

**Background information for Pro-Life Resolution**  
**Re: Repeal/Replace the “The Ten-Day Law” in the Texas Advance Directives Act**

Current Texas law (Section 166.046, Texas Health and Safety Code) authorizes a physician to withdraw life-sustaining medical treatment (like a ventilator) from a patient despite the patient’s advance directive, expressed medical decisions, or directive of the surrogate claiming the patient would like the treatment. Once the physician’s decision is reviewed and agreed upon by the hospital’s own ethics committee, the patient or surrogate is given ten days to transfer to another facility or physician willing to honor this basic medical decision of the patient. The physician and the facility are legally immune when acting under the statute to withdraw or withhold basic life-sustaining treatment, which inevitably speeds the death of the patient.

This law violates the Pro-Life principles of respecting the worth and dignity of each individual human. Respect for a patient’s dignity requires allowing patients and their family make medical decisions about the basic Life-sustaining treatment they receive. Additionally, current law leaves no appeals process for the patient whose civil liberties have been taken and given to the hospital committee, generally comprised of hospital employees with a clear conflict of interest.

**Solution:**

Many incremental bills that address the ten-day deadline in Section 166.046 have been filed in the Legislature since 2007. Removing the draconian ten-day deadline would afford sufficient time to patients and their families to transfer to a more appropriate care setting. These Pro-Life bills would require that basic Life-sustaining treatment continue until the patient while allowing physicians and hospital staff to transfer the patient in question to another hospital, a long-term acute care facility, or even home health care.

This legislation would mirror how at least eleven other states protect vulnerable patients from imposed quality of life value judgments by physicians and hospitals which lead to imposed death.

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- Hundreds of published peer-reviewed medical ethics, bioethics, and law review articles have criticized the imbalance in this provision of the Texas Advance Directive Act as “not sufficiently fair” for the patient.<sup>1</sup>
- One legal criticism in the *Baylor Law Review* argues that Texas law provides more due process protection to tenants facing eviction from rental property, workers from their wages being garnished, or automobile owners losing their cars to repossession than to patients wanting life-sustaining treatment in a hospital setting.<sup>2</sup>
- The current ten-day law ruins the doctor-patient relationship by pitting health care providers against families.
- Current law offers no medical limits of the application of the process so that all hospitalized patients are at risk.
- Bed availability, insurance constraints, or Medicaid eligibility can cause delays in transferring patients. Or this red tape is cleared, the transfer occurs, but far more time than ten days is required.
- Twelve other states have enacted the appropriate balanced solution: Alabama, Florida, Idaho, Kansas, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Ohio, Oklahoma, and Wyoming.
- Two other states offer additional protection for discriminatory withdrawal of treatment or simply prohibit the withdrawal of wanted treatment altogether: Idaho and Oklahoma.

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<sup>1</sup> Thaddeus Pope, “Texas Advance Directive Act: Nearly A Model Dispute Resolution Mechanism For Intractable Medical Futility Conflicts,” *QUT Law Review* 16, no. 1 (2015): 44.

<sup>2</sup> Nora O’Callaghan, “Dying for Due Process: The Unconstitutional Medical Futility Provision of the Texas Advance Directives Act” *Baylor Law Review* 60, no. 2 (2008).

## **Resolution to Repeal and Replace Part of the Texas Advance Directives Act**

**Whereas**, every year in Texas, an unreported number of vulnerable patients, like 46 year-old Chris Dunn in Houston, Texas, are victims of the unethical, unconstitutional, and unprecedented 10-day hospital committee process under the Texas Advance Directives Act; and

**Whereas**, Section 166.046, Texas Health and Safety Code, authorizes physicians and hospitals to unilaterally withhold or withdraw a patient's basic Life-sustaining treatment against the patient or patient's family's will without any appeal; and

**Whereas**, through the process in Section 166.046 of the Texas Health and Safety Code, a physician and the hospital's own ethics committee may refuse to honor a patient's medical decision to receive Life-sustaining treatment after giving the patient ten days notice, regardless of whether the patient's decision is recorded in a written Advance Directive, if the patient's Medical Power of Attorney articulates this decision, and even if the patient himself expresses his desire for the treatment; and

**Whereas**, this law awards all medical staff complete civil, criminal, and administrative immunity to override a patient's medical decision, although withdrawing the wanted treatment will likely result in the patient's death; and

**Whereas**, this legal process in Section 166.046 of the Texas Health and Safety Code simultaneously violates the patient's constitutionally protected right to due process, and the patient's Right to Life without opportunity for appeal or legal recourse; and

**Whereas**, no other state has such an egregious and unethical law that violates the patient's Right to Life by handing over such medical decisions to physician's and hospitals' internal ethics committees.

**Therefore, be it resolved** that the Republican Party of \_\_\_\_\_ County calls on the Texas Legislature to repeal the unethical, unconstitutional, and unprecedented Section 166.046 of the Texas Health and Safety Code and replace it with a truly Pro-Life option that requires physicians to respect a patient or surrogate's medical decision about basic Life-sustaining treatment while allowing physicians to transfer these patient to another physician or facility that will honor their choice to continue the vulnerable patient's basic Life-sustaining treatment.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the Precinct Convention of Precinct # \_\_\_\_\_ of the \_\_\_\_\_ County Republican Party of Texas.