

SENATE JUDICIARY
COMMITTEE
DATE 2/9/11
SB 167

Honorable Members of the Senate Judiciary Committee
State Senate, State of Montana
Helena, Montana

Statement of Sen. Anders Blewett
Sponsor of SB 167 (Aid in Dying)

Dear Members of the State Senate's Judiciary Committee:

Mentally competent, terminally ill adult Montanans may choose aid in dying: to request a prescription for medication from their doctors that they themselves can ingest to bring about a peaceful death.

Terminally ill patients, mostly suffering from cancer and other incurable diseases, want the choice to have some measure of control at the end of their lives. The option to request aid in dying places the power to choose solely in the hands of the terminally ill patient.

Our Montana Supreme Court found that this medical decision falls within the ability of the terminally ill to control their own bodies at the end of life.

The right of patients to make their own end-of-life decisions is based on the simple premise that people should be free. Specifically, when they are terminally ill and death is near, they should be free to decide whether to prolong their suffering or end it more quickly.

The court found that Montana law respects and protects a patient's medical decisions about his or her own bodies at the end of life. The decision to self-administer life-ending medication receives the same treatment as a decision to discontinue life sustaining therapies, such as mechanical ventilation.

The Montana Supreme Court recognized that the statute empowering patients to make decisions about their end-of-life care, even when those decisions will precipitate death, reflects public policy in favor of patient autonomy. The court ruled there could be no successful prosecution of physicians who provide aid in dying.

This legislature should affirm the court's guidelines, and not place undue obstacles in patients' way. The Montana Death With Dignity Act, SB 167, would affirm that

physician participation is voluntary, and enact protections from civil liability and professional sanctions for physicians who practice within the court's guidelines.

The Montana Death With Dignity Act codifies the bounds of the court's *Baxter* decision. It would enact protection for physicians who respect their patient's decision, and establish additional safeguards beyond those the court outlined.

The criminal laws of Montana still apply to actions outside the court's ruling. State police authority will effectively enforce this law, just as criminal law enforcement has for decades prevented unlawful discontinuation of life-sustaining machines.

The people of Montana strongly support the *Baxter* decision. I have heard from many elderly Montanans who live in my district on this issue. They are proud of their independence, and believe the power to make their own end-of-life decisions belongs to them, in consultation with their doctor, not to the State of Montana, nor to any organization or institution. Most Montanans support choice at the end of life because they cherish the freedom and autonomy it protects. This support is reflected in public opinion polling, which finds 65% of Montana voters support the Montana Supreme Court decision granting end-of-life choice. National polling for the past thirty years has reflected this high level of public support.

The people of Montana yearn for freedom, not government intrusion. When they are dying of a terminal illness, they want the freedom to make their own decisions about how to die.

This morning you will hear from Montana doctors, patients, religious leaders, and citizens who support this ability of terminal patients to make their own end-of-life decisions.

You will hear from experts about the success of the Oregon experience with physician aid in dying.

You will also hear from opponents. Opponents seek to have this Legislature override and void the court's decision. They would deny terminal patients the comfort and peace of mind afforded by legal aid in dying.

Opponents would have the State of Montana decide how cancer patients are allowed to die. Their arguments rely mainly upon fear that this policy will be abused. They hope to scare you with predictions of abuse of the law. All of these

predictions of disaster were made in Oregon, and in Washington, and not one of them proved true.

I would caution you to examine carefully any claims of abuse, as these claims will not withstand close scrutiny.

The Oregon experience with aid in dying has been studied more than any other end-of-life procedure in the world. Independent experts have found that the aid in dying policy has worked as intended, and that no group, nor individual, has suffered any harm. This has led many medical and health groups to adopt policies in support of aid in dying, including the American Public Health Association, the nation's largest and oldest association of public health officials dedicated to protecting the public's health.

Reports each year confirm that although many dying patients in the state of Oregon may consider an aid in dying option and may benefit from improved care because the option exists, only a few complete a request under the law. Objective measures of improved end-of-life care include the experiences of hospice nurses, use of medical morphine, referrals to hospice and the second-lowest rates of in-hospital deaths and the second-highest rates of home deaths in the nation.

The Montana Death With Dignity Act will help improve end-of-life care in Montana, and provide comfort, peace of mind and control to those facing death from terminal illness. I hope you will join the overwhelming majority of Montanans and me in supporting it.

