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Riggins v. Nevada: The Accused's Right to "Just Say No" to Antipsychotic Drugs?

The use of antipsychotic drugs to alter psychotic behavior has vastly improved the quality of life for many mentally ill patients. While antipsychotic drugs do not cure psychosis, they can reduce its more acute symptoms, such as thought disorder, indifference, paranoid identification, hallucinations, belligerence, bizarre behavior, and inappropriate responses to people.

Antipsychotic drugs are powerful agents that are administered to alter the chemical balances in the brain, but that may, like many medical treatments, produce unwanted side effects. Both the detrimental side effects and the intrusive nature of antipsychotic drugs are significant factors when a state wants to forcibly treat an individual with these agents. Many American courts have considered whether persons confined to

1. John M. Davis & Jonathan O. Cole, Antipsychotic Drugs, in 5 American Handbook of Psychiatry 441, 441-42 (Daniel X. Freedman & Jarl E. Dyrud eds., 2d ed. 1975). Psychiatric practice has been profoundly affected by the discovery of antipsychotic drugs and their antischizophrenic effects. Id. at 441. Beyond the pharmacological actions of these drugs, their discovery allowed public mental institutions for the first time to be regarded as "true treatment centers, rather than as primarily custodial facilities." Id. at 442. Furthermore, because the drugs are capable of bringing the more disruptive and destructive psychotic behaviors under control, their use also made possible the widespread use of other therapies, such as psychotherapy, group therapy, and occupational therapy. Id. Antipsychotic drug therapy has resulted in a major reduction in the number of hospitalized schizophrenic patients. Id.

2. Id. at 446; see also Physicians' Desk Reference 1940 (44th ed. 1990) (describing the clinical pharmacology and indications for the antipsychotic drug Mellaril).

3. Washington v. Harper, 494 U.S. 210, 229 (1990); see also Brief Amicus Curiae of the American Psychiatric Association Supporting Petitioner at 7-8, Riggins v. Nevada, 112 S. Ct. 1810 (1992) (No. 90-8466) [hereinafter Brief of the American Psychiatric Association] (stating antipsychotic drugs are used to treat serious disorders of the mind where reality cannot be distinguished from fantasy, as compared with antidepressants which are used to treat mood disorders).

4. See Physicians' Desk Reference, supra note 2, at 1940-41 (describing serious adverse reactions, such as tardive dyskinesia, to the antipsychotic drug Mellaril).

5. See Riggins v. Nevada, 112 S. Ct. 1810, 1814 (1992) (recognizing the intrusive nature of antipsychotic drugs and their side effects in concluding that the forcible injection of medication represents a substantial interference with the person's liberty, and, in the case of antipsychotic drugs, that interference is "particularly severe"); Harper, 494 U.S. at 229-30 (recognizing intrusive nature of antipsychotic drugs and their side effects in concluding
mental institutions or prisons have a constitutional right to refuse treatment with antipsychotic drugs. While the United States Supreme Court has recognized a liberty interest in being free from unwanted antipsychotic drugs, the Court has further concluded that such an interest is not absolute and must be weighed against competing state interests.

In *Riggins v. Nevada*, the United States Supreme Court considered whether the forced administration of antipsychotic medication during trial violated the defendant's Sixth and Fourteenth Amendment rights. In a seven to two decision, the Court concluded that the lower courts' failure to acknowledge Riggins' liberty interest in freedom from continual, involuntary antipsychotic drug treatment without any determination regarding the need for antipsychotic medication or any consideration of reasonable alternatives constituted reversible error. The Court stated that such error may have violated Riggins' right to a full and fair trial.

The Court reasoned that Riggins' rights at trial possibly were impaired because the side effects of the medication may have impacted his outward appearance, the content of his testimony, his ability to follow the proceedings, or the substance of his communication with counsel.

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7. *Harper*, 494 U.S. at 227 (holding that due process allows a mentally ill inmate to be treated with antipsychotic drugs where the inmate is dangerous to himself or others and the treatment is medically appropriate).


9. *Id.* at 1814.

10. *Id.* at 1815-16.

11. *Id.* at 1816.

12. *Id.; see also In re Pray*, 336 A.2d 174 (Vt. 1975) (holding that where a defendant's defense to a first degree murder charge was solely based on a plea of insanity, the state should have at least informed the jury that defendant was under heavy sedation); *State v. Murphy*, 355 P.2d 323 (Wash. 1960) (en banc) (granting a new trial upon a showing by the accused of a reasonable possibility that his attitude, appearance, and demeanor may have been influenced by tranquillizers administered during trial where the jury imposed the death penalty). *But see State v. Hayes*, 389 A.2d 1379 (N.H. 1978) (holding defendant has no absolute right to be tried free from the influence of the drugs where defendant was
This Note first discusses the side effects that accompany antipsychotic drug treatment and examines how courts have addressed the asserted right to refuse treatment with antipsychotic drugs in the pre-trial and prison settings. Part II analyzes the Supreme Court's holding in Riggins v. Nevada. Finally, this Note examines the implications of Riggins with respect to a state's burden to justify the need to medicate a defendant with antipsychotic medication before or during trial.

I. ANTIPSYCHOTIC DRUGS

Physicians widely prescribe antipsychotic drugs for patients exhibiting symptoms of psychosis, and the therapeutic benefits of these drugs are well documented.\(^\text{13}\) Antipsychotic drugs are used to alter the chemical balance in the brain to effect positive changes in the patient's ability to organize his or her thought processes.\(^\text{14}\) Antipsychotic drugs can eliminate hallucinations and delusions, thereby restoring the patient to a rational state of mind.\(^\text{15}\) In fact, for many patients there is no alternative effective treatment of psychotic illness.\(^\text{16}\)

under the influence of the drugs at the time of the crime); State v. Jojola, 553 P.2d 1296 (N.M. Ct. App. 1976) (holding that the defendant does not have an absolute right to be tried free from the influence of antipsychotic drugs and due process is not denied by trying him under the influence of drugs administered to sedate him emotionally); State v. Law, 244 S.E.2d 302 (S.C. 1978) (holding defendant's insanity defense and his ability to assist counsel and confront witnesses against him were not undermined by the fact that defendant was forcibly medicated during trial).

13. See Brief of the American Psychiatric Association, supra note 3, at 8 (stating antipsychotic drugs are widely accepted within the psychiatric community as a highly effective treatment, and are the treatment of choice by many); see generally Davis & Cole, supra note 1, at 441-59 (discussing effective treatment with antipsychotic drugs).

