Cruzan v missouri case edited

Countries, United States

CRUZAN, BY HER PARENTS AND CO-GUARDIANS, CRUZAN ET UX. v. DIRECTOR, MISSOURI DEPARTMENT OF HEALTH, ET AL. SUPREME COURT OF THE UNITED STATES 497 U. S. 261; 110 S. Ct. 2841; 111 L. Ed. 2d 224; 1990 U. S. LEXIS 3301 December 6, 1989, Argued June 25, 1990, Decided PRIOR HISTORY: CERTIORARI TO THE SUPREME COURT OF MISSOURI. DISPOSITION: 760 S. W. 2d 408, affirmed. JUDGES: REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, O'CONNOR, SCALIA, and KENNEDY, JJ., joined. O'CONNOR, J., and SCALIA, J. filed concurring opinions. BRENNAN, J., filed a dissenting opinion, in which MARSHALL and BLACKMUN, JJ., joined. STEVENS, J., filed a dissenting opinion. OPINION BY: REHNQUIST OPINION CHIEF JUSTICE REHNQUIST delivered the opinion of the Court. Petitioner Nancy Beth Cruzan was rendered incompetent as a result of severe injuries sustained during an automobile accident. Copetitioners Lester and Joyce Cruzan, Nancy's [**2845] parents and coguardians, sought a court order directing the withdrawal of their daughter's artificial feeding and hydration equipment after it became apparent that she had virtually no chance of recovering her cognitive faculties. The Supreme Court of Missouri held that because there was no clear and convincing evidence of Nancy's desire to have life-sustaining treatment withdrawn under such circumstances, her parents lacked authority to effectuate such a request. We granted certiorari, 492 U. S. 917 (1989), and now affirm. [*266] On the night of January 11, 1983, Nancy Cruzan lost control of her car as she traveled down Elm Road in Jasper County, Missouri. The vehicle overturned, and Cruzan was discovered lying face down in a ditch without detectable respiratory or cardiac function. Paramedics were able to restore her breathing and heartbeat at the accident

site, and she was transported to a hospital in an unconscious state. An attending neurosurgeon diagnosed her as having sustained probable cerebral contusions compounded by significant anoxia (lack of oxygen). The Missouri trial court in this case found that permanent brain damage generally results after 6 minutes in an anoxic state; it was estimated that Cruzan was deprived of oxygen from 12 to 14 minutes. She remained in a coma for approximately three weeks and then progressed to an unconscious state in which she was able to orally ingest some nutrition. In order to ease feeding and further the recovery, surgeons implanted a gastrostomy feeding and hydration tube in Cruzan with the consent of her then husband. Subsequent rehabilitative efforts proved unavailing. She now lies in a Missouri state hospital in what is commonly referred to as a persistent vegetative state: generally, a condition in which a person exhibits motor reflexes but evinces no indications of significant cognitive function. 1 The State of Missouri is bearing the cost of her care. 1 The State Supreme Court, adopting much of the trial court's findings, described Nancy Cruzan's medical condition as follows: ". . . (1) Her respiration and circulation are not artificially maintained and are within the normal limits of a thirty-year-old female; (2) she is oblivious to her environment except for reflexive responses to sound and perhaps painful stimuli; (3) she suffered anoxia of the brain resulting in a massive enlargement of the ventricles filling with cerebrospinal fluid in the area where the brain has degenerated and [her] cerebral cortical atrophy is irreversible, permanent, progressive and ongoing; (4) her highest cognitive brain function is exhibited by her grimacing perhaps in recognition of ordinarily painful stimuli, indicating the experience of pain and apparent

response to sound; (5) she is a spastic quadriplegic; (6) her four extremities are contracted with irreversible muscular and tendon damage to all extremities; (7) she has no cognitive or reflexive ability to swallow food or water to maintain her daily essential needs and . . . she will never recover her ability to swallow sufficient [sic] to satisfy her needs. In sum, Nancy is diagnosed as in a persistent vegetative state. She is not dead. She is not terminally ill. Medical experts testified that she could live another thirty years." Cruzan v. Harmon, 760 S. W. 2d 408, 411 (Mo. 1989) (en banc) (quotations omitted; footnote omitted). In observing that Cruzan was not dead, the court referred to the following Missouri statute: " For all legal purposes, the occurrence of human death shall be determined in accordance with the usual and customary standards of medical practice, provided that death shall not be determined to have occurred unless the following minimal conditions have been met: "(1) When respiration and circulation are not artificially maintained, there is an irreversible cessation of spontaneous respiration and circulation; or "(2) When respiration and circulation are artificially maintained, and there is total and irreversible cessation of all brain function, including the brain stem and that such determination is made by a licensed physician." Mo. Rev. Stat. § 194. 005 (1986). Since Cruzan's respiration and circulation were not being artificially maintained, she obviously fit within the first proviso of the statute. Dr. Fred Plum, the creator of the term " persistent vegetative state" and a renowned expert on the subject, has described the " vegetative state" in the following terms: "'Vegetative state describes a body which is functioning entirely in terms of its internal controls. It maintains temperature. It maintains heart beat and

