

# Five Years of Dignity

*The Baxter Ruling and End-Of-Life  
Freedom in Montana*

 compassion  
& choices | MT



# Bob Baxter

Veteran, father, trucker, Montanan  
and history-making plaintiff

**Bob Baxter, the man who so generously gave his name and his time** to the landmark case that authorized aid in dying in Montana, was a proud, independent, patriotic and law-abiding Montanan. He liked to hunt and fish. An ex-marine, he built a career as a long-haul truck driver, relishing the freedom of the open road.

In the mid-1990s, Bob was diagnosed with lymphocytic leukemia. Multiple courses of chemotherapy kept his disease at bay, but the treatment became less effective over time. After about 10 years, Bob was diagnosed with an aggressive and terminal form of lymphoma.

“My father understood he had no hope of recovery,” explains Roberta King of Missoula, Bob’s daughter. “The only medical issues remaining were exactly when his death would occur and how much he would suffer before he died.”

Bob Baxter declined rapidly after the lymphoma diagnosis, experiencing constant pain and extreme fatigue. He found it difficult to breathe, eat, sleep or even sit up. Already thin, he lost 30 pounds. Driving, once a way of life, was out of the question; he depended on his wife for everything. He was in a constant state of misery, which his doctors could do nothing to alleviate.

“His symptoms were so severe and his suffering so unrelenting that he yearned for death,” according to Roberta. “But he wanted to do what was legal. He wanted his doctor to help him.”

By 2006, Compassion & Choices had identified a physician willing to serve as plaintiff in a case testing the right to die with dignity in Montana, but the case still needed a patient. In 2007, the terminally ill Bob Baxter volunteered to be the lead plaintiff in a case that came to be called *Baxter v. Montana*. He knew the case would likely not be decided in time to help him, but he hoped to secure the right to seek aid in dying for other terminally ill Montanans.

Bob Baxter died on December 5, 2008—the same day District Court Judge Dorothy McCarter ruled that Montana’s state constitution guarantees “the right of a competent terminally ill patient to die with dignity.” He was 76 years old.

Roberta King says, “My father died knowing he made a difference, and that meant the world to him.”

Five years after Judge McCarter’s initial ruling, *Baxter* remains law in Montana, despite multiple attempts to overturn it in court and in the legislature. Roberta and her sister Leslie are committed to carrying on their father’s legacy.

“It really comes down to individual freedom,” says Leslie. “My father would be very proud to know that we continue to have this right in our state. And I’ll continue to fight so that all Montanans, and hopefully someday all Americans, can choose when to end a terminal illness.”



“My father died knowing he made a difference, and that meant the world to him.”

— Roberta King,  
daughter of Bob Baxter

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# Executive Summary

On December 31, 2009, Montana's highest court ruled that physicians are authorized under state law to provide aid in dying; that is, to prescribe medication that a terminally ill adult can take to shorten their dying process should the suffering become unbearable. Five years of public debates and legal challenges later, the *Baxter v. Montana* ruling stands, and death with dignity is in practice in Montana. Montanans and their elected representatives support the autonomy the ruling has afforded them, and polling overwhelmingly shows that they believe government has no business legislating private end-of-life healthcare decisions that are best left to an individual, his doctor and his family.

In the fall of 2014 the movement to protect death with dignity in Montana received a boon when young Brittany Maynard's story went viral. Weeks of high-profile media coverage repeatedly cited Montana as one of five states where aid in dying is authorized, and Montanans took notice: Record numbers have begun calling Compassion & Choices' End-of-Life Consultation Service and have stepped forward to protect *Baxter*. The number of physicians who provide aid in dying in the state is also on the rise.

*Five Years of Dignity* highlights key moments leading up to the historic ruling and chronicles the challenges that *Baxter* has withstood. It features Montanans affected by the ruling, including the plaintiffs, a judge and a witness to the peaceful death that aid in dying makes possible. This report also documents the broad public support for death with dignity seen in polling numbers, bipartisan votes and the many Montana residents who serve as volunteer advocates working to protect the freedoms afforded by the *Baxter* ruling.

## Highlights Include

■ **Five Years of Dignity** is book-ended by stories told by two widows whose lives weren't so different until their husbands' deaths took markedly different turns. "Erwin's Story" told by his widow Ethel Byrnes, attests to the loving and peaceful death the Missoula educator achieved by "being the driver of his own bus" when he utilized aid in dying. In contrast, Lynne Hilleboe of Kalispell tells "Jack's Story" about her terminally ill husband, a physician who could not access aid in dying and consequently ended his life with a self-inflicted gunshot on the patio of the couple's winter home in Arizona.

■ In 2013 Dr. Eric Kress, a family doctor from Missoula certified in palliative care, became the first Montana physician to speak publicly about prescribing aid in dying. Inspired by his bravery, many physicians came forward as advocates and received medical training by Dr. Kress and Compassion & Choices experts. Today, the Physician Advisory Council for Aid in Dying (PACAID) in Montana has 30 members.

■ **The Baxter Decision** is based on Montana Code Annotated and not the Montana Constitution. Former Supreme Court Justice Jim Nelson, whose special concurrence in the case was cited by *The New York Times*, acknowledges that while the ruling authorized aid in dying, he still has regrets. He writes that those "enduring the maelstrom of a life-ending illness... have an individual constitutional right to end their lives with the assistance of their physicians." That right, he argues, is greater than statutory law; it is "grounded in the attributes of humanness with which each of us is born" and inscribed in the Montana Constitution itself.

