The Constitution and Hastening Inevitable Death

By Robert A. Sedler

The due process clause of the Fourteenth Amendment protects the right of terminally ill persons to hasten their inevitable death. In prohibiting physicians from prescribing lethal medications by which such patients might hasten death, Michigan's ban on "assisted suicide" unconstitutionally imposes an "undue burden" on the exercise of that right.

As might be expected, the nationwide controversy over the legitimacy and legality of assisted suicide has had its most immediate impact in Michigan, the home state of assisted suicide's most visible practitioner, Dr. Jack Kevorkian. Although public opinion polls in Michigan show strong support for assisted suicide in certain circumstances, and for that matter, for Dr. Kevorkian himself, efforts to "Stop Kevorkian" have long been a prominent feature of the Michigan legal and political scene. Kevorkian's activity has been strongly opposed by a number of legislators and prosecutors, and by the politically powerful Michigan Right to Life lobby.

During the 1992-93 session of the Michigan legislature, a number of bills dealing with assisted suicide were introduced, ranging from permitting assisted suicide in certain circumstances to completely prohibiting it in all circumstances. Faced with this politically charged and highly controversial issue, the Michigan legislature decided to do what legislatures often do in such a situation—appoint a blue ribbon commission to study the matter.[1] However, the day before the agreed-upon bill establishing the study commission was to be voted on in the Michigan House, Kevorkian performed another of his now familiar assisted suicides, which, as usual, received nationwide media coverage. This renewed the legislative clamor to "Stop Kevorkian" and "[not] let Michigan become the nation's suicide capitol." The study commission bill was then amended on the floor of the House to add a provision making assisted suicide a criminal offense, and the amended bill was quickly passed by the House and the Senate and signed into law by the governor.

I am a professor of constitutional law at Wayne State University Law School in Detroit and am one of the lawyers litigating the American Civil Liberties Union's constitutional challenge to Michigan's assisted suicide ban. In this article, I will discuss the ACLU's substantive constitutional challenge to the ban, which I helped to formulate. The basis of that challenge is that the ban on assisted suicide is unconstitutional insofar as it prohibits terminally ill patients from making use of physician-prescribed medications to hasten their inevitable death. The ACLU further challenged the process by which the ban was enacted as violating provisions of the state constitution,[2] as well as arguing that the law was unconstitutionally vague and indefinite. I will argue here that the ban imposes an "undue burden" on what I maintain is the constitutionally protected right of terminally ill patients to hasten inevitable death. In doing so, I frame the issue differently from opponents of assisted suicide, as, for example, Professor Yale Kamisar's contention recently advanced in this journal that laws prohibiting assisted suicide do not violate the U.S. Constitution.[3]

A distinguished constitutional scholar has observed, "Once taken into our constitutional system, the dialogue takes on a new seriousness. It is, therefore, critically important that we get the questions right and the answers right, because constitutional law is written in concrete and is not easily washed out by rain or tears."[4] The "right question," as regards the ACLU challenge to Michigan's ban on assisted suicide, is not, I would submit, whether there is a constitutional "right to assisted suicide" or a constitutional "right to die." Rather the right question, framed in the context of this particular constitutional challenge, is whether an absolute ban on the use of physician-prescribed medications by a terminally ill person to hasten that person's inevitable death, *if and when the person chooses to do so,* is an "undue burden" on the person's "liberty" interest protected by the Fourteenth Amendment's due process clause, and so is unconstitutional.

On Behalf of the Terminally Ill

As in many constitutional cases, an understanding of the basis of the ACLU challenge to Michigan's ban on assisted suicide must begin by looking at the people who are bring-

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ing the challenge and at how the ban affects what it is that they want to do. The ACLU did not bring the constitutional challenge to the law on behalf of Dr. Kevorkian (by tacit mutual agreement the ACLU and Dr. Kevorkian have kept at some considerable distance from each other), on behalf of proponents of "voluntary euthanasia," or on behalf of nonterminally ill persons who wish to terminate an "unbearable existence." The principal plaintiffs in the case are terminally ill cancer patients who want to have the *choice* to hasten their inevitable death by taking a lethal dose of physician-prescribed medications, and physicians who want to prescribe medications so that their patients will have this choice. The physician plaintiffs do *not* want to give lethal injections to terminally ill patients or perform voluntary euthanasia in any way whatsoever, and the patient plaintiffs do not want to have their lives ended by means of lethal injections. What the patient plaintiffs do want and what the physician plaintiffs do want to provide is *patient empowerment* to hasten inevitable death. The physicians want to be permitted, when they consider this to be medically appropriate, to provide their patients with barbiturates, opiates, and other medications in sufficient quantities that the patients may, at any time of their own choosing, immediately terminate their lives by consuming a lethal dosage of the available medications. In this respect, patient empowerment encompasses both pain control and the hastening of inevitable death. The patient takes the medications to relieve pain, but if the pain becomes so unbearable that he or she no longer wants to continue living with it, the patient can "take the whole bottle," so to speak, and bring the suffering to a merciful end.

