Right to Die, Forced to Live: Cruzan v. Director, Missouri Department of Health

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On January 11, 1983, an automobile accident in Jasper County, Missouri, rendered Nancy Beth Cruzan incompetent. Deprived of oxygen for twelve to fourteen minutes, Ms. Cruzan sustained probable cerebral contusions compounded by significant anoxia (lack of oxygen). Ms. Cruzan entered a comatose state and remained unconscious. With the consent of her husband, surgeons implanted a gastrostomy feeding tube to facilitate and maintain nutrition in order to further her recovery. Nevertheless, rehabilitative efforts were unsuccessful, and Ms. Cruzan entered a persistent vegetative state. On December 14, 1990, after a prolonged legal battle, a Missouri trial court granted Ms. Cruzan's parents' request for the termination of treatment.

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). "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." Cruzan, 110 S. Ct. at 2863 n.2 (Brennan, J., dissenting) (emphasis in original) (citation omitted).

By one estimate, Ms. Cruzan could have lived for an additional thirty years. Cruzan v. Harmon, 760 S.W.2d 408, 411 (Mo. 1988) (en banc), aff'd sub nom. Cruzan v. Director, Mo. Dep't of Health, 110 S. Ct. 2841 (1990). In her vegetative state, Ms. Cruzan suffered from bleeding gums, vomiting, seizures, and diarrhea. Gladwell, Woman in Right-to-Die Case Succumbs: Cruzan Was in Coma for Eight Years; Court Ruling Allowed Tube Removal, Wash. Post, Dec. 27, 1990, at A3, col. 1 [hereinafter Gladwell]. Missouri paid Ms. Cruzan's medical costs, which were approximately $130,000 per month. Okie, Medical Groups Criticize Court for Interfering in Life-or-Death Decisions, Wash. Post, June 26, 1990, at A1, col. 5.

Gladwell, Court Rules Woman Has Right to Die: Cruzan Case Leaves Unresolved Issues, Legal Experts Say, Wash. Post, Dec. 15, 1990, at A1, col. 1. Missouri officials did not challenge the court order, which was issued after three of Ms. Cruzan's friends testified in August 1990 that Ms. Cruzan said in conversations with them that she would never want to live "like a vegetable." Id. at A10, col. 2.
Thereafter, the hospital ceased to administer water and her liquid diet;⁴ Ms. Cruzan died twelve days later.⁵

I.

In Cruzan v. Director, Missouri Department of Health,⁶ the United States Supreme Court addressed for the first time the controversial issue of a patient's right to die. While the Court found that a competent patient has a liberty interest in refusing life-sustaining treatment, it differentiated the exercise of that right by a competent patient from that by an incompetent patient. Since an incompetent patient cannot truly give informed consent in the absence of a living will, the Court held that Missouri's interest in the protection of life permitted it to "apply a clear and convincing evidence standard in proceedings where a guardian seeks to discontinue nutrition and hydration of a person diagnosed to be in a persistent vegetative state."⁷

Without court approval, hospital employees had refused the request of Ms. Cruzan's parents to remove their daughter's nutrition tube.⁸ Consequently, her parents and co-guardians, Lester and Joyce Cruzan, sought a court order requiring removal. A Missouri trial court concluded that Ms. Cruzan had a "fundamental right under the State and Federal Constitutions to refuse or direct the withdrawal of 'death prolonging procedures.'"⁹ Since she had previously expressed her desire not to survive if she could not live "at least halfway normally," the trial court ordered the removal.¹⁰

The Missouri Supreme Court, however, reversed the trial court by a divided vote.¹¹ The court found that Missouri had a strong state policy favoring the preservation of life¹² and was reluctant to apply the doctrine of informed consent to an incompetent patient who did not have a living will.