■ **Public opinion polls confirm** the majority of Montanans believe the role of government should be limited, especially in regard to private medical decisions: 66% of Independents, 59% of Republicans and 83% of Democrats support keeping aid in dying authorized in Montana.<sup>1</sup> When legislation that would undermine *Baxter* and imprison doctors for providing aid in dying came up, 73% of Montana voters opposed it. Such legislation failed twice in Helena thanks to votes from Democrats and Republicans alike—and Montana's libertarian values. In addition to

<sup>1</sup> Global Strategy Group, April 2013.

highlighting polling data, this report spotlights individuals from across the political spectrum and their reasons for supporting death with dignity.

■ **Public support for keeping** the medical option of aid in dying available in Montana is reflected in the efforts of passionate advocates and volunteers across the state who appear throughout this report.

■ **As the disability rights movement** becomes successful at ensuring people have access to the healthcare they deserve, its position on death with dignity has evolved. Dustin Hankinson, a longtime disability rights activist in Montana, was featured in a video about reconciling these two important movements for bodily autonomy. The video was picked up by *New Mobility Magazine*, a leading voice in the disability community. In an unprecedented move, their editorial board announced it is now divided on the issue rather than uniformly opposed.

■ **According to a new report by** the National Academies' Institute of Medicine (IOM), palliative care is too

infrequently or too slowly offered to patients who need it. Dr. Kress concurs with the findings in the IOM's new report, *Dying in America*, as does Compassion & Choices President Barbara Coombs Lee. These experts attest that the more patients know about their end-of-life options and the more options they are given, of which aid in dying is one, the less suffering they and their loved ones endure. Compassion & Choices offers end-of-life guidance and consultation to patients and family members at no charge in all 50 states.

■ **Nearby Oregon has a 17-year** thoroughly transparent record showing that death with dignity is sound policy and good medical practice. The Oregon Death With Dignity Act has been rigorously observed and documented by scientists, journalists and public health officials. Montanans can see how it works and, importantly, see that fears raised by opponents have never materialized. For the 0.2% of dying Oregonians who have actually accessed the law, it has worked as intended with no instances of abuse. It also improved overall end-of-life care for all Oregonians and increased hospice referrals and utilization.

## Montana Timeline

This timeline features key moments and players surrounding the historic *Baxter* ruling, and the subsequent challenges it has withstood.

**1999-2000** Compassion & Choices conducts extensive analysis of litigation as a tool to expand end-of-life choice in Montana.



**2000-2006** Search begins for plaintiffs, made challenging because most physicians have medical privileges at Catholic healthcare facilities. Litigator Mark Connell agrees to partner in bringing a case. Oncologist Stephen Speckart participates as a physician plaintiff.

**2007** Bob Baxter, a Marine veteran, outdoorsman and career long-haul truck driver living in Billings—suffering from lymphocytic leukemia, a painful disease for which there is no known cure—volunteers to be the lead plaintiff.



**October 2007** Baxter asks the court to affirm his legal right to die in a peaceful and dignified manner by taking medication prescribed by his doctor for that purpose. Co-plaintiffs are four physicians seeking assurance that they can provide aid in dying without becoming subject to criminal prosecution.

**December 2008** District Court Judge Dorothy McCarter decides the Montana Constitution guarantees "the right of competent terminally ill patients to die with dignity." The ruling comes too late to give relief to Baxter, who dies that evening. The state announces it will appeal the ruling.



**April 2009** Sheridan man Dick Gotshalk dies from ALS after suffering terrifying symptoms, turning his partner, Doris Fischer, into an activist. Within two months, Doris has written an affidavit to the court.





# Jack's Story

By Lynne Hilleboe

“You cannot imagine how painful it was, and how devastating it is, to our family that he chose to shoot himself to end his suffering.”

— Lynne Hilleboe

**Violent suicide among Oregon hospice patients has virtually disappeared since aid in dying became legal.**

**After 47 years of marriage, you know someone pretty well.** But still, some things can take you by surprise. In the spring of 2013, my husband, Jack, fatally shot himself at our home in Arizona.

When I returned from my walk that morning, I was thrilled to see that Jack appeared to be feeling well enough to be enjoying the sunshine out on the patio in a lounge chair. Instead, as I approached him, I saw a pool of blood beneath his head and the gun still in his hand.

In 2001, Jack retired from his career as an orthopedic surgeon in Kalispell (MT), having just been diagnosed with advanced prostate cancer. Over many subsequent years we saw numerous doctors and tried various therapies including chemo, which did extend his life. In October of 2012, he was told his PSA test result was very high and no longer able to be controlled. Jack asked the oncologist, "How much time do I have left?" The doctor said he didn't like to put a timeline on it, and that Jack should live each day to its fullest.

And so he did. We went to Arizona for the winter and, after the holidays, he traveled with our three boys, Todd, the oldest, and the twins, Eric and Scott to enjoy March Madness. Upon returning from this trip, his health rapidly declined, and an MRI showed the cancer now extensively involved his bone, liver and kidneys.

Having lived a full, active life of snow-skiing, biking, hunting, fishing, golfing, traveling and raising a family in his native Montana, Jack was a strong, independent, amazing person. He said more than once, "I don't want to die the way my father did." He wanted to die with dignity. I later found a brochure from an end-of-life organization while going through his things. He had obviously been investigating his options, but found none.

You cannot imagine how painful it was, and how devastating it is, to our family that he chose to shoot himself to end his suffering. In this world of modern medicine, certainly we can provide better end-of-life options to the terminally ill. If more options had been available, Jack could have had a peaceful death surrounded by loving friends and family.

If we had known about the option of death with dignity in Montana, we would have come home for Jack to die. Montanans must fight to keep aid in dying a legal, safe option. An adult of sound mind who is terminally ill deserves the freedom to plan a more peaceful end than Jack had.

