

**COMMENTARY**

# Medical Aid in Dying State Laws: A Thirty Year Evolution

Eli Y. Adashi, MD, MS and I. Glenn Cohen, JD

**The notion of medical aid in dying dates back to 1994 and the approval of the Death with Dignity Act by the citizens of Oregon. Therein was incorporated the notion of competent terminally ill patients being permitted to resort to the self administration of lethal physician-prescribed drugs. Several other states followed suit. Medical aid in dying is now broadly applied in the US under strict legal oversight in an ever-growing number of states. (J Am Board Fam Med 2025;38:977–979.)**

**Keywords:** Constitutional Amendments, End of Life Care, Right to Die, Terminally Ill

Consider a story of 2 Novembers, more than thirty years apart. On November 8, 1994, Oregonians voted in favor of a citizen initiative titled *Death with Dignity Act* (DWDA) by a slim margin (51% to 49%).<sup>1</sup> In addition known as *Ballot Measure 16*, DWDA was the brainchild of a Political Action Committee (*Oregon Right to Die*), intent on legalizing Medical Aid in Dying (MAiD).<sup>1</sup> As written, DWDA empowered mentally competent terminally ill patients (with <6 months to live as determined by the attending and the consulting physician) to end their lives via the self-administration of lethal physician-prescribed drugs.<sup>1</sup> Among the statutory provisions guarding against potential misuse of the law, note was made of the requirement that qualified

patients (≥18 years old) are to make 2 oral and 1 written request for the lethal drugs in question.<sup>1</sup> By contrast, on November 5, 2024, West Virginia voters narrowly approved (50.5% to 49.5%) Constitutional Amendment 1 that read “No person, physician, or health care provider in the State of West Virginia shall participate in the practice of medically assisted suicide, euthanasia, or mercy killing of a person.”<sup>2</sup> The Amendment contained language specifying it did not prohibit prescribing medication to alleviate pain or discomfort, withholding or withdrawing life-sustaining treatment on the request of a patient or their decision-maker, or providing capital punishment.<sup>2</sup> The result is perhaps even more surprising because MAiD is already illegal in the state.<sup>2</sup> Despite these mirror image results, much has changed over the past 30 years. In this *Commentary*, we review the slow-paced national adoption of state-based MAiD initiatives, as well as explore the potential root causes and likely future prospects thereof.

Let us return to the 1994 Oregon DWDA. Despite the narrow voter approval, the DWDA nevertheless withstood a delayed (November 4, 1997) repeal effort (*Ballot Measure 51*) by a decisive margin (60% to 40%).<sup>1</sup> The opposition to DWDA took on the form of several legal challenges which were brought to the fore in relatively rapid succession.<sup>1</sup> In December of 1994, in *Lee v. State of Oregon*, plaintiffs argued that DWDA violated the *Equal Protection Clause* of the 14<sup>th</sup> Amendment to the US Constitution according to which states may not “deny to any person within its jurisdiction the equal protection of the laws” because the state did not protect terminally ill patients from abuse or impaired

This article was externally peer reviewed.

Submitted 6 May 2025; revised 11 July 2025; accepted 28 July 2025.

From the Professor of Medical Science, Former Dean of Medicine and Biological Sciences, Brown University, Providence, RI (EYA); Deputy Dean and James A. Attwood and Leslie Williams Professor of Law, Harvard (IGC); Law School, Faculty Director, Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics, Harvard University, Cambridge, MA (IGC).

*Funding:* None.

*Conflict of interest:* Professor Adashi declares no conflict of interest. Professor Cohen is Chair of the ethics advisory board for Illumina and a member of the Bayer Bioethics Council and serves as an advisor for World Class Health. He was also compensated for speaking at events organized by Philips with the Washington Post, Danaher the Doctors Company, attending the Transformational Therapeutics Leadership Forum organized by Galen Atlantica, and retained as an expert in health privacy, gender-affirming care, and reproductive technology lawsuits.

*Corresponding author:* Eli Y. Adashi, MD, MS, Professor of Medical Science, Former Dean of Medicine and Biological Sciences, Brown University, 222 Richmond St., Providence, RI 02903 (E-mail: [Eli\\_Adashi@brown.edu](mailto:Eli_Adashi@brown.edu)).

judgment the way it did the nonterminally ill.<sup>3</sup> In deciding the case, Federal district court judge Michael R. Hogan ruled in favor of the plaintiffs and thus against the implementation of DWDA.<sup>1</sup> It was not until February 1997 that the US Court of Appeals for the Ninth Circuit reversed that decision, without reaching the merits of the question, instead determining the plaintiffs in the case lacked standing to bring their challenge.<sup>1,3,4</sup> Though the implementation of DWDA was subsequently delayed yet again by a legal injunction issued by Judge Hogan, reinstatement of the process was promptly secured by the Ninth Circuit on October 27, 1997.<sup>1,3,4</sup> After the Ninth Circuit's decision, the Oregon legislature sent the *Death with Dignity Act* back to the electorate for a second referendum vote in November 1997, with a larger approval margin of 60 to 40%.<sup>4</sup> Notably, however, DWDA was challenged yet again on November 6, 2001 by US Attorney General John D. Ashcroft on the grounds that it violated the *Controlled Substances Act*.<sup>3,4</sup> By April of 2002, however, US District Judge Robert C. Jones placed a permanent restraining order on the Ashcroft directive.<sup>3,4</sup> Just as importantly, the US Supreme Court upheld DWDA in *Gonzales v. Oregon* by a 6 to 3 vote on January 17, 2006, declaring its refusal to render "illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law."<sup>3,4</sup>