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⁴ Id. at A1, col. 1. Doctors administered pain medication, and medical experts predicted she would starve and dehydrate to death within two weeks.
⁵ Gladwell, supra note 2, at A3, col. 1 ("She remained peaceful throughout and showed no sign of discomfort or distress in any way." (quoting family statement)).
⁷ Id. at 2854. At the United States Law Week's Constitutional Law Conference on September 14-15, 1990, Yale Kamisar of the University of Michigan suggested that the Supreme Court simply upheld Missouri's rule. It did not approve, require, or endorse the use of the higher evidentiary standard, and it did not affect states that either recognize a broader right to die or have decided similar cases differently. See Constitutional Law Conference, 59 U.S.L.W. 2272, 2275 (1990) [hereinafter Law Conference].
⁸ Cruzan, 110 S. Ct. at 2846.
⁹ Id.
¹⁰ Id.
¹² Id. at 426.
Although Ms. Cruzan's prior statements persuaded the trial court, the Missouri Supreme Court concluded that the statements were unreliable to determine her intent and thus failed to satisfy the clear and convincing evidentiary standard the court established for that purpose.

The United States Supreme Court affirmed the Missouri Supreme Court decision. Writing for the majority, Chief Justice Rehnquist traced the development of state right-to-die cases, observing that "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." After emphasizing that the Court's review was limited to the constitutional issue, the majority concluded that a protected liberty interest to refuse medical treatment exists under the fourteenth amendment to the Constitution. "[F]or purposes of this case," the Court assumed that "a competent person [has] a constitutionally protected right to refuse lifesaving hydration and nutrition."

Even while acknowledging that a patient has a protected liberty interest to refuse treatment, the Court dismissed the principle applied by many state courts that the right of privacy includes a right to refuse treatment. Rather, the Court stated that the "issue is more properly analyzed in terms of a Fourteenth Amendment liberty interest."

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13. Id. at 424.
14. Id. at 425.
17. Cruzan, 110 S. Ct. at 2852. The most significant aspect of the Cruzan decision may be that five justices gave substantive constitutional protection to the right to die. While Chief Justice Rehnquist only assumed that such a right exists, Justice O'Connor in her concurring opinion was more explicit, saying that "the liberty guaranteed by the Due Process Clause must protect, if it protects anything, an individual's deeply personal decision to reject medical treatment, including the artificial delivery of food and water." Id. at 2857 (O'Connor, J., concurring). Thus, including her among the four dissenting justices, a majority of the Court supported a constitutional right to die. While the departure of Justice Brennan leaves this majority status in doubt, the views of these four justices will certainly influence future decisions in this area. See Law Conference, supra note 7, at 2272.
Since the right to refuse treatment implicated a liberty interest under the due process clause, and not a privacy right, the Court balanced Ms. Cruzan's liberty interests against the State's interest in the preservation of life to determine whether a constitutional violation had occurred.\(^9\) Addressing Ms. Cruzan's interest, the Court determined that "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 . . . , if at all, by some sort of surrogate."\(^2\) Consequently, Missouri could erect a clear and convincing evidentiary standard as 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."\(^2\) Thus, while Ms. Cruzan retained her liberty interest even though she was incompetent, Missouri could qualify procedurally the exercise of that right.

In discussing the state interests, the Court supported Missouri's "interest in the protection and preservation of human life."\(^2\) To emphasize the significance of this interest, the Court identified both the treatment of homicide as a "serious crime" as well as the criminalization of assisting suicide. Moreover, the finality of the decision to terminate treatment and the danger of its potential abuse by self-interested surrogates made this interest even more significant.\(^2\)

\(^{23}\) circumstances, in much the same way as it is broad enough to encompass a woman's decision to terminate pregnancy under certain conditions\(^\) (\(^\)).