# Comfort *Beyond* Reach

**In Montana and across the nation,** too few people are receiving the end-of-life medical care they need and deserve. Compassion & Choices has been working to improve access to palliative care and hospice for more than three decades. Sometimes called “comfort care,” palliative care is aimed at relieving a terminally ill person’s physical and sometimes emotional pain through medication, physical therapy, spiritual counseling or other methods. It involves and benefits family members, too, and is undertaken with the understanding that the treatment is not intended to cure disease or prolong life. Aid in dying is one rarely used treatment option along the palliative care spectrum. It allows a mentally competent, terminally ill adult to request a prescription for a life-ending medication from their physician.

A September 2014 report by the Institute of Medicine (IOM), the health arm of the National Academy of Sciences, examines the “mismatch between the services patients and families need and the services they can obtain,” and highlights the need for improved end-of-life care in the United States.

Dr. Eric Kress, a Missoula-based family doctor and palliative care specialist

who has fulfilled aid-in-dying requests for qualified terminal patients, says that the IOM’s *Dying in America* report reflects what palliative specialists have known for some time. He explains that terminally ill people “are not guided toward hospice by their physicians early enough, or sometimes even at all. Our healthcare system is not ‘patient-centered, family-oriented and consistently accessible near the end of life,’ which the Institute of Medicine confirms.” Kress says this leads to “unnecessary suffering and diminished quality of life that needn’t be so.”

## Findings in the *Dying in America* report include:

- **A palliative approach** typically affords the highest quality of life for the most time possible.
- **Providing the care** that people want—and avoiding costly but futile care that they do not want—means better communication between people or their families and the care team, as well as more emphasis on advance care planning.

■ **Improving the quality and availability** of medical and social services for people and their families could enhance quality of life through the end of life.

■ **Hospice is an important approach** to addressing the palliative care needs of people with limited life expectancy and their families.

■ **There are too few palliative care specialists,** and there’s too little palliative care knowledge among other clinicians who care for individuals with serious advanced illness.

Compassion & Choices President Barbara Coombs Lee, who co-authored the nation’s first death-with-dignity law in Oregon, notes that the law has dramatically improved overall end-of-life care in the state. According to Coombs Lee, “We think that’s because people in Oregon are more likely to think through their end-of-life wishes when they have real choices. And studies show that early admission to hospice care can extend the patient’s life and improve the quality.” Coombs Lee says that most Americans want to die at home, “but the sad truth is many don’t, because they fail to do advance care planning with their families and their physicians.”

Compassion & Choices’ trained end-of-life consultants help guide people through the dying process. We also provide support and emotional assistance to clients and their loved ones, and can help with completing advance directives and other planning documents.

Call 800.247.7421 if you or a loved one would like to learn more or receive a free consultation.



# By the Numbers...

**Public polling shows that Montanans reject efforts to criminalize personal choices and there is a real cost to legislators who support such penalties.**

## 82%

of Montana voters are driven by a fundamental belief that end-of-life choices are private, personal decisions that should be made by terminally ill people and their families without government interference.

A survey of 605 likely voters in Montana was conducted by Global Strategy Group between April 3 and April 4, 2013. The margin of error at the 95% confidence level is +/- 4.0%.

Global Strategy Group is a nationally recognized public affairs, communications, and research firm with offices in New York, Washington, DC, Hartford, and Los Angeles.

## 67%

of Montana voters would be less likely to vote for a legislator who supports proposals to send doctors to prison for complying with their patients' wishes.

## 69%

of Montana voters support allowing a terminally ill adult to end his or her life in a humane and dignified way, including 48% who strongly support such a choice, 59% of Republicans, 66% of Independents, and 83% of Democrats.

## 69%

of Montana voters believe the law should allow doctors to comply with the wishes of a dying patient who wants to ease her or his suffering and chooses to end his or her life.

## 73%

of Montana voters oppose proposals to send doctors to prison for providing medication that would allow patients to end their own lives in a dignified and humane way.

## 71%

of Montana voters say that if they were terminally ill and in distress, they would want the legal option to end their lives in a humane and dignified way.

### The bottom line is this:

**End-of-life choices are private and personal decisions** that terminally ill people make with their families—and Montanans believe it should remain that way. Broad majorities of Montanans support legal end-of-life choices and strongly reject any efforts to criminalize doctors for complying with their patients' wishes. Furthermore, this data suggests that legislators will pay a real price for supporting efforts to penalize and criminalize doctors for doing so. Ultimately, Montanans support the choice for others, want to be able to make the legal choice for themselves, and believe there is no role for government when it comes to making that decision.



**September 2009** Helena resident and cancer patient Steve Johnson becomes a powerful public advocate for death with dignity in Montana.



**December 2009** Montana Supreme Court affirms terminally ill adults have the right to choose aid in dying under state law and that physicians may not be criminally prosecuted for assisting them. Sidesteps constitutional question. Justice James Nelson writes powerful concurrence.

**March 2010** Jessica Grennan joins Compassion & Choices Montana and takes experienced health practitioners on months-long public education tour.



**April 2010** First patient is able to access a peaceful death through aid in dying from Montana doctor, as authorized by *Baxter*.

**July 2010** State Rep. Dick Barrett of Missoula undertakes drafting a bill to offer safeguards to *Baxter*, first in decades to propose an affirmative framework for aid in dying in Montana.



**February 2011** Supporters from around the state come to Helena to testify including Roberta King, daughter of Bob Baxter. Montana Senate Judiciary Committee debates and then rejects both bills.