Thank you.

Feb. 9, 2011
Honorable Members of the Senate Judiciary Committee
C/o Honorable Anders Blewett
State Senate, State of Montana
Helena, Montana

Re: Opposing SB 116 (Hinkle)

Dear Members of the State Senate's Judiciary Committee:

Good morning.

My name is Roberta King, and I live in Missoula.

My father, Robert Baxter, was the plaintiff in the case that brought Physician Aid in Dying to Montanans.

I'm here to urge you not to take away the choice my father fought so hard to gain for dying Montanans.

My father was a typical Montanan: a proud and independent guy, a very patriotic ex-Marine. He liked to hunt and fish. He was a truck driver for as long as I can remember, and he loved the freedom of it. His whole life he wanted to do things the right way.

Dad's suffering and death were much more painful and difficult than they had to be, and he never got the right to decide for himself how much to endure.

He died the same day the court ruled in his favor.

I was extremely close with my father. He shared with me a number of times during his last months his feelings about death and the situation he was confronting with his disease. His pain and suffering, and his wasting away, were unbearable to him.

My father told me many times that he wanted aid in his dying.

But that choice was not legal in Montana.

That made his suffering and death much more painful and difficult than they otherwise could have been, and deprived him of the right to decide for himself how much suffering to endure before he died.

My dad suffered so much that called me the summer before he died and told me he had purchased a gun and was going to end his life.

If you pass this bill, that's the kind of choice you are leaving people to make. In the end, Dad sucked it up and soldiered on so that his family would not have to witness his violent death.

Now, Montanans do have the right to legal aid in dying.

People in this state pretty much believe that we know how to take care of ourselves without government interference. We trust our doctors to give us the best possible medical advice. The Montana Supreme Court was right to agree.

Their decision leaves in place all of our legal protections against elder abuse. Dad wanted to do what was legal. There were a lot of options he could have taken, but he wanted to be an upstanding citizen. He wanted his doctor to aid in his dying.

I'm here to urge you to keep this choice in place, the one my Dad should have had.

I believe, like my Dad did, that people suffering the pain and anguish of a prolonged terminal illness should be allowed to make the decision about how their life ends, with the support of family and loved ones and the aid of their physician.

SB 116 would destroy what my father fought for until the moment of his death.

Please don't pass this bill.

Respect the freedom my father fought to win.

Thank you.

February 9, 2011

Honorable Members of the Senate Judiciary Committee

C/o Honorable Anders Blewett

State Senate, State of Montana

Helena, Montana

Re: SB 167/Montana Death With Dignity Act

Dear Members of the State Senate's Judiciary Committee:

Mr. Chairman and members of the Committee: I am **Barbara Glidewell**, as ombudsman for a major medical center in Portland, Oregon I personally administered Oregon's Death with Dignity Act for 12.5 years. That means I was involved in nearly all interviews and discussions between patient and provider, to oversee that the requirements of the law were met in each and every voluntary request by a terminally ill, qualified Oregonian.

- In Oregon, Aid in Dying is not offered as an option to terminally ill patients, regardless of their age unless the patient brings it up or inquires about that as an option. Other end of life options are routinely offered when the patient is suffering, such as palliative care, and hospice (comfort care).
- The patient must bring up the discussion (or request) to the provider, after which a thoughtful dialogue ensues between patient and provider, often including family members or significant others. This is documented in the medical record.
- Information is provided to the patient that he or she may choose to discontinue to take all the myriad incidental medications currently prescribed, e.g. hypertension, diabetic medications, etc, and may choose to take only comfort medications and receive comfort care only.

- Some individuals ask that they may be terminally sedated, so as not to be awake while their organ systems shut down and their life force ebbs. Others may choose to remain awake but cease taking in food and fluids, allowing natural death to occur.
- It is not true that elderly patients are targeted, encouraged, or coerced into considering or requesting aid in dying. It is the personal, voluntary request by a terminally ill adult patient that initiates the conversation about qualifying under the law to obtain a lethal dose of medication to end one's life.
- The requesting patient is alert, cogent, and voluntarily asks for information, or consideration of becoming qualified so that he or she may choose to end their life when their terminal condition becomes intolerable. Often it is a matter of dignity in the last days that causes the patient to ask for aid in dying; it well to remember the patient is actively dying, will die soon, have intractable suffering and pain, and wishes to have control over the rigors of the dying process.
- There are elderly patients suffering the burden and misery of an advancing terminally condition who do request and qualify for the DWD act. Some use the medication and some did not.
- This issue is a matter of compassion and choice and patient autonomy and dignity. Individuals, 18 years or older, who have no possibility of recovery or any furtherance of quality of life, and who have been diagnosed and confirmed to have a terminal illness may prefer palliative and hospice care with no further interventions.
- Or, these same individuals may prefer to choose a day upon which they find themselves exhausted from the burden of suffering, be it physical, emotional, spiritual, or just had enough of invasive, rescue therapies which only produce more suffering – and exercise their right to hasten the day