14. Washington v. Harper, 494 U.S. 210, 229 (1990). Harper received antipsychotic medication after first being diagnosed with a manic-depressive disorder. Id. at 214. Later, he was diagnosed as suffering from schizophrenia. Id. at 214 n.2; see also Brief of the American Psychiatric Association, supra note 3, at 8 (discussing the effective treatment of schizophrenia with antipsychotic drugs).

15. See AMERICAN PSYCHIATRIC PRESS TEXTBOOK OF PSYCHIATRY 774 (John A. Talbott et al. eds., 1988); see also Davis & Cole, supra note 1, at 442 (stating that antipsychotic medication so improved some mentally ill patients that they were discharged from the hospital and returned to their communities to be functioning members, and stating that schizophrenic patients can often be effectively treated with antipsychotic drugs without ever being hospitalized).

16. See Brief of the American Psychiatric Association, supra note 3, at 4 (contending that antipsychotic medication "may be the only reasonable means of treating a defendant in custody who is mentally ill and dangerous to himself . . . [and] may be the only reasonable means of restoring or maintaining a defendant's competence to stand trial").
A. The Side Effects of Antipsychotic Drugs

If you take a lot of [the antipsychotic drug Mellaril] you become stoned for all practical purposes and can barely function.\(^7\)

Despite the potential of antipsychotic drugs to alleviate the symptoms of psychosis, they are dangerous and even fatal for some patients.\(^1\) The negative side effects of antipsychotic drugs are wide ranging and vary in severity. Physical or motor activity impairments include akinesia, akathisia, parkinsonian syndrome, and tardive dyskinesia.\(^9\) Akinesia is characterized by lethargy, drooling, apathy, and rigid facial expressions.\(^2\) Akathisia is a condition of semi-involuntary motor restlessness\(^21\) wherein patients often cannot sit still and may experience anxiety attacks.\(^22\) Symptoms of parkinsonian syndrome are similar to those associated with Parkinson's disease, such as muscle tremors, masklike facial expressions, the slowing of voluntary movements, and rigidity.\(^23\) Tardive dyskinesia (TD), a neurological disorder with physical manifestations, may occur late in the course of antipsychotic drug treatment, particularly where high doses have been administered for several years.\(^24\) Symptoms of TD include uncontrollable muscular movements, particularly around the mouth, such as smacking of the lips, involuntary sucking, lateral or "fly catching" movements of the tongue, and grimacing.\(^25\) The symptoms of

\(^7\) Riggins v. Nevada, 112 S. Ct. 1810, 1819 (1992) (Kennedy, J., concurring) (quoting Dr. Jurasky, one of three court appointed psychiatrists who examined Riggins to determine his competency to stand trial). But see Brief of the American Psychiatric Association, supra note 3, at 11 (stating "[t]here is, however, little reliable evidence that properly used antipsychotic medication has any significant adverse effect on attention or perception"). See generally Davis & Cole, supra note 1, at 449-52 (discussing dosages of antipsychotic medication). Because different patients respond to different dosages, there is no set dose for any given antipsychotic drug. Id. at 449. "There is a wide therapeutic range between effective dose and toxic overdose with the antipsychotic agents." Id. at 450.

\(^8\) See Physicians' Desk Reference, supra note 2, at 1941 (discussing adverse reactions associated with the antipsychotic drug Mellaril); Harper, 494 U.S. at 230 (describing one side effect, neuroleptic malignant syndrome as "a relatively rare condition which can lead to death from cardiac dysfunction").

\(^9\) See Davis & Cole, supra note 1, at 460-63 (discussing akathisia, parkinsonian syndrome, and tardive dyskinesia); Bachand, supra note 6, at 1061-62 (discussing akinesia, akathisia, and tardive dyskinesia).

\(^10\) Bachand, supra note 6, at 1061-62.

\(^11\) Id. at 1062 (stating akathisia causes "a pronounced inner restlessness or jumpiness").

\(^12\) Davis & Cole, supra note 1, at 460-61.

\(^13\) Id. at 460.

\(^14\) Id. at 462.

\(^15\) Id. Antiparkinsonian medication is not effective to treat tardive dyskinesia. Id. at 463.
TD have been observed not only during full treatment, but also several
days or weeks after treatment has ceased or been reduced.  

Autonomic, physical side effects of antipsychotic drugs include dry
mouth and throat, blurred vision, flushed skin, constipation, and urinary
retention. Long term eye and skin disorders have also been observed,
including a discoloration of skin exposed to sunlight, wherein the skin
first turns tan and then to a dark gray, blue, or purple color. Retinitis
pigmentosa may develop when dosages of thioridazine (Mellaril) exceed
800 milligrams per day. Effects on the endocrine system include breast
engorgement, lactation, and male impotence. 

Antipsychotic drugs may also cause behavioral side effects, such as
toxic confusion, insomnia, bizarre dreams, and aggravated schizophrenic
symptoms. The American Psychiatric Association has recognized that
the drugs' sedation-like effect can alter the thought processes in severe
cases. 

B. The Right to Refuse Antipsychotic Medication

In Bee v. Greaves, the Tenth Circuit held that a pretrial detainee
treated with antipsychotic drugs against his will has a constitutionally protected liberty interest in refusing the unwanted medication.\textsuperscript{34} The Tenth Circuit considered three constitutional bases for its holding.\textsuperscript{35}

First, the court recognized a liberty interest based on the constitutionally protected fundamental right to privacy.\textsuperscript{36} The court concluded that

\textsuperscript{34} Bee, 744 F.2d at 1391-92. Daniel Howard Bee filed this action under 42 U.S.C. § 1983 (1976) against state officials in federal district court to challenge the forced antipsychotic medication while he was jailed prior to trial. \textit{Id.} at 1389. Bee asserted that medicating him with antipsychotics against his will violated his constitutional due process and privacy rights. \textit{Id.} at 1391. Defendants asserted that pretrial detainees have no constitutional right to refuse medical treatment while incarcerated. The district court granted the defendants' motion for summary judgment. \textit{Id.}

\textsuperscript{35} \textit{Id.} at 1391-92.

