

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 10: The Reagan Era – Individual Rights/Personal Freedom and Public Morality/Right to Die

Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990)

Nancy Cruzan lost control of her car and crashed on January 11, 1983. She was rushed to the hospital where she went into a coma for three weeks and then progressed to a persistent vegetative state. Persons in such a state can breathe and have some motor functions, but they demonstrate no signs of significant cognitive function. After being informed that her vegetative state was permanent, Cruzan's parents asked the hospital to remove the feeding tubes that were keeping their daughter alive. The hospital insisted on court approval. The trial court, after hearing testimony from Cruzan's friends, ruled that Nancy Cruzan would not have wanted to live in a vegetative state and authorized termination of life support. That decision was reversed by the Supreme Court of Missouri, which insisted on "clear and convincing evidence" that an incompetent person would want to end his or her life. The Cruzan family appealed to the Supreme Court of the United States.

The controversy over terminating Cruzan's life support attracted national attention. The United States, conservative social groups, organizations of handicapped persons, conservative religious groups, and the Association of American Physicians and Surgeons urged the Supreme Court to keep Nancy Cruzan alive. The brief for the Association of Retarded Citizens of the United States declared,

The Missouri Supreme Court was free under the United States Constitution to require state-appointed guardians to act pursuant to a strong interest in the preservation of life. Likewise, the court properly considered the non-burdensome nature of providing food and fluids by tube to Ms. Cruzan. The court's reasoning prevents "quality of life" assessments from being employed that would endanger the lives and well-being of all persons with long-term mental disabilities.

More liberal religious groups, the American Nurses Association, the American Medical Association and other major medical associations, proponents of the right to die, an AIDS rights association, and several associations of senior citizens filed briefs urging the courts to find that the Cruzan's had a right to terminate life support for their unresponsive daughter. The brief for the American Geriatrics Society stated,

Patients' interests are not always best served by applying all theoretically beneficial treatments. Instead, the choice made should reflect that patients often have legitimate concerns about avoiding suffering, advancing their occupational or family concerns, mitigating disability, and sustaining independence. Particular medical interventions may not be warranted in light of overall effects on well being, although they may be expected to help a particular medical condition.

*The Supreme Court by a 6–3 vote declared that Nancy Cruzan should remain on life support. Chief Justice Rehnquist's majority opinion recognized that competent persons had a constitutional right in certain circumstances to refuse life-sustaining medical treatment. He nevertheless maintained that Missouri could place a strong burden on guardians who wished to terminate life support for an incompetent patient. Why did he insist that burden is justified? Why did Justice Brennan insist that the only state interest is an accurate determination of the patient's wishes? Who has the better of the argument? Justice Scalia was the only member of the Court who rejected a constitutional right to die in any circumstances. Does this suggest the Court in 1990 was backing away from the more narrow conception of fundamental rights articulated in *Bowers v. Hardwick*? If so, what explains that drift?*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

...
At common law, even the touching of one person by another without consent and without legal justification was a battery. Before the turn of the century, this Court observed that “[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” This notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment. Justice Cardozo, while on the Court of Appeals of New York, aptly described this doctrine: “Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient’s consent commits an assault, for which he is liable in damages.” . . .

The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment. . . . More recently, . . . with the advance of medical technology capable of sustaining life well past the point where natural forces would have brought certain death in earlier times, cases involving the right to refuse life-sustaining treatment have burgeoned. . . .

...
[Previous state court cases demonstrate that] the common-law doctrine of informed consent is viewed as generally encompassing the right of a competent individual to refuse medical treatment. Beyond that, these cases demonstrate both similarity and diversity in their approaches to decision of what all agree is a perplexing question with unusually strong moral and ethical overtones. State courts have available to them for decision a number of sources—state constitutions, statutes, and common law—which are not available to us. In this Court, the question is simply and starkly whether the United States Constitution prohibits Missouri from choosing the rule of decision which it did. This is the first case in which we have been squarely presented with the issue whether the United States Constitution grants what is in common parlance referred to as a “right to die.”

The Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions. In *Jacobson v. Massachusetts* (1905), for instance, the Court balanced an individual’s liberty interest in declining an unwanted smallpox vaccine against the State’s interest in preventing disease. . . .

But determining that a person has a “liberty interest” under the Due Process Clause does not end the inquiry; “whether respondent’s constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests.” . . .

. . . [F]or purposes of this case, we assume that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition.

Petitioners go on to assert that an incompetent person should possess the same right in this respect as is possessed by a competent person. . . .

The difficulty with petitioners’ claim is that in a sense it begs the question: An incompetent person is not able to make an informed and voluntary choice to exercise a hypothetical right to refuse treatment or any other right. Such a “right” must be exercised for her, if at all, by some sort of surrogate. Here, Missouri has in effect recognized that under certain circumstances a surrogate may act for the patient in electing to have hydration and nutrition withdrawn in such a way as to cause death, but it has established a procedural safeguard to assure that the action of the surrogate conforms as best it may to the wishes expressed by the patient while competent. Missouri requires that evidence of the incompetent’s wishes as to the withdrawal of treatment be proved by clear and convincing evidence. The question, then, is whether the United States Constitution forbids the establishment of this procedural requirement by the State. We hold that it does not.

Whether or not Missouri’s clear and convincing evidence requirement comports with the United States Constitution depends in part on what interests the State may properly seek to protect in this situation. Missouri relies on its interest in the protection and preservation of human life, and there can be no gainsaying this interest. As a general matter, the States—indeed, all civilized nations—demonstrate

their commitment to life by treating homicide as a serious crime. Moreover, the majority of States in this country have laws imposing criminal penalties on one who assists another to commit suicide. We do not think a State is required to remain neutral in the face of an informed and voluntary decision by a physically able adult to starve to death.

But in the context presented here, a State has more particular interests at stake. The choice between life and death is a deeply personal decision of obvious and overwhelming finality. We believe Missouri may legitimately seek to safeguard the personal element of this choice through the imposition of heightened evidentiary requirements. It cannot be disputed that the Due Process Clause protects an interest in life as well as an interest in refusing life-sustaining medical treatment. Not all incompetent patients will have loved ones available to serve as surrogate decisionmakers. And even where family members are present, “[t]here will, of course, be some unfortunate situations in which family members will not act to protect a patient.” A State is entitled to guard against potential abuses in such situations. Similarly, a State is entitled to consider that a judicial proceeding to make a determination regarding an incompetent’s wishes may very well not be an adversarial one, with the added guarantee of accurate factfinding that the adversary process brings with it. Finally, we think a State may properly decline to make judgments about the “quality” of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual.

In our view, Missouri has permissibly sought to advance these interests through the adoption of a “clear and convincing” standard of proof to govern such proceedings. “The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to ‘instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.’”

. . . We believe that Missouri may permissibly place an increased risk of an erroneous decision on those seeking to terminate an incompetent individual’s life-sustaining treatment. An erroneous decision not to terminate results in a maintenance of the status quo; the possibility of subsequent developments such as advancements in medical science, the discovery of new evidence regarding the patient’s intent, changes in the law, or simply the unexpected death of the patient despite the administration of life-sustaining treatment at least create the potential that a wrong decision will eventually be corrected or its impact mitigated. An erroneous decision to withdraw life-sustaining treatment, however, is not susceptible of correction. . . .

. . .
No doubt is engendered by anything in this record but that Nancy Cruzan’s mother and father are loving and caring parents. If the State were required by the United States Constitution to repose a right of “substituted judgment” with anyone, the Cruzans would surely qualify. But we do not think the Due Process Clause requires the State to repose judgment on these matters with anyone but the patient herself. . . . [T]here is no automatic assurance that the view of close family members will necessarily be the same as the patient’s would have been had she been confronted with the prospect of her situation while competent. All of the reasons previously discussed for allowing Missouri to require clear and convincing evidence of the patient’s wishes lead us to conclude that the State may choose to defer only to those wishes, rather than confide the decision to close family members.

JUSTICE O’CONNOR, concurring.

