

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

January 29, 1997 Hearing Room 357

3:15 P.M. Tapes 5 - 6

MEMBERS PRESENT:

Rep. Ron Sunseri, Chair

Rep. George Eighmey, Vice-Chair

Rep. Roger Beyer

Rep. Peter Courtney

Rep. Charles Starr

Rep. Judy Uherbelau

MEMBER EXCUSED:

STAFF PRESENT:

William E. Taylor, Counsel

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

Measure 16 - Invited Testimony Only

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

Tape/#	Speaker	Comments
Tape 5, A		
077	Chair Sunseri	Calls meeting to order 3:20 P.M.
080	William E. Taylor	Identifies contents of binder presented to Committee Members. (EXHIBIT A)
130	Taylor	Continues in identifying documents within the binder.

165	Chair Sunseri	Shares the intention of this hearing. It is possible to see it back in the Spring. No bill presently. Believe it is important to raise the level of awareness for the sake of the Committee and for what the Legislature may or may not need to do with this Measure.
184	David Schuman	Deputy Attorney General
205	Schuman	<p>I will present an overview of the constitutional law of assisted suicide/ physician assisted suicide/right to die as it is variously known.</p> <p>Explains where Oregon, Washington, and New York are and how those cases can interact with each other.</p> <p>Mr. Bushong will provide a general chronology of events in the US.</p> <p>Modern history of this issue in the courts began in 1990 when the US Supreme Court noted, without actually holding, that a mentally competent adult had rooted in the common law a constitutionally protected liberty interest or right to refuse life sustaining medical care.</p> <p>Subsequently a few years later a social movement began across the states to take it to the next step. A constitutionally founded right to an assisted suicide by refusing life sustaining medical care.</p> <p>In 2 Federal courts (9th & 2nd Circuits) the cases attack on statutes that made it a crime to provide a physician assisted suicide succeeded.</p> <p>Both cases are currently under advisement at the US Supreme Court and were argued earlier this year</p>
250	Schuman	<p>Oregon submitted amicus brief in those cases. States did not have to as a matter of constitutional law provide people with access to physician assisted suicide or interfere with it. Oregon took the position if the state choose to permit that it was constitutional due to the people of Oregon passing Measure 16.</p> <p>Cases at the US Supreme Court now argue that a state must permit a medically competent terminally ill person access to physician assisted suicides.</p> <p>Measure 16 states that if we want to permit it we can but the state doesn't have to. However, if the voters choose to permit assisted suicide they can.</p>
275	Rep. Eighmey	To clarify that in Oregon we have made the decision that we do not have that constitutional right (Oregon or Federally) and if someone were involved with an assisted suicide that they would still be prosecuted in the fullest extent of the law. We come to this under a provision in Measure 16. That the 2 cases before the US Supreme Court say that you do not even need a Measure 16. You may do so because that there is a constitutional right under the Federal constitution to do so. Is that correct?
290	Schuman	Yes, basically correct.

295	Rep. Uherbelau	Isn't it true in Washington & perhaps in New York that there is a state law that forbids ? Or at least in one of those states?
298	Schuman	Correct, those 2 cases launch a constitutional attack on those statutes. Arguing that those statutes interfere with the constitutional right of a terminally mentally competent individual to a physician assisted suicide.
305	Stephen Bushong	<p>Assistant Attorney General</p> <p>Gives a brief overview of the lawsuit filed in US District Court in Eugene, Oregon to date:</p> <ul style="list-style-type: none"> >Judge Hogan in 1994 entered Temporary Restraining order >Hearing in late December of 1994 placed a preliminary injunction until the Judge could have a full blown hearing on the constitutional merits. Those hearings took place in early 1995. >August of 1995 Judge Hogan issued his opinion >Finding first that the Plaintiffs in the suit did have standing to challenge the Measure and secondly, Judge Hogan ruled that Measure 16 violated the equal protection clause of the 14th Amendment to the US Constitution. >Oregon filed a Appellate Brief to 9th Circuit argued in July of 1996
350	Bushong	<p>.>Currently, we are awaiting the decision of the 9th Circuit court.</p> <p>The 9th Circuit may or may not wait until the US Supreme Court rules on the Washington and New York cases before deciding this case.</p>
363	Rep. Eighmey	Based upon traditional time lines it would appear that a ruling on our appeal would likely be written before the US Supreme Court would issue it's opinion?
370	Bushong	That could happen. The discussion before the 9th Circuit focused on the standing of these plaintiffs to bring the lawsuit in on Measure 16. If the court were to decide on that basis then there would be no reason to wait. If reach the merits then they might wait until the US Supreme Court renders an opinion.
385	Schuman	Discusses what the 9th Circuit will do vs. what the Supreme Court might to do.
415	Schuman	<p>Continues.</p> <p>It could depend on the Supreme Courts reasoning. Many of the arguments before the Supreme Court was that it was not a matter imbedded in the federal constitution but should be left to the state legislatures.</p> <p>Not unprecedented for the 9th Circuit to hold up on a case that they have under advisement.</p>
433	Taylor	Could you describe in the Hogan opinion what the two classes were that he talked about and may be compare it to what the court found in the New York case regarding equal protection?