20. Id. at 2852.
21. Id.
22. Id. at 2852-53. Identifying the preservation of life as a state interest assumes that the termination of treatment, rather than the underlying illness, would be the primary cause of death. This view is not universal. See In re Estate of Greenspan, 137 Ill. 2d 1, —, 558 N.E.2d 1194, 1201 (1990) (citation omitted) ("When, as result of incurable illness, a patient cannot chew or swallow and a death-delaying feeding tube is withdrawn in scrupulous accordance with the law, the ultimate agent of death is the illness and not the withdrawal."); In re Estate of Longeway, 133 Ill. 2d 33, 42, 549 N.E.2d 292, 296 (1989) ("Termination of [nasogastric tubes, gastrostomies, or intravenous infusions does] not deprive the patient of life; rather, the inability of the patient to chew or swallow, as a result of his illness, is viewed as the ultimate agent of death.").

The Court did not, however, include the economic costs to the State of Ms. Cruzan's care in its discussion of state interests. While the majority could have argued that the value of human life cannot be assigned a dollar value, the economic reality of federal and state fiscal constraints suggests that such costs should at least be considered, especially when a patient's choice is not clearly ascertainable. See Smith, Death Be Not Proud: Medical, Ethical and Legal Dilemmas in Resource Allocation, 3 J. CONTEMP. HEALTH L. & POL'Y 47 (1987); Okie, supra note 2, at A1, col. 5.

23. Cruzan, 110 S. Ct. at 2852; see also Longeway, 133 Ill. 2d at 44, 549 N.E.2d at 299. The Longeway court identified four countervailing State interests: the preservation of life; the protection of the interests of innocent third parties; the prevention of suicide; and maintenance of the ethical integrity of the medical profession. Id.
Since the interests before the Court were "more substantial, both on an individual and societal level, than those involved in a run-of-the-mine civil dispute,"\textsuperscript{24} the Court held that Missouri was justified in its adoption of a clear and convincing standard of proof to determine an incompetent patient's intent to terminate treatment. In addition to the substantial interests involved, there were other reasons for the heightened standard. It reflected a societal judgment about who should bear the risk of an erroneous decision. An erroneous decision not to terminate treatment maintains the status quo and preserves the opportunity to take advantage of advances in medical technology\textsuperscript{25} or to find additional evidence of intent. However, an erroneous decision to withdraw feeding and hydration is "final and irrevocable."\textsuperscript{26}

While the "dramatic consequences" of termination influenced the balance of interests,\textsuperscript{27} the Court refused to consider Ms. Cruzan's quality of life.\textsuperscript{28} Rather, a state could "simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual."\textsuperscript{29} The patient's quality of life was therefore not

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\item \textsuperscript{24} Cruzan, 110 S. Ct. at 2854.
\item \textsuperscript{25} Id. But see id. at 2873 (Brennan, J., dissenting) ("'The discovery of new evidence'... is more hypothetical than plausible, [and in any event]... it is a part of the patient's calculus.") (quoting majority op., 110 S. Ct. at 2854) (emphasis in original).
\item \textsuperscript{26} Id. at 2854. In addition, the rationale underlying the parole evidence rule, requiring parties to formalize intent in writing, supported the heightened standard. Id.
\item One effect of Cruzan is that it promotes the formalization of intent.
\item The legacy of Cruzan is that... it gave a boost to living wills. It gave a boost to the idea that the stopping of treatment should be discussed before someone becomes incompetent or impaired and made doctors and nurses more attentive to the idea that the tubes they put in could also be removed.
\item Gladwell, supra note 2, at A3, col. 1.
\item \textsuperscript{27} Cruzan, 110 S. Ct. at 2852.
\item \textsuperscript{28} By refusing to address the quality of life for someone in Ms. Cruzan's position, the Court took a simplistic, uncritical, and unsatisfying approach to this complex medical, legal, and ethical issue. While the Court's review is limited by the Constitution, it does not follow that such an inquiry would not inform the constitutional answer or, especially, the exercise of this constitutional right. While the Court erred on the side of Ms. Cruzan's continued existence, and thus pursued what some may view as the morally correct course, "[i]t is harder to morally justify letting somebody die a slow and ugly death, dehumanized, than it is to justify helping him to escape from such misery." Fletcher, Ethics and Euthanasia, in DEATH, DYING, AND EUThANASIA 293 (1977).
\item \textsuperscript{29} Cruzan, 110 S. Ct. at 2853. Quality of life, however, is perhaps the crux of the argument. The summary dismissal of a quality-of-life inquiry ignores the reason for the termination of treatment: the complete absence and impossibility of any objective quality of life when there is only the mere persistence of biological life. Moreover, while the focus for traditional ethics has been the sanctity of life, a better course in the right-to-die context may be to pursue a code of ethics of the quality of life. See, e.g., Fletcher, supra note 28, at 294. "Humanness is understood as primarily rational, not physiological. This 'doctrine of man' puts the homo and ratio before the vita. It holds that being human is more 'valuable' than being alive." Id. at 295.
\end{itemize}
considered as a constitutionally protected interest. While the Court acknowledged that the Missouri Supreme Court’s “requirement of proof in this case may have frustrated the effectuation of the not-fully-expressed desires of Nancy Cruzan,” it nonetheless admonished that the “Constitution does not require general rules to work faultlessly.” The Court stated that because Ms. Cruzan’s expressions of intent “did not deal in terms with withdrawal of medical treatment or of hydration and nutrition,” Missouri did not violate her constitutionally protected liberty interest to refuse treatment.