pulmonary ventilation. It maintains digestive activity. It maintains reflex activity of muscles and nerves for low level conditioned responses. But there is no behavioral evidence of either self-awareness or awareness of the surroundings in a learned manner.'" In re Jobes, 108 N. J. 394, 403, 529 A. 2d 434, 438 (1987). See also Brief for American Medical Association et al. as Amici Curiae 6 (" The persistent vegetative state can best be understood as one of the conditions in which patients have suffered a loss of consciousness"). [*267] [***235] [**2846] After it had become apparent that Nancy Cruzan had virtually no chance of regaining her mental faculties, her parents asked hospital employees to terminate the artificial nutrition and hydration procedures. All agree that such a [*268] removal would cause her death. The employees refused to honor the request without court approval. The parents then sought and received authorization from the state trial court for termination. The court found that a person in Nancy's condition had a fundamental right under the State and Federal Constitutions to refuse or direct the withdrawal of " death prolonging procedures." App. to Pet. for Cert. A99. The court also found that Nancy's " expressed thoughts at age twenty-five in somewhat serious conversation with a housemate friend that if sick or injured she would not wish to continue her life unless she could live at least halfway normally suggests that given her present condition she would not wish to continue on with her nutrition and hydration." Id., at A97-A98. The Supreme Court of Missouri reversed by a divided vote. The court recognized a right to refuse treatment embodied in the common-law doctrine of informed consent, but expressed skepticism about the application of that doctrine in the circumstances of this case. Cruzan v. Harmon, 760 S. W. 2d

408, 416-417 (1988) (en banc). The court also declined to read a broad right of privacy into the State Constitution which would " support the right of a person to refuse medical treatment in every circumstance," and expressed doubt as to whether such a right existed under the United States Constitution. Id., at 417-418. It then decided that the Missouri Living Will statute, Mo Rev. Stat. § 459. 010 et seq. (1986), embodied a state policy strongly favoring the preservation of life. 760 S. W. 2d at 419-420. The court found that Cruzan's statements to her roommate regarding her desire to live or die under certain conditions were " unreliable for the purpose of determining her intent," id., at 424, " and thus insufficient to support the co-guardians['] claim to exercise substituted [***236] judgment on Nancy's behalf." Id., at 426. It rejected the argument that Cruzan's parents were entitled to order the termination of her medical treatment, [*269] concluding that " no person can assume that choice for an incompetent in the absence of the formalities required under Missouri's Living Will statutes or the clear and convincing, inherently reliable evidence absent here." Id., at 425. The court also expressed its view that " broad policy questions bearing on life and death are more properly addressed by representative assemblies" than judicial bodies. Id., at 426. We granted certiorari to consider the question whether Cruzan has a right under the United States Constitution which would require the hospital to withdraw life-sustaining treatment from her under these circumstances. At common law, even the touching of one person by another without consent and without legal justification was a battery. See W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 9, pp. 39-42 (5th ed. 1984). Before the turn of the century, this Court

observed that " no [HN1] 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." Union Pacific R. Co. v. Botsford, 141 U. S. 250, 251, 35 L. Ed. 734, 11 S. Ct. 1000 (1891). 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 [**2847] 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." Schloendorff v. Society of New York Hospital, 211 N. Y. 125, 129-130, 105 N. E. 92, 93 (1914). The informed consent doctrine has become firmly entrenched in American tort law. See Keeton, Dobbs, Keeton, & Owen, supra, § 32, pp. 189-192; F. Rozovsky, Consent to Treatment, A Practical Guide 1-98 (2d ed. 1990). [*270] 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. Until about 15 years ago and the seminal decision in In re Quinlan, 70 N. J. 10, 355 A. 2d 647, cert. denied sub nom. Garger v. New Jersey, 429 U. S. 922, 50 L. Ed. 2d 289, 97 S. Ct. 319 (1976), the number of right-to-refuse-treatment decisions was relatively few. 2 Most of the earlier cases involved patients who refused medical treatment forbidden by their religious beliefs, thus implicating First Amendment rights as well as common-law rights of self-determination. 3 More recently, however, [***237] 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. See 760 S. W. 2d at 412, n. 4 (collecting 54 reported decisions from 1976 through 1988). 2 See generally Karnezis, Patient's Right to Refuse Treatment Allegedly Necessary to Sustain Life, 93 A. L. R. 3d 67 (1979) (collecting cases); Cantor, A Patient's Decision to Decline Life-Saving Medical Treatment: Bodily Integrity Versus the Preservation of Life, 26 Rutgers L. Rev. 228, 229, and n. 5 (1973) (noting paucity of cases). 3 See Chapman, The Uniform Rights of the Terminally Ill Act: Too Little, Too Late?, 42 Ark. L. Rev. 319, 324, n. 15 (1989); see also F. Rozovsky, Consent to Treatment, A Practical Guide 415-423 (1984). In the Quinlan case, young Karen Quinlan suffered severe brain damage as the result of anoxia and entered a persistent vegetative state. Karen's father sought judicial approval to disconnect his daughter's respirator. The New Jersey Supreme Court granted the relief, holding that [HN2] Karen had a right of privacy grounded in the Federal Constitution to terminate treatment. In re Quinlan, 70 N. J. at 38-42, 355 A. 2d at 662-664. Recognizing that this right was not absolute, however, the court balanced it against asserted state interests. Noting that the State's interest " weakens and the individual's right to privacy grows as the degree of bodily invasion increases and the prognosis dims," the court concluded that the state interests had to give way in that case. Id., at [*271] 41, 355 A. 2d at 664. The court also concluded that the " only practical way" to prevent the loss of Karen's privacy right due to her incompetence was to allow her guardian and family to decide " whether she would exercise it in these