when their life shall end. In other words choose a day that fits with their personal preference regarding how they will die and when. The experience in Oregon shows the law has worked as intended.

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- Please preserve this right for Montanans.
- New edits:
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February 9, 2011
Honorable Members of the Senate Judiciary Committee
C/o Honorable Anders Blewett
State Senate, State of Montana
Helena, Montana

Re: Opposition to SB 116

Dear Members of the State Senate's Judiciary Committee:

We are Steve and Mary Johnson.

We live in Helena, Montana, and we are here today to ask you to vote against Senate Bill 116. I'm speaking because it's difficult for Steve to read and remember what he wants to say. We have been married for 50 years and together have been living with Steve's brain cancer for nine years. As you probably understand, a lengthy illness becomes a family affair.

Steve has done everything possible to fight this disease, including surgery, and repeated radiation treatments, including the Cyber-Knife at Stanford University. Treatment removed much, but not all, of the cancer. The repeated radiation has taken a toll on his mind and body. He is now fairly disabled and may go blind.

Steve wants to keep living—and I want him to live. We are both concerned not only about how many more treatments he can endure, but more importantly—how his life will end. When the Montana Supreme Court decided we all have a choice on how we are allowed to die, we became hopeful. When our time is near, we want the peace of mind that comes from knowing we have options.

Adults like Steve should have the option, if terminally ill, to request physician assistance in dying. We want our doctor to be able to respect and honor Steve's choice to die with dignity. Imagine your family doctor saying, "Don't worry. I'll take care of you through the end. I promise." Even though we don't know whether he would ultimately take medication to end his life peacefully, Steve would like to have the choice. We think he should have something to say about how he dies.

It seems so compassionate to minimize unnecessary suffering at the end of life, to let people make the choice about how much suffering to endure, based on their values and beliefs. Please don't take away Steve's hope and the peace of mind we both get from knowing he'll have something to say about how he dies.

Thank you for your consideration and please vote against SB 116.

Steve & Mary Johnson
Helena, MT

Honorable Members of the Senate Judiciary Committee
C/o Honorable Anders Blewett
State Senate, State of Montana
Helena, Montana

Re: SB 167/Montana Death With Dignity Act

Dear Members of the State Senate's Judiciary Committee:

My name is Stephen Speckart. I am a recently retired cancer specialist from Missoula and a plaintiff in the Baxter decision. I would like to share with you the physician's perspective of aid in dying in support of SB-167.

My involvement with dying patients began in the late 1970's when we founded the first hospice in Montana, which was an all-volunteer effort for many years.

Initially, I found I was quite inexperienced, however, after many visits within patients' homes I began to develop an entirely new understanding of terminal illness and dying. Participating in the family dynamic of support, love and care was extremely satisfying and I felt my presence was critical for optimal management at this most painful and difficult time of illness. It became very clear to me that those issues surrounding how we die represent the most critical and sacred moments of our individual lives. Each and every death is extraordinarily personal and absolutely singular. Application of standard and accepted bioethical principles of dignity, autonomy, self-determination and relief of pain and suffering are fundamental in support and management of all dying patients. This is a time when patients and family most need the maximum support from providers, to include their physician.

Historically, physicians in Montana could not respond to those very few patients who, because of intolerable suffering, requested drugs to end their life. Refusal was awkward and left the patient feeling abandoned and fearful of their terminal circumstances. The Baxter decision allows for continuance of desired and optimal physician care, not abandoning, but being there as you should be, understanding and supportive of the patient who's dying and suffering terribly.

