

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

January 30, 1997 Hearing Room 357

3:15 P.M. Tapes 7 - 9

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

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 7, A		
003	Chair Sunseri	Calls meeting to order at 3:20 P.M.
<u>OPENS HEARING ON MEASURE 16</u>		
005	Chair Sunseri	Opens hearing on Measure 16.
		Retired Family Physician and recently retired from a teaching position at

011	Dr. Peter Goodwin	<p>Oregon Health Sciences University</p> <p>Testifies in support of Measure 16 elaborates on his reasons for getting involved by show of examples.</p> <p>> I had not any of the skills or the resources to help them adequately.</p>
050	Goodwin	<p>Continues testimony.</p> <p>>helped to develop and write an initiative</p> <p>>met with physicians of the Oregon Medical Association to discuss with the delegates as to what their attitude should be to this initiative petition. They decided unanimously to take a "hands off" attitude. Let the people of Oregon tell us what they need.</p> <p>I think the people of Oregon have told us what we needed.</p> <p>Our opponents would maintain the illegality of physician assisted suicide and would make it illegal to assist people in dying.</p> <p>I believe that is the opposite of compassionate care that does not allow us to open and fully assist our terminally ill and dying patients.</p>
100	Goodwin	<p>Continues testimony.</p> <p>This process is completely voluntary and that the physician must make every attempt to make certain that there is no compulsion.</p> <p>Needs to take the message that the majority of the Oregon electorate voted in favor of this measure and to suggest now that the electorate was ill informed, I think it is inappropriate to say the least.</p>
136	Dorothy Hucstrat	<p>Widow of Emerson Hucstrat</p> <p>Active in the initial campaign in 1994 and gives reasons for her involvement.</p>
170	Barbara Coombs Lee	<p>A Family Nurse Practitioner, a Physician's Assistant, an Attorney at Law and one of the three Chief Petitioners of Measure 16.</p> <p>>act is constructed as a safe harbor within Oregon's existing laws against assisted suicide for an attending physician under very controlled situations, to provide a prescription for lethal medication upon repeated voluntary forms of request from a competent adult terminally ill patient.</p> <p>>act imposes enough safeguards</p> <p>>the Oregon Health Division has drafted it's rules for documentation by the attending physician, confidentiality confines, and effective oversight by the state.</p>

225	Coombs Lee	<ul style="list-style-type: none"> >over the years medical science has gained the ability to extend life >because the pain is so severe that it requires sedation until unconscious. >presently the law causes family members to be separated at death >when a patient does not want to go through body disintegration into violent and premature deaths while they still have the strength to act >while it forces some to suffer through a slow and agonizing death
275	Coombs Lee	<ul style="list-style-type: none"> >obtained official endorsements >part of the Oregon Democratic Party Platform >politically very conservative persons are biggest supporters >most unshakable support are republican men over the age of 50
310	Coombs Lee	Reads from written testimony - Trends in Public Opinion on Physician Assisted Dying (EXHIBIT A)
360	Coombs Lee	<ul style="list-style-type: none"> >person has to do the final voluntary act >physician attitudes appear to be changing >Oregon physicians reported 21% requested - 7% complied
410	Coombs Lee	>no action required from the legislature
Tape 8, A		
014	Coombs Lee	<ul style="list-style-type: none"> >National Rights to Life Committee sponsored the challenge that tied up Measure 16 in the courts and now have embarked on legislative repeal. >Don't send the message to Oregonians that every initiative must be a constitutional amendment in order to survive a legislative session intact. >It is rooted in doctrine and believed that a conscious decision to hasten death is always irrational and is never moral and that suffering is redemptive. One can have the greatest respect for those beliefs but hold to the rule that they have no legitimate place in public policy in a secular government. >the Supreme Court said in Casey, "at the heart of liberty is the right to define ones concept of existence, the meaning of the universe, and of the mystery of human life"
050	Coombs Lee	<ul style="list-style-type: none"> >Don't break faith with Oregonians. >Let the act take effect and release families from the threat of criminal prosecution, if they stand by the wishes of their loved ones and help ease

		there passage.
060	Taylor	Assuming the injunction is lifted, does Measure 16 prohibit a religious hospital/hospice from prohibiting a physician from participating in a physician aided suicide on their premises? Which could then raise issues concerning the First Amendment - Freedom of Religion.
065	Coombs Lee	Does not prevent any entity or individual from opting out of the provisions of Measure 16 and certainly not on their premises. How far does the jurisdiction of an entity go? Can a physician with a contract treat patients in the privacy of his/her own personal office and do as that physician's conscience dictates? We believe they could regulate and ban any participation in the death and dignity act on their property but that it would not extend to the physician's office.
080	Taylor	Could they remove the physician's privilege to practice within that hospital, if they did perform a physician assisted suicide on the hospital grounds?
081	Coombs Lee	I believe that is so.
093	Hazel Jenny	Advocate for over 20 years. Testifies against Measure 16 and submits written testimony. (EXHIBIT B)
135	Jenny	Continues testimony.
158	Rep. Uherbelau	Regarding the concern you raised that somehow Measure 16 will be used in a fiscal manner for those who are disabled or elderly. Where in Measure 16 do you think this authority arises?
175	Jenny	Because the political process is ongoing. It will never be static. Let's try not to go down the road and tag on amendments to this measure. I don't think it is in the Measure specifically.
205	Ruth McEwen	Testifies against Measure 16 and submits written testimony. (EXHIBIT C)
247	James Davis	Legislative Director of the Oregon State Council Testifies in opposition of Measure 16 and submits written testimony. (EXHIBIT D)
288	Davis	Continues testimony.
330	Davis	Continues testimony.
380	Davis	Continues testimony.
		Are you here representing the Oregon Council of Senior Citizens?