. . .
As the Court notes, the liberty interest in refusing medical treatment flows from decisions involving the State’s invasions into the body. Because our notions of liberty are inextricably entwined with our idea of physical freedom and self-determination, the Court has often deemed state incursions into the body repugnant to the interests protected by the Due Process Clause. . . . The State’s imposition of medical treatment on an unwilling competent adult necessarily involves some form of restraint and intrusion. A seriously ill or dying patient whose wishes are not honored may feel a captive of the

machinery required for life-sustaining measures or other medical interventions. Such forced treatment may burden that individual's liberty interests as much as any state coercion. . . .

The State's artificial provision of nutrition and hydration implicates identical concerns. Artificial feeding cannot readily be distinguished from other forms of medical treatment. Whether or not the techniques used to pass food and water into the patient's alimentary tract are termed "medical treatment," it is clear they all involve some degree of intrusion and restraint. . . . Requiring a competent adult to endure such procedures against her will burdens the patient's liberty, dignity, and freedom to determine the course of her own treatment. Accordingly, the liberty guaranteed by the Due Process Clause must protect, if it protects anything, an individual's deeply personal decision to reject medical treatment, including the artificial delivery of food and water.

I also write separately to emphasize that the Court does not today decide the issue whether a State must also give effect to the decisions of a surrogate decisionmaker. In my view, such a duty may well be constitutionally required to protect the patient's liberty interest in refusing medical treatment. . . .

Today's decision, holding only that the Constitution permits a State to require clear and convincing evidence of Nancy Cruzan's desire to have artificial hydration and nutrition withdrawn, does not preclude a future determination that the Constitution requires the States to implement the decisions of a patient's duly appointed surrogate. . . .

JUSTICE SCALIA, concurring.

While I agree with the Court's analysis today, and therefore join in its opinion, I would have preferred that we announce, clearly and promptly, that the federal courts have no business in this field; that American law has always accorded the State the power to prevent, by force if necessary, suicide—including suicide by refusing to take appropriate measures necessary to preserve one's life; that the point at which life becomes "worthless," and the point at which the means necessary to preserve it become "extraordinary" or "inappropriate," are neither set forth in the Constitution nor known to the nine Justices of this Court any better than they are known to nine people picked at random from the Kansas City telephone directory; and hence, that even when it is demonstrated by clear and convincing evidence that a patient no longer wishes certain measures to be taken to preserve his or her life, it is up to the citizens of Missouri to decide, through their elected representatives, whether that wish will be honored. It is quite impossible (because the Constitution says nothing about the matter) that those citizens will decide upon a line less lawful than the one we would choose; and it is unlikely (because we know no more about "life and death" than they do) that they will decide upon a line less reasonable.

The text of the Due Process Clause does not protect individuals against deprivations of liberty simpliciter. It protects them against deprivations of liberty "without due process of law." To determine that such a deprivation would not occur if Nancy Cruzan were forced to take nourishment against her will, it is unnecessary to reopen the historically recurrent debate over whether "due process" includes substantive restrictions. . . . It is at least true that no "substantive due process" claim can be maintained unless the claimant demonstrates that the State has deprived him of a right historically and traditionally protected against state interference. . . . That cannot possibly be established here.

At common law in England, a suicide, defined as one who "deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death," . . . was criminally liable. Case law at the time of the adoption of the Fourteenth Amendment generally held that assisting suicide was a criminal offense. . . .

Petitioners rely on three distinctions to separate Nancy Cruzan's case from ordinary suicide: (1) that she is permanently incapacitated and in pain; (2) that she would bring on her death not by any affirmative act but by merely declining treatment that provides nourishment; and (3) that preventing her from effectuating her presumed wish to die requires violation of her bodily integrity. None of these suffices. Suicide was not excused even when committed "to avoid those ills which [persons] had not the fortitude to endure." . . .

. . . I readily acknowledge that the distinction between action and inaction has some bearing upon the legislative judgment of what ought to be prevented as suicide—though even there it would seem to

me unreasonable to draw the line precisely between action and inaction, rather than between various forms of inaction. . . .