\textsuperscript{36} \textit{Id.} at 1392-93; accord Rogers v. Okin, 634 F.2d 650 (1st Cir. 1980), \textit{vacated and remanded on other grounds sub nom.}, Mills v. Rogers, 457 U.S. 291 (1982), \textit{on remand} 738 F.2d 1, 7 (1st Cir. 1984) (holding that state procedural rules regarding forcible antipsychotic medication of mental patients create federally protected liberty interests under the Due Process Clause). In \textit{Rogers}, a class action suit was filed by mental hospital patients against members of the hospital staff, seeking injunctive and monetary relief from the defendants' forcible medication practices. The district court granted plaintiffs injunctive relief but denied their claims for damages under federal and state law. Rogers v. Okin, 478 F.Supp. 1342, 1383 (D. Mass. 1979). Defendants appealed the district court's order enjoining the forcible use of antipsychotic medication, and plaintiffs cross appealed from the denial of damages. The First Circuit affirmed in part and reversed in part the district court's injunctive order. Rogers, 634 F.2d at 650. In April 1981, the Supreme Court granted certiorari to decide whether an involuntarily committed mental patient has a constitutional right to refuse treatment with antipsychotic drugs. Okin v. Rogers, 451 U.S. 906 (1981). With certiorari pending, the Massachusetts Supreme Judicial Court issued its opinion in \textit{In re Guardianship of Roe}, 421 N.E.2d 40, 42 (Mass. 1981), in which the court held that a noninstitutionalized, mentally incompetent ward had a protected liberty interest in refusing treatment with antipsychotic drugs grounded in common law and federal constitutional law. In light of \textit{Roe}, the United States Supreme Court vacated the judgment of the First Circuit in \textit{Rogers} and remanded for a determination of whether state law had been modified by \textit{Roe} and whether the rights and duties of the parties could be determined entirely under state law. Mills v. Rogers, 457 U.S. 291, 306 (1982). The Supreme Court stated that an involuntarily committed mental patient's right to refuse medication has both substantive and procedural aspects, and that state law can go further than the federal Constitution in creating substantive liberty interests and in creating procedural protections for those interests. \textit{Id.} at 300. The First Circuit thereafter certified nine questions to the Massachusetts Supreme Court to clarify the nature and extent of a patient's substantive and procedural rights under Massachusetts law. Rogers v. Commission of the Dep't of Mental Health, 458 N.E.2d 308, 312 (Mass. 1983); see also Youngberg v. Romeo, 644 F.2d 147 (3d Cir. 1980) (en banc), \textit{vacated}, 457 U.S. 307, 316 (1982) (holding an involuntarily committed mentally ill patient has a constitutionally protected liberty interest under the Due Process Clause of the Fourteenth Amendment to freedom from unreasonable bodily restraints); Rennie v. Klein, 476 F.Supp. 1294 (D.N.J. 1979), \textit{modified}, 653 F.2d 836 (3rd Cir. 1981) (en banc), \textit{vacated}, 458 U.S. 1119 (1982), \textit{on remand} 720 F.2d 266, 269 (3d Cir. 1983) (en banc) (holding an involuntarily committed mentally ill patient has a constitutionally protected right to refuse antipsychotic medication). \textit{Rennie} was remanded by the Supreme Court at
the personal decision to accept or reject potentially dangerous antipsychotic drugs falls within the constitutionally protected right to privacy, and the forced administration of these drugs constitutes a significant invasion of that right.\textsuperscript{37}

Second, the \textit{Bee} court likened Bee's interest in being free from the unwanted physical and mental restraints potentially imposed by antipsychotic drugs to freedom from physical, bodily restraints.\textsuperscript{38} The court reasoned that because incarcerated individuals retain a liberty interest in freedom from soft physical restraints, they also should enjoy a liberty interest in being free from the physical and mental restraints caused by antipsychotic drugs.\textsuperscript{39} The \textit{Bee} court relied on \textit{Vitek v. Jones},\textsuperscript{40} wherein the Supreme Court held that "[c]ompelled treatment in the form of mandatory behavior modification programs is a proper factor to be considered in determining whether a prisoner's liberty interest in personal security has been infringed."\textsuperscript{41}

Finally, the \textit{Bee} court grounded the asserted liberty interest in the First Amendment right to the free communication of ideas.\textsuperscript{42} The court reasoned that "[a]ntipsychotic drugs have the capacity to severely and even

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\textsuperscript{37} \textit{Bee}, 744 F.2d at 1392-93 (relying on \textit{Davis v. Hubbard}, 506 F. Supp. 915 (N.D. Ohio 1980)). The \textit{Hubbard} court stated that the source of the right to refuse antipsychotic drugs "can best be understood as substantive due process, or . . . as an aspect of 'liberty' guaranteed by the due process clause of the Fourteenth Amendment." \textit{Davis v. Hubbard}, 506 F. Supp. 915, 929 (N.D. Ohio 1980); see also \textit{Riggins v. Nevada}, 112 S. Ct. 1810, 1816 (1992) (holding that a pretrial detainee possesses a significant liberty interest in being free from unwanted antipsychotic drugs under the Fourteenth Amendment Due Process Clause); \textit{Washington v. Harper}, 494 U.S. 210, 221-22 (1990) (holding that a prison inmate possesses a significant liberty interest in being free from unwanted antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment); cf. \textit{Winston v. Lee}, 470 U.S. 753, 759 (1985) (concluding that proposed surgical removal of a bullet from defendant for evidentiary purposes implicated a defendant's right to privacy).

\textsuperscript{38} \textit{Bee}, 744 F.2d at 1393. "[L]iberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action." \textit{Id.} (quoting \textit{Youngberg v. Romeo}, 457 U.S. 307, 316 (1982) (citations omitted)).

\textsuperscript{39} \textit{Bee}, 744 F.2d at 1393.

\textsuperscript{40} 445 U.S. 480 (1980).


\textsuperscript{42} \textit{Bee}, 744 F.2d at 1393-94.
permanently affect an individual's ability to think and communicate.\textsuperscript{43}

After concluding that the pretrial detainee has a constitutional liberty interest in avoiding antipsychotic medication, the \textit{Bee} court stated that the protected interest is not absolute, but must be weighed against competing state interests.\textsuperscript{44} The court first noted that pretrial detainees do not enjoy the same freedoms as unincarcerated individuals, and then examined the three interests advanced by the state.\textsuperscript{45}

First, the court summarily dismissed the state's asserted concern that the jail has the right and duty to treat a mentally ill detainee, concluding that such a duty arises only when necessary medical treatment is desired by the detainee.\textsuperscript{46} Second, the court rejected the state's asserted interest in keeping the defendant competent to stand trial, citing the state court's earlier determination that the defendant was not mentally ill and was competent to stand trial.\textsuperscript{47} Finally, the court addressed the state's as-

\begin{itemize}
\item \textsuperscript{43} Id. at 1394.
\item \textsuperscript{44} Id.; accord Davis v. Hubbard, 506 F. Supp. 915 (N.D. Ohio 1980). The \textit{Davis} court stated:

\begin{quote}
Recognition of the interests . . . as fundamental and worthy of constitutional protection does not, \textit{ipso facto}, mean that plaintiffs have a right to refuse psychotropic medication. Whether any such right exists, and if so, its limitations can be determined only after identifying the legitimate interests of the State and then balancing these interests against the interests of the plaintiffs.
\end{quote}

\textit{Id.} at 934; \textit{see also} Youngberg v. Romeo, 457 U.S. 307, 321 (1982) (stating that an involuntarily committed mental patient's right to freedom from bodily restraint must be balanced against relevant state interests to determine whether his constitutionally protected right has been violated); Rennie v. Klein, 720 F.2d 266, 273 (3d Cir. 1983) (stating that the right of an involuntarily committed mental patient to refuse antipsychotic medication is not absolute).