425	Rep. Uherbelau	Who makes up the Council?
428	Davis	Identifies member of the Oregon Council of Senior Citizens.
438	Rep. Uherbelau	Does the Council look at itself as representing all seniors or just it's members?
440	Davis	Does look to itself as representing all seniors. We recognize, however, that there are some seniors who are split as to their support or nonsupport on this emotional issue.
Tape 7, B		
030	Rep. Uherbelau	In regards to pain medication that sometimes the dose that will control the pain is lethal in of itself. In your mind, morally and ethically, would it be all right to control that person's pain and give them that dosage?
034	Davis	If it's a lethal dose and planned among the family, I feel putting it in statute is unnecessary and could cause problems without safeguards.
048	Simon Paquette	CEO of Mid Willamette Valley Hospice Testifies in opposition and submits written testimony. (EXHIBIT E)
090	Paquette	Continues testimony.
131	Bob Joondeph, J.D.	Executive Director of Oregon Advocacy Center Testifies neutrally on Measure 16 and submits written testimony. (EXHIBIT F)
181	Joondeph	Continues testimony.
220	Rep. Uherbelau	When you talk about this determination are you talking about procedures in competency hearings or other types?
233	Joondeph	I'm not suggesting a formalized court procedure. I think there needs to be a guidance in the law.
238	Dr. William L. Toffler	A practicing family physician, an Associate Professor at the Oregon Health Sciences University in the Department of Family Medicine, and President of Physicians for Compassionate Care. Testifies in opposition of Measure 16 and submits written testimony. (EXHIBIT G)
287	Toffler	Continues testimony.
337	Toffler	Continues testimony.
387	Toffler	Continues testimony.
425	Toffler	Continues testimony, refers to (EXHIBIT H) , and read excerpts from (EXHIBIT I) .
Tape 8, B		

030	Rep. Uherbelau	You talked about consistent ethics that have served us well, however, I was not quite sure what ethics you were discussing?
033	Toffler	<p>The ethic that I am referring to is that we have a consistent role as health care providers for the health and well being of our patients.</p> <p>Never to disrespect their own wishes if they do not want extraordinary measures taken. Never to unnaturally prolong life if that is not what they want.</p> <p>To hasten life that is a clear ethic that crosses the boundaries. When we take the posture that the 9th Circuit Court did that when you are incompetent you are not dignified. What did it say to those of us who have that disability. Its disrespectful and it's a boundary I choose not to cross and my profession chose never to cross.</p>
041	Rep. Uherbelau	You say your profession has never crossed. Would it surprise you then to say that the years I have worked as a registered nurse in many hospitals throughout this country in the 50's and 60's that on more than one occasion I saw a physician after discussions with the families hasten death. Does that surprise you?
053	Toffler	<p>Individuals make choice that they sometimes regret later. I can not be the judge of individual decisions.</p> <p>Refers to Barbara Coombs Lee's testimony regarding that we have a right to define our universe as we see fit. We would have chaos.</p> <p>I realize I cannot control all things.</p> <p>Addresses that the ethics of society are eroding.</p>
080	Rep. Uherbelau	You've handed out articles concerning medical ethics. Would you acknowledge that this question is being struggled with in the medical profession and there are many articles that come down on a different position?
086	Toffler	Yes.
089	Rep. Uherbelau	You mentioned that one of the consistent ethics was respecting your patient's wishes and you also mentioned the ethic of "do no harm". Yet your saying that if a person comes to you to ask for assisted suicide you would turn them down. My question is two fold: (1) is that respecting their wishes that you just mentioned we should do and (2) to let people die with severe pain and agony. Is that not doing harm also?
095	Toffler	I have never abandoned a patient. I will utilize my skills to discern their wishes. There is interdisciplinary support available for all physicians and patients.
		<p>Not here to debate the issue again. We now have an assisted suicide bill and how do we address it.</p> <p>If we review the statute it does not assist those that are depressed. Solely</p>