But to return to the principal point for present purposes: the irrelevance of the action-inaction distinction. Starving oneself to death is no different from putting a gun to one's temple as far as the common-law definition of suicide is concerned; the cause of death in both cases is the suicide's conscious decision to "pu[t] an end to his own existence." . . .

The third asserted basis of distinction—that frustrating Nancy Cruzan's wish to die in the present case requires interference with her bodily integrity—is likewise inadequate, because such interference is impermissible only if one begs the question whether her refusal to undergo the treatment on her own is suicide. It has always been lawful not only for the State, but even for private citizens, to interfere with bodily integrity to prevent a felony. . . . It is not even reasonable, much less required by the Constitution, to maintain that although the State has the right to prevent a person from slashing his wrists, it does not have the power to apply physical force to prevent him from doing so, nor the power, should he succeed, to apply, coercively if necessary, medical measures to stop the flow of blood.

. . .
What I have said above is not meant to suggest that I would think it desirable, if we were sure that Nancy Cruzan wanted to die, to keep her alive by the means at issue here. I assert only that the Constitution has nothing to say about the subject. To raise up a constitutional right here we would have to create out of nothing (for it exists neither in text nor tradition) some constitutional principle whereby, although the State may insist that an individual come in out of the cold and eat food, it may not insist that he take medicine; and although it may pump his stomach empty of poison he has ingested, it may not fill his stomach with food he has failed to ingest. Are there, then, no reasonable and humane limits that ought not to be exceeded in requiring an individual to preserve his own life? There obviously are, but they are not set forth in the Due Process Clause. What assures us that those limits will not be exceeded is the same constitutional guarantee that is the source of most of our protection—what protects us, for example, from being assessed a tax of 100% of our income above the subsistence level, from being forbidden to drive cars, or from being required to send our children to school for 10 hours a day, none of which horrors are categorically prohibited by the Constitution. Our salvation is the Equal Protection Clause, which requires the democratic majority to accept for themselves and their loved ones what they impose on you and me. This Court need not, and has no authority to, inject itself into every field of human activity where irrationality and oppression may theoretically occur, and if it tries to do so it will destroy itself.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

. . .
Because I believe that Nancy Cruzan has a fundamental right to be free of unwanted artificial nutrition and hydration, which right is not outweighed by any interests of the State, and because I find that the improperly biased procedural obstacles imposed by the Missouri Supreme Court impermissibly burden that right, I respectfully dissent. Nancy Cruzan is entitled to choose to die with dignity.

"[T]he timing of death—once a matter of fate—is now a matter of human choice." Of the approximately 2 million people who die each year, 80% die in hospitals and long-term care institutions, and perhaps 70% of those after a decision to forgo life-sustaining treatment has been made. Nearly every death involves a decision whether to undertake some medical procedure that could prolong the process of dying. Such decisions are difficult and personal. They must be made on the basis of individual values, informed by medical realities, yet within a framework governed by law. The role of the courts is confined to defining that framework, delineating the ways in which government may and may not participate in such decisions.

. . .
The right to be free from medical attention without consent, to determine what shall be done with one's own body, is deeply rooted in this Nation's traditions, as the majority acknowledges. . . . "Anglo-American law starts with the premise of thorough-going self determination. It follows that each man is

considered to be master of his own body, and he may, if he be of sound mind, expressly prohibit the performance of lifesaving surgery, or other medical treatment." . . .

. . .
No material distinction can be drawn between the treatment to which Nancy Cruzan continues to be subject—artificial nutrition and hydration—and any other medical treatment. . . The artificial delivery of nutrition and hydration is undoubtedly medical treatment. The technique to which Nancy Cruzan is subject—artificial feeding through a gastrostomy tube—involves a tube implanted surgically into her stomach through incisions in her abdominal wall. It may obstruct the intestinal tract, erode and pierce the stomach wall, or cause leakage of the stomach's contents into the abdominal cavity. . . .

