

CRUZAN v. DIRECTOR, MISSOURI DEPARTMENT OF HEALTH (1990)

Background

As a result of severe head injuries suffered in a car accident in 1983, Nancy Cruzan fell into a coma, and then, a few weeks later, into a persistent vegetative state (motor reflexes, but no indications of cognitive function). In order to keep her alive, doctors hooked her up to a feeding and hydration tube with her then husband's consent. Her parents then asked the doctors in charge of her care to remove the feeding tube, but the doctors refused to remove the tube without court approval. (All agreed that removing the tube would result in Cruzan's death.) A State court found that Cruzan had a fundamental right to refuse unwanted medical treatment, and that previous statements to friends and family indicating that she would not wish to live under these sorts of conditions were sufficient to determine that she would want the feeding tube removed. The Missouri State Supreme Court disagreed with the lower State court, and the case then came to the U.S. Supreme Court on appeal.

The Issue

The Court had to decide (i) whether Cruzan has a right to refuse unwanted medical treatment, and (ii) what evidentiary standard to apply in determining what Cruzan would wish her doctors to do under the circumstances. By a vote of 5-4, the Court decided that Cruzan does have "a constitutionally protected liberty interest in refusing unwanted medical treatment," that this interest must be "balanced" against the State's "interest in the protection and preservation of human life," and that the strength of the State's interest is such that it is constitutionally permitted to require "clear and convincing" evidence of Cruzan's wishes when competent (such as a living will) before consenting to the removal of the feeding tube.

In the majority: Rehnquist, White, O'Connor, Scalia, and Kennedy

In the minority: Brennan, Marshall, Blackmun, and Stevens

Rehnquist's Opinion

1. Prior decisions (*Jacobson, Harper, Vitek, Parham*) suggest that, under the DP Clause, "a *competent* person [has] a constitutionally protected right to refuse lifesaving hydration and nutrition." [Notice that Rehnquist does not say whether this right is *fundamental*.]

"The forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty." [*Harper*]

2. No right is absolute. The exercise of any right must be balanced against relevant state interests.

Example: In *Jacobson*, the Court “balanced an individual’s liberty interest in declining an unwanted smallpox vaccine against the State’s interest in preventing disease.”

3. The State’s interest in this case is in the protection and preservation of human life.
4. As a means of promoting this interest, Missouri requires “clear and convincing” evidence that Cruzan would want her feeding tube removed before acceding to her guardians’ request for removal, but does *not* require “clear and convincing” evidence that Cruzan would want her feeding tube to remain before acceding to any request that it remain. [Thus, the State needs to justify its *asymmetrical application* of the “clear and convincing” evidence rule.]
5. In past cases (e.g., *Santosky*), the Court has stated that the “clear and convincing evidence” rule is constitutionally appropriate when “the individual interests at stake...are both ‘particularly important’ and ‘more substantial than mere loss of money’.”
6. In this case, it is “self-evident” that the interests at stake “are more substantial, both on an individual and societal level, than those involved in a run-of-the-mine civil dispute.”
7. Moreover, it is permissible for the State to “place an increased risk of an erroneous decision” on those who are proposing to perform an action that is “final and irrevocable.”

“An erroneous decision not to terminate [life-sustaining treatment] results in a maintenance of the status quo; the possibility of subsequent developments such as advancements in medical science, the discovery of new evidence regarding the patient’s intent, [or] changes in the law...at least create the potential that a wrong decision will eventually be corrected or its impact mitigated. An erroneous decision to [terminate], however, is not susceptible of correction.”
8. In this case, the State has placed an increased risk of an erroneous decision on those who are proposing the removal of the feeding tube, which removal will finally and irrevocably result in Cruzan’s death.
9. So: It is constitutionally appropriate and permissible for the State to require “clear and convincing” evidence (e.g., in the form of a living will) that Cruzan’s parents’ decision to remove the feeding tube comports with her wishes before acceding to their request.
10. Moreover, the State is not constitutionally *required* to allow an incompetent person’s guardians’ wishes to prevail. The reason for this is that there is no guarantee that an incompetent person’s guardians’ wishes comport with the wishes she had when she was competent:

“There is no automatic assurance that the view of close family members will necessarily be the same as the patient’s would have been had she been confronted with the prospect of her situation while competent.”

Brennan's Dissent

1. Cruzan's right "to be free of unwanted artificial nutrition and hydration" is fundamental.
2. The "clear and convincing evidence" rule impermissibly burdens this right.
3. So: The "clear and convincing evidence" rule is unconstitutional. States should be left to determine accurate and unbiased ways of determining what incompetent patients would want.