\item \textsuperscript{45} \textit{Bee}, 744 F.2d at 1394.
\item \textsuperscript{46} \textit{Id.} at 1394-95. The \textit{Bee} court concluded that because medical treatment is required to ensure that pretrial detention does not amount to the imposition of punishment, constitutionally mandated medical treatment does not encompass forcing the treatment on a competent individual who chooses to forgo the risks and pains of a potentially dangerous treatment. \textit{Id.}; cf. Riggins v. Nevada, 112 S. Ct. 1810, 1815 (1992) (concluding that a state can treat a pretrial detainee with antipsychotic drugs against his will if it can demonstrate a need for the medication and its medical appropriateness).

\item \textsuperscript{47} \textit{Bee}, 744 F.2d at 1395. While recognizing the state's interest in bringing the accused to trial, the \textit{Bee} court questioned whether such an interest would ever be compelling enough to outweigh the criminal defendant's interest in refusing unwanted antipsychotic medication with potentially dangerous side effects. \textit{Id.} The \textit{Bee} court concluded that a state's interest that is not related to the individual's legitimate treatment needs is irrelevant in determining whether antipsychotic medication should be involuntarily administered. \textit{Id.}; cf. \textit{Riggins}, 112 S. Ct. at 1815 (noting that "the State might have been able to justify medically appropriate, involuntary treatment with [antipsychotic] drug[s] by establishing that it could not obtain an adjudication of [the defendant's] guilt or innocence by using less intrusive means").
\end{itemize}
serted interest in protecting the jail staff and others from a violent detainee. The court concluded that, absent an emergency, such an interest was not "reasonably related" to the forced administration of antipsychotic drugs. To determine whether an emergency justifying medication exists, a court must balance the jail's safety concerns against the detainee's recognized liberty interest. The court further required the consideration of less restrictive means and suggested segregation or less controversial drugs, such as sedatives or tranquilizers.

The court thus concluded that the district court erred in granting summary judgment in favor of the defendants because it had not determined whether an emergency existed to justify forcibly medicating Bee. The court further noted that there was a genuine issue of material fact as to whether forcible medication for an indefinite period was an "exaggerated response" if an emergency did exist.

Six years after the Tenth Circuit decided Bee, the United States Supreme Court considered in Washington v. Harper whether a convicted prisoner has a liberty interest in being free from the forced administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment. Harper filed suit in state court claiming that the state prison policy allowing the involuntary administration of antipsychotic medication without first providing a judicial hearing violated his rights under the Due Process, Equal Protection, and Free Speech clauses.

48. Bee, 744 F.2d at 1395.
49. Id. (quoting Bell v. Wolfish, 441 U.S. 520, 539 (1979)).
50. Id. at 1395-96. A determination of whether an "emergency" exists "requires an evaluation in each case of all the relevant circumstances, including the nature and gravity of the safety threat, the characteristics of the individual involved, and the likely effects of particular drugs." Id. at 1396.
51. Id. The court recognized that the Supreme Court had declined to apply a less intrusive means test with respect to the use of physical restraints in the treatment of an involuntarily committed mental patient. Id. at 1396 n.7. The court distinguished the case before it, however, by noting that the forced administration of antipsychotic drugs involved mental restraints with potentially long term effects on a pretrial detainee who had not been declared mentally incompetent, rather than the use of temporary, physical restraints on an individual who had been certified as severely retarded. Id.
52. Id. at 1396.
53. Id. at 1396-97; see also Bell v. Wolfish, 441 U.S. 520, 547-48 (1979) (stating that courts should ordinarily defer to the expert judgment of corrections officials in matters arising in the daily operation of a corrections facility, at least in the absence of substantial evidence that the officials have exaggerated their response in the name of preserving internal order, discipline, and maintaining security).
of the federal and Washington state Constitutions. The Washington district court held that although Harper retained a liberty interest in freedom from unwanted antipsychotic medication, the prison policy met the Supreme Court's requirements of due process. The Washington Supreme Court reversed on appeal. The court agreed with the trial court's determination that Harper possessed a liberty interest in refusing antipsychotic medication, but further concluded that greater procedural protections were necessary because of the "highly intrusive nature" of antipsychotic drug treatment. The United States Supreme Court reversed on appeal.

In Harper, the Supreme Court first sought to separate the substantive and procedural rights involved in the case, stating that procedural protections must be examined in light of the substantive rights at stake. The Court determined that "the substantive issue is what factual circumstances must exist before the State may administer antipsychotic drugs to the prisoner against his will." The Court concluded that although Harper possessed a significant liberty interest in avoiding unwanted antipsychotic medication under the Due Process Clause of the Fourteenth Amendment, such a liberty interest was not absolute. The Court reasoned that the extent of Harper's rights under the Due Process Clause must be defined in the context of the inmate's confinement. The Court stated that the proper standard of review for determining the validity of a prison regulation that is claimed to infringe on an inmate's fundamental constitutional right is whether the regulation is "reasonably related to legitimate penological interests."

In evaluating whether the challenged prison policy met the reasonableness standard, the Supreme Court considered three factors. First, the

56. Id. at 217.
57. Id. at 217-18; see Vitek v. Jones, 445 U.S. 480 (1980).
59. Id.
60. Id. at 220.
61. Id.
62. Id. at 221-22.
63. Id. at 222.
64. Id. at 223 (quoting Turner v. Safley, 482 U.S. 78, 89 (1987)). The Supreme Court stated that the Washington Supreme Court had erred in refusing to apply a standard of reasonableness. Id.; see also O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987) (holding that the proper standard for determining the validity of a prisoner's rights is whether the regulation claimed to infringe on an inmate's First Amendment rights is reasonable).
Court inquired whether there was a valid, rational connection between the regulation and the legitimate government interest advanced to justify it. The Court concluded that the state’s interest in providing appropriate medical treatment and ensuring the safety of mentally ill inmates and the prison staff were legitimate and important interests. The Court also concluded that the regulation was a rational means of furthering these objectives. The Court reasoned that the regulation applied exclusively to inmates who were mentally ill or who represented a significant danger to themselves or others, and that the drugs were administered only under the direction of a licensed psychiatrist for the purpose of treatment.