The right to be free from unwanted medical attention is a right to evaluate the potential benefit of treatment and its possible consequences according to one's own values and to make a personal decision whether to subject oneself to the intrusion. For a patient like Nancy Cruzan, the sole benefit of medical treatment is being kept metabolically alive. Neither artificial nutrition nor any other form of medical treatment available today can cure or in any way ameliorate her condition. Irreversibly vegetative patients are devoid of thought, emotion, and sensation; they are permanently and completely unconscious. . . .

. . . Dying is personal. And it is profound. For many, the thought of an ignoble end, steeped in decay, is abhorrent. A quiet, proud death, bodily integrity intact, is a matter of extreme consequence. "In certain, thankfully rare, circumstances the burden of maintaining the corporeal existence degrades the very humanity it was meant to serve." . . . A long, drawn-out death can have a debilitating effect on family members. For some, the idea of being remembered in their persistent vegetative states rather than as they were before their illness or accident may be very disturbing.

Although the right to be free of unwanted medical intervention, like other constitutionally protected interests, may not be absolute, no state interest could outweigh the rights of an individual in Nancy Cruzan's position. Whatever a State's possible interests in mandating life-support treatment under other circumstances, there is no good to be obtained here by Missouri's insistence that Nancy Cruzan remain on life-support systems if it is indeed her wish not to do so. Missouri does not claim, nor could it, that society as a whole will be benefited by Nancy's receiving medical treatment. No third party's situation will be improved and no harm to others will be averted. . . .

The only state interest asserted here is a general interest in the preservation of life. But the State has no legitimate general interest in someone's life, completely abstracted from the interest of the person living that life that could outweigh the person's choice to avoid medical treatment. . . . Thus, the State's general interest in life must accede to Nancy Cruzan's particularized and intense interest in self-determination in her choice of medical treatment. There is simply nothing legitimately within the State's purview to be gained by superseding her decision.

. . .
This is not to say that the State has no legitimate interests to assert here. . . . Missouri has a *parens patriae* interest in providing Nancy Cruzan, now incompetent, with as accurate as possible a determination of how she would exercise her rights under these circumstances. Second, if and when it is determined that Nancy Cruzan would want to continue treatment, the State may legitimately assert an interest in providing that treatment. But until Nancy's wishes have been determined, the only state interest that may be asserted is an interest in safe-guarding the accuracy of that determination.

Accuracy, therefore, must be our touchstone. Missouri may constitutionally impose only those procedural requirements that serve to enhance the accuracy of a determination of Nancy Cruzan's wishes or are at least consistent with an accurate determination. The Missouri "safeguard" that the Court upholds today does not meet that standard. The determination needed in this context is whether the incompetent person would choose to live in a persistent vegetative state on life support or to avoid this medical treatment. Missouri's rule of decision imposes a markedly asymmetrical evidentiary burden. Only evidence of specific statements of treatment choice made by the patient when competent is admissible to support a finding that the patient, now in a persistent vegetative state, would wish to avoid further medical treatment. Moreover, this evidence must be clear and convincing. No proof is required to support a finding that the incompetent person would wish to continue treatment.

. . . The majority explains that the State may constitutionally adopt this rule to govern determinations of an incompetent's wishes in order to advance the State's substantive interests, including its unqualified interest in the preservation of human life. Missouri's evidentiary standard, however, cannot rest on the State's own interest in a particular substantive result. To be sure, courts have long erected clear and convincing evidence standards to place the greater risk of erroneous decisions on those bringing disfavored claims. In such cases, however, the choice to discourage certain claims was a legitimate, constitutional policy choice. In contrast, Missouri has no such power to disfavor a choice by Nancy Cruzan to avoid medical treatment, because Missouri has no legitimate interest in providing Nancy with treatment until it is established that this represents her choice. Just as a State may not override Nancy's choice directly, it may not do so indirectly through the imposition of a procedural rule.