**September 2011** Dr. Stephen Speckart and Dr. Eric Kress submit a request to the Board of Medical Examiners (BOME) to integrate aid in dying into the practice of medicine. Attorney Ron Waterman volunteers to provide invaluable counsel regarding BOME.



**January 2011** State Sen. Anders Blewett of Great Falls introduces SB 167 to implement *Baxter*, providing guidelines for patients and doctors. Sen. Greg Hinkle of Thompson Falls proposes SB 116 to overturn *Baxter* and criminalize aid in dying.



# Some Thoughts About *Baxter*, Michelangelo and the Sistine Floor



**James (Jim) Nelson** retired in 2013 as a justice of the Montana Supreme Court after nearly 20 years of service. Justice Nelson distinguished himself as a vocal and consistent advocate for human rights including, among others, the right to death with dignity. His lengthy special concurrence in *Baxter v. State*, described as “passionately worded” by the *New York Times*, focused on the fundamental rights to inviolable human dignity, autonomy and individual privacy as support for the right to aid in dying. In retirement, Justice Nelson continues to advocate for human rights. He serves on the legal advisory board of Free Speech for People, and is a frequent speaker and blogger for various organizations supporting human rights.

I was speaking to a group of students recently, and I was asked if there were any decisions during my career as a Montana Supreme Court Justice that I regretted. I answered that I could think of a couple, and that the *Baxter* decision<sup>1</sup> was one of them.

I explained that appellate courts, like Montana’s Supreme Court, typically decide cases on the narrowest grounds, avoiding constitutional issues if possible. And that, of course, is what we did in *Baxter*. The court concluded that, reading various Montana statutes together, persons with incurable illnesses who were going to die within a short period of time, accompanied by great suffering, had a legal avenue to seek and receive their physician’s assistance in dying a dignified death.

<sup>1</sup> *Baxter v. State*, 209 MT 449, 234 Mont. 354, 224 P3d 1211

And, despite the ruling’s detractors, we know that over the intervening five years since *Baxter*, Montanans suffering those types of illnesses have successfully sought and obtained that assistance from various compassionate physicians in this state. *Baxter* has worked well and as intended—and without the parade of horrors predicted by those who would interfere with a patient’s most personal decision.

So what’s my regret? Before the *Baxter* case reached us, District Judge Dorothy McCarter had written a courageous and brilliant decision in the underlying case. She concluded that Montanans’ constitutional rights of individual privacy and dignity protected the right of incurably ill patients to end their physical and mental suffering with the assistance of their physicians. Our court didn’t disagree with her, but, as noted, simply concluded that there was a narrower way to uphold her decision on nonconstitutional grounds.

And that’s what I regret. As I argued at some length in my special concurrence, I believed—and I still categorically believe—that our court should have simply upheld Judge McCarter’s decision on the constitutional bases she determined. It wasn’t that the court was wrong; it was simply that Judge McCarter was right—indeed, more right.

“The playwright Neil Simon once observed that, “if no one ever took risks, Michelangelo would have painted the Sistine floor.” And that’s my regret. Our Court painted the floor, when we should have painted the ceiling.”

Men and women who are enduring the maelstrom of a life-ending illness; who are suffering terribly from pain and disability; who are not only losing their bodies to their illness, but—and in many cases, worse—their spirits, their dignity and their autonomy, cultivated and treasured over a lifetime, do, and let me repeat do, have an individual constitutional right to end their lives with the assistance of their physicians. That right is protected and guaranteed by Montana’s constitution. That right is fundamental: It is a natural right grounded in the attributes of humanness with which each of us is born; it is a right grounded in our ability to make and take responsibility for our own moral decisions; it is an elemental part of our individual sentience and consciousness. It is a right that society must respect.

My regret, then, lies in our court’s failure to recognize and apply these incredibly powerful rights and attributes of our humanity. I can think of no more empowering and comforting final thought in the mind of a person who chooses to end her own life and personal suffering than the knowledge that her autonomy, privacy and dignity were respected by her family, friends and fellow citizens to the end. She was born a whole person and she died the same way. She was loved.

Risk is a part of life. Some accept—even seek—more risk than others, but we all live out our lives with risks small and great. That, also, is a part of the human condition.

I believe, too, that courts deciding cases like *Baxter* should be willing to take risks. I believe that sometimes the road not taken is the better. I believe that upholding fundamental constitutional rights is often better than searching for and creating a narrower path. I believe that is what the constitution is for—to protect the most sacred and fundamental natural rights that we, as human beings, possess: the right of inviolable human dignity; the right of individual privacy; the right of autonomy to find our own path through life and into death.

– **James C. Nelson**  
Montana Supreme Court Justice (Ret.)

**January 2012** BOME issues board advisory stating its policy will be to consider aid in dying as it would any other medical procedure when evaluating physician conduct.



**April 2012** Dr. Kress joins Dr. Speckart to found the Physician Advisory Council for Aid in Dying (PACAID).

**August 2012** With his family at his side, Steve Johnson achieves peaceful death without any aid-in-dying medication.

**November 2012** Emily Bentley and Amy Hetzler join the Montana team after Jessica Grennan is promoted to National Field Director.



**December 2012** Montanans Against Assisted Suicide (MAAS) files suit contesting BOME policy on aid in dying.



**February 2013** Sen. Dick Barrett again introduces a bill to provide safeguards; bill fails in committee. Volunteers testify in support.

**February 2013** Opponents introduce the “Physician Imprisonment Act,” calling for 10-year prison terms and \$50,000 fines for doctors who provide aid in dying. Passes House despite bipartisan opposition; moves to the Senate. Appears headed for quick passage.