The two other factors the Court weighed in determining whether the prison policy met the reasonableness standard were the availability of reasonable alternatives and the adverse impact of accommodating the inmate’s liberty interest on the guards, other inmates, and the allocation of prison resources. The Court recognized that “the absence of ready alternatives is evidence of the reasonableness of a prison regulation,” but also stated that prison officials were not required to “set up and then shoot down every conceivable alternative method of accommodating the claimant’s constitutional complaint.” The Court concluded that the availability of alternative means for accommodating Harper’s interest in refusing antipsychotic medication did not invalidate the state’s prison policy. The Court reasoned that the alternative use of physical restraints or seclusion does not “fully accommodat[e] the prisoner’s rights at de minimis cost to valid penological interests.” The Court stated that Harper failed to show that the use of physical restraints or seclusion would constitute acceptable substitutes for antipsychotic drugs, “in terms of either their medical effectiveness or their toll on limited prison

67. Id. at 225.
68. Id. at 226.
69. Id.
70. Id. at 225; see also Turner, 482 U.S. at 90.
72. Id. at 226.
73. Id. (quoting Turner v. Safley, 482 U.S. 78, 91 (1987)). The Court also rejected Harper’s contention that the Due Process Clause mandates that a prisoner’s right to refuse antipsychotic medication be sustained unless he is found to be incompetent, and unless the fact finder makes the substituted judgment that the prisoner would consent to the treatment if competent. The Court rejected such a standard because it “takes no account of the legitimate governmental interest in treating him where medically appropriate for the purpose of reducing the danger he poses.” Id.
The Supreme Court stated that the prison policy at issue comported with the demands of due process because it required the state to establish by medical finding that the inmate was mentally ill and dangerous, and that the treatment was in the inmate's medical interest. The Court reasoned that because the policy required that the medication be prescribed by a psychiatrist and then approved by a reviewing psychiatrist, the policy ensured that the treatment was in the inmate's medical interest, given the legitimate needs of his institutional confinement. The Court concluded that under these conditions the state could forcibly administer unwanted antipsychotic drugs to a mentally ill inmate without denying the inmate due process.

Justices Stevens, Brennan, and Marshall disagreed with the majority's evaluation of the liberty interest at stake in Harper. They argued that the intrusiveness of antipsychotic drugs was properly equated with electroconvulsive therapy or psychosurgery, and that a competent individual's right to refuse such medication was "a fundamental liberty interest deserving the highest order of protection."

II. RIGGINS V. NEVADA

In 1992, the United States Supreme Court held that a pretrial detainee has a constitutionally protected right to refuse unwanted antipsychotic medication. In Riggins v. Nevada, the Court held that for a state to medicate a criminal defendant prior to and during trial without violating the Due Process Clause of the Fourteenth Amendment, the state must demonstrate the need for the antipsychotic drug and its medical appropriateness. Because Nevada did not demonstrate a need to medicate the defendant Riggins, the Supreme Court concluded that the forced administration of antipsychotic drugs violated both Riggins' constitutionally protected liberty interest in freedom from antipsychotic drugs and his Sixth Amendment right to assist in his own defense.

74. Id. at 227.
75. Id.
76. Id.
77. Id.
78. Id. at 240-41 (Stevens, J., concurring in part and dissenting in part).
80. Id. at 1815.
81. Id. at 1814-16.
A. Case History

Shortly after his arrest for robbery and murder in late November 1987, a private psychiatrist who treated prisoners at the jail put Riggins on the antipsychotic drug Mellaril. The drug was prescribed because the defendant complained of hearing voices in his head and of having difficulty sleeping. Riggins told the psychiatrist he had been treated successfully with Mellaril in the past, but that he had not been taking any prescription medication at the time he committed the murder. The dosages of Mellaril that Riggins received were subsequently increased in December 1987, and January, May, and July 1988, in response to his continued complaints of hearing voices and insomnia. Three psychiatrists examined Riggins in February and March 1988, and two found him competent to stand trial. However, Riggins was receiving 450 milligrams of Mellaril per day at the time of the examinations.

In June 1988, defense counsel filed a motion to terminate Riggins' medication until the end of his trial. Defense counsel argued that continued involuntary medication infringed upon Riggins' freedom, and that the effect of the drugs on his demeanor and mental state during trial would deny him Due Process under the Fourteenth Amendment. The State opposed the motion, arguing that the medication was necessary to ensure Riggins' competency to stand trial.

In July 1988, the Clark County district court held an evidentiary hearing on the motion. The testimony of the three psychiatrists who had examined Riggins earlier was inconsistent. Dr. Master, who had earlier concluded that Riggins was competent to stand trial, "guess[ed]" that cessation of the medication would not result in a noticeable change in behavior or render the defendant incompetent to stand trial. Dr. Quass, who initially treated Riggins with Mellaril following his arrest, stated that Rig-
gins would be competent to stand trial without the medication, but that the effects of the drug would not be noticeable to jurors if medication was continued.\textsuperscript{93}

Dr. O’Gorman, who had treated Riggins several years before the crime and who had found him competent for the purpose of standing trial in the instant case, testified that he believed “Mellaril made the defendant calmer and more relaxed but that an excessive dose would cause drowsiness.”\textsuperscript{94} Dr. O’Gorman also questioned the need for the high dosage and testified that he was unable to predict how Riggins might behave if the medication was terminated.\textsuperscript{95} The written report of Dr. Jurasky, who had concluded that the defendant was incompetent to stand trial, was also before the court.\textsuperscript{96} In that report, Dr. Jurasky stated that he believed Riggins “would most likely regress to a manifest psychosis and become extremely difficult to manage” if the administration of Mellaril was discontinued.\textsuperscript{97}

Without specifically finding that antipsychotic medication was necessary, the district court denied defense counsel’s motion to suspend medication until the end of trial.\textsuperscript{98} Thus, Riggins continued to receive 800 milligrams of Mellaril daily until the end of his trial.\textsuperscript{99} At trial, Riggins presented a defense of insanity.\textsuperscript{100} Testifying on his own behalf, Riggins stated that he had fought with the murder victim, but that the victim was trying to kill him, and “voices in his head said that killing [the victim] would be justifiable homicide.”\textsuperscript{101} The same jury convicted Riggins and sentenced him to death on the murder charge.\textsuperscript{102}

