

medical treatment. Also, the Court seems ready to extend such right not only to terminally ill patients, but also to severely incapacitated patients whose condition has stabilized.<sup>702</sup> However, the Court made clear in a subsequent case, *Washington v. Glucksberg*,<sup>703</sup> that it intends to draw a line between withdrawal of medical treatment and more active forms of intervention.

In *Glucksberg*, the Supreme Court rejected an argument that the Due Process Clause provides a terminally ill individual the right to seek and obtain a physician's aid in committing suicide. Reviewing a challenge to a state statutory prohibition against assisted suicide, the Court noted that it moves with "utmost care" before breaking new ground in the area of liberty interests.<sup>704</sup> The Court pointed out that suicide and assisted suicide have long been disfavored by the American judicial system, and courts have consistently distinguished between passively allowing death to occur and actively causing such death. The Court rejected the applicability of *Cruzan* and other liberty interest cases,<sup>705</sup> noting that while many of the interests protected by the Due Process Clause involve personal autonomy, not all important, intimate, and personal decisions are so protected. By rejecting the notion that assisted suicide is constitutionally protected, the Court also appears to preclude constitutional protection for other forms of intervention in the death process, such as suicide or euthanasia.<sup>706</sup>

## PROCEDURAL DUE PROCESS: CIVIL

### Generally

Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to

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<sup>702</sup> There was testimony that the patient in *Cruzan* could be kept "alive" for about 30 years if nutrition and hydration were continued.

<sup>703</sup> 521 U.S. 702 (1997). In the companion case of *Vacco v. Quill*, 521 U.S. 793 (1997), the Court also rejected an argument that a state which prohibited assisted suicide but which allowed termination of medical treatment resulting in death unreasonably discriminated against the terminally ill in violation of the Equal Protection Clause of the Fourteenth Amendment.

<sup>704</sup> 521 U.S. at 720.

<sup>705</sup> *E.g.*, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (upholding a liberty interest in terminating pregnancy).

<sup>706</sup> A passing reference by Justice O'Connor in a concurring opinion in *Glucksberg* and its companion case *Vacco v. Quill* may, however, portend a liberty interest in seeking pain relief, or "palliative" care. *Glucksberg* and *Vacco*, 521 U.S. at 736–37 (Justice O'Connor, concurring).