

suggested—physician-assisted suicide—that appears to be an uncertain blend of assisted suicide or active euthanasia undertaken by a licensed physician.

There has been little litigation of constitutional issues surrounding suicide generally, although Supreme Court *dicta* seems to favor the notion that the state has a constitutionally defensible interest in preserving the lives of healthy citizens.⁶⁹⁶ On the other hand, the right of a seriously ill person to terminate life-sustaining medical treatment has been addressed, but not squarely faced. In *Cruzan v. Director, Missouri Department of Health*,⁶⁹⁷ the Court, rather than directly addressing the issue, “assume[d]” that “a competent person [has] a constitutionally protected right to refuse lifesaving hydration and nutrition.”⁶⁹⁸ More importantly, however, a majority of the Justices separately declared that such a liberty interest exists.⁶⁹⁹ Yet, it is not clear how actively the Court would seek to protect this right from state regulation.

In *Cruzan*, which involved a patient in a persistent vegetative state, the Court upheld a state requirement that there must be “clear and convincing evidence” of a patient’s previously manifested wishes before nutrition and hydration could be withdrawn. Despite the existence of a presumed due process right, the Court held that a state is not required to follow the judgment of the family, the guardian, or “anyone but the patient herself” in making this decision.⁷⁰⁰ Thus, in the absence of clear and convincing evidence that the patient had expressed an interest not to be sustained in a persistent vegetative state, or that she had expressed a desire to have a surrogate make such a decision for her, the state may refuse to allow withdrawal of nutrition and hydration.⁷⁰¹

Despite the Court’s acceptance of such state requirements, the implications of the case are significant. First, the Court appears, without extensive analysis, to have adopted the position that refusing nutrition and hydration is the same as refusing other forms of

⁶⁹⁶ *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 280 (1990) (“We do not think that a State is required to remain neutral in the face of an informed and voluntary decision by a physically able adult to starve to death”).

⁶⁹⁷ 497 U.S. 261 (1990).

⁶⁹⁸ 497 U.S. at 279.

⁶⁹⁹ See 497 U.S. at 287 (O’Connor, concurring); id. at 304–05 (Brennan, joined by Marshall and Blackmun, dissenting); id. at 331 (Stevens, dissenting).

⁷⁰⁰ 497 U.S. at 286.

⁷⁰¹ “A State is entitled to guard against potential abuses” that can occur if family members do not protect a patient’s best interests, and “may properly decline to make judgments about the ‘quality’ of life that a particular individual may enjoy, and [instead] simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual.” 497 U.S. at 281–82.