2013

**March 2013** Dr. Kress’ testimony and statewide newspaper editorial—“Which doctors will be sent to prison? I am one of those doctors. I have written aid-in-dying prescriptions”—provokes backlash against bill and elicits national media attention. Letters pour in thanking Dr. Kress for his bravery.





## Disability Rights Activists Speak Out for Autonomy

Last summer, *New Mobility*, a magazine for wheelchair users, ran an online ad from Compassion & Choices. This remarkable gesture—the magazine has historically opposed end-of-life choice—was accompanied by a thoughtful editorial describing the disability rights community’s struggle with the issue. Alongside the editorial was a photo of Dustin Hankinson of Missoula, a passionate advocate for death with dignity.

Hankinson has Duchenne muscular dystrophy. “At some point, my cardiac muscles will become too weak for me to breathe,” he says. “When that time comes, I believe I should be the one to decide my fate.”

He attributes opposition to end-of-life choice within the disability rights community to historic mistreatment of people with disabilities. “We were warehoused in deplorable conditions, or the family kept us home as a secret,” he says. Colliding with this lingering distrust is a fundamental misunderstanding about what end-of-life choice really means.

“It’s not about people with disabilities,” he says. “It’s about people who have a terminal illness. If you get a terminal illness and you’re in your right

mind, you should be allowed to decide. It’s your life, your pain, your treatment, your death—your choice.”

Hankinson has become a very public face for the death-with-dignity movement in Montana and across the country. He has blogged, written op-eds and letters to the editor, testified, and lobbied his legislators to protect the right to seek aid in dying in Montana.

“We can honor patient choice and protect vulnerable citizens,” he says. “The two are not mutually exclusive.”

Bonnie Kelley of Frenchtown agrees that misconceptions about aid in dying can cloud people’s views. She’s been an enthusiastic advocate since she came across the Compassion & Choices booth at the Western Montana Fair in 2013. Bonnie, age 40, has been in a wheelchair since a severe car accident three years ago.

“We can honor patient choice and protect vulnerable citizens. The two are not mutually exclusive.”

— Dustin Hankinson

“I saw the word ‘compassion,’ learned about the *Baxter* decision, put my name down and started showing up,” she says. Now an active volunteer, Bonnie writes letters to the editor and promotes the movement at events, and among friends and family. A persuasive speaker, she excels at educating people one on one—like one of her caregivers, who asked Kelley about aid in dying after learning about it from a *60 Minutes* broadcast in October 2014.

“She didn’t know much about the issue, so I explained it to her from the get-go—that it’s aid in dying for the terminally ill, not suicide. That we have the right in Montana now, but we fight every couple of years in the legislature to keep it—and to keep them from making laws that persecute the doctors who prescribe or the people who seek a prescription.”



After her accident, Kelley spent time in a nursing home, where she saw many people suffering at the end of life. This galvanized her support for death with dignity.

“Not everybody who gets the prescription uses it,” she says. “But I am dedicated to this because I believe that people should have a choice and continue their independence all the way to the end of their life.”

# Doctors for Dignity

Physician Advisory Councils for Aid in Dying (PACAIDs) have formed in a growing number of states. Montana has 30 doctor-members who work to establish and share best practices with other healthcare providers, and actively educate their patients and communities about aid in dying. Prescribing aid in dying is not a requirement for PACAID doctors in Montana.

In the five years since the **Baxter decision**, committed and compassionate physicians have stood up to protect the end-of-life freedom it affords Montanans. Two of them are Dr. Colette Kirchhoff of Bozeman and Dr. Eric Kress of Missoula. Both are family practitioners board certified in hospice and palliative care who also serve on Montana's Physician Advisory Council for Aid in Dying (PACAID).

Dr. Kress is the President of PACAID. He became well known for his outspoken opposition to HB505, aka. "The Physician Imprisonment Act," during the 2013 legislative session. The bill would sentence Montana physicians to ten years in prison for providing aid in dying to patients who request it. During his testimony to the Senate Judiciary Committee, he became the first Montana physician to speak publicly about providing aid in dying. He also lent his voice and expertise to a series of radio ads making it clear that death with dignity was now authorized in Montana.



In October 2013 Dr. Kress and Compassion & Choices Medical Director Dr. Judy Epstein hosted a private seminar for ten Montana physicians. The daylong event featured a number of topics, ranging from the *Baxter* decision to medical best practice. Medical topics discussed included patient selection criteria, prescription medication options and availability, consent forms and paperwork, the dying process, and post-mortem best practice. Attorneys were on hand to answer questions about the *Baxter* decision. Physicians left with full knowledge of how to proceed should they treat the rare patient who meets the criteria for aid in dying.

Dr. Kress chooses to follow the criteria established by Oregon's Death With Dignity Act, which provides clear standards of care for the practice of aid in dying.

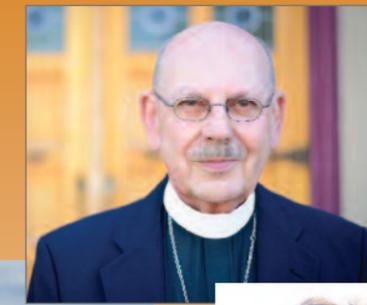
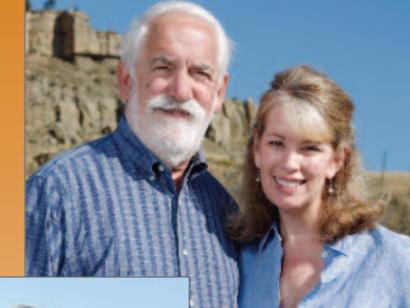
"I've had so much support from patients," he says. "I can't think of one patient who has left me because of this issue. And I've had hundreds of people who want me to be their doctor because I've been out front on this and written prescriptions."