108	Rep. Eighmey	<p>that they are depressed does not give them the right to assisted suicide under the statute.</p> <p>How are you going to deal or recommend that we deal with the present situation with the fact that we now have two cases before the US Supreme Court and one case before an Appellate Court? How do you say we handle that when we do not know the outcome of either one of those cases? Are you recommending a preemptive decision, an anticipatory decision to do something? What do you say we do?</p>
135	Toffler	<p>We need positive legislative alternatives that incorporates many of the aspects we have talked about.</p>
160	Robert J. Castagna	<p>General Counsel and Executive Director of Oregon Catholic Conference</p> <p>Testifies in opposition of Measure 16. (EXHIBIT J)</p>
190	Castagna	<p>Continues testimony.</p> <p>>refers to amicus briefs submitted to the US Supreme Court</p> <p>>course of litigation remains uncertain but what is certain</p>
233	Castagna	<p>Continues testimony.</p> <p>If Measure 16 should go into effect and if that happens we are faced with the prospect of introducing physician assisted suicide not only in the state of Oregon but creating the difficult dangerous unwise policy of physician assisted suicide for the United States.</p> <p>>Measure 16 broke a number of boundary lines - Medical, Legal, and a moral precept contained in the Hebrew scriptures.</p> <p>>Federal Parliament in Australia adopted a similar measure.</p> <p>>Netherlands has had physician assisted suicide for over 20 plus years</p>
270	Castagna	<p>Continues testimony.</p> <p>>There are alternatives developed since the passage of Measure 16 that require attention.</p> <p>>Officials of the Oregon Health Plan were publicly announcing that ballot Measure 16 activities in physician assisted suicide would be covered under the plan.</p> <p>>A bill introduced to prohibit Medicare reimbursement for physician assisted suicide to address the assertions made by the Oregon Health Care officials.</p> <p>>in the newspaper, The Oregonian, it had done investigative reporting in the Netherlands stating that in 25% of the assisted suicide cases the</p>

		<p>patient does not immediately die and that a lethal injection is necessary and must be administered.</p> <p>>reads from footnote #35 on page 23 of the amicus brief submitted to the US Supreme Court on behalf of the American Civil Liberties Union, Hemlock Society, and other parties</p>
355	Castagna	<p>Continues testimony.</p> <p>>US Congress had a Subcommittee where some of you testified</p> <p>>Report of Chairman Canady re: Netherlands</p>
395	Castagna	<p>Continues testimony.</p> <p>>Managed care creates a potential conflict of interest between a physician who is concerned who is an advocate for his patient and a physician who is a financial administrator for a hospital. You have a dangerous convergence of public policy issues.</p> <p>>work with us to create positive alternative</p> <p>This legislature has the mantle of national responsibility for public policy on physician assisted suicide.</p>
416	Rep. Eighmey	<p>This process started in 1994 and now it is 1997 and you say you are probably going to appeal, and should this time line continue the 1999 Legislature will address the Measure.</p> <p>Are you telling us then to preempt the decision of the US Supreme Court, the Appellate Court, and the Circuit Court and the 1999 Legislature in dealing with this?</p>
Tape 9, A		
037	Castagna	<p>No, I am not suggesting that you preempt anyone. What I am suggesting from my conversation with the Attorneys involved at the Supreme Court level that according to their best legal judgment (conferred to me this morning) is that it is conceivable given the uncertain course of litigation that ballot Measure 16 may become legally effective in the state of Oregon before the convening of the 1999 Legislative Assembly.</p> <p>If the US Supreme Court issues its opinion in June or July of this year that it would then be too late for this legislative body to act unless it acts in the confines of the regular session of 1997.</p> <p>There is potential of a global impact of a decision or non-decision by this legislative body on lives involved.</p>
057	Rep.	<p>If in fact that this is true that this issue has such a far reaching impact and not only to the citizens of Oregon but to the world as a whole, is it not true that a prudent and a reflective legislative body will let the</p>

	Eighmey	course of judiciary make its decision before we the legislative body does something about it. Is it not true that if in fact it is of such importance that this legislative body could have a special session to address this?
065	Castagna	You know that special sessions could not adequately address the numerous public policy issues contained in any timely manner before ballot Measure 16 has the potential for going into effect. New York State's task force came to a significantly and unanimous conclusion that as public policy physician assisted suicide is dangerous and unwise because lives will be at risk.
089	Rep. Eighmey	Will you agree then to respect my position to be more reflective and in less of a rush to change the law?
096	Castagna	I will always respect the individual judgment of an Oregon legislature, even if I oppose and in turn you respect our first amendment rights under the US Constitution - freedom of speech and religion.
109	Chair Sunseri	Adjourn meeting at 5:17 P.M.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - Measure 16, testimony, Barbara Coombs Lee, 2 pages

B - Measure 16, testimony, Hazel Jenny, 3 pages

C - Measure 16, testimony, Ruth McEwen, 2 pages

D - Measure 16, testimony, James Davis, 3 pages

E - Measure 16, testimony, Simon Paquette, 2 pages

F - Measure 16, testimony, Bob Joondeph, 2 pages

G - Measure 16, testimony, William L. Toffler, 4 pages

H - Measure 16, Code of Medical Ethics Current Opinions with Annotations,

William L. Toffler, 4 pages

I - Measure 16, Article-Medicine Against Society, William L. Toffler, 5 pages

J - Measure 16, testimony and attached exhibits, Robert J. Castagna, 171 pages