Since Oregon's legislation, only a limited number of states have approved MAiD. The very first effort to secure a state-wide legalization of death with dignity, Initiative 119 (Aid-in-Dying), was placed on the ballot of the state of Washington on November 5, 1991 only to be defeated by a narrow margin.<sup>1</sup> A similar fate befell the 1992 California ballot measure known as Proposition 161 (Aid-in-Dying Act).<sup>1</sup> It was not until 2008 that the state of Washington succeeded in replicating the 1994 Oregon precedent.<sup>3,4</sup> Since then, either by legislation or referendum, Vermont (2013), California (2015), Colorado (2016), Washington, D.C. (2016), Hawaii (2018), Maine (2019), New Jersey (2019), and New Mexico (2021) have all enacted MAiD measures.<sup>4</sup> Though presently lacking a ratified right-to-die statute, Montana cleared the path to this clinical intervention by way of a 2009 ruling of its Supreme Court in *Baxter v. Montana* that held that "a terminally ill patient's consent to physician aid in dying constitutes a statutory defense to a charge of homicide against the aiding physician."<sup>4</sup> West Virginia's

anti-MAiD constitutional amendment from 2024 is discussed above.

While the number of states allowing MAiD has increased somewhat, the terms of access remain the same – the statutes and decision have limited MAiD to terminally ill adults possessing the mental capacity to make an informed choice decision and the patient must self-administer the lethal dose. Other countries have considered individuals suffering from mental health disorders, pediatric patients, and others for MAiD access, often to significant controversy.

The aforementioned progression notwithstanding, most US states (41 in total) have yet to enact a MAiD statute. To its detractors, MAiD challenges deeply held beliefs on the inviolable sanctity of life, the premise of the Hippocratic oath, as well as the prevention of abuse of the elderly, the incapacitated, and the dependent.<sup>1,3,4</sup> To its proponents, in contrast, physician MAiD remains a highly valued and humane practice.<sup>1,3,4</sup> As per a recent Gallup poll, "adults who do not pursue a specific faith (77%), Democrats (69%), and college graduates (67%) are the most inclined to believe that doctor-aid-in-dying is morally acceptable."<sup>5</sup> Notably however, as many as 71% of Americans believe that physicians should be "allowed by law to end the patient's life by some painless means if the patient and his or her family request it."<sup>5</sup> Just as importantly, however, "66% of the most religious Americans believe doctor-aid-in-dying is morally wrong."<sup>5</sup> How these recent opinion trends will manifest themselves in potential future state deliberations of MAiD remains a matter of conjecture.

At the time of this writing, a significant proportion of nations have accepted and legalized the practice of MAiD as an act of compassion.<sup>6</sup> The United Kingdom has just resolved to afford this right to its citizenry.<sup>6</sup> In the US, however, the legalization of MAiD remains limited to 9 states. No other US state has taken on the challenge of enacting an aid-in-dying statute since 2021. As issues of public importance go, MAiD faces a number of structural difficulties in mobilizing public opinion and action. First, major medical associations most notably the AMA have not endorsed it, such that it is difficult to claim this is a prerogative that physicians need to have to treat patients. Second, MAiD is a classic high-intensity but low numbers issue – there will be relatively few people who want or need it for themselves or a loved one, but for those who do it is an extremely urgent issue. Third, most of the individuals who do

recognize a need for MAiD do so toward the very end of their life where their opportunity to lobby for action is dwindling. Because state ballot initiatives often require multiple years of planning and support, it may be hard to ensure continuity over successive individuals in need. Finally, it is not that easy to communicate what MAiD is, why it may be needed, and in particular where it might be used that the cessation or refusal of treatment is not sufficient.

It is likely that the slow-paced progression of MAiD state laws will persist absent the resolution of the national divide on this matter. Partial, if incomplete national relief of the attendant clinical need was recently afforded by the repeal of the Oregon and Vermont residency requirements to qualify for MAiD.<sup>7</sup> Travel to Oregon or Vermont with MAiD in mind is now a reality.<sup>7</sup> It is unclear whether the possibility of interstate travel will sap some of the political effort toward more state MAiD initiatives. In any event, we should not hold our breath for national uniformity on the issues. In 1997, in *Washington v. Glucksberg*, the US Supreme Court rejected a claim for a federal constitutional right to MAiD, and the court's jurisprudence and make-up today has become only more hostile to such a claim.<sup>4</sup>

## References

1. Annas GJ. The bell tolls for a constitutional right to physician-assisted suicide. *N Engl J Med* 1997;337:1098–103.
2. Kersey L. WV voters narrowly approved putting medically assisted suicide prohibition in constitution. *West Virginia Watch* 2024. Available at: <https://westvirginiawatch.com/2024/11/06/west-virginia-voters-narrowly-approved-putting-medically-assisted-suicide-prohibition-in-constitution/>.
3. Hall MA, Bobinski MA, Orentlicher D, Cohen IG, Backley N, Sawicki NN. *Health Care Law and Ethics*. 10th ed. New York, NY: Aspen Publishers; 2024.
4. Clodfelter RP, Adashi EY. The liberty to die: California enacts physician aid-in-dying law. *JAMA* 2016;315:251–2.
5. Yi R. Gallup. Most Americans favor legal euthanasia. Accessed August 8, 2024. Available at: <https://news.gallup.com/poll/648215/americans-favor-legal-euthanasia.aspx>.
6. Watkins A, Petri AE. British Lawmakers Voted to Legalize Assisted Dying. Here's What to Know. Accessed November 29, 2024. Available at: <https://www.nytimes.com/article/uk-assisted-suicide-parliament.html>.
7. Death with Dignity. Traveling to Oregon and Vermont to Access Medical Aid in Dying. Available at: <https://deathwithdignity.org/resources/traveling-to-oregon-and-vermont-to/>.