Riggins appealed his conviction to the Nevada Supreme Court. He argued that the antipsychotic medication forced on him during trial denied him the ability to assist in his own defense and “prejudicially affected his attitude, appearance, and demeanor at trial.”\textsuperscript{103} Riggins argued that the state violated his constitutionally protected liberty interest in being free from unwanted antipsychotic drugs by forcibly medicating him with an-

\begin{thebibliography}{99}
\bibitem{93} Riggins, 112 S. Ct. at 1813.
\bibitem{94} Id.
\bibitem{95} Id.
\bibitem{96} Id.
\bibitem{97} Riggins, 112 S. Ct. at 1813.
\bibitem{98} Id.
\bibitem{99} Id.
\bibitem{100} Id.
\bibitem{101} Riggins, 112 S. Ct. at 1813.
\bibitem{102} Id.
\bibitem{103} Id.
\end{thebibliography}
tipsychotic drugs without demonstrating the need for the drug or the unavailability of less drastic alternatives.\textsuperscript{104}

The Nevada Supreme Court affirmed both the conviction and sentence.\textsuperscript{105} While it recognized that Riggins' demeanor had probative value where sanity was at issue, the court concluded that ample expert testimony was presented at trial to inform the jury about the effect of the medication on the defendant, and that expert testimony was a sufficient substitute for the jury's firsthand observation of the defendant's natural demeanor.\textsuperscript{106} The Nevada Supreme Court thus held that the denial of defendant's motion to terminate medication was neither an abuse of discretion nor a violation of Riggins' trial rights.\textsuperscript{107}

In a concurring opinion, Justice Rose indicated he would have preferred "a stronger showing that the medication was absolutely necessary, and evidence establishing how the defendant behaved without it."\textsuperscript{108} In a dissenting opinion, Justice Springer stated, "I do not think that these drugs should be \textit{forced} down the throats of these defendants, thereby inducing an unnatural and unwanted state of consciousness, just so the state can bring them to 'justice.'"\textsuperscript{109} Justice Springer maintained that the forced administration of antipsychotic medication deprived Riggins of his rights to appear, defend, and present evidence at trial.\textsuperscript{110}

\textsuperscript{104} Id.
\textsuperscript{105} Riggins, 112 S. Ct. at 1813.
\textsuperscript{106} Id. at 1813-14. The issue of whether forced medication during trial violates a defendant's trial rights was one of first impression for the Nevada Supreme Court. Riggins v. State, 808 P.2d 535, 537 (Nev. 1991), rev'd, Riggins v. Nevada, 112 S. Ct. 1810 (1992). According to the Nevada Supreme Court, the "states are evenly divided over whether expert testimony about the effect of the medication can substitute for the jury's firsthand observation of the defendant's natural demeanor." Id.; see, e.g., Commonwealth v. Louraine, 453 N.E.2d 437, 442 (Mass. 1983) (upholding the defendant's right to be tried in an unmedicated state and concluding expert testimony may not substitute for firsthand observation of the defendant's natural demeanor); State v. Law, 244 S.E.2d 302, 307 (S.C. 1978) (determining that the trial court had safeguarded the defendant from prejudice with respect to his medicated appearance at trial by informing that the defendant was taking antipsychotic drugs through expert testimony).
\textsuperscript{107} Riggins, 112 S. Ct. at 1814. The Nevada Supreme Court did not examine whether the medication was needed to maintain Riggins' competency or whether the state had a sufficient justification for administering the medication. Brief of the American Psychiatric Association, supra note 3, at 5. Cf. Riggins v. State, 808 P.2d at 540 (Rose, J., concurring) (stating that the defendant should not be involuntarily medicated during trial unless it is truly necessary, and suggesting a suspension of the antipsychotic medication and observation of the defendant's behavior while unmedicated to make such a determination).
\textsuperscript{108} Riggins v. State, 808 P.2d at 540 (Rose, J., concurring).
\textsuperscript{109} Id. at 541 (Springer, J., dissenting).
\textsuperscript{110} Id. at 542.
B. The Lower Courts' Error

The United States Supreme Court in Riggins concluded that the Clark County, Nevada district court's refusal to acknowledge Riggins' liberty interest in freedom from unwanted antipsychotic drugs constituted reversible error because the defendant's constitutionally protected trial rights may have been impaired.\(^{111}\) In particular, the Court pointed out that under the high dosage of Mellaril that Riggins was receiving, there was the possibility that the defendant might suffer from drowsiness or confusion, and that such side effects could have impacted Riggins' outward appearance, the content of his testimony on the witness stand, his ability to follow the proceedings, or the substance of his communication to counsel.\(^{111}\) The Court also rejected the dissenting Justice Thomas' suggestion that the defendant be required to demonstrate actual trial prejudice as a result of the continued administration of Mellaril.\(^{113}\)

The Supreme Court characterized the Clark County district court's order denying Riggins' pretrial motion to suspend medication as "laconic."\(^{114}\) The order did not adopt the State's view that the administration of Mellaril was required to ensure that defendant could be tried, nor did it indicate a finding that safety considerations or other compelling concerns outweighed Riggins' interest in freedom from unwanted antipsychotic drugs.\(^{115}\) The Court stated that the district court's determination was deficient because it "allowed administration of Mellaril to continue without making any determination of the need for this course or any findings about reasonable alternatives."\(^{116}\) The Supreme Court stated:

Were we to divine the District Court's logic from the hearing transcript, we would have to conclude that the court simply weighed the risk that the defense would be prejudiced by changes in Riggins' outward appearance against the chance that Riggins would become incompetent if taken off Mellaril, and struck the balance in favor of involuntary medication.\(^{117}\)

\(^{111}\) Riggins, 112 S. Ct. at 1816.

\(^{112}\) Id.


\(^{114}\) Riggins, 112 S. Ct. at 1816.

\(^{115}\) Id.

\(^{116}\) Id. at 1815-16.

\(^{117}\) Id. at 1816.
The Supreme Court also rejected the Nevada Supreme Court's conclusion that expert testimony about the effect of antipsychotic drugs on the demeanor of the defendant could cure the possibility that defendant's testimony, interaction with counsel, or comprehension at trial were compromised by the forced administration of the drugs. The Court further concluded that such an unacceptable risk of prejudice at trial could not be justified by an essential state interest because there were no findings in the record to support a conclusion that the medication was necessary to accomplish an essential state policy.

