

# Murder, suicide, starvation, death: U.S. Supreme Court protects them all

by Linda Everett

In its first euthanasia ruling, the U.S. Supreme Court June 25 ruled 5-4 that it is constitutionally permissible for states to require "clear and convincing proof" that an incompetent patient wants to die before allowing life-support or food and water to be removed. The ruling, in affirming a state's right to make laws that uphold the state's interest in protecting the lives of its citizens, *appears* to espouse some sentient notion of the inviolability of human life.

It does not.

Just as the majority ruled that states *may* choose to demand procedural safeguards of the highest evidentiary degree to determine an incompetent patient's treatment wishes, it also endorsed a sweep of state laws and court rulings that eschew such protections and allow the murder of patients under the most specious circumstances. The young woman this decision saved from a starvation death in Missouri, will probably just be moved to the next state where her killing could be legal. In this decision, the Supreme Court swept aside American jurisprudence once born of natural law, gutted the Constitution of its sanctity of life premise, and then discovered a constitutional rationale for murdering the sick and influencing the vulnerable to commit suicide—both better known as your "right to die."

The Supreme Court admitted, for all the wrong reasons, that starving patients to death was no different than removing other forms of medical treatment (after all, murder is murder), but then pronounced that "the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition." This "sensitive" decision, as U.S. Solicitor General Kenneth Starr characterized it, condemns tens of thousands of vulnerable patients.

The case before the Court involved the Cruzan family's request to remove the feeding tube that sustains their daughter Nancy, 33, who has been unconscious for seven years since an auto accident. State hospital employees refused to starve her. A lower court finding that state and federal constitutions embody a fundamental right to refuse to withdraw "death prolonging procedures," was reversed by the Missouri Supreme Court in an outstanding ruling that still has the eutha-

nasia mob shuddering. It found that a patient's right to privacy does not allow refusal of medical treatment under every circumstance; that Missouri law embodies a strong state policy that favored preservation of life; and that Cruzan's statements that she would not want to live as a "vegetable," made a year before her accident, were "unreliable for the purpose determining her intent."

## Others decide your 'right' to die

Chief Justice William Rehnquist delivered the majority opinion in which Justices Byron White, Sandra O'Connor, Antonin Scalia, and Anthony Kennedy joined. The Court sees the right to refuse treatment on the common law held "sacred" right "of every individual to the possession and control of his own person, free from all restraint or interference of others (1891)." "Every human being of adult years and sound mind has a right to determine what shall be done with his own body (1914)." The logical corollary of the doctrine of informed consent, the Court states, is the patient's "right not to consent, that is, to refuse treatment."

Quoting major court decisions that made euthanasia legal over the last 15 years, the Court details how states have demonstrated their "diversity" in dealing with right-to-die issues. It is no coincidence that the most far reaching rulings dealt initially, like the Nazi euthanasia program, with the most vulnerable patients, the ones who could not fight back. Karen Ann Quinlan's right to privacy (to refuse treatment and protect her bodily integrity) was not lost while she lay unconscious; her parents exercised it for her by having her respirator removed. In *Saikewicz*, the court reasoned that a retarded adult facing chemotherapy has the same rights to privacy and informed consent as a competent individual "because the value of human dignity extends to both." The court decided what treatment the incompetent patient *would* have wanted, using a "substituted judgment" standard.

The Supreme Court writes that in *Saikewicz*, the Massachusetts court found the state's interest in the preservation of life as "paramount and . . . greatest when the affliction was curable, 'as opposed to the State interest where . . . the issue is not whether, but when, for how long, and at what cost to

the individual [a] life may be briefly extended.’ ” In other words, life at its terminus or for the chronically ill or unconscious—is of less worth. The Court cites cases in which life-sustaining care is terminated by someone other than the incompetent patient who exercises the patient’s right to self-determination using formulations like objective standards, best interests standards, limited-objective standards, or pure objective standards. It gets worse.