Unlike Dr. Kevorkian's assisted suicides, and unlike voluntary euthanasia, patient empowerment means that there is no physician intervention at the time of death, and that the physician is not directly involved with the patient's death at all. There are no "suicide machines" or television cameras. There is no appointed time at which the physician comes to the patient's home or hospital room to administer the lethal injection. Everything is entirely in the patient's control. Only the patient, or family members or friends if the patient so chooses, will know of the patient's decision before it is carried out. The only sign of death is the empty bottle. The patient herself has determined the *timing* of her inevitable death and of her release from unbearable pain and suffering.

Once the right of terminally ill patients to hasten their inevitable death is firmly established as a matter of law, much of the controversy over assisted suicide may dissipate by its own force.

I would further submit that once the right of terminally ill patients to hasten their inevitable death by the use of physician-prescribed medications is firmly established as a matter of constitutional law, much of the controversy over assisted suicide may dissipate by its own force. At least the controversy will no longer involve the terminally ill. Once it is understood by both physicians and patients that physicians are legally permitted to prescribe lethal medications in such quantities as to empower the terminally ill patient to hasten inevitable death, there will no longer be any need for Dr. Kevorkian and his suicide machine. And there may not even be a need for voluntary euthanasia. A terminally ill patient will be able to obtain the necessary quantity of lethal medications from her physician, and if the particular physician refuses to prescribe them, the patient can simply find another physician. If I am correct in this contention, then the controversy over assisted suicide, at least as regards terminally ill patients, may well have been superseded by the constitutional recognition of patient empowerment to hasten inevitable death.

The problem for doctors and patients in Michigan, however, is that the Michigan legislature has defined "assisted suicide" to *include* the prescription of lethal medications by a physician to a terminally ill patient for the purpose of enabling the patient to use the medications to hasten inevitable death. The law states that it does not apply "to prescribing, dispensing or administering medications or procedures if the intent is to relieve pain or discomfort and not to cause death, even if the medication of procedure may hasten or increase the risk of death."[5] This means that if the physician prescribes lethal medications in sufficient quantities to cause death and instructs the patient how to use the medications for that purpose, the physician will be found to have the "intent to cause death," and so will be guilty of a violation of the law.

Indeed, the ban is more sweeping still. Under the law, no terminally ill person in Michigan, no matter how excruciating that person's pain and suffering, will be able to receive any assistance whatsoever, either from a physician or from a family member or friend, in implementing that person's decision to hasten his or her own inevitable death. Under the law, a person is guilty of "criminal assistance to suicide" if she "has knowledge that another person intends to commit or attempt to commit suicide and intentionally (a) provides the physical means by which the other person attempts or commits suicide or (b) participates in a physical act by which the other person attempts or commits suicide."[6] The only intent necessary for a violation of the law is the intent to "provide the physical means" or "participate in a physical act," with the "knowledge that another person intends to commit or attempt to commit suicide." *There need not be any intent that the other person commit suicide.* So, if a terminally ill person has told a spouse or friend "I sometimes wish I could die," and the spouse or friend

responds to a request for a glass of water that the terminally ill person uses to swallow a lethal dose of medication, the spouse or friend is guilty of violating the law. Furnishing the "physical means" with the knowledge that a person has "threatened suicide" is sufficient to subject the spouse or friend to up to four years' imprisonment.

Opponents of assisted suicide agree with this result. Professor Kamisar, for example, insists that a ban on assisted suicide should properly extend even to the terminally ill. This is because, he says, there is no principled way to distinguish for constitutional purposes between the terminally ill and others who desire "death by suicide."

I will respond to Professor Kamisar's "constitutional identity" argument shortly. But "constitutional identity" aside, in the real world we have no difficulty identifying and distinguishing the terminally ill. They are patients who will die from a specific disease within a relatively short period of time. Their medical treatment is limited to alleviating their pain, and the only thing that is not certain is the precise point in time when their death will occur. They thus constitute a distinct and identifiable class of persons, clearly separate from all other persons who might seek "death by suicide."