...
The majority claims that the allocation of the risk of error is justified because it is more important not to terminate life support for someone who would wish it continued than to honor the wishes of someone who would not. An erroneous decision to terminate life support is irrevocable, says the majority, while an erroneous decision not to terminate "results in a maintenance of the status quo." But, from the point of view of the patient, an erroneous decision in either direction is irrevocable. An erroneous decision to terminate artificial nutrition and hydration, to be sure, will lead to failure of that last remnant of physiological life, the brain stem, and result in complete brain death. An erroneous decision not to terminate life support, however, robs a patient of the very qualities protected by the right to avoid unwanted medical treatment. His own degraded existence is perpetuated; his family's suffering is protracted; the memory he leaves behind becomes more and more distorted.

...
The Missouri court's disdain for Nancy's statements in serious conversations not long before her accident, for the opinions of Nancy's family and friends as to her values, beliefs and certain choice, and even for the opinion of an outside objective factfinder appointed by the State evinces a disdain for Nancy Cruzan's own right to choose. The rules by which an incompetent person's wishes are determined must represent every effort to determine those wishes. The rule that the Missouri court adopted and that this Court upholds, however, skews the result away from a determination that as accurately as possible reflects the individual's own preferences and beliefs. It is a rule that transforms human beings into passive subjects of medical technology.

...
A State's inability to discern an incompetent patient's choice still need not mean that a State is rendered powerless to protect that choice. But I would find that the Due Process Clause prohibits a State from doing more than that. A State may ensure that the person who makes the decision on the patient's behalf is the one whom the patient himself would have selected to make that choice for him. And a State may exclude from consideration anyone having improper motives. But a State generally must either repose the choice with the person whom the patient himself would most likely have chosen as proxy or leave the decision to the patient's family.

...
"[L]aw, equity and justice must not themselves quail and be helpless in the face of modern technological marvels presenting questions hitherto unthought of." The new medical technology can reclaim those who would have been irretrievably lost a few decades ago and restore them to active lives. For Nancy Cruzan, it failed, and for others with wasting incurable disease, it may be doomed to failure. In these unfortunate situations, the bodies and preferences and memories of the victims do not escheat to the State; nor does our Constitution permit the State or any other government to commandeer them. . . .

...
JUSTICE STEVENS, dissenting.

. . . First, a competent individual's decision to refuse life-sustaining medical procedures is an aspect of liberty protected by the Due Process Clause of the Fourteenth Amendment. Second, upon a proper evidentiary showing, a qualified guardian may make that decision on behalf of an incompetent

ward. Third, in answering the important question presented by this tragic case, it is wise “not to attempt, by any general statement, to cover every possible phase of the subject.” Together, these considerations suggest that Nancy Cruzan’s liberty to be free from medical treatment must be understood in light of the facts and circumstances particular to her.

...
... The Court’s decision affords no protection to children, to young people who are victims of unexpected accidents or illnesses, or to the countless thousands of elderly persons who either fail to decide, or fail to explain, how they want to be treated if they should experience a similar fate. Because Nancy Beth Cruzan did not have the foresight to preserve her constitutional right in a living will, or some comparable “clear and convincing” alternative, her right is gone forever and her fate is in the hands of the state legislature instead of in those of her family, her independent neutral guardian ad litem, and an impartial judge—all of whom agree on the course of action that is in her best interests. The Court’s willingness to find a waiver of this constitutional right reveals a distressing misunderstanding of the importance of individual liberty.

...
Ultimate questions that might once have been dealt with in intimacy by a family and its physician have now become the concern of institutions. When the institution is a state hospital, as it is in this case, the government itself becomes involved. . . . [T]his Court has long recognized that the liberty to make the decisions and choices constitutive of private life is so fundamental to our “concept of ordered liberty.”

...
... Choices about death touch the core of liberty. Our duty, and the concomitant freedom, to come to terms with the conditions of our own mortality are undoubtedly “so rooted in the traditions and conscience of our people as to be ranked as fundamental and indeed are essential incidents of the unalienable rights to life and liberty endowed us by our Creator. . . .