Finally, the Court rejected the guardians’ contention that Missouri was required to accept the substituted judgment of Ms. Cruzan’s close family members. The Court held that the due process clause required only that the State allow the patient to determine when to terminate treatment. While the decision of a family member may not be “ignoble,” “there is no automatic assurance that the view of close family members will necessarily be the same as the patient’s would have been.”

II.

In her concurring opinion, Justice O’Connor focused on the ability of a competent person to appoint a surrogate decisionmaker to act in the event of incompetence. After noting that the majority opinion did not decide “whether a State must also give effect to the decisions of a surrogate decisionmaker,” she opined that “such a duty may well be constitutionally required to protect the patient’s liberty interest in refusing medical treatment.” Justice O’Connor suggested that a state’s refusal to consider evidence of intent other than explicit oral or written instructions “may fre-

30. Cruzan, 110 S. Ct. at 2853.
31. Id. at 2855. However, even when a person attempts specificity through expressed written consent, there is no assurance that the intent will be effectuated. One commentator suggests that the patient and the doctor may have different understandings of the words used. Moreover, it is difficult to predict the precise circumstances of one’s death, and, therefore, to memorialize one’s intent with sufficient specificity. Rouse, Does Autonomy Require Informed and Specific Refusal of Life-Sustaining Medical Treatment?, 5 Issues L. & Med. 321, 328-33 (1989). One possibility would be to consult one’s physician prior to and after drafting the document and then seek the physician’s involvement when the need to terminate medical treatment arises.
32. Cruzan, 110 S. Ct. at 2855. Cruzan’s parents had argued that under the federal and Missouri constitutions, the State was required to accept their substituted judgment for their daughter. However, while the Court held that a state is not obligated to recognize the substituted judgment of anyone, this holding does not preclude a state legislature or court, interpreting a state constitution, from adopting the substituted judgment doctrine.
33. Id.
34. Id. at 2855-56.
35. Id. at 2857 (O’Connor, J., concurring).
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quently fail to honor a patient's intent."\(^3\) The appointment of a surrogate decisionmaker would avoid this problem.\(^3\) Finally, she reiterated that the "more challenging task of crafting appropriate procedures for safeguarding incompetents' liberty interests is entrusted to the 'laboratory' of the States."\(^3\)

In a separate concurring opinion which had the tone of a dissent, Justice Scalia stated emphatically that the "federal courts have no business in this field" because "it is up to the citizens of Missouri to decide, through their elected representatives, whether that wish (to terminate treatment) will be honored."\(^3\) Equating a right to withdraw treatment with a right to commit suicide,\(^4\) Justice Scalia remarked that "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.""\(^4\)

As the "power of the State to prohibit suicide is unquestionable,"\(^4\) a patient could not terminate treatment.