An important and germane issue to physician aid in dying in Montana is a recently announced national call for a change in practice directives for terminally ill patients. The American Society of Clinical Oncology (ASCO), the voice of all cancer specialists in America, just issued practice guidelines to its members on management of patients with incurable cancer and I quote "helping patients live their final days in comfort and dignity is one of the most important responsibilities of our profession, said ASCO President George W. Sledge, patients have a right to

make informed choices about their care. Oncologists must lead the way in discussing the full range of curative and palliative therapies to ensure that patients' choices are honored." ASCO has never before told physicians how to practice and this directive occurred because of mounting outcry from multiple sources, criticizing the cancer community about absent, ineffective or delayed conversations terminal patients were receiving from their doctors. Such an abrupt policy change is a major event and IS related to physician assisted dying because, ultimately, this is a patients' rights issue and choice of physician assisted dying, within terminal illness should be a viable choice.

Lastly, most physicians feel significant unease both with the limited safeguards and possible risk of criminal prosecution after the Baxter decision. Physicians feel strongly that adherence to additional safeguards, to include those exempting populations at risk, such as the disabled and elder abuse, are imperative and that full implementation of SB-167 will both select only those patients who are soon to die for physician assisted dying and provide immunity for caregivers.

We ask this committee to vote in favor of SB-167 so that patients in Montana with intolerable suffering may have a choice, and that caregivers can provide the full spectrum of compassionate care without fear of prosecution.

**Honorable Members of the Senate Judiciary Committee
C/o Honorable Anders Blewett
State Senate, State of Montana
Helena, Montana**

Re: SB 167/Montana Death With Dignity Act

Dear Members of the State Senate's Judiciary Committee:

I am the Reverend John C. Board, *from Helena*, an ordained deacon in the Episcopal Diocese of Montana.

I am here in support of SB 167.

I am not here to convert you to my *personal religious* belief, but I am here to ask you not to impose the perspective of any one faith upon all Montanans. There is no religious institution that speaks for all of us. There are, however, many religious people who support aid in dying.

Free will, love, and compassion are central articles of Christian faith. For believers, our deaths involve a very private conversation with our Creator. We pray the manner of our dying will fulfill our relationship with God, honor the life we led, and ease our loved ones' grief. Christian compassion exhorts us to relieve, whenever we can, the suffering of others

The issue before us is whether or not a competent, terminally ill adult should have the right to determine the manner in which she or he dies.

I have wrestled with that issue for at least 67 years. That is, ever since I realized that someday I would die.

Very few of the people I have known ~~have~~ died suddenly. Most ~~have~~ suffered for months or years.

My father suffered for 10 years before he died from complications caused by emphysema; and my mother suffered 10 months before her death by non-Hodgkin's Lymphoma.

The deaths of those close to me were not unusual. Approximately 20% of us will die a sudden death, 80% of us will die as the result of a prolonged and terminal illness.

For seven years, I have been a Hospice Volunteer. I have served patients who have died from congestive heart failure, Lou Gehrig's disease, and cancer. One *terminal cancer* patient stands out because he wanted to *end his suffering die*. Every time I visited him, he told me he wanted to die. He was a retired brigadier general who had served in WWII, Korea, and Viet Nam. He was no stranger to death and dying. *He ended up dying a slow, painful death.*

Should a competent, terminally ill adult have the right to determine the manner in which she or he dies? I believe they should.

SB 167 does not force anyone to do anything against his or her will. It does not mandate physicians to honor a patient's request for assistance in dying. *It also forbids lethal injection, mercy killing, active euthanasia, assisted suicide, or homicide.*

It does, ~~however~~, guarantee an individual's freedom to exercise his or her free will concerning matters of moral concern, and the United States and Montana Constitutions guarantee the free exercise of one's religious beliefs.

Without a law such as SB 167, a mentally competent and terminally ill adult has *little* ~~no~~ choice in the manner in which she or he dies. Rather the individual is condemned to die a cruel death only because she or he had the bad luck to have a terminal illness.

I urge your support of SB 167.

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Honorable Members of the Senate Judiciary Committee

C/o Honorable Anders Blewett

State Senate, State of Montana

Helena, Montana

Re: SB 167/Montana Death With Dignity Act

Dear Members of the State Senate's Judiciary Committee:

I am writing this letter to discuss SB 116 and SB 167. My name is Dr. Kathryn Borgenicht. I am certified in Internal Medicine, Geriatrics and Palliative Medicine. I am Medical Director of Bozeman Deaconess Palliative Care Program and Hospice of Southwest Montana. I also have a geriatric out patient clinic associated with Bozeman Deaconess Hospital. I have worked in geriatrics for 30 years and have another 15 years of experience with hospice and palliative medicine. The average age of the patients I see is 80 years old. There is not a day that goes by that my patients want to discuss their quality of life and what the end of their life looks like.