circumstances." Ibid. After Quinlan, however, most courts have based a right to refuse treatment either solely on the common-law right to informed consent or on both the common-law right and a constitutional privacy right. See L. Tribe, American Constitutional Law § 15-11, p. 1365 (2d ed. 1988). In Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 370 N. E. 2d 417 (1977), the Supreme Judicial Court of Massachusetts relied on both the right of privacy and the right of informed consent to permit the withholding of chemotherapy from a profoundly retarded 67-year-old man suffering from leukemia. Id., at 737-738, 370 N. E. 2d at 424. Reasoning that an incompetent person retains the same rights as a competent individual " because the value of human dignity extends to both," the court adopted a " substituted judgment" standard whereby courts were to determine what an incompetent individual's decision would have been under the circumstances. Id., at 745, 752-753, 757-758, 370 N. E. 2d at 427, 431, 434. Distilling certain state interests from prior case law -- the preservation of life, the protection of the interests [**2848] of innocent third parties, the prevention of suicide, and the maintenance of the ethical integrity of the medical profession -- the court recognized the first interest as paramount and noted it was greatest when an affliction was curable, " as opposed to the State interest where, as here, the issue is not whether, but when, for how long, and at what cost to the individual [a] life may be briefly extended." Id., at 742, 370 N. E. 2d at 426. In In re Storar, 52 N. Y. 2d 363, 420 N. E. 2d 64, 438 N. Y. S. 2d 266, cert. denied, 454 U. S. 858, 70 L. Ed. 2d 153, 102 S. Ct. 309 (1981), the New York Court of Appeals declined to base a right to refuse treatment on a constitutional privacy right. Instead, it found such a right " adequately [*272]

supported" by the informed consent doctrine. Id., at 376-377, 420 N. E. 2d at 70. In In re Eichner (decided with In re Storar, supra), an 83-year-old man who had suffered brain damage from anoxia [***238] entered a vegetative state and was thus incompetent to consent to the removal of his respirator. The court, however, found it unnecessary to reach the question whether his rights could be exercised by others since it found the evidence clear and convincing from statements made by the patient when competent that he " did not want to be maintained in a vegetative coma by use of a respirator." Id., at 380, 420 N. E. 2d at 72. In the companion Storar case, a 52-year-old man suffering from bladder cancer had been profoundly retarded during most of his life. Implicitly rejecting the approach taken in Saikewicz, supra, the court reasoned that due to such life-long incompetency, " it is unrealistic to attempt to determine whether he would want to continue potentially life prolonging treatment if he were competent." 52 N. Y. 2d at 380, 420 N. E. 2d at 72. As the evidence showed that the patient's required blood transfusions did not involve excessive pain and without them his mental and physical abilities would deteriorate, the court concluded that it should not " allow an incompetent patient to bleed to death because someone, even someone as close as a parent or sibling, feels that this is best for one with an incurable disease." Id., at 382, 420 N. E. 2d at 73. Many of the later cases build on the principles established in Quinlan, Saikewicz, and Storar/Eichner. For instance, in In re Conroy, 98 N. J. 321, 486 A. 2d 1209 (1985), the same court that decided Quinlan considered whether a nasogastric feeding tube could be removed from an 84-year-old incompetent nursing-home resident suffering irreversible mental and physical ailments. While recognizing that a federal

right of privacy might apply in the case, the court, contrary to its approach in Quinlan, decided to base its decision on the common-law right to self-determination and informed consent. [*273] 98 N. J. at 348, 486 A. 2d at 1223. " On balance, the right to self-determination ordinarily outweighs any countervailing state interests, and competent persons generally are permitted to refuse medical treatment, even at the risk of death. Most of the cases that have held otherwise, unless they involved the interest in protecting innocent third parties, have concerned the patient's competency to make a rational and considered choice." Id., at 353-354, 486 A. 2d at 1225. Reasoning that the right of self-determination should not be lost merely because an individual is unable to sense a violation of it, the court held that incompetent individuals retain a right to refuse treatment. It also held that such a right could be exercised by a surrogate decisionmaker using a " subjective" standard when there was clear evidence that the incompetent person would have exercised it. Where such evidence was lacking, the court held that an individual's right could still be invoked in certain circumstances under objective " best interest" standards. Id., at 361-368, 486 A. 2d at 1229-1233. Thus, if some trustworthy evidence existed that the individual would have wanted to terminate treatment, but not enough to clearly establish a person's wishes for purposes of the [**2849] subjective standard, and the burden of a prolonged life from the experience of pain and suffering markedly outweighed its satisfactions, treatment could be terminated under a " limited-objective" standard. Where no trustworthy evidence existed, [***239] and a person's suffering would make the administration of life-sustaining treatment inhumane, a " pure-objective" standard could be used

to terminate treatment. If none of these conditions obtained, the court held it was best to err in favor of preserving life. Id., at 364-368, 486 A. 2d at 1231-1233. *** [**2851] As these cases demonstrate, 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." We follow the judicious counsel of our decision in Twin City Bank v. Nebeker, 167 U. S. 196, 202, 42 L. Ed. 134, 17 S. Ct. 766 (1897), where we said that in deciding " a question [*278] of such magnitude and importance . . . it is the [better] part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject." [***LEdHR3] [3]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, 197 U. S. 11, 24-30, 49 L. Ed. 643, 25 S. Ct. 358 (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. Decisions prior to the incorporation of the Fourth Amendment into the Fourteenth Amendment analyzed searches and seizures involving the body under the Due Process Clause and were thought to implicate substantial liberty interests. See, e. g., Breithaupt v. Abram, 352 U. S. 432, 439, 1 L. Ed. 2d 448, 77 S. Ct. 408 (1957) (" As against the right of an individual that his person be held inviolable . . . must be set the interests of society . . ."). [***242] Just this Term, in the course of holding that a State's procedures for administering antipsychotic medication to prisoners were sufficient to satisfy due process concerns, we recognized that prisoners possess " a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment." Washington v. Harper, 494 U. S. 210, 221-222, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990). [***LEdHR4] [4] [***LEdHR5A] [5A]But determining that a person has a " liberty interest" under the Due Process Clause does not end the inquiry; 7 " whether respondent's constitutional rights have been violated [**2852] must be determined by balancing his liberty interests against the relevant state interests." Youngberg v. Romeo, 457 U. S. 307, 321, 73 L. Ed. 2d 28, 102 S. Ct. 2452 (1982). See also Mills v. Rogers, 457 U. S. 291, 299, 73 L. Ed. 2d 16, 102 S. Ct. 2442 (1982). 7 [***LEdHR5B] [5B] Although many state courts have held that a right to refuse treatment is encompassed by a generalized constitutional right of privacy, we have never so held. We believe this issue is more properly analyzed in terms of a Fourteenth Amendment liberty interest. See Bowers v. Hardwick, 478 U. S. 186, 194-195, 92 L. Ed. 2d 140, 106 S. Ct. 2841 (1986).