441	Bushong	Judge Hogan found that Measure 16 divided Oregonians into 2 classes. One of terminally ill adults that were eligible for physician assisted suicide and all other Oregonians who are not. The problems with Measure 16 making it eligible to that one class of citizens was that the law did not have enough safeguards to ensure that it was only available to that class of citizens.
Tape 6, A		
030	Bushong	The New York cases was narrowly defined in that terminally ill adults were able to terminate their life through an advance directive was one class and those who were not able to end their lives through an advance directive (basically turning off a life support system) were discriminated against because they could not end life support or obtained physician assistance to end their lives.
043	Schuman	Judge Minor in New York held that it was utterly irrational for New York to voluntarily refuse life support and not permit someone to get a physician assisted suicide in the course of a terminal disease.
049	Rep. Uherbelau	Did the 9th Circuit mention that the Oregon law as being one that had appropriate safeguards or words to that effect?
051	Bushong	Correct. The 9th Circuit stated that the states could draft these types of laws if they wanted and pointed to Oregon's Measure 16 as an example. Describes ours as a carefully crafted law and that Judge Hogan had erred in ruling otherwise.
059	Rep. Eighmey	In the 9th Circuit case did they refer to our Constitution Article 1 Section 20 in any way?
060	Bushong	No, it was solely under the equal protection clause.
061	Taylor	Do you think the US Supreme Court is likely to rule sometime this Spring?
062	Schuman	I am quite confident they will rule before they adjourn in July. Extremely rare that they would carry a case over.
065	Taylor	Could they rule while we are still in session - towards the very end of it?
068	Schuman	It's extremely likely that they will rule before the Oregon Legislature adjourns. Could rule at any time.
071	Rep. Uherbelau	If the Supreme Court does rule that it should be something left to the states and the 9th Circuit overturns Judge Hogan then Measure 16 would immediately go into effect? Is that not correct? Unless someone appeals to a higher court...
073	Bushong	Unless the effect of the 9th Circuit was stayed or appealed to the Supreme Court and stayed pending until resolution of that appeal.
078	Schuman	The 9th Circuit would order the district court to lift the injunction. There would be a number of opportunities for creative counsel to interpose themselves to delay the effect.
085	Rep. Eighmey	Assuming that the Supreme Court ruling is interpreted the way you presented it, then the 9th Circuit reverses for what ever standing, and immediately appeals, is in your opinion that the Supreme Court would almost automatically deny certiorari based on the fact that they had ruled in the other cases?
091	Bushong	Hard to predict, the Oregon case is not nearly as interesting as the Washington and New York cases they have pending. I would be very surprised to have the

		Supreme Court grant certiorari in the Oregon case.
110	Dr. Grant Higginson	<p>Deputy Administrator, Oregon Health Division (Exhibit B)</p> <p>Although the Health Division is noted in the act it is not our act. The department has been and will remain neutral on the act.</p> <p>The role of the department is to develop a reporting system to collect data on the effects of the Death with Dignity Act and is important for two reasons. First, we need to know: how many take advantage of the act, the medical diagnosis of the individuals, who obtains prescriptions and use them towards their death or that they die due to underlying causes, etc. Second, that there are a number of safeguards built into the act.</p> <p>Although that there is a mandate to monitor the compliance with the act there is currently no enforcement activity written into the act.</p>
140	Higginson	<p>In Exhibit A, there are draft of administrative rules because we can't file those until injunction has been lifted. Once lifted, they will be immediately filed.</p> <p>At the time temporary rules can be filed, we will begin to develop permanent administrative rules which involves public notification and public hearings.</p> <p>Gives a scenario how the system will work once in placed.</p> <p>Confidentiality must and will happen with these records.</p>
193	Elvin Sinnard	<p>Retired Businessman - Measure 16 Chief Petitioner</p> <p>Give his reasons behind his getting involved. (Wife's illness)</p>
230	Sinnard	continues
280	Sinnard	<p>We would have to indict you if we can prove you had any connections with your wife's death. That's the law and this law is wrong.</p> <p>I resent that I had not been able to be with my wife when she died. She had to die alone. My personal dignity and invasion of privacy resented till this day.</p> <p>For these reasons I support Measure 16.</p>
330	Chair Sunseri	Adjourns meeting at 4:00 P.M.

Submitted by, Reviewed by,

Lauri A. Smith, William E. Taylor,

Administrative Support Counsel

EXHIBIT SUMMARY

A - Measure 16 Binder, prepared by staff - (Oversized)

B - Measure 16, written testimony, Grant Higginson, MD, MPH, 2 pages