

We help you find your way.



DAVIS
AGNOR
RAPAPORT
SKALNY^{LLC}
ATTORNEYS AT LAW



LEGAL BRIEFS

U.S. Supreme Court Affirms Oregon's Death With Dignity Act

During the past year or so, the topic of “death with dignity” has been addressed several times in this column. I have learned from my clients that the ability to control the quality of one’s life, including how that life ends, is a core principle that must be preserved.

In support of this principle, the U. S. Supreme Court, in a decision released on January 17, 2006, struck down the Bush Administration’s latest attempt to limit the right to provide for a death with dignity.

In *Gonzales v. Oregon*, the Supreme Court ruled, by a 6 to 3 vote, that the Federal government could not use a law designed to control dangerous substances, such as heroin or cocaine, to prevent a physician from prescribing a lethal dose of medication in a legal manner under Oregon’s Death With Dignity Act.

In 1994, and then again in 1997, the citizens of Oregon voted in referenda to allow physicians to prescribe lethal doses of medication to terminally ill patients if the strict guidelines set forth in the Death With Dignity Act are followed. These guidelines provide that the patient must have a diagnosis of an incurable and irreversible disease that will most likely cause death within six months. The physician must determine that the patient’s request for a lethal dose of medication is truly voluntary and be an informed decision. If there is a possibility that the patient is suffering from depression or other psychological disability, the patient must be referred to counseling. Finally, a second physician must confirm the original physician’s conclusions.

Obviously the citizens of Oregon wanted the option to terminate their own lives in certain end-of-life situations. The safeguards contained in the Death With Dignity Act were designed to protect an individual from undue influence, involuntary decisions, and abuse. This approach recognized the individual wishes of a dying patient and balanced those wishes against the state’s interest in preserving life.

Nevertheless, the Attorney General of the United States took unilateral action to overrule the citizens of Oregon by determining that the Controlled Dangerous Substances Act precluded a physician from dispensing or prescribing such drugs for the purpose of ending a person’s life, even though Oregon law specifically authorized such actions.

The Supreme Court’s ruling was not based on constitutional grounds. There was no determination that a person’s right to privacy was improperly violated or that the Federal government was improperly intervening into a state-protected area of the law. Instead, the ruling was based solely on an interpretation of a federal statute. In this case, the Supreme Court determined that Congress had not acted to limit the prescription of such drugs in these circumstances.

As much this ruling was helpful in retaining a state’s right to enact legislation similar to Oregon’s law, it also set out a roadmap for those to follow who wish to overturn the Death With Dignity Act. If mere enactment of a federal statute by Congress is sufficient to defeat this law, we must make sure our lawmakers know that we want the option to preserve this right. In the meantime, other states, such as California and Vermont, are considering enacting similar legislation to allow their citizens the right to control the quality of their own lives.

This ruling is important primarily because it preserves the ability of an individual to have the option of controlling the end of that person’s life. Since 1997, only 208 people in Oregon have taken advantage of this law. Most of these people had advanced stages of cancer, but were allowed to die at home.

The statistic that cannot be estimated, however, is the number of people who find tremendous solace in just knowing that they can control their deaths, whether or not they actually request the medications. Sometimes, this knowledge alone provides incredible comfort during the dying process.