Petitioners insist that under the general holdings of our cases, the forced administration of life-sustaining medical treatment, and even of artificially delivered food and water essential to life, would implicate a competent person's liberty interest. Although we think the logic of the cases discussed above would embrace such a liberty interest, the dramatic consequences involved in refusal of such treatment would inform the inquiry as to whether the deprivation of that interest is constitutionally permissible. But for 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. They rely primarily on our decisions in Parham v. J. R., supra, and Youngberg v. Romeo, supra. In Parham, we held that a mentally disturbed minor child had a liberty interest in " not being confined unnecessarily for medical treatment," 442 U. S. at 600, but we certainly did not intimate that such a minor child, after commitment, would have a liberty interest in refusing treatment. In Youngberg, we held that a seriously retarded adult had a liberty [*280] interest in safety and freedom from [***243] bodily restraint, 457 U. S. at 320. Youngberg, however, did not deal with decisions to administer or withhold medical treatment.

[***LEdHR1B] [1B] [***LEdHR6] [6]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. 8 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. 8 See Smith, All's Well That Ends Well: Toward a Policy of Assisted Rational Suicide or Merely Enlightened Self-Determination?, 22 U. C. D. L. Rev. 275, 290-291, and n. 106 (1989) (compiling statutes). [*281] [***LEdHR1C] [1C]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 [**2853] may legitimately seek to safeguard the

personal element of this choice through the imposition of heightened evidentiary requirements. [HN3] 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, " there will, of course, be some unfortunate situations in which family members will not act to protect a patient." In re Jobes, 108 N. J. 394, 419, 529 A. 2d 434, 447 (1987). 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 [***244] process brings with it. 9 See Ohio v. Akron Center for Reproductive [*282] Health, 497 U. S. 502, 515-516. Finally, we think [HN4] 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. 9 Since Cruzan was a patient at a state hospital when this litigation commenced, the State has been involved as an adversary from the beginning. However, it can be expected that many disputes of this type will arise in private institutions, where a guardian ad litem or similar party will have been appointed as the sole representative of the incompetent individual in the litigation. In such cases, a guardian may act in entire good faith, and yet not maintain a position truly adversarial to that of the family. Indeed, as noted by the court below, " the guardian ad litem [in this case]

finds himself in the predicament of believing that it is in Nancy's 'best interest to have the tube feeding discontinued,' but 'feeling that an appeal should be made because our responsibility to her as attorneys and guardians ad litem was to pursue this matter to the highest court in the state in view of the fact that this is a case of first impression in the State of Missouri.'" 760 S. W. 2d at 410, n. 1. Cruzan's guardian ad litem has also filed a brief in this Court urging reversal of the Missouri Supreme Court's decision. None of this is intended to suggest that the guardian acted the least bit improperly in this proceeding. It is only meant to illustrate the limits which may obtain on the adversarial nature of this type of litigation. [***LEdHR1D] [1D] [***LEdHR7] [7] [***LEdHR8A] [8A] [***LEdHR9A] [9A]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. [HN5] " 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.'" Addington v. Texas, 441 U. S. 418, 423, 60 L. Ed. 2d 323, 99 S. Ct. 1804 (1979) (quoting In re Winship, 397 U. S. 358, 370, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970) (Harlan, J., concurring)). " This Court has mandated an intermediate standard of proof -- 'clear and convincing evidence' -- when the individual interests at stake in a state proceeding are both 'particularly important' and 'more substantial than mere loss of money.'" Santosky v. Kramer, 455 U. S. 745, 756, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982) (quoting Addington, supra, at 424). Thus, such a standard has been required

in deportation proceedings, Woodby v. INS, 385 U. S. 276, 17 L. Ed. 2d 362, 87 S. Ct. 483 (1966), in denaturalization proceedings, Schneiderman v. United States, 320 U. S. 118, 87 L. Ed. 1796, 63 S. Ct. 1333 (1943), in civil commitment proceedings, Addington, supra, and in proceedings for the termination of parental rights, Santosky, supra. 10 [***245] Further, [*283] this level of proof, " or an even higher one, has traditionally been imposed in cases involving [**2854] allegations of civil fraud, and in a variety of other kinds of civil cases involving such issues as . . . lost wills, oral contracts to make bequests, and the like." Woodby, supra, at 285, n. 18. 10 [***LEdHR9B] [9B] We recognize that these cases involved instances where the government sought to take action against an individual. See Price Waterhouse v. Hopkins, 490 U. S. 228, 253, 104 L. Ed. 2d 268, 109 S. Ct. 1775 (1989) (plurality opinion). Here, by contrast, the government seeks to protect the interests of an individual, as well as its own institutional interests, in life. We do not see any [HN6] reason why important individual interests should be afforded less protection simply because the government finds itself in the position of defending them. " We find it significant that . . . the defendant rather than the plaintiff" seeks the clear and convincing standard of proof -- " suggesting that this standard ordinarily serves as a shield rather than . . . a sword." Id., at 253. That it is the government that has picked up the shield should be of no moment. [***LEdHR1E] [1E] [***LEdHR8B] [8B]We think it self-evident that the interests at stake in the instant proceedings are more substantial, both on an individual and societal level, than those involved in a run-of-the-mine civil dispute. But [HN7] not only does the standard of proof reflect the importance of a particular adjudication, it also

