Memorandum

Right to Personal Autonomy

Justice Gorsuch

"Government is not free to disregard the First Amendment in times of crisis (*Exercising power to abrogate a person's religious rights*) – ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK v. ANDREW M. CUOMO, GOVERNOR OF NEW YORK (November 25, 2020) (Italic mine).

Although the Bill of Rights does not explicitly mention "privacy" or "personal autonomy", Justice William O. Douglas wrote for the majority that the right was to be found in the **"penumbras"** *(cast shadows*) and **"emanations"** (*an abstract but perceptible thing that issues from a source*) of other constitutional protections, such as the self-incrimination clause of the Fifth Amendment. (Italic mine)

Douglas wrote,

"Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship."

Justice Arthur Goldberg wrote a concurring opinion in which he used the Ninth Amendment in support of the Supreme Court's ruling. **Justice Byron White** and **Justice John Marshall Harlan II** wrote concurring opinions in which they argued **that privacy is protected by the due process clause of the Fourteenth Amendment**.

In **McFall v. Shimp** an individual was being coerced to give bone marrow against their will in order to save someone else's life. "When the case ended up in court, **Judge John P. Flaherty Jr.** stated that Shimp's position, refusing to donate bone marrow, was "morally indefensible", but constitutionally secure.

Judge Flaherty went on to say that **forcing a person to submit to an intrusion of his body** in order to donate bone marrow "**would defeat the sanctity of the individual and would impose a rule which would know no limits, and one could not imagine where the line would be drawn."**

Body autonomy is a critical component of the right to privacy protected by the Constitution, as decided in Griswold v. Connecticut (1965), McFall v. Shimp (1978), and of course Roe v. Wade (1973).

The Supreme Court has decided that competent adults have the right to refuse medical treatment including but not limited to the wearing of masks and vaccinations, if they so wish!

Privacy Rights and Personal Autonomy

The U.S Constitution safeguards the rights of Americans **to privacy and personal autonomy . . . and medical treatment.**

JUSTIA https://www.justia.com/constitutional-law/docs/privacy-rights/

State and federal laws face the challenge of balancing an individual's right to privacy against the state's compelling interests. **Such compelling interests include protecting public morality and the health of its citizens and improving the quality of life . . . but State interests cannot easily justify the abrogation of human rights without vigorous challenge.**

Right to Refuse Medical Treatment

The Supreme Court has held that adults have **the right to personal autonomy in matters relating to their own medical care.** Adults, as long as they are competent to understand their decision, have the right to refuse medical treatment, even life-saving medical treatment, though a state may require clear and convincing evidence that a person wanted treatment ended before it allows termination. A state may restrict family members from terminating treatment for another, because this right belongs to each individual. The court has not extended this right to allow physician-assisted suicide.

Cases on Personal Autonomy

In his brief, "Legal Right to Refuse Medical Treatment in the USA" (2012), Ronald B. Standler says, "The history of the right to refuse medical treatment in the USA is often traced back to two judicial opinions"

Union Pacific Railway Co. v. Botsford, 141 U.S. 250, 251 (1891)

Botsford sued railroad for concussion resulting from alleged negligence of railroad. Railroad wanted surgical examination of her injuries. Request of railroad denied.

"**No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."**

Schloendorff v. Society of New York Hospital, 105 N.E. 92, 93 (N.Y. 1914)

"Every human being of adult years and sound **mind has a right to determine what shall be done with his own body;** and a surgeon who performs an operation without his patient's consent **commits an assault**, for which he is liable in damages."

Consent launches contracts into the sea of commerce. The bedrock of trust, consent is necessary for healthy relationships.

In re Brown, 478 So.2d 1033, 1040 (Miss. 1985)

"The informed consent rule rests upon the bedrock of this state's respect for the individual's right to be free of unwanted bodily intrusions no matter how well intentioned. Informed consent further suggest a corollary: the patient must be informed of the nature, means and likely consequences of the proposed treatment so that he may 'knowingly' determine what he should do one of his options being rejection."