III.

In a dissent joined by Justices Marshall and Blackmun, Justice Brennan provided an analytical framework which, upon application, demonstrated

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36. Id.; cf. id. at 2875 (Brennan, J., dissenting) ("Too few people execute living wills or equivalently formal directives for such an evidentiary rule to ensure adequately that the wishes of incompetent persons will be honored."). "Surveys show that the overwhelming majority of Americans have not executed such written instructions." Id. at 2875 n.21 (citations omitted).

37. Id. at 2857.

38. Id. at 2859 (citation omitted); cf. id. at 2851 ("State courts have available to them for decision a number of sources—state constitutions, statutes, and common law—which are not available to us.").

39. Cruzan, 110 S. Ct. at 2859 (Scalia, J., concurring); see id. at 2863 ("The Constitution has nothing to say about the subject.").

40. One commentator posits that the analogy to suicide is incorrect; rather, an individual has an inherent right to enlightened self-determination which encompasses the right to die. Smith, All's Well That Ends Well: Toward a Policy of Assisted Rational Suicide or Merely Enlightened Self-Determination?, 22 U.C. Davis L. Rev. 275, 381 (1989).


42. Id. at 2863. The suicide contemplated by Justice Scalia and the right to die contemplated by a person in Ms. Cruzan's position are two separate and conceptually different situations. When one attempts suicide under Justice Scalia's view, a person decides to end her existence after assessing all that life has to offer and concluding that life has no inherent value or meaningfulness. In contrast, a person such as Ms. Cruzan makes no assessment of the objective value or meaningfulness of life. Rather, her physical condition completely precludes any opportunity to achieve or inject meaningfulness. Since any quality of life is objectively impossible, the decision to die does not comport with Justice Scalia's traditional conception of suicide. See Smith, supra note 40, at 381.
that the balance between Nancy Cruzan's interests and the State's interests necessarily favored Ms. Cruzan. He found that Ms. Cruzan had a fundamental right to refuse medical treatment, believing that she was "entitled to choose to die with dignity." Justice Brennan examined the physical and personal implications of Ms. Cruzan's condition and concluded that the "State's general interest in life must accede to Nancy Cruzan's particularized and intense interest in self-determination in her choice of medical treatment." 

While recognizing that Missouri, as parens patriae, had a legitimate state interest in Ms. Cruzan's welfare, Justice Brennan refused to recognize that this interest included a generalized interest in the protection of life. For Justice Brennan, the state could assert only an "interest in safeguarding the accuracy of [the] determination" of Ms. Cruzan's intent "until [her] wishes have been determined." Consequently, any safeguards a state adopts must enhance accuracy. A court then must determine "whether the incompetent person would choose to live in a persistent vegetative state on life-support or to avoid this medical treatment."

Missouri's evidentiary standards, though, failed to promote accuracy in the determination of Ms. Cruzan's intent and thus deprived her of her right to refuse medical treatment. Justice Brennan criticized the majority's

43. Cruzan, 110 S. Ct. at 2865 (Brennan, J., dissenting).
44. Id. at 2864.
45. Id. at 2870. Justice Brennan suggested that the majority's view may actually deter the use of life-sustaining treatment by medical personnel.

"[A]n even more troubling wrong occurs when a treatment that might save life or improve health is not started because the health care personnel are afraid that they will find it very difficult to stop the treatment if, as is fairly likely, it proves to be of little benefit and greatly burdens the patient."

Id. (quoting 3 President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Deciding to Forego Lifesustaining Treatment 75 (1983)).

This view is shared by George Annas, the Utley Professor of Health Law at Boston University's School of Medical and Public Health and the Director of the Law, Medicine, and Ethics Program. He believes that "[i]t's becoming very hard to terminate treatment on anyone in this country. The Cruzan decision is having that horrible effect—of physicians starting to practice law basically." Colburn, Another Chapter in the Case of Nancy Cruzan: Missouri Seeks to Withdraw from Legal Case It Has Long Pursued, Wash. Post, Oct. 16, 1990, Health, at 7, col. 3.