serves as " a societal judgment about how the risk of error should be distributed between the litigants." Santosky, supra, at 755; Addington, supra, at 423. The more stringent the burden of proof a party must bear, the more that party bears the risk of an erroneous decision. 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. In Santosky, one of the factors which led the Court to require proof by clear and convincing evidence in a proceeding to terminate parental rights was that a decision in such a case was final and irrevocable. Santosky, supra, at 759. The same must surely be said of the decision to discontinue hydration and nutrition of a patient such as Nancy Cruzan, which all agree will result in her death. *** [***LEdHR1F] [1F]In sum, we conclude that [HN8] a State may apply a clear and convincing [***246] evidence standard in proceedings where a guardian seeks to discontinue nutrition and hydration of a person diagnosed to be in a persistent vegetative state. We note that many courts which have adopted some sort of substituted judgment procedure in situations like this, whether they limit consideration of evidence to the prior expressed wishes of the

incompetent individual, or whether they allow more [**2855] general proof of what the individual's decision would have been, require a clear and convincing standard of proof for such evidence. See, e. g., Longeway, 133 Ill. 2d at 50-51, 549 N. E. 2d at 300; McConnell, 209 Conn. at 707-710, 553 A. 2d at 604-605; O'Connor, 72 N. Y. 2d at 529-530, 531 N. E. 2d at 613; In re Gardner, 534 A. 2d 947, 952-953 (Me. 1987); In re Jobes, 108 N. J. at 412-413, 529 A. 2d, [*285] at 443; Leach v. Akron General Medical Center, 68 Ohio Misc. 1, 11, 426 N. E. 2d 809, 815 (1980). [***LEdHR2B] [2B]The Supreme Court of Missouri held that in this case the testimony adduced at trial did not amount to clear and convincing proof of the patient's desire to have hydration and nutrition withdrawn. In so doing, it reversed a decision of the Missouri trial court which had found that the evidence " suggested" Nancy Cruzan would not have desired to continue such measures, App. to Pet. for Cert. A98, but which had not adopted the standard of " clear and convincing evidence" enunciated by the Supreme Court. The testimony adduced at trial consisted primarily of Nancy Cruzan's statements made to a housemate about a year before her accident that she would not want to live should she face life as a " vegetable," and other observations to the same effect. The observations did not deal in terms with withdrawal of medical treatment or of hydration and nutrition. We cannot say that the Supreme Court of Missouri committed constitutional error in reaching the conclusion that it did. 11 11 The clear and convincing standard of proof has been variously defined in this context as " proof sufficient to persuade the trier of fact that the patient held a firm and settled commitment to the termination of life supports under the circumstances like those presented," In re

Westchester County Medical Center on behalf of O'Connor, 72 N. Y. 2d 517, 531, 531 N. E. 2d 607, 613, 534 N. Y. S. 2d 886 (1988) (O'Connor), and as evidence which " produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." In re Jobes, 108 N. J. at 407-408, 529 A. 2d at 441 (quotation omitted). In both of these cases the evidence of the patient's intent to refuse medical treatment was arguably stronger than that presented here. The New York Court of Appeals and the Supreme Court of New Jersey, respectively, held that the proof failed to meet a clear and convincing threshold. See O'Connor, 72 N. Y. 2d at 526-534, 531 N. E. 2d at 610-615; Jobes 108 N. J. at 442-443. Petitioners alternatively contend that Missouri must accept the " substituted judgment" of close family members even in the absence of substantial proof that their views reflect [*286] the views of the patient. They rely primarily upon our decisions in Michael H. v. Gerald D., 491 U. S. 110, 105 L. Ed. 2d 91, 109 S. Ct. 2333 (1989), and Parham v. J. R., 442 U. S. 584, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979). But we do not think these cases support their claim. In Michael H., we upheld the constitutionality of California's favored treatment of traditional family relationships; such a holding may not be turned around [***247] into a constitutional requirement that a State must recognize the primacy of those relationships in a situation like this. And in Parham, where the patient was a minor, we also upheld the constitutionality of a state scheme in which parents made certain decisions for mentally ill minors. Here again petitioners

would seek to turn a decision which allowed a State to rely on family decisionmaking into a constitutional requirement that the State recognize such decisionmaking. But constitutional law does not work that way. [***LEdHR13] [13] [***LEdHR14A] [14A]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 [HN9] the Due Process Clause requires the State to repose judgment on these matters with anyone but the patient herself. Close family members may have a strong feeling -- a feeling not at all ignoble or unworthy, but not entirely disinterested, [**2856] either -- that they do not wish to witness the continuation of the life of a loved one which they regard as hopeless, meaningless, and even degrading. But there 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 [*287] choose to defer only to those wishes, rather than confide the decision to close family members. 12 12 We are not faced in this case with the question whether a State might be required to defer to the decision of a surrogate if competent and probative evidence established that the patient herself had expressed a desire that the decision to terminate life-sustaining treatment be made for her by that individual. [***LEdHR14B] [14B] Petitioners also adumbrate in their brief a claim based on the Equal Protection Clause of the Fourteenth