Cruzan v. Harmon, 760 S.W.2d 408, 417 (Mo. 1988)

"The doctrine of informed consent arose in recognition of the value society places on a person's autonomy and as the primary vehicle by which a person can protect the integrity of his body. If one can consent to treatment, one can also refuse it. Thus, as a necessary corollary to informed consent, the right to refuse treatment arose."

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

Patients have a right to refuse medical treatment,

"The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment."

Matter of Guardianship of L.W., 482 N.W.2d 60, 65 (Wis. 1992)

"The logical corollary of the doctrine of informed consent is the right not to consent — the right to refuse treatment."

In re Fiori, 673 A.2d 905, 910 (Pa. 1996)

"The doctrine of informed consent declares that absent an emergency situation, medical treatment may not be imposed without the patient's informed consent. A logical corollary to this doctrine is the patient's right, in general, 'to refuse treatment and to withdraw consent **to treatment once begun.' [citations omitted]"**

Stouffer v. Reid, 993 A.2d 104, 109 (Maryl. 2010)

"We explained that the 'fountainhead of the doctrine [of informed consent] is the patient's right to exercise control over his own body,… by deciding for himself [or herself] whether or not to submit to the particular therapy. 'Mack, … 618 A.2d [744] at 755 (Maryl. 1993) (quoting Sard v. Hardy, … 379 A.2d 1014,1019 (Maryl. 1977)).

Although [the Patient] has both a common law and constitutional right to refuse unwanted medical treatment, Mack, 329 Md. at 210-11, 618 A.2d at 755; see also Cruzan, 497 U.S. at277, 110 S.Ct. at 2851, 111 L.Ed.2d at 241, in the present case we base our decision on [the Patient's] common law right to refuse medical treatment and therefore need not reach the constitutional question. As noted by courts in other jurisdictions, a patient's right of self-determination, ordinarily, is superior to the considerations of the medical profession as to treatment options. See Thor, 21 Cal.Rptr.2d 357, 855 P.2d at 386 (noting that "patient autonomy and medical ethics are not reciprocals; one does not come at the expense of the other"); Myers, 399 N.E.2d [452] at 458 [(Mass. 1979)](noting that the interest in maintaining the integrity of the medical profession is not controlling because a "patient's right of self-determination would normally be superior to … institutional concerns" of the government and medical profession).

Robert Byrn, law professor wrote:

"The law of informed consent would be rendered meaningless if patient choice were subservient to conscientious medical judgment. … The rule of the supremacy of the 'doctor's conscience' finds no real support in law."8 In the same article, the law professor concluded that concern for medical ethics would not "impinge upon the competent adult's freedom to reject lifesaving medical treatment." (Robert M. Byrn, "Compulsory Lifesaving Treatment for the Competent Adult," 44 FORDHAMLAW REVIEW1, 29 (1975)).

In 1996, Prof. Annas, an eminent expert in medical law at Boston University, wrote:

"Although courts have mentioned four potentially compelling state interests, no appellate court has ever ultimately required any competent adult to undergo treatment for any of these reasons." See, e.g., Superintendent of Belchertown State Sch. v. Saikewicz, 370 N.E.2d 417(Mass. 1977); In re Quinlan, 348 A.2d 801 (N.J.Super. Ch. Div. 1975), modified, 355 A.2d647 (N. J. 1976), cert. denied, 429 U.S. 922 (1976)

The following quotations from judicial opinions provide evidence of an absolute right to accept or refuse medical procedures; that is, state interest must surrender to the individual's right of autonomy and self-determination.

Matter of Conroy, 486 A.2d 1209, 1225 (N.J. 1985)

"On balance, the right to self-determination ordinarily outweighs any countervailing state interests, and competent persons generally are permitted to refuse medical treatment, even at the risk of death."