Among the state statutory laws the Supreme Court feels are exemplary “resolution(s) of these issues,” is a California court’s authorization of conservators, relatives, or “*other persons*” to make life and death decisions for a patient without his prior consent. That court reasoned that “to claim that [a patient’s] ‘right to choose’ survives incompetency is a legal fiction at best,” but, the respect society accords to persons as individuals is not lost upon incompetence and is best preserved by allowing others “to make a decision that reflects [a patient’s] interests.” The California State Deputy Public Defender, aghast at the thousands of lives at risk with this statute, brought the case to the U.S. Supreme Court which refused to hear it. The patient, William Drabick, was starved to death. The Court cites rulings that allowed conservators to murder patients because it was in their “best interests”—but evidence indicates that only a liable hospital, in one case, and the state budget, in another, were served. In a New Jersey ruling, after an unconscious woman was starved to death with the court’s permission, the guardian was implicated in the suspicious deaths of his first wife and a former companion, and possibly others. With the Court’s approval of “Right to Die,” we can expect to see even greater disasters.

### **Liberty to die?**

The Court infers that a competent person has a constitutionally protected liberty in refusing unwanted treatment from the Fourteenth Amendment’s guarantee that no state shall “deprive any person of life, liberty, or property, without due process of law.” Since these rights must be exercised *for* an incompetent patient, states like Missouri have a right to set up procedural safeguards that demand “clear and convincing” proof of a patient’s wishes expressed when competent. The U.S. Constitution does not forbid the establishment of this requirement, the Supreme Court said, since it grows out of the state’s interest in the protection of human life. “The States, indeed, all civilized nations—demonstrate their commitment to life by treating homicide as serious crime.” The Court adds, “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 the Court forgoes these protections, as many states they cite allowed initial euthanasia rulings on little more than a relative’s comment that “Auntie never liked doctors” (*Conroy*), or the patient “mentioned ten years ago while watching TV that she would not want to live like a vegetable” (*Jobes*), or “my wife always had a phobia about head injur-

ies” (*McConnell*). The Court defended Missouri’s strict proof laws, because “Most states forbid oral testimony entirely in determining the wishes of parties in transactions which, while important, simply do not have the consequence that a decision to terminate a person’s life does.” An erroneous decision to withdraw life-sustaining treatment is “not susceptible of correction.” The decision to stop feeding Nancy Cruzan will be “final and irrevocable.”

In a concurring opinion, Justice O’Connor cites court decisions and pro-euthanasia diatribes from the (now defunct) President’s Commission, the American Medical Association, the Hastings Bioethics Center, and the U.S. Office of Technology Assessment’s Task force on Life-Sustaining Technologies and the Elderly, to promote the use of the Euthanasia Society’s living will, or powers of attorney in which you appoint a proxy to make or carry out your treatment decisions once you are unable. This is a horrible charade that denies any “protected” right to informed consent. Not only are the elderly manipulated and frightened into refusing treatment, patients are yanked off life-support, denied care and food, and condemned to slip deeper into coma because of willful decisions not to treat them.

Justice Scalia agrees with the majority opinion, but says “the federal courts have got no business in this field.” Justice William Brennan’s position is that it is none of the state’s business if a person wants to commit suicide, while Justice John Paul Stephens says the “choices about death touch the core of liberty,” and are best left up to individual conscience. Scalia says the states have the power to prevent or prohibit suicides even by force, including suicide by refusing critical treatment—but they are also free to permit them! “Starving oneself to death,” he adds, “is no different from putting a gun to one’s temple as far as common-law definition of suicide is concerned.” Scalia says he does not mean to suggest, however, 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 only assert that the Constitution has nothing to say on the issue. . . . The Court . . . has no authority to inject itself into every field of human activity where irrationality and oppression may theoretically occur.”

Justice Brennan’s dissent, with Justices Thurgood Marshall and Harry Blackmun, and Justice Stephens’s separate dissent, differ from the majority ruling only in the degree of cold-blooded abhorrence of natural law—of man’s capacity to surmount, through progress, nature’s limits on life. Both dissents slam the majority variously for not making euthanasia a fundamental civil right or for not giving young, injured children a way to assure against unwanted treatment. Both assert patients should be allowed to be killed if families would prefer pleasant memories of his or her better days—and not of their “degraded” state—as though the dignity of man and the good he contributes is physically posited in a leg or breast or consciousness. Even in illness, our patients call upon us to produce a greater good, a cure, and to fight for life.