These considerations cast into stark relief the injustice, and unconstitutionality, of Missouri’s treatment of Nancy Beth Cruzan. Nancy Cruzan’s death, when it comes, cannot be an historic act of heroism; it will inevitably be the consequence of her tragic accident. But Nancy Cruzan’s interest in life, no less than that of any other person, includes an interest in how she will be thought of after her death by those whose opinions mattered to her. There can be no doubt that her life made her dear to her family and to others. How she dies will affect how that life is remembered. The trial court’s order authorizing Nancy’s parents to cease their daughter’s treatment would have permitted the family that cares for Nancy to bring to a close her tragedy and her death. Missouri’s objection to that order subordinates Nancy’s body, her family, and the lasting significance of her life to the State’s own interests. . . .

... Nancy Cruzan is obviously “alive” in a physiological sense. But for patients like Nancy Cruzan, who have no consciousness and no chance of recovery, there is a serious question as to whether the mere persistence of their bodies is “life” as that word is commonly understood, or as it is used in both the Constitution and the Declaration of Independence. The State’s unflagging determination to perpetuate Nancy Cruzan’s physical existence is comprehensible only as an effort to define life’s meaning, not as an attempt to preserve its sanctity.

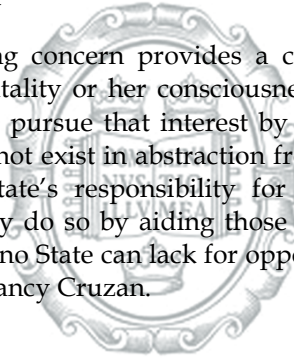
... When people speak of life, they often mean to describe the experiences that comprise a person’s history, as when it is said that somebody “led a good life.” They may also mean to refer to the practical manifestation of the human spirit, a meaning captured by the familiar observation that somebody “added life” to an assembly. If there is a shared thread among the various opinions on this subject, it may be that life is an activity which is at once the matrix for, and an integration of, a person’s interests. In any event, absent some theological abstraction, the idea of life is not conceived separately from the idea of a living person. Yet, it is by precisely such a separation that Missouri asserts an interest in Nancy Cruzan’s life in opposition to Nancy Cruzan’s own interests. The resulting definition is uncommon indeed.

...
My disagreement with the Court is thus unrelated to its endorsement of the clear and convincing standard of proof for cases of this kind. Indeed, I agree that the controlling facts must be established with

unmistakable clarity. The critical question, however, is not how to prove the controlling facts but rather what proven facts should be controlling. In my view, the constitutional answer is clear: The best interests of the individual, especially when buttressed by the interests of all related third parties, must prevail over any general state policy that simply ignores those interests. . . .

...
... The Court suggests that Missouri's policy "results in a maintenance of the status quo," and is subject to reversal, while a decision to terminate treatment "is not susceptible of correction" because death is irreversible. Yet, this explanation begs the question, for it assumes either that the State's policy is consistent with Nancy Cruzan's own interests, or that no damage is done by ignoring her interests. The first assumption is without basis in the record of this case, and would obviate any need for the State to rely, as it does, upon its own interests rather than upon the patient's. The second assumption is unconscionable. Insofar as Nancy Cruzan has an interest in being remembered for how she lived rather than how she died, the damage done to those memories by the prolongation of her death is irreversible. Insofar as Nancy Cruzan has an interest in the cessation of any pain, the continuation of her pain is irreversible. Insofar as Nancy Cruzan has an interest in a closure to her life consistent with her own beliefs rather than those of the Missouri Legislature, the State's imposition of its contrary view is irreversible. To deny the importance of these consequences is in effect to deny that Nancy Cruzan has interests at all, and thereby to deny her personhood in the name of preserving the sanctity of her life.

...
The Cruzan family's continuing concern provides a concrete reminder that Nancy Cruzan's interests did not disappear with her vitality or her consciousness. However commendable may be the State's interest in human life, it cannot pursue that interest by appropriating Nancy Cruzan's life as a symbol for its own purposes. Lives do not exist in abstraction from persons, and to pretend otherwise is not to honor but to desecrate the State's responsibility for protecting life. A State that seeks to demonstrate its commitment to life may do so by aiding those who are actively struggling for life and health. In this endeavor, unfortunately, no State can lack for opportunities: There can be no need to make an example of tragic cases like that of Nancy Cruzan.



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