. Chairman, I truly believe there is real common ground and that the nation would benefit if we were to focus our efforts there. All of us would like to reduce the desire and demand for physician aid in dying. In order to do that, pain management needs a huge boost, not another set back.

Previous attempts to negate Oregon's law have damaged pain management in every corner of the United States. Even the New England Journal of Medicine editorialized against that attempt out of concern for the impact on pain management nationwide saying: "many doctors are concerned about the scrutiny they invite when they prescribe or administer controlled substance sand they are hypersensitive to drug seeking behavior in patients. Patients as well as doctors often have exaggerated fears of addiction and the side effects of narcotics. Congress would make this bad situation worse."

Pain management is in a sorry state in this country. Senator Smith and I introduced the Conquering Pain Act to help provide families, patients and health professionals with assistance so that no patient would be left in excruciating pain waiting for the doctor's office to open up.

The Medicare hospice benefit, created in 1987, has not been revised significantly since then. I have legislation, the

Medicare Hospice Demonstration Act, to test new ways of bringing hospice benefits to the patient. For example, Medicare currently requires terminally ill patients to choose between "curative" care and hospice. In plain English, that means you can't get hospice unless you give up hope. I contend that people do not get into hospice soon enough to get its full benefits if they're forced to make such a choice. My idea, which Aetna is currently testing, would set aside this "either or" choice, allowing hospice to begin while the patient continues with curative care.
The nation also has a shortage of providers - physicians and nurses --trained in palliative care. Legislation I authored, "The Palliative Care Training Act," provides funding to assure there is a medical faculty trained in palliative care for all ages.

It is a sad fact that not everyone can be cured. As the number of ways to prolong life multiplies, end of life care issues will be more controversial, more difficult and more painful. The aging of our population will bring more families face-to-face with these issues, as well. I contend that the more that is done to improve end of life care and to help support patient and family decisions, the less people will turn to physician aid in dying.

The country's legal system should not make those decisions more difficult, or more complicated.

For the citizens of Oregon, the Death With Dignity Act has brought about improvement in many areas and encouraged conversations that many would never have had otherwise. For many, it has brought a small measure of peace of mind, knowing that they can remain in control of their lives if they choose to do so.

In Oregon, the end of life process has been decriminalized. And although I could not prove it, I believe in Oregon we have fewer physician aid in dying cases than in other states where that kind of action is prohibited.

Mr. Chairman, let me close by saying that I know these are deeply personal issues for all Americans. My state has chosen a unique path. But rather than pursue a bitter and divisive debate over physician aid in dying, I would offer that we work together to make the end of life time a better one for all Americans.