C. The Supreme Court's Two Prong Test

The Supreme Court applied a two prong inquiry regarding the constitutionality of forcibly medicating Riggins with antipsychotics: whether a "need" for antipsychotic medication had been demonstrated, and whether the administration of the drugs was medically appropriate. The Court presumed that administration of the antipsychotic drug Mellaril was medically appropriate in Riggins' case, and thus the Court's conclusion regarding the first prong was not a decisive factor in its decision to reverse the Supreme Court of Nevada.

The Supreme Court relied on its decision in Washington v. Harper in addressing Riggins' argument that involuntary administration of Mellaril had denied him a full and fair trial. Noting that the Harper Court held that a convicted prisoner's interest in avoiding unwanted antipsychotic drugs is protected under the Due Process Clause of the Fourteenth Amendment because it "represents a substantial interference with that person's liberty," the Riggins Court concluded that a criminal defendant has a protected right to refuse antipsychotic medication. Citing the

118. Id. But see Riggins v. State, 808 P.2d 535, 538 (Nev. 1991), rev'd, Riggins v. Nevada, 112 S. Ct. 1810 (1992) (holding that expert testimony was sufficient to inform the jury of the effect of the antipsychotic medication on defendant's demeanor and testimony); see also State v. Law, 244 S.E.2d. 302, 307 (S.C. 1978) (noting that the trial court had safeguarded the defendant from prejudice with respect to his appearance at trial by informing the jury that defendant was taking antipsychotic drugs).
119. Riggins, 112 S. Ct. at 1816-17; cf. Holbrook v. Flynn, 475 U.S. 560, 568-69 (1986) (holding that trial prejudice resulting from the noticeable presence of guards at respondent's trial was not so inherently prejudicial as to deny respondent his constitutional right to a fair trial because sufficient cause for their presence could be found in the State's legitimate interest in maintaining custody over defendant).
120. Riggins, 112 S. Ct. at 1815.
121. Id. at 1814.
122. Id.
123. Id. (quoting Washington v. Harper, 494 U.S. 210, 229 (1990)).
many negative physical and mental side effects of these drugs, the Court further noted that "[i]n the case of antipsychotic drugs like Mellaril, that interference is particularly severe."124

The Supreme Court characterized Harper as requiring "a finding of overriding justification and a determination of medical appropriateness."125 In Harper, this standard was met where there was a determination that, "the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest."126 The Court in Riggins determined that the Fourteenth Amendment affords pretrial detainees at least as much protection as convicted prisoners.127 Thus, the Court concluded that in order to satisfy due process, a state must demonstrate a need for the antipsychotic medication and the medical appropriateness of the drug in order to forcibly medicate a pretrial detainee with antipsychotic drugs.128

In his dissenting opinion, Justice Thomas argued that while the majority in Riggins purported to rely on Harper, the standards it applied differed in several respects.129 Justice Thomas stated that the majority "appears to adopt a standard of strict scrutiny," contrary to the standard of reasonableness adopted in Harper.130 Justice Thomas concluded that the majority had departed from the standard announced in Harper by requiring a finding that continued medication was necessary for the defendant to stand trial, or a finding that other compelling concerns outweighed the defendant's liberty interest.131

Justice Thomas also argued that Harper did not require the considera-

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124. Id. at 1814-15. See generally supra notes 18-32 and accompanying text (discussing the negative side effects of antipsychotic drugs).
125. Riggins, 112 S. Ct. at 1815.
126. Id. (quoting Washington v. Harper, 494 U.S. 210, 227 (1990)).
127. Riggins, 112 S. Ct. at 1815; see also Bell v. Wolfish, 441 U.S. 520, 545 (1979) (stating that pretrial detainees who have not been convicted of any criminal offense retain at a minimum the constitutional rights held by convicted prisoners).
128. Riggins, 112 S. Ct. at 1815.
129. Id. at 1826. (Thomas, J., dissenting).
130. Id. (Thomas, J., dissenting); Washington v. Harper, 494 U.S. 210, 224 (1990) (applying a standard of reasonableness for determining the validity of a prison regulation claimed to infringe on an inmate's constitutional rights).
131. Riggins, 112 S. Ct. at 1826 (Thomas, J., dissenting). The Riggins majority stated: The [Clark County district] court's laconic order denying Riggins' motion did not adopt the State's view, which was that continued administration of Mellaril was required to ensure that the defendant could be tried . . . . Nor did the order indicate a finding that safety considerations or other compelling concerns outweighed Riggins' interest in freedom from unwanted antipsychotic drugs.
Id. at 1816.
tion of less intrusive alternatives, stating, "In Harper . . . we imposed no such requirement." Thus, Justice Thomas concluded: "Either the Court is seeking to change the Harper standards or it is adopting different standards for detainees without stating its reasons. I cannot accept either interpretation of the Court's opinion."

The majority in Riggins expressly denied Justice Thomas' assertion that it was adopting a standard of strict scrutiny for judging forced administration of antipsychotic drugs in the trial or pretrial setting, stating "[w]e have no occasion to finally prescribe such substantive standards." The majority did conclude, however, that "if the prosecution had demonstrated and the [Clark County] District Court had found that treatment with antipsychotic medication was medically appropriate and, considering less intrusive alternatives, essential for the sake of [the defendant's] own safety or the safety of others," then Nevada "certainly would have satisfied due process."

The Court also maintained that a state might be able to justify the need for antipsychotic drugs by showing that an adjudication of the defendant's guilt or innocence by less intrusive means was unattainable. The Court insisted that "[t]he question whether a competent criminal defendant may refuse antipsychotic medication if cessation of medication would render him incompetent at trial is not before us." The Court declined to consider this question because during the hearing on his motion to suspend medication, Riggins did not contend that he had a right to be tried without Mellaril if its discontinuation made him incompetent.