The Right to Refuse Artificial Nutrition and Hydration

1. It is *sufficient* (even if it is not necessary) for a right to be counted as fundamental that it be "deeply rooted in this Nation's history and tradition." [*Moore* criterion]

It is also sufficient for a right to be counted as fundamental that it be "one of the basic civil rights of man." [*Palko* criterion]

2. The right to refuse unwanted medical treatment is deeply rooted in this Nation's history and tradition and is also a basic human right.

"Anglo-American law starts with the premise of thorough-going self-determination. It follows that each man is considered to be master of his own body, and he may, if he be of sound mind, expressly prohibit the performance of lifesaving surgery or other medical treatment."

3. Artificial nutrition and hydration is a form of medical treatment.
4. Competence is not a necessary condition for possession of a fundamental right.

Examples: The mentally retarded have a right to safety and freedom from bodily restraint; children have a right not to be confined unnecessarily for medical treatment.

5. So: Cruzan, though incompetent, has a fundamental right to refuse artificial nutrition and hydration. The issue is "how such [a right] may be exercised."

The Standard of Evaluation: Strict Scrutiny

Although Brennan does not mention the standard for evaluating laws that infringe fundamental rights, it is clear that he takes the proper standard to be Strict Scrutiny: The law must bear a necessary relation to a compelling government interest.

The State's Interests

Missouri has a legitimate interest in the preservation of life. But this interest cannot outweigh a particular person's decision to avoid medical treatment.

1. If a State were able to override a person's decision to avoid medical treatment, "the interest in liberty protected by the Due Process Clause would be a nullity."
2. A "general interest in someone's life, completely abstracted from the interest of the person living that life" is not compelling, for "there is nothing legitimately within the State's purview to be gained by superseding her decision."

Moreover, there "may be considerable danger" that a rule that makes it *more difficult* for patients to exercise the right to refuse artificial nutrition and hydration *after* the initiation of life-saving measures will make it *less likely* that families or doctors will *initiate* these measures. Thus, Missouri "clear and convincing evidence" rule might well "impair rather than serve any interest [it] does have in sustaining life."

So: The State's interest in the preservation of Cruzan's life reduces to an interest in safeguarding the *accuracy* of a determination as to how she *would* exercise her fundamental right to refuse artificial nutrition and hydration under the circumstances.

The question: Is Missouri's "clear and convincing evidence" rule the most accurate way to determine how Cruzan would choose to exercise her rights under conditions of incompetence?

How to Determine Cruzan's Wishes Accurately

The majority is worried about what might happen if a "clear and convincing evidence" rule were not imposed.

1. The absence of such a rule would make it more difficult to ferret out conflicts of interest and venal motives. [Think of cases in which the guardians stand to inherit if the patient dies.]

Reply: Lower courts could deal with this problem by appointing a guardian ad litem (guardian at law) whose job it is to look out for the best interests of the incompetent patient, and who would have the power to gather evidence regarding the patient's wishes.

2. The absence of such a rule would make it easier for guardians to argue successfully for the removal of feeding tubes, thereby increasing the risk of erroneous and irrevocable decisions.

Reply: The imposition of such a rule would make it more difficult for guardians to argue successfully for the removal of feeding tubes, thereby increasing the risk of erroneous and irrevocable decisions.

“From the point of view of the patient, an erroneous decision in either direction is irrevocable. An erroneous decision to terminate [life-support], to be sure, will...result in complete brain death. An erroneous decision not to terminate life-support, however, robs a patient of the very qualities protected by the right to avoid unwanted medical treatment. His own degraded existence is perpetuated; his family’s suffering is protracted; the memory he leaves behind becomes more and more distorted.”

Moreover, the imposition of a “clear and convincing evidence” rule practically mandates that no evidence aside from a properly executed “living will” would be sufficient to justify removal of a feeding tube. The problem with living wills is that, for various reasons, there are too few of them. (People don’t like to think about their own deaths; they would need to know about living wills; and they might need legal assistance in filling them out.) So, from the fact that a patient does not have a living will, one cannot conclude that she *would* want to remain on life-support indefinitely in a persistent vegetative state, especially if close friends and family members testify that she would *not* want to remain on life-support.

The State worries that “there is no automatic assurance that the view of close family members will necessarily be the same as the patient’s would have been had she been confronted with the prospect of her situation while competent.” But there is also “no automatic assurance” that the view of the *State* will necessarily be the same as the patient’s would have been. After all, unlike the patient’s close friends and family, the State is “a stranger to the patient.”

Brennan’s Conclusion

The imposition of a “clear and convincing” evidence rule impermissibly robs Cruzan of her fundamental right to free herself from the imposition of artificial nutrition and hydration. Under the DP Clause, the rule is therefore unconstitutional.

Brennan’s solution is to let States determine the most effective means of determining what the patient *would* want under the circumstances.