Amendment to the effect that Missouri has impermissibly treated incompetent patients differently from competent ones, citing the statement in Cleburne v. Cleburne Living Center, Inc., 473 U. S. 432, 439, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985), that the Clause is " essentially a direction that all persons similarly situated should be treated alike." The differences between the choice made by a competent person to refuse medical treatment, and the choice made for an incompetent person by someone else to refuse medical treatment, are so obviously different that the State is warranted in establishing rigorous procedures for the latter class of cases which do not apply to the former class. The judgment of the Supreme Court of Missouri is Affirmed. CONCUR BY: O'CONNOR; SCALIA CONCUR JUSTICE O'CONNOR, concurring. I agree that a protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions, see 497 U. S. at 278-279, and that the refusal of artificially delivered food and water is encompassed within that liberty interest. See ante, at 279. I write separately to clarify why I believe this to be so. *** 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. See ante, at 287, n. 12. In my view, such a duty may well be constitutionally required to protect the patient's liberty interest in refusing medical treatment. Few individuals provide explicit oral or written instructions regarding their intent to refuse medical treatment should they become incompetent. 1 [*290] States which decline to consider any evidence other than such instructions may frequently fail to honor a patient's intent. Such failures might be avoided if the State considered an equally probative source

of evidence: the patient's appointment of a proxy to make health care decisions on her behalf. Delegating the authority to make medical decisions to a family member or friend is becoming a common method of planning for the future. See, e. g., Areen, The Legal Status of Consent Obtained from Families of Adult Patients to Withhold or Withdraw Treatment, 258 JAMA 229, 230 (1987). Several States have recognized the practical wisdom of such a procedure by enacting durable power of attorney statutes that specifically authorize an individual to appoint a surrogate to make medical treatment decisions. 2 Some state courts have suggested that an agent appointed pursuant [**2858] to a general durable power of attorney statute would also be empowered to make health care decisions on behalf of the patient. 3 See, e. g., In re Peter, 108 N. J. 365, 378-379, [*291] [***250] 529 A. 2d 419, 426 (1987); see also 73 Op. Md. Atty. Gen. No. 88-046 (1988) (interpreting Md. Est. & Trusts Code Ann. §§ 13-601 to 13-602 (1974), as authorizing a delegatee to make health care decisions). Other States allow an individual to designate a proxy to carry out the intent of a living will. 4 These procedures for surrogate decisionmaking, which appear to be rapidly gaining in acceptance, may be a [*292] valuable additional safeguard of the patient's interest in directing his medical care. Moreover, as patients are likely to select a family member as a surrogate, see 2 President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Making Health Care Decisions 240 (1982), giving effect to a proxy's decisions may also protect the " freedom of personal choice in matters of . . . family life." Cleveland Board of Education v. LaFleur, 414 U. S. 632, 639, 39 L. Ed. 2d 52, 94 S. Ct. 791 (1974). 1 See 2 President's

Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Making Health Care Decisions 241-242 (1982) (36% of those surveyed gave instructions regarding how they would like to be treated if they ever became too sick to make decisions; 23% put those instructions in writing) (Lou Harris Poll, September 1982); American Medical Association Surveys of Physician and Public Opinion on Health Care Issues 29-30 (1988) (56% of those surveyed had told family members their wishes concerning the use of life-sustaining treatment if they entered an irreversible coma; 15% had filled out a living will specifying those wishes). 2 At least 13 States and the District of Columbia have durable power of attorney statutes expressly authorizing the appointment of proxies for making health care decisions 3 All 50 States and the District of Columbia have general durable power of attorney statutes 4 Thirteen States have living will statutes authorizing the appointment of health care proxies. 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. Nor does it prevent States from developing other [**2859] approaches for protecting an incompetent individual's liberty interest in refusing medical treatment. As is evident from the Court's survey of state court decisions, see 497 U. S. at 271-277, no national consensus has yet emerged on the best solution for this difficult and sensitive problem. Today we decide only that one State's [***251] practice does not violate the Constitution; the more challenging task of crafting appropriate procedures

for safeguarding incompetents' liberty interests is entrusted to the " laboratory" of the States, New State Ice Co. v. Liebmann, 285 U. S. 262, 311, 76 L. Ed. 747, 52 S. Ct. 371 (1932) (Brandeis, J., dissenting), in the first instance. JUSTICE SCALIA, concurring. The various opinions in this case portray quite clearly the difficult, indeed agonizing, questions that are presented by the constantly increasing power of science to keep the human body alive for longer than any reasonable person would want to inhabit it. The States have begun to grapple with these problems through legislation. I am concerned, from the tenor of today's opinions, that we are poised to confuse that [*293] enterprise as successfully as we have confused the enterprise of legislating concerning abortion -- requiring it to be conducted against a background of federal constitutional imperatives that are unknown because they are being newly crafted from Term to Term. That would be a great misfortune. 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 [**2860] interference. Michael H. v. Gerald D., 491 U. S. 110, 122, 105 L. Ed. 2d 91, 109 S. Ct. 2333 (1989) (plurality opinion); Bowers v. Hardwick, 478 U. S. 186, 192, 92 L. Ed. 2d 140, 106 S. Ct. 2841 (1986); Moore, 431 U. S. at 502-503 (plurality opinion). 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," 4 W. Blackstone, Commentaries *189 -- was criminally liable. Ibid. Although the States abolished the penalties imposed by the common law (i. e., forfeiture and ignominious burial), they did so to spare the innocent family and not to legitimize the act. Case law at the time