**Like Eric Kress, Dr. Colette Kirchhoff** also worked to defeat the law that would have repealed the *Baxter* ruling's freedoms. She was featured with nine other physicians in a newspaper advertisement against the bill, saying, "HB505 has misconstrued the sensitive and important issue of end-of-life care. If passed, it would interfere with physicians' ability to communicate honestly and with integrity to our patients." She went further, speaking to her state senator and writing letters to the editor arguing against the bill.

Dr. Kirchhoff readily discusses end-of-life choice with her private-practice patients, and has incorporated end-of-life issues into her work as a teaching physician in lectures and during rounds with residents. "It's someone's personal choice, and it must remain authorized in our state," she says. "It's a rarely chosen path, and it's one that needs to be legal and safe."

# Volunteer SPOTLIGHT



The death-with-dignity movement in Montana owes its success and its momentum to volunteer advocates across the state. Their vocal passion for both freedom and privacy at the end of life has helped convince Montana legislators to defeat bills aimed at criminalizing aid in dying in every legislative session since 2011.

“Vote for freedom even if your own convictions won’t allow you personally to exercise it.”

— Elwood English, Billings

Volunteers pursue a variety of activities and strategies that continue to expand the movement: submitting letters to the editor in local newspapers; connecting with lawmakers; hosting house parties to educate their friends; tabling at farmers markets, county fairs and healthcare events; and helping others sign up to become more involved.

Since 2013 supporters have collected over 3,000 signatures to keep death with dignity authorized in Montana, have hosted over 20 house parties, have tabled at over 50 events and have recruited 20 doctors to become advocates.

These unpaid advocates’ most powerful tool is a compelling voice.

Each expresses their gratitude for the peace of mind afforded to Montanans by the *Baxter* decision and their common-sense insistence that government stay out of private end-of-life medical decisions. Their voices and their commitment continue to carry the day in Montana.

In Billings, **Elwood English** has organized several well-attended meetings at his church to discuss metaphysical questions about passing and the right to die in peace and privacy. Elwood recognizes that lawmakers may be opposed to aid in dying for religious reasons. He knows that death with dignity isn’t for everybody, so his message to lawmakers is simple and strikes a chord in a state

with long and deep libertarian roots. “Vote for freedom even if your own convictions won’t allow you personally to exercise it,” he said in a letter.

Ninety-five-year-old **Barbara Kirkland** of Helena and her daughter Maren are very close. The two are often seen together around town. Maren was in the audience in 2013 when her mother testified to the Senate Judiciary Committee against House Bill 505, dubbed the “Physician Imprisonment Act.” “I’m dying,” Barbara said. “It won’t be quick. I do not want this. House Bill 505 will deny me the chance to get out of this life comfortably. It is abuse of an elder.” The committee did not pass the bill.

**Dan Lourie’s** earliest memory is fleeing from the Nazi bombing of Antwerp, Belgium, the city of his birth. He believes this experience is the root of his lifelong social justice work. In Bozeman now, Dan has submitted several letters to the editor in defense of death with dignity. He speaks passionately about morality and writes, “What legal or religious ground can exist for the immorality of denying this final request of a fellow human being? We are fortunate that Montana is one of a few states in which such physician-assisted death is authorized. It is the just and moral path, and it is the

continued protection of that legality which has become important to me.”

Volunteer advocates like Elwood, Barbara, Maren and Dan can be found all across Montana. Each one brings a singular wisdom and voice to the issue of end-of-life freedom. Working together and with Compassion & Choices, their message is even more powerful. Policymakers need only listen to what these engaged, passionate constituents are saying to do the right thing: Protect the freedoms given to Montanans by the *Baxter* decision.

“It is the just and moral path, and it is the continued protection of that legality which has become important to me.”

— Dan Lourie, Bozeman

**April 2013** Physician Imprisonment Act goes to full Senate vote and is rejected 27 to 23. Libertarian arguments persuade several Republican senators to oppose intrusive government. Kress and Bentley celebrate.



**October 2013** Hundreds turn out to hear Kress speak as he embarks on statewide tour. Attitudes among Montana physicians see major shift due to Kress’ courage. Dr. Kress and Dr. Judy Epstein, Medical Director at C&C, hold a private medical seminar for physicians.



**March 2014** Erwin Byrnes of Missoula takes medication prescribed to him to end his suffering. An article in the *Missoulian* newspaper about his choice reignites the conversation about aid in dying.



**June 2014** C&C tables at Montana PRIDE celebration and Butte Folk Festival; both prove successful events for recruiting supporters.



**July 2013** Dr. Jim McCreedy approaches C&C about becoming involved after a terminally ill friend dies violently because he could not access aid in dying. McCreedy goes on to become a powerful voice with conservative lawmakers.

**September 2013** BOME rescinds all 22 of its board advisories.

**December 2013** District Court Judge Mike Menahan in Helena rules that MAAS’s case against BOME is moot.

**February 2014** Hetzler travels state speaking to groups; arranges for end-of-life literature to be placed in over 50 venues including senior living centers, medical facilities, hospices and local agencies on aging. List of supporters doubles.



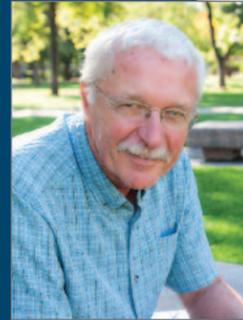
**April 2014** National Healthcare Decisions Day is celebrated in seven Montana cities, encouraging people to complete advance directives and discuss end-of-life care. ACLU Montana Deputy Director Ninia Baehr hosts event in Bozeman.

