

STEVENS, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 02–964

GEORGE H. BALDWIN, PETITIONER *v.* MICHAEL
REESE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March 2, 2004]

JUSTICE STEVENS, dissenting.

It is appropriate to disregard this Court’s Rule 15.2 and permit respondents to defend a judgment on grounds not raised in the brief in opposition when the omitted issue is “predicate to an intelligent resolution of the question presented.” *Ohio v. Robinette*, 519 U. S. 33, 38 (1996) (internal quotation marks omitted). I would do so in this case. Respondent satisfactorily demonstrates that there is no significant difference between an ineffective-assistance-of-appellate-counsel claim predicated on the Oregon Constitution and one based on federal law. Brief for Respondent 29–35; see also *Guinn v. Cupp*, 304 Ore. 488, 495–496, 747 P. 2d 984, 988–989 (1988) (in banc). It is therefore clear that the state courts did have a fair opportunity to assess respondent’s federal claim. Accordingly, I would affirm the judgment of the Court of Appeals.