of the adoption of the Fourteenth Amendment generally held that assisting suicide was a criminal offense. See Marzen, O'Dowd, Crone, & Balch, Suicide: A Constitutional Right?, 24 Duquesne L. Rev. 1, 76 (1985) (" In short, twenty-one of the thirty-seven states, and eighteen of the thirty ratifying states prohibited assisting suicide. Only eight of the states, and seven of the ratifying states, definitely did not"); see also 1 F. Wharton, Criminal Law § 122 (6th rev. ed. 1868). The System of Penal Law presented to the House of Representatives by Representative Livingston in 1828 would have criminalized assisted suicide. E. Livingston, A System of Penal Law, Penal Code 122 (1828). The Field Penal Code, [*295] adopted by the Dakota Territory in 1877, proscribed attempted suicide and assisted suicide. Marzen, O'Dowd, Crone, & Balch, supra, at 76-77. And most States that did not explicitly prohibit assisted suicide in 1868 recognized, when the issue arose in the 50 years following the Fourteenth Amendment's ratification, that assisted and (in some cases) attempted suicide were unlawful. Id., at 77-100; id., at 148-242 (surveying development of States' laws). Thus, " there is no significant support for the claim that a right to suicide is so rooted in our tradition that it may be deemed 'fundamental' or 'implicit in the concept of ordered liberty.'" Id., at 100 (quoting Palko v. Connecticut, 302 U. S. 319, 325, 82 L. Ed. 288, 58 S. Ct. 149 (1937)). 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." 4 Blackstone, supra, at *189. " The life of those to whom life has become a burden -- of those who are [***253] hopelessly diseased or fatally wounded -- nay, even the lives of criminals condemned to death, are under the protection of the law, equally as the lives of those who are in the full tide of life's enjoyment, and anxious to continue to live." Blackburn v. State, 23 Ohio St. 146, 163 (1873). Thus, a man who prepared a poison, and placed it within reach of his wife, " to put an end to her suffering" from a terminal illness was convicted of murder, People v. Roberts, 211 Mich. 187, 198, 178 N. W. 690, 693 (1920); the " incurable suffering of the suicide, as a legal question, could hardly affect the degree of criminality . . . ." Note, 30 Yale L. J. 408, 412 (1921) (discussing Roberts). Nor would the imminence of the patient's death have [*296] affected liability. " The lives of all are equally under the protection of the law, and under that protection to their last moment. . . . [Assisted suicide] is declared by the law to be murder, irrespective of the wishes or the condition of the party to whom the poison is administered . . . ." Blackburn, supra, at 163; see also Commonwealth v. Bowen, 13 Mass. 356, 360 (1816). [**2861] The second asserted distinction -- suggested by the recent cases canvassed by the Court concerning the right to refuse treatment, 497 U. S. at 270-277 -- relies on the dichotomy between action and inaction. Suicide, it is said, consists of an affirmative act to end one's life; refusing treatment is not an affirmative act " causing" death, but merely a passive acceptance of the natural process of dying. 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. It would not make much sense to say that one may not kill oneself by walking into the sea, but may sit on the beach until submerged by the incoming tide; or that one may not intentionally lock oneself into a cold storage locker, but may refrain from coming indoors when the temperature drops below freezing. Even as a legislative matter, in other words, the intelligent line does not fall between action and inaction but between those forms of inaction that consist of abstaining from " ordinary" care and those that consist of abstaining from " excessive" or " heroic" measures. Unlike action versus inaction, that is not a line to be discerned by logic or legal analysis, and we should not pretend that it is. 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 [*297] decision to " put an end to his own existence." 4 Blackstone, supra, at *189. See In re Caulk, 125 N. H. 226, 232, 480 A. 2d 93, 97 (1984); State ex rel. White v. Narick, 170 W. Va. 195, 292 S. E. 2d 54 (1982); Von Holden v. Chapman, 87 A. D. 2d 66, 450 N. Y. S. 2d 623 (1982). Of course the common law rejected the action-inaction distinction in other contexts involving the taking of human life as well. In the prosecution of a parent for the starvation death of her infant, it was no defense that the infant's [***254] death was " caused" by no action of the parent but by the natural process of starvation, or by the infant's natural inability to provide for

itself. See Lewis v. State, 72 Ga. 164 (1883); People v. McDonald, 49 Hun 67, 1 N. Y. S. 703 (5th Dept., App. Div. 1888); Commonwealth v. Hall, 322 Mass. 523, 528, 78 N. E. 2d 644, 647 (1948) (collecting cases); F. Wharton, Law of Homicide §§ 134-135, 304 (2d ed. 1875); 2 J. Bishop, Commentaries on Criminal Law § 686 (5th ed. 1872); J. Hawley & M. McGregor, Criminal Law 152 (3d ed. 1899). A physician, moreover, could be criminally liable for failure to provide care that could have extended the patient's life, even if death was immediately caused by the underlying disease that the physician failed to treat. Barrow v. State, 17 Okla. Crim. 340, 188 P. 351 (1920); People v. Phillips, 64 Cal. 2d 574, 414 P. 2d 353, 51 Cal. Rptr. 225 (1966). It is not surprising, therefore, that the early cases considering the claimed right to refuse medical treatment dismissed as specious the nice distinction between " passively submitting to death and actively seeking it. The distinction may be merely verbal, as it would be if an adult sought death by starvation instead of a drug. If the State may interrupt one mode of self-destruction, it may with equal authority interfere with the other." John F. Kennedy Memorial Hosp. v. Heston, 58 N. J. 576, 581-582, 279 A. 2d 670, 672-673 (1971); see also Application of President & Directors of Georgetown College, Inc., 118 U. S. App. D. C. 80, 88-89, 331 F. 2d 1000, [*298] 1008-1009 (Wright, J., in chambers), cert. denied, 377 U. S. 978, 12 L. Ed. 2d 746, 84 S. Ct. 1883 (1964). 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 [**2862]

