

Court to rule on Oregon assisted-suicide law

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WASHINGTON (ABP)—Epitomizing what is at stake in the battle over a replacement for retiring Justice Sandra Day O'Connor, a skeptical Supreme Court heard arguments in a case involving Oregon's assisted-suicide law.

The justices are considering whether the U.S. attorney general can use federal drug-control laws to punish physicians who prescribe death-hastening drugs to patients.

Gonzales v. Oregon represents the first contentious social issue to come before the court since newly appointed Chief Justice John Roberts took the helm Oct. 3. And the case was heard only two days after President Bush announced a nominee to replace O'Connor, who often has been a moderate swing vote on such issues.

Not at issue in the Oregon case is whether the Constitution provides individuals with a "right to die." However, the case will determine whether a federal administration that is opposed to a state's policy allowing physician-assisted suicide can effectively override it, even though the legal

system historically has given states the authority to regulate the medical professions.

"Certainly the practice of medicine by physicians is an area traditionally regulated by the states, is it not?" O'Connor asked federal Solicitor General Paul Clement, who was arguing on behalf of Attorney General Alberto Gonzales and the Justice Department.

Clement replied, "That has to be reconciled with the fact that, for 90 years, the federal government has had a prominent role in controlling" narcotics and other substances.

The case began with the nation's first and only law legalizing physician-assisted suicide, which Oregon voters approved in 1994 and reaffirmed in 1997. It allows doctors to prescribe oral medications to hasten death for terminally ill patients who are mentally competent and meet other strict criteria. Since the law was enacted, according to court documents, approximately 70 patients have used it to end their lives.

Members of Congress then inquired if the federal Controlled Substances Act would allow the Justice Department to punish Oregon physicians with federal controlled-substances licenses who prescribed suicide drugs. Then-Attorney General Janet Reno determined in 1998 that her Justice Department would not pursue such sanctions.

However, with the advent of President Bush's administration in 2001, then-Attorney General John Ashcroft reversed the Justice Department's position. Ashcroft determined that prescribing drugs to hasten death violates a provision in the federal law that says "a prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice."

After Ashcroft resigned, his successor, Alberto Gonzales, maintained that

stance.

The state of Oregon asked a federal district court to declare the policy illegal. That court and the 9th U.S. Circuit Court of Appeals agreed, saying a 1997 Supreme Court decision suggesting states have the right to experiment with assisted-suicide laws and the letter of the Controlled Substances Act do not give the federal attorney general the right to punish physicians who act within state law.

The case will not establish whether there is a constitutional “right to die.” The 1997 *Washington v. Glucksberg* decision said there is no federal right to physician-assisted suicide. But the current case still laid bare the rift between social conservatives and social liberals on end-of-life issues, as well as other controversies.

Dozens of pro-life demonstrators gathered outside the Supreme Court’s building during the arguments. Many of them held signs encouraging the appointment of a strongly pro-life justice to replace O’Connor, who has provided a crucial vote endorsing abortion rights in many of the court’s close rulings on the issue during her tenure.

The views of Bush’s nominee, White House Counsel Harriet Miers, are largely unknown on issues of abortion and bioethics. But friends have reported she personally is opposed to abortion.

Both Clement and his opponent in the arguments—Oregon Assistant Attorney General Robert Atkinson—faced tough questions from many members of the court, reflecting the vexing nature of the issue.

Justice Anthony Kennedy, himself a moderate on many contentious issues, told Clement it is a “tough case.”

Roberts and Justice Antonin Scalia peppered Atkinson with a barrage of tough questions about whether states have complete authority to

determine, independently of the federal government, what sorts of drugs their physicians can legitimately prescribe.

And at one point, Scalia responded to Atkinson's argument that the Controlled Substances Act, passed in 1970, does not allow the attorney general to call something allowed by state law an inappropriate practice of medicine.

"I think (legalized) assisted suicide would have been unthinkable at the time" Congress passed the bill, Scalia said.

But O'Connor likewise had difficult questions for Clement, asking if a future attorney general could decide the administration of deadly drugs under state death-penalty laws was not a legitimate medical practice.

"Would that be true also for any doctor who prescribed the substances to execute a convict?" she asked.

O'Connor's future on the court was on the minds of many court observers during the arguments. She has agreed to stay on the court until her successor is confirmed and sworn in. That could happen as early as November—probably long before the court renders a decision in the assisted-suicide case.

Without O'Connor's vote, the court could end up in a 4-4 deadlock on the case. But the new justice could not rule on the case if he or she did not hear the Oct. 5 arguments. That would likely mean the case would be re-argued before the court and its new member.

If that justice is Miers, "I'm confident that she would go our way," said Jay Sekulow, chief lawyer for the American Center for Law and Justice and an opponent of the Oregon law.

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