I strongly oppose Bill 116. Decisions at the end of life are uniquely personal and individual. Each person's death is as unique as their birth. In hospice and palliative care, we honor this perspective. We also do everything we can to help people with any suffering that may occur at the end of their lives. Unfortunately, despite all my training and all of our medical advances we cannot control all suffering. Physician Aid in Dying is an individual's decision to control his or her suffering

Evidence from Oregon is very clear and has been well documented in multiple research studies. There are a very small number of patients who actually use the Death with Dignity Act as it is called in Oregon and Washington. Most of the patients who are at the end of life, and certainly most of the patients I see, would never qualify under the Oregon Death with Dignity Act. In addition, there is no evidence of elder abuse in these studies. The guidelines are strict and clear and allow for only competent terminally ill patients to participate in this program. There are multiple safeguards to make sure that the request is voluntary and only comes from the patient themselves.

I believe that SB 167, which sets up clear guidelines based on the Oregon and Washington experience is completely appropriate. Since we have begun this debate in Montana, I have spoken to many community groups about this. There is broad interest in this topic and indeed I believe broad support for adapting appropriate guidelines that will safeguard people at the end

of life. There is not a week that goes by that I am approached by a patient to discuss physician aid in dying and what that might mean for them. 99% of the time, I explain that this is not an appropriate option for them. However, people do want to know about this and have some reassurance about what might happen to them at the end of their lives. Having clear guidelines for our community will help people better to understand how we might help them at the end of their lives. Most of my dialogues with patients end with them understanding what the process is and that the process is not appropriate for them.

Finally, by approving SB 167, I believe we will be able to have important discussions with patients and their families about end of life care. Suffering is not defined by the medical community, but rather by what a person says it is. It behooves us morally, ethically and spiritually to be able to help people with suffering as best we can.

I believe we have an obligation to agree with the Montana Supreme Court that said that end of life choices are between a patient and their doctor. It is not your job to put further obstacles to this dialogue.

Honorable Members of the Senate Judiciary Committee

C/o Honorable Anders Blewett

State Senate, State of Montana

Helena, Montana

Re: SB 167/Montana Death With Dignity Act

Dear Members of the State Senate's Judiciary Committee:

I am Dustin Hankinson from Missoula and I ask that you vote against SB 116. I ask this so that people's sovereign responsibility for their lives can be recognized and secured. Patients choices are disregarded to an unacceptable degree by medical personnel.

The best example I have is my best friend Theresa's mother who passed mere months ago. She was in her 60's and had been dealing with COPD for a few years. She contracted pneumonia which put pressure on her breathing until her vitals crashed and she was intubated, given a morphine drip and left to the probability that eventually she would die. She did remain conscious though and she could communicate though she couldn't talk. Time slid by until three weeks passed with her family attending her bedside virtually around the clock. At some point in this timeframe, Cheryl wrote to her family on paper expressing her desire to be disconnected from the ventilator.

She even wrote a note in front of the nursing staff. The family originally fought against her wish but after a few more days they truly saw her discomfort. They ultimately relented and talked to the doctor on her behalf. He vacillated, said he'd make it happen then went against that statement and finally left Cheryl in a paradox of disconnecting her only when she was "well" enough to tolerate it. Meanwhile, Cheryl was laying and waiting and getting more frustrated. After the doctor recanted on extubating her a third time in a week, Cheryl did something disturbing yet courageous: she pulled her ET tube out herself, in essence disconnecting herself from the machine sustaining her. The doctor didn't reintubate her and she passed within 24 hours.

Now, skip the abstraction and policy talk. Put yourself in Cheryl's place. You want disconnected but the doctor's thoughts veto yours. You have no say, no action, no recourse. You can't get "aid to die" but rather you get "wait to die." Cheryl's situation stressed the family more than it stressed anyone. It lasted WEEKS! If she wouldn't have extubated herself, who knows how much time, pain and stress she would have had to endure against her will. People SHOULD NOT have the right to decide anything of this importance FOR someone else.

[Conclusion]