46. Cruzan, 110 S. Ct. at 2871 (Brennan, J., dissenting).
47. Id. (emphasis in original).
48. Id. By focusing his analysis on accuracy, Justice Brennan accommodates a broader approach to determining Ms. Cruzan's intent. Consequently, he avoids the presumption in favor of continued treatment which detracts from the analytical soundness of the majority approach.
49. Id.
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heightened standard as a “markedly asymmetrical evidentiary burden,” requiring clear and convincing evidence of specific statements of intent to discontinue treatment, while demanding no evidence to demonstrate that a patient wanted to continue medical treatment.\(^5\) Justice Brennan opined that the decision to terminate treatment would not lack guarantees of trustworthiness because such a decision is ordinarily the result of a considered determination “by at least one adult and more frequently several adults that discontinuation of treatment is the patient’s wish.”\(^5\) Moreover, the additional safeguards accompanying the decision, namely, a non-ex parte proceeding with an appointed guardian ad litem, would assure a balancing of all interests.\(^5\) Further, Justice Brennan argued that the attempt to promote accuracy through application of a clear and convincing standard,\(^5\) though ordinarily necessary “to protect an individual’s exercise of a fundamental right,”\(^5\) actually functioned “as an obstacle to the exercise of [Ms. Cruzan’s] fundamental right.”\(^5\)

Justice Brennan offered a sound and flexible framework to assess the constitutionality of any future procedural safeguards that determine an incompetent patient’s intent. “[P]rotects must be genuinely aimed at ensuring decisions commensurate with the will of the patient, and must be reliable as instruments to that end.”\(^5\) Moreover, he noted that a state’s goal to determine accurately an incompetent patient’s intent is not hindered because there is “nothing in the Constitution [that] prevents States from reviewing the advisability of a family decision, by requiring a court proceeding or by appointing an impartial guardian ad litem.”\(^5\)

Finally, Justice Brennan disagreed with the majority’s position that a state as parens patriae should determine whether treatment will continue when the incompetent patient’s intent cannot be ascertained.\(^5\) A state may select the individual who the incompetent would most likely select, or it may reposit the decision in a family member; however, a state’s inability to ascertain intent does not justify its appropriation of that decision. Justice Brennan’s

\(^{50}\) Id.
\(^{51}\) Cruzan v. Director, Mo. Dep’t of Health, 110 S. Ct. 2841, 2872 (1990).
\(^{52}\) Id. Family members, friends, doctors, and the guardian ad litem agreed that there was no genuine dispute as to Ms. Cruzan’s preference. Id. More specifically, Ms. Cruzan’s sister, mother, and two friends testified that Ms. Cruzan would want to discontinue the nutrition and hydration. Id. at 2874 n.20.
\(^{53}\) Id. at 2872-73.
\(^{54}\) Id. at 2873.
\(^{56}\) Cruzan, 110 S. Ct. at 2876 (Brennan, J., dissenting).
\(^{57}\) Id.
\(^{58}\) Id. at 2877.
response to Missouri’s appropriation was in the form of a question: “Is there any reason to suppose that a State is more likely to make the choice that the patient would have made than someone who knew the patient intimately?”

In a separate dissent, Justice Stevens opined that the Constitution required the “State to care for Nancy Cruzan’s life in a way that gives appropriate respect to her own best interests.” He concluded that the “best interests of the individual, especially when buttressed by the interests of all related third parties, must prevail over any general state policy that simply ignores those interests.” As Missouri had only an “abstract, undifferentiated interest in the preservation of life,” Ms. Cruzan’s best interests would allow a decision to terminate nutrition and hydration.