only for the State, but even for private citizens, to interfere with bodily integrity to prevent a felony. See Phillips v. Trull, 11 Johns. 486 (N. Y. 1814); City Council v. Payne, 11 S. C. L. 475, 2 Nott & McC. 475 (S. C. 1821); Vandeveer v. Mattocks, 3 Ind. 479 (1852); T. Cooley, Law of Torts 174-175 (1879); Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 673 (1924); Restatement of Torts § 119 (1934). That general rule has of course been applied to suicide. At common law, even a private person's use of force to prevent suicide was privileged. Colby v. Jackson, 12 N. H. 526, 530-531 (1842); Look v. Choate, 108 Mass. 116, 120 (1871); Commonwealth v. Mink, 123 Mass. 422, 429 (1877); In re Doyle, 16 R. I. 537, 539, 18 A. 159, 159-160 (1889); Porter v. Ritch, 70 Conn. 235, 255, 39 A. 169, 175 (1898); Emmerich v. Thorley, 35 A. D. 452, 456, 54 N. Y. S. 791, 793-794 (1898); State v. Hembd, 305 Minn. 120, 130, 232 N. W. 2d 872, 878 (1975); 2 C. Addison, Law of Torts § 819 (1876); Cooley, supra, at 179-180. 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. The state-run hospital, I am certain, is not liable under 42 U. S. C. § 1983 [***255] for violation of constitutional rights, nor the private hospital liable under general tort law, if, in a State where suicide is unlawful, it pumps out the stomach of a person who has intentionally [*299] taken an overdose of barbiturates, despite that person's wishes to the contrary. *** 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 [***256] 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 horribles 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 [*301] where irrationality and oppression may theoretically occur, and if it tries to do so it will destroy itself. DISSENT BY: BRENNAN; STEVENS DISSENT JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting. " Medical technology has effectively created a twilight zone of suspended animation where death commences while life, in some form, continues. Some patients, however, want no part of

a life sustained only by medical technology. Instead, they prefer a plan of medical treatment that allows nature to take its course and permits them to die with dignity." 1 1 Rasmussen v. Fleming, 154 Ariz. 207, 211, 741 P. 2d 674, 678 (1987) (en banc). Nancy Cruzan has dwelt in that twilight zone for six years. She is oblivious to her surroundings and will remain so. Cruzan v. Harmon, 760 S. W. 2d 408, 411 (Mo. 1988). Her body twitches only reflexively, without consciousness. Ibid. The areas of her brain that once thought, felt, and experienced sensations have degenerated badly and are continuing to do so. The cavities remaining are filling with cerebrospinal fluid. The "'cerebral cortical atrophy is irreversible, permanent, progressive and ongoing.'" Ibid. " Nancy will never interact meaningfully with her environment again. She will remain in a persistent vegetative state until her death." Id., at 422. 2 Because she cannot swallow, her nutrition and hydration are delivered through a tube surgically implanted in her stomach. 2 Vegetative state patients may react reflexively to sounds, movements, and normally painful stimuli, but they do not feel any pain or sense anybody or anything. Vegetative state patients may appear awake but are completely unaware. See Cranford, The Persistent Vegetative State: The Medical Reality, 18 Hastings Ctr. Rep. 27, 28, 31 (1988). A grown woman at the time of the accident, Nancy had previously expressed her wish to forgo continuing medical care under circumstances such as these. Her family and her [*302] friends are convinced that this is what she would want. See n. 20, infra. A guardian ad litem appointed by the trial court is also convinced that this is what Nancy would want. See 760 S. W. 2d at 444 (Higgins, J., [***257] dissenting from denial of rehearing). Yet the Missouri Supreme Court, alone

among state courts deciding such a question, has determined that an irreversibly vegetative [**2864] patient will remain a passive prisoner of medical technology -- for Nancy, perhaps for the next 30 years. See id., at 424, 427. Today the Court, while tentatively accepting that there is some degree of constitutionally protected liberty interest in avoiding unwanted medical treatment, including life-sustaining medical treatment such as artificial nutrition and hydration, affirms the decision of the Missouri Supreme Court. The majority opinion, as I read it, would affirm that decision on the ground that a State may require " clear and convincing" evidence of Nancy Cruzan's prior decision to forgo life-sustaining treatment under circumstances such as hers in order to ensure that her actual wishes are honored. See 497 U. S. at 282-283, 286-287. 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. I A " The timing of death -- once a matter of fate -- is now a matter of human choice." Office of Technology Assessment Task Force, Life Sustaining Technologies and the Elderly 41 (1988). Of the approximately 2 million people who die each year, 80% die in hospitals and long-term care institutions, 3 [*303] and perhaps 70% of those after a decision to forgo life-sustaining treatment has been made. 4 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. 3 See President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Deciding to Forego Life Sustaining Treatment 15, n. 1, and 17-18 (1983) (hereafter President's Commission). 4 See Lipton, Do-Not-Resuscitate Decisions in a Community Hospital: Incidence, Implications and Outcomes, 256 JAMA 1164, 1168 (1986). The question before this Court is a relatively narrow one: whether the Due Process Clause allows Missouri to require a now-incompetent patient in an irreversible persistent vegetative state to remain on life support absent rigorously clear and convincing evidence that avoiding the treatment represents the patient's prior, express choice. See 497 U. S. at 277-278. If a fundamental right is at issue, Missouri's rule of decision must be scrutinized under the standards this Court has always applied in such circumstances. As we said in Zablocki v. Redhail, 434 U. S. 374, 388, 54 L. Ed. 2d 618, 98 S. Ct. 673 (1978), if a [***258] requirement imposed by a State " significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." The Constitution imposes on this Court the obligation to " examine carefully . . . the extent to which [the legitimate government interests advanced] are served by the challenged regulation." Moore v. East Cleveland, 431 U. S. 494, 499, 52 L. Ed. 2d 531, 97 S. Ct. 1932 (1977). See also Carey v. Population Services International, 431 U. S. 678, 690, 52 L. Ed.

2d 675, 97 S. Ct. 2010 (1977) (invalidating a requirement that bore " no relation to the State