# Pushing Past

**Montana voters, volunteer advocates and lawmakers** across the political spectrum overwhelmingly support aid in dying. The powerful message that government shouldn't be making private end-of-life medical decisions for people resonates strongly in a state that has proud libertarian roots.

During the 2013 legislative session, "The Physician Imprisonment Act," which would have put doctors in prison for up to ten years for providing aid in dying, failed in the Montana Senate with just under **30% of Republicans siding with 90% of Democrats to vote against it.**

**1. Democratic Senator Dick Barrett** is a longtime professor of economics turned policymaker. He has carried bills to provide safeguards similar to the Oregon law in the Montana Senate and is a well-respected policy expert on this issue. He believes we should always honor and respect the privacy, dignity and autonomy of others, and that is especially true when a person is dying and preparing to leave us.



**2. Senator Cynthia Wolken is a Democrat** and first-time senator in 2015. She proudly campaigned as a champion of the right to die with dignity and won with 57% of the vote in her district. Candidates across Montana feel confident speaking in favor of aid in dying. She considers not honoring the wishes of seniors who are suffering from their terminal disease to be elder abuse.



**3. Elfie Neber is a 64-year-old college instructor** and a Democrat who lives in Great Falls, Montana. She understands there must be safeguards in place so that the right to die is not abused, but believes that terminally ill people should not have to suffer a dying process they find unbearable.



# Partisanship

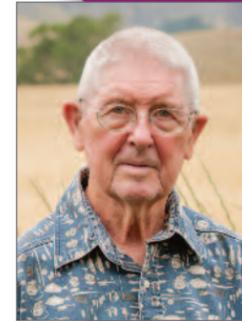
**1. Senator Chas Vincent is a conservative Republican** from Libby. He spoke against "The Physician Imprisonment Act" on the Senate floor saying, "This is fundamentally a role-of-government discussion. Government's role is to protect me from you and you from me. It is not to protect me from myself. Many of you have a libertarian streak running through you like I do. There are certain costs to living in a free society, folks. Sometimes we don't like those costs, and this is one of them. This is not government's role."



**2. Representative "Doc" Moore, Republican** from Missoula, has been an active supporter since before he ran for office. Now he is a strong ally in the State House. He works with his caucus and his delegation to ensure the *Baxter* decision remains protected. During the 2013 legislative session, Rep. Moore published an influential letter to the editor about his young wife, who suffered greatly as she died.



**3. Dr. Jim McCreedy is a volunteer advocate** from Great Falls who practiced internal medicine for many years in Kalispell. A staunch conservative, he began working to improve access to aid in dying after a long-time colleague and friend in Arizona resorted to violent means to end his terminal suffering because the choice was not available. In a guest editorial Dr. McCreedy asks, "Why would anyone want to interfere with such a private thing as a dying person's last wishes?"



**Polling shows that 69% of Montana voters support** allowing a mentally competent adult who is dying of a terminal disease to choose to end his or her life in a humane and dignified way.

Support in Montana cuts across demographic and partisan lines, and can be seen among **Republicans, Democrats and Independents.**



**2014**

**July 2014** Montana disability rights advocate Dustin Hankinson is featured in C&C video marking the Americans With Disabilities Act; *New Mobility Magazine* for wheelchair users publishes editorial making historic move from opposed to neutral on the issue of aid in dying.

**September 2014** Compassion & Choices board member Dr. Charlie Hamlin speaks in Bozeman, solidifying strong support in the medical community.



**October 2014** Widespread coverage of Brittany Maynard's story pushes Montana into the national spotlight as one of five states where death with dignity is authorized. Calls to C&C end-of-life consultation service break records.



**2014**

**November 2014** Sen. Cynthia Wolken elected while campaigning for death with dignity. Volunteers across Montana meet with their legislators to advocate for death with dignity on what would have been Brittany Maynard's 30th birthday.



**January 2015** Celebrations held across Montana to commemorate Bob Baxter and *Five Years of Dignity* in Montana. Legislative session begins. *Six Word Project* unveiled. Volunteers prepare to defeat bill that would eliminate access to death with dignity in Montana.

**2015**

**Five Years of Dignity**  
*The Baxter Ruling and End-Of-Life Freedom in Montana*



**If death can be beautiful, his was beautiful.** On a sunny Montana morning in March my husband, Erwin, died at home surrounded by family and love. He died as he lived—on his own terms, his own timeline and with dignity.

In the 1940s, death was seen as a natural part of life. It happened. People died, we celebrated their lives, buried them and remembered them always. Now people live much longer but sometimes that means they suffer more.

In 1949 Erwin and I met at the University of Montana in the dorm where I lived and where he took his meals. He liked to say that I asked him to play catch (softball) and ended up catching him. We were married the following summer in Cascade, where I was born. We have six children together.

He was a wonderful father, attentive and involved. He refereed boys' and girls' high school basketball and high school football. In addition, he taught history and economics. As an educator, he influenced many lives. Erwin and I accepted death as a part of life. We talked about death together and with our children.

When Erwin learned that his cancer was terminal and he faced a decline into even more pain and indignities, he made the choice to finish his life on his own terms. The decision seemed to lift his spirits. He then turned to planning his own life celebration, taking care of all the details as he loved to do.

He also spent hours visiting with old friends, reminiscing and saying his goodbyes. He asked his friend Gene to serve as master of ceremonies at his celebration and asked others to say a few words too. He gathered his family and helped choose pictures for the celebration while laughing and sharing memories.