132. Id. at 1826 (Thomas, J., dissenting).
133. Id. (Thomas, J., dissenting).
134. Id. at 1815. The Court determined that it did not need to adopt any standard at all because the district court did not make any determination of the need for continued antipsychotic medication or any finding about reasonable alternatives. Id. at 1815-16.
135. Id. at 1815; cf. Addington v. Texas, 441 U.S. 418 (1979) (stating that due process allows civil commitment of an individual shown to be mentally ill and dangerous by clear and convincing evidence).
136. Riggins, 112 S. Ct. at 1815. See Illinois v. Allen, 397 U.S. 337, 347 (1970) (Brennan, J., concurring) (stating that the "constitutional power to bring an accused to trial is fundamental to a scheme of 'ordered liberty' and prerequisite to social justice and peace").
137. Riggins, 112 S. Ct. at 1815; see also Brief for Petitioner, Riggins v. Nevada, 112 S. Ct. 1810 (1992) (No. 90-8466) (arguing that this case is not about whether a state may ever treat an incompetent defendant with antipsychotic drugs in order to achieve and maintain competency to stand trial).
138. Riggins, 112 S. Ct. at 1815.
D. Justice Kennedy’s Concurrence

Justice Kennedy concurred in the judgment but filed a separate opinion to express his views on the issue of competency to stand trial. Justice Kennedy, who authored the majority opinion in Harper, disagreed with the Riggins majority’s application of the same standard announced in Harper, because “[h]ere the purpose of the medication is not merely to treat a person with grave psychiatric disorders and enable that person to function and behave in a way not dangerous to himself and others, but rather to render the person competent to stand trial.”

Justice Kennedy agreed with the majority that a state “has a legitimate interest in attempting to restore the competence of otherwise incompetent defendants.” He concluded that this interest is based upon a state’s right to bring an accused to trial and upon the Supreme Court’s holding in Pate v. Robinson, that conviction of an incompetent defendant violates due process. Justice Kennedy framed the issue in Riggins as “whether the State’s interest in conducting the trial allows it to insure the defendant’s competence by involuntary medication, assuming of course there is a sound medical basis for the treatment.” He argued that “elementary protections against state intrusion require the State in every case to make a showing that there is no significant risk that the medication will impair or alter in any material way the defendant’s capacity or willingness to react to the testimony at trial or to assist his counsel.” Justice Kennedy expressed grave doubt that such a showing could be made.

To justify the application of such a strict standard, Justice Kennedy dis-

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139. Id. at 1817 (Kennedy, J., concurring).
140. Id. at 1818.
141. Id. at 1817.
143. Riggins, 112 S. Ct. at 1817 (Kennedy, J., concurring); see also Drope v. Missouri, 420 U.S. 162, 171 (1975) (stating that a state cannot try an incompetent defendant); Pate v. Robinson, 383 U.S. 375, 378 (1966) (stating that a state cannot try an incompetent defendant).
144. Riggins, 112 S. Ct. at 1818 (Kennedy, J., concurring).
145. Id.; see also Bachand, supra note 6, at 1078-79 (stating that courts should determine whether a defendant medicated with antipsychotics is suffering from any adverse side effects and should consider the extent to which those adverse side effects may impair a defendant’s ability to present an effective defense).
146. Riggins, 112 S. Ct. at 1818 (Kennedy, J., concurring). Justice Kennedy concluded that such an inquiry is elusive because it assumes some “baseline of normality that experts may have some difficulty in establishing for a particular defendant, if they can establish it at all.” Id.
cussed at great length the adverse effects of antipsychotic drugs and the potential for prejudice to the accused.\textsuperscript{147} He stated that the drugs can prejudice the accused by altering his demeanor in a manner that will prejudice his reactions and presentation in the courtroom, and by rendering him unable or unwilling to assist counsel.\textsuperscript{148} He concluded that until more effective antipsychotic drugs with minimal side effects are developed, these drugs can only be used if the state can show that involuntary treatment does not cause alterations in the defendant that raise the above concerns regarding trial prejudice.\textsuperscript{149} However, because he doubted that such a showing could be made, Justice Kennedy also stated: "If the State cannot render the defendant competent without involuntary medication, then it must resort to civil commitment, if appropriate, unless the defendant becomes competent through other means."\textsuperscript{150}

IV. Conclusion

In \textit{Riggins v. Nevada}, the Supreme Court concluded that to forcibly medicate a criminal defendant during trial, a state must establish the need for antipsychotic medication and the drug's medical appropriateness. The medical appropriateness prong of the Court's test was not at issue in \textit{Riggins} because the defendant never claimed that antipsychotic drug treatment was improper. Likewise, the Court avoided setting substantive standards regarding a state's burden to show a need for forced medication. The opinions, however, do offer guidance on this issue.

First, Justice Kennedy chose to set the substantive standards that the majority opinion declined to expound. Justice Kennedy clearly believed that the issue of competency should be addressed, and, rather than applying the reasonableness test for forcibly medicated inmates that he formulated in \textit{Harper}, he would have required that a state demonstrate that the medication would not affect the defendant's behavior and demeanor in a substantial way. If the state cannot meet this burden, Justice Kennedy suggested civil commitment. With only Justices Thomas and Scalia dis-

\textsuperscript{147} \textit{Id.} at 1818-19 (Kennedy, J., concurring); see also \textit{Washington v. Harper}, 494 U.S. 210, 229-30 (1990) (discussing the adverse side effects of antipsychotic drugs); Brief of the American Psychiatric Association, \textit{supra} note 3, at 10 (stating that "antipsychotic medication can cause a number of side-effects that are readily observable and therefore may affect a jury's view of a medicated defendant").

\textsuperscript{148} \textit{Riggins}, 112 S. Ct. at 1818-19 (Kennedy, J., concurring); see generally \textit{Geders v. United States}, 425 U.S. 80, 91 (1976) (holding that a defendant's right to the effective assistance of counsel is impaired when he is unable to actively cooperate with his attorney).

\textsuperscript{149} \textit{Riggins}, 112 S. Ct. at 1820 (Kennedy, J., concurring).

\textsuperscript{150} \textit{Id.} (Kennedy, J., concurring).
senting, Justice Kennedy's views on the use of antipsychotic drugs to ensure a criminal defendant's competency to stand trial may represent the views of a majority of the Court.

Second, while the majority declined to rule on whether a competent criminal defendant may refuse antipsychotic medication if cessation of medication would render him incompetent to stand trial, the court was not silent on the issue. In its discussion of how a state might establish the need for antipsychotic drugs to justify involuntary medication, the majority suggested that a state might be able to forcibly medicate a defendant with antipsychotic drugs if the state can show that it cannot bring the defendant to trial using less intrusive means. This suggests that a state must take steps before trial to ensure that the defendant would not be competent without the medication, such as determining competency before the medication is given. If medication is necessary to ensure competency, the state would be well advised to determine that an unnecessarily high dosage is not administered. Finally, the defendant should be monitored for adverse side effects due to antipsychotic drug treatment. If the physical or mental side effects are pronounced, the state should discontinue treatment and seek civil commitment.

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