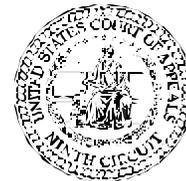




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*This summary constitutes no part of the opinion of the court.
It has been prepared by court staff for the convenience of the reader.*

State of Oregon v. Ashcroft, 02-35587

Opinion Filed: 5/26/04

Panel: Judge Richard Tallman (author); Senior Eighth Circuit Judge Donald Lay; Judge J. Clifford Wallace (dissenting)

The panel majority enjoined the enforcement of an interpretative rule issued by Attorney General John Ashcroft, known as the “Ashcroft Directive,” which declares that physician assisted suicide violates the Controlled Substances Act of 1970.

The Ashcroft Directive criminalizes conduct authorized by Oregon’s Death With Dignity Act, which was enacted by ballot measure and authorizes physicians to prescribe lethal doses of controlled substances to terminally ill Oregon residents. Specifically, the Ashcroft Directive states that physician assisted suicide serves no “legitimate medical purpose” within the meaning of 21 C.F.R. § 1306.04, which prohibits physicians from dispensing controlled substances except for legitimate medical purposes, and that specific conduct authorized by Oregon’s Death With Dignity Act may render a physician’s registration inconsistent with the public interest and therefore subject to possible suspension or revocation.

A doctor, a pharmacist, several terminally ill patients, and the State of Oregon brought an action in federal district court, seeking declaratory and injunctive relief against the Ashcroft Directive. The district court entered a permanent injunction against enforcement of the Ashcroft Directive.

The panel held that although the district court lacked jurisdiction over this matter, this court had original jurisdiction pursuant to 21 U.S.C. § 877 over “final determinations, findings, and conclusions of the Attorney General” made under the Controlled Substances Act.

On the merits, the panel held that the Ashcroft Directive is unlawful and unenforceable for three reasons:

* The Ashcroft Directive lacks clear congressional authority. The Attorney General may not exercise control over an area of law traditionally reserved for state authority, such as regulation of medical care, unless Congress' authorization is "unmistakably clear." Congress has provided no indication that it intended to authorize the Attorney General to regulate the practice of physician assisted suicide.

* The Ashcroft Directive violates the plain language of the Controlled Substances Act. The Controlled Substances Act expressly limits federal authority under the Act to the field of drug abuse and prevention, and Congress so intended to limit federal authority. The Ashcroft Directive purports to regulate medical practices outside the field of drug abuse and prevention.

* The Ashcroft Directive oversteps the bounds of the Attorney General's statutory authority. Congress intended to limit the Controlled Substances Act to problems associated with drug abuse and addiction. To the limited extent that the Controlled Substances Act authorizes the federal government to make decisions regarding the practice of medicine, Congress empowered the Secretary of Health and Human Services, not the Attorney General, to make those decisions.

Accordingly, the panel ordered the injunction previously entered by the district court to be continued in full force and effect as the injunction of this court.

In dissent, Judge Wallace reasoned that because the Ashcroft Directive interprets an agency regulation, 21 C.F.R. § 1306.04, rather than the Controlled Substances Act itself, this court must accord the Ashcroft Directive "substantial deference." Nothing in the Controlled Substances Act's text or legislative history authorizes the panel majority to deny deference to the Ashcroft Directive. Firmly established principles of the administrative law formulated by the United States Supreme Court and this court command this court to defer to the Attorney General's interpretation of 21 C.F.R. § 1306.04.

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