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Justices Accept Oregon Case Weighing Assisted Suicide

By LINDA GREENHOUSE

WASHINGTON, Feb. 22 - In an action likely to reopen a national debate over whether doctors should be able to help terminally ill patients end their lives, the Supreme Court agreed on Tuesday to hear the Bush administration's challenge to the only state law in the country that authorizes physician-assisted suicide.

Oregon's Death With Dignity Act, the administration's target, was approved twice by the state's voters and took effect in November 1997. According to the state, in a brief filed last month, 171 patients have used the law to administer lethal doses of federally regulated drugs that their doctors prescribed for them.

In the administration's view, suicide is not a "legitimate medical purpose" under regulations that carry out the federal Controlled Substances Act. Consequently, the administration will argue before the Supreme Court, as it did unsuccessfully in the lower federal courts, that doctors who prescribe drugs for committing suicide violate the federal law and are subject to revocation of their federal prescription license. The license applies to broad categories of medications and is necessary, as a practical matter, for a doctor to remain in practice.

The Bush administration's position, announced in November 2001 by John Ashcroft, then the attorney general, reversed the response to the Oregon law by Janet Reno, the attorney general in the Clinton administration.

In a letter to Congress in June 1998, Ms. Reno said there was no evidence that Congress "intended to displace the states as the primary regulators of the medical profession" when it enacted the Controlled Substances Act in 1969. "The federal government's pursuit of adverse actions against Oregon physicians who fully comply with that state's Death With Dignity Act would be beyond the purpose of the C.S.A.," she wrote.

The federal government's change of heart in 2001 led the Oregon attorney general, Hardy Myers, to go to federal court to block the Justice Department's proposed enforcement order. A doctor, Peter A. Rasmussen; a pharmacist, David M. Hochhalter; and several terminally ill state residents joined the lawsuit as plaintiffs. The state won an immediate temporary injunction from the Federal District Court in Portland, which Judge Robert E. Jones made permanent in April 2002.

Voting 2 to 1, a three-judge panel of the United States Court of Appeals for the Ninth Circuit upheld the injunction last May. "The attorney general's unilateral attempt to regulate general medical practices historically entrusted to state lawmakers interferes with the democratic debate about physician-assisted suicide and far exceeds the scope of his authority under federal law," Judge Richard C. Tallman wrote for himself and Judge Donald P. Lay, over the dissent of Judge J. Clifford Wallace.

The administration's appeal, Gonzales v. Oregon, No. 04-623, which is now filed under the name of Mr. Ashcroft's successor, Alberto R. Gonzales, and which the Supreme Court will hear in October, argues that the

Ninth Circuit's decision "stands the proper relationship between the federal and state governments under the Constitution on its head." The brief asked the court "to correct this serious misconception of the relative powers of state and federal governments."

The issue, the administration asserts, is "who gets to decide," whether "the attorney general, pursuant to a uniform national standard, or each of the 50 states, according to 50 different views regarding the proper use of controlled substances."

Although the justices have agreed to review the case, the "who gets to decide" argument on the merits may be a hard sell. The court has been notably deferential to the states, and eight years ago, in another assisted-suicide case, it appeared to invite continued state experimentation.

In that earlier case, Washington v. Glucksberg, the court rejected the argument that the Constitution itself gives terminally ill people a right to physician-assisted suicide. But at the same time, the justices were careful to make clear that they were not closing the door. Chief Justice William H. Rehnquist concluded his majority opinion with these words: "Throughout the nation, Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician-assisted suicide. Our holding permits this debate to continue, as it should in a democratic society."

Although it has constitutional overtones, the new case essentially presents a question of administrative law, one that would be routine in most other contexts: is a federal agency's action authorized by its governing statute? The appeals court concluded that the Controlled Substances Act was addressed to "drug abuse and prevention," and that the attorney general had exceeded his statutory mandate by seeking to apply it to assisted suicide.

Despite the narrowness of the legal issue, the case is likely to galvanize debate over assisted suicide much as the 1997 case did. James Bopp Jr., president of the National Legal Center for the Medically Dependent and Disabled and a longtime lawyer for the National Right to Life Committee, announced Tuesday that he would coordinate "an all-out legal effort in support of the Ashcroft directive."

Eli D. Stutsman, a Portland lawyer who represents the doctor and pharmacist in the new case and who was also involved in the earlier litigation, said in an interview that renewed public attention would lead to increased understanding and support for the option of assisted suicide. Mr. Stutsman noted that of the 30,000 Oregon residents who die each year, only 20 or 25 have chosen to use the Death With Dignity Act.

The law contains precise procedures for informed consent, including an explanation to the patient of alternatives to suicide, like pain relief and hospice care. Two doctors must agree on the patient's mental competence, diagnosis and prognosis; there must be a "reasonable medical judgment" that the patient will die within six months of "an incurable and irreversible disease."