## Erwin's Story

By Ethel Byrnes



He said, "We have to be the driver of our own bus." Erwin was definitely behind the wheel in the last months of his life.

With an understanding and blessing from me and our children, Erwin got a prescription for medication that would end his suffering. Through laughter, tears, conversation and love, our family supported his choice.

On the morning of his death, the family gathered around Erwin. Guitar music, written and recorded by our grandson, played softly as we hugged him and spoke of our love for him. We all talked of our life as a family and revisited some favorite times.

Erwin took the medicine on March 17, 2014, at 10:00 a.m. and died gently not long after.

Peace and comfort filled the room. Erwin loved sports, and we were talking about the NCAA tournament, carrying on a conversation as he drifted away. I was holding his hand. He appeared to smile a little as we all kissed him goodbye and sent him on his way with words of our love for him.

It gave Erwin great peace of mind to know he wouldn't suffer in the end. He chose death with dignity, and our family was able to love him fully through his final breath. It was beautiful. I will always be grateful this option was available to him when he

asked for it. As a compassionate and free people, we all deserve this choice, and Montana lawmakers must never take it away.

“ On a sunny Montana morning in March my husband, Erwin, died at home surrounded by family and love. He died as he lived—on his own terms, his own timeline and with dignity. ” — Ethel Byrnes



# The Oregon Experience

Implemented in 1997, Oregon's first-in-the-nation law authorizing death with dignity has been rigorously observed and documented by scientists, journalists and public health officials. The resulting record offers important insight into who uses aid in dying and how it works. Importantly, it also shows that none of the fears opponents of the law have raised over the years have materialized.

## WHO THINKS ABOUT IT?

One in six dying Oregonians have considered requesting the aid-in-dying prescription seriously enough to discuss it with their families.

Consideration of aid in dying is higher among patients with cancer and ALS.

## WHO ASKS FOR IT?

According to physicians prescribing aid-in-dying medication, the top three concerns their terminally ill patients cite for requesting it are loss of autonomy, inability to participate in activities that make life enjoyable and loss of dignity.

According to family members of Oregonians who formally request aid in dying, the top concerns for the dying person are being able to control the circumstances of death, wanting to die at home and fearing loss of dignity.

## WHO USES IT?

For every 1,000 people who die in Oregon, just two (.2%) use aid-in-dying.

In Oregon, 1,173 people have received an aid-in-dying prescription since the law was implemented, but just 752 have ingested it.

98% of Oregonians who receive and consume the medication are enrolled in hospice; more than 98 percent are covered by Medicare, Medicaid or private insurance.

## ALL UPSIDE:

Aid in dying is completely voluntary for both doctors and patients; doctors may decline the request and patients may rescind it. And of course, eligible patients may receive the prescription and never consume it since it is a self-administered medication.

State health department records confirm that no instances of abuse or coercion have occurred under Oregon's death-with-dignity law.

End-of-life care is overall improved in Oregon since the law's implementation, in large part due to the dialogue the death-with-dignity law encourages and mandates between physicians and patients. Hospice referrals are up, as is the use of morphine for palliative care. Oregon now has the lowest rates of in-hospital deaths and the highest rates of at-home deaths in the nation.

## End-of-Life Care Definitions

Decide what you want and tell your loved ones today. Use these definitions to make sure everyone is on the same page.

For more end-of-life planning resources visit [www.CompassionAndChoices.org](http://www.CompassionAndChoices.org).

**Advance directive** - A legal document comprised of a "living will" and a "healthcare durable power of attorney." In a living will people outline their end-of-life medical wishes in the event they are unable to communicate. The durable power of attorney allows people who are unable to communicate to appoint another person, called a healthcare agent or proxy, to make medical decisions on their behalf.

**Palliative care** - Sometimes called "comfort care," palliative care is aimed at relieving a person's pain through medication, physical therapy, spiritual counseling or other methods, and with the understanding that the treatment is not intended to cure or prolong the person's life.

**Aid in dying** - The process that allows a mentally competent, terminally ill adult to legally request a prescription for a life-ending medication from their physician. The medication must be self-administered.

**Death with dignity** - Both a concept and a movement; in both cases it includes the ideas of limiting suffering and providing control and choice at the end of life. Usually death with dignity also includes support for a mentally competent, terminally ill patient to request a lethal dose of a drug to shorten their dying process.

**DNR** - Stands for "do not resuscitate," a medical order documenting an individual's request (made while that person is able and conscious, or by that person's healthcare proxy if he or she is not) that no measures be taken to resuscitate them should their heart or breathing stop.

**Palliative/total/terminal sedation** - The continuous administration of medication to relieve severe, intractable symptoms that cannot be controlled while the person is conscious. This state is maintained until death occurs.

**Voluntary stopping of eating and drinking (VSED)** - The conscious refusal to accept fluids or nutrition. This procedure is gaining in popularity and acceptance as a method of ending prolonged suffering.

## Act Now to Keep Death with Dignity Authorized in Montana!

**The Supreme Court's 2009 Baxter decision recognized Montana as one of the few states to allow aid in dying. Now, some groups won't stop until they take that right away from us.**

**Yes!** I support the *Baxter* decision.

Please visit our website [www.Compassion-AndChoices.org/montana](http://www.Compassion-AndChoices.org/montana) to sign the petition and protect your right to a peaceful death.

***Want to learn more or volunteer?***

Contact Amy in Montana at 406.552.2916

... or ...

Like us on Facebook [www.facebook.com/CompassionAndChoicesMontana](http://www.facebook.com/CompassionAndChoicesMontana)

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**[www.CompassionAndChoices.org](http://www.CompassionAndChoices.org)  
800.247.7421**