Matter of Farrell, 529 A.2d 404, 413 (N.J. 1987)

"Generally, a competent informed patient's 'interest in freedom from nonconsensual invasion of her bodily integrity would outweigh any state interest.' Conroy, 98 N.J. at 355, 486 A.2d 1209 [at 1226 (N.J. 1985)]."

In re Estate of Longeway, 549 N.E.2d 292, 299 (Ill. 1989)

"Normally, none of these [four]interests [in Saikewicz] will override a patient's refusal of artificially administered food and water. Adequate safeguards exist to protect life and third parties, and to prevent suicide."

In re A.C., 573 A.2d 1235, 1252 (D.C. 1990) (en banc)

"We emphasize, nevertheless, that it would be an extraordinary case indeed in which a court might ever be justified in over riding the patient's wishes and authorizing a major surgical procedure such as a caesarean section. Throughout this opinion we have stressed that the patient's wishes, once they are ascertained, must be followed in 'virtually all cases,' ante at 1249, unless there are 'truly extraordinary or compelling reasons to override them,' ante at 1247. Indeed, some may doubt that there could ever be a situation extraordinary or compelling enough to justify a massive intrusion into a person's body, such as a caesarean section, against that person's will.").

In 1993, the California Supreme Court wrote:

Moreover, "[n]o state interest is compromised by allowing [an individual] to experience a dignified death rather than an excruciatingly painful life." [quoting] Donaldson v. Lundgren,… 4 Cal.Rptr.2d 59 [at 63 (Cal. App. 1992)].

Thor v. Superior Court, 855 P.2d 375, 385 (Cal. 1993).

On 15 June 2012, the Massachusetts Supreme Court came face-to-face with the dilemma in a mentally competent adult's interest in autonomy verses four state interests:

"The right to refuse medical treatment, although strongly rooted in our constitutional and common law, is not absolute. "As distilled from the cases, the State has claimed interest in: (1) the preservation of life; (2) the protection of the interests of innocent third parties; (3) the prevention of suicide; and (4) maintaining the ethical integrity of the medical profession." Superintendent of Belchertown State Sch. v. Saikewicz, 373 Mass. 728, 741, 370 N.E.2d 417 (1977).

In certain very limited circumstances, these State interests may override a competent individual's privacy rights. Any attempt by the State to override a competent adult's decision about her medical care, however, is carefully scrutinized. In virtually every instance where we have considered the issue, **we have upheld the "right of a competent individual to refuse medical treatment,"** Shine v. Vega, 429 Mass.456, 463, 709 N.E.2d 58 (1999), quoting Norwood Hosp. v. Munoz,409 Mass. 116, 122,564 N.E.2d 1017 (1991). It is uncertain if the Commonwealth has not cited any cases to the contrary. Even "the State's interest in the preservation of life does not invariably control the right to refuse treatment," Commissioner of Correction v. Myers, 379 Mass. 255, 263, 399 N.E.2d452 (1979), even pregnant women have a right to forgo medical treatment even in life-threatening situations. See Shine v. Vega,supra at 467, 709 N.E.2d 58."

In fundamental law, the Declaration acknowledges enumerated God-given rights to life, liberty, and property, while the 10th Amendment announces the existence of unenumerated rights reserved by the people.

Thus, this American National reserves his / her right to refuse dubious medical practices of wearing face-coverings and injections with RNA-DNA Covid vaccines . . . to protect himself and his family from the vigorous attempts by over-zealous sychophants showing contempt to the rule of law to inject every human being on this earth with a vaccine that alters human DNA with or without their consent.

Note: Human life with its RNA-DNA begins at conception, not birth. While a woman has a right to personal autonomy regarding her own body, she does not have a God-given right to kill her baby or to interfere with another life with a different set of RNA-DNA in their cells. To end life in the womb is not a right, but a crime of murder.

“murders” is one category of people in hell excluded from the kingdom of God (Revelation 21:8).