In addition, Justice Stevens attempted to distill Missouri’s purpose in opposing the parent’s request to remove the gastrostomy tube. After finding that Missouri’s objection unreasonably intruded upon Ms. Cruzan’s liberty interest, he interpreted Missouri’s interest in the preservation of life as an “effort to define life, rather than to protect it.” Moreover, while the majority declined to consider the quality of life under these circumstances, Justice Stevens reasoned that “[l]ives do not exist in abstraction from persons, and to pretend otherwise is not to honor but to desecrate the State’s responsibility for protecting life.” Thus, Ms. Cruzan’s best interests overcame the

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59. Id. (emphasis in original).
60. Cruzan, 110 S. Ct. at 2879 (Stevens, J., dissenting). Interestingly, the “best interests” test has been applied most often to initiate treatment, Robertson, Is ‘Substituted Judgment’ a Valid Legal Concept?, 5 ISSUES L. & MED. 197, 200 n.11 (1989), and has favored continued treatment as protecting a ward’s best interests. Id. at 199-200; see Harris & Bostrom, Is the Continued Provision of Food and Fluids in Nancy Cruzan’s Best Interests?, 5 ISSUES L. & MED. 415, 416 (1990) (concluding that continued provision of food and water are in her best interests).

61. Cruzan v. Director, Mo. Dep’t of Health, 110 S. Ct. 2841, 2889 (1990) (Stevens, J., dissenting). In re Estate of Longeway, 133 Ill. 2d 33, 549 N.E.2d 292 (1989), however, criticized the best interests test because “it lets another make a determination of a patient’s quality of life, thereby undermining the foundation of self-determination and inviolability of the person upon which the right to refuse medical treatment stands.” Id. at 49, 549 N.E.2d at 299.

62. Cruzan, 110 S. Ct. at 2879.
63. Id. at 2885.
64. Id. at 2886.
65. Cruzan, 110 S. Ct. at 2892. By allowing a state to argue that the protection of life justifies the preclusion of a quality-of-life inquiry, there results “an illogical and pro-life blind-
State's generalized interest, and thus should have prevented Missouri from interfering with the decision to terminate treatment.

IV.

In *Cruzan v. Director, Missouri Department of Health*, the Supreme Court provided a patchwork quilt of possibilities without providing clear guidance on the multi-faceted issue of an incompetent patient's right to die. While the majority's cursory refusal to assess a patient's quality of life was an unsatisfactory response to the central issue for many in this legal-medical-ethical debate, it is conceivable that the Court feared a presumption in favor of termination, a result that may occur if quality of life is considered.

Nevertheless, *Cruzan* marks the first time a majority of the Supreme Court has recognized a right to die. This recognition will hopefully be a springboard for future decisions to expand that right while including a quality-of-life component to its application. Justice Brennan provides a foundation that avoids the creation of a presumption in favor of continued treatment. His pursuit of accuracy is the most likely means to achieve what an incompetent patient desired. Unfortunately, for patients like Nancy Cruzan, accuracy is a goal for which there is no guarantee of realization, and their only hope is either through state legislatures or for a natural death. In light of the intensely political nature of the debate, the latter may be the most likely—and expeditious—result.

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66. "Disposition of the *Cruzan* case seems to have opened a Pandora's box of right-to-die and right-to-life cases, all putting painful ethical dilemmas before the courts." Tiff, *Life and Death After Cruzan: Across the Country, a Welter of Painful Dilemmas About the Possible Termination of Care Is Wending Through the Courts*, TIME, Jan. 21, 1991, at 67 (surveying factual situations).

67. See supra note 17.

68. Even with Justice Brennan's departure from the Court, one commentator believes that "there is 'strong evidence' that a majority of the remaining justices either have rejected, or will reject in future cases, (1) any distinction between the feeding tube and other forms of life support, and (2) any distinction between 'dying' or 'terminally ill' patients and others whose conditions have stabilized" and who could live for many years. See Law Conference, supra note 7, at 2275 (paraphrasing address by Yale Kamisar).