I find it appalling that the pejorative label "suicide" would be put on a terminally ill person's choice to hasten his or her inevitable death. In no meaningful sense of the term can a choice to hasten one's own inevitable death by the use of physician-prescribed medications be labeled a "suicide." The term conjures up the image of a person jumping off a bridge or "blowing his brains out." The terminally ill person, who is facing death, and who seeks to have the choice to hasten that inevitable death, is not "committing suicide" by ending a life that otherwise is of indefinite duration. The life of the terminally ill person is coming to an end, and the question is whether the terminally ill person must undergo unbearable suffering until death comes "naturally," or whether that person can make the choice to end the unbearable suffering by the use of physician-prescribed medications.

Professor Kamisar does not say very much about the terminally ill, emphasizing instead that most people who commit suicide are in fact not terminally ill.[7] He, along with most other opponents of "assisted suicide," is rather uncomfortable when talking about the terminally ill and so quickly brushes them off. Opponents of assisted suicide then start down the familiar slippery slope, suggesting that once we start allowing terminally ill people to hasten their inevitable death, we are but a few steps away from putting all "old and sick people" on the modern equivalent of an "ice floe" and ridding ourselves of the "inconvenience" of having to care for them.[8]

Because he wishes to ignore the terminally ill to the extent possible, Professor Kamisar says that the ACLU is simply engaging in "good advocacy tactics" when it restricts its challenge to the terminally ill. As I have explained above, the ACLU challenge to Michigan's assisted suicide ban involves only the constitutionality of that ban as applied to terminally ill people, because only terminally ill people and physicians treating terminally ill people are seeking to challenge the ban in this case. Moreover, the challenge is not to the law's general prohibition against assisted suicide—the plaintiffs do not care about a ban on Dr. Kevorkian's suicide machine or a ban on physician-administered lethal injections—but only to the ban on physician-prescribed medications that would empower terminally ill people to make the choice to hasten their inevitable death.

For this reason, the constitutional issue presented in the ACLU challenge is relatively narrow and quite specific. It is also the issue that opponents of assisted suicide find the most troubling, because they cannot give any justification, moral or otherwise, for requiring terminally ill people to continue to undergo unbearable pain and suffering and for denying them the right to hasten their inevitable death. Rather than invoke the spectre of the slippery slope, a justification of the ban on its merits might begin with an admission that opponents of assisted suicide affirmatively do want to prohibit terminally ill people from using physician-prescribed medications to hasten their inevitable death.

Litigation in the Constitutional System

The fact that the issue presented in the ACLU challenge to Michigan's ban on assisted suicide is quite specific is not simply good advocacy tactics. Nor is it "the technique of overcoming opposition to a desired goal by proceeding step-by-step."[9] *It is the way that constitutional issues are supposed to be litigated in the American constitutional system.*

In the American system, constitutional law develops in a "line of growth," on a case-by-case, issue-by-issue basis. Indeed, it is a fundamental principle of constitutional adjudication that "constitutional issues will not be determined in broader terms than are required by the precise facts to which the ruling is to be applied."[10] The meaning of a constitutional provision develops incrementally, and that provision's line of growth strongly influences its application in particular cases.[11]

The line of growth of constitutional doctrine is clearly illustrated by the development of constitutional protection of a woman's right to have an abortion. This constitutional protection of abortion is part of the constitutional protection afforded to the broader interest of reproductive freedom, which in turn is a part of the even broader "liberty" interest that is textually protected by the Fourteenth Amendment's due process clause. The constitutional protection of reproductive freedom as a due process liberty interest traces back to a 1942 Supreme Court decision holding unconstitutional the "discriminatory" sterilization of convicted felons.[12] The concept of reproductive freedom as a "fundamental right," first recognized by the Court in that case, was later invoked by the Court to hold unconstitutional a ban on the use of contraceptives by married couples,[13] and then a ban on access to contraceptives by unmarried persons.[14] So when, in the 1973 case of *Roe v. Wade*,[15] the Court had to confront the consti-

tutionality of antiabortion laws, reproductive freedom had already been established as a fundamental right, and the question before the Court was whether the state's interest in protecting potential human life was "sufficiently compelling" to justify a prohibition on a pregnant woman's entitlement to a medical abortion. The Court held that it was not "sufficiently compelling" prior to the stage of viability, and so in effect held that a woman had a "constitutional right" to an abortion.[16]

We see then how constitutional doctrine develops incrementally, case-by-case, issue-by-issue. The ACLU's constitutional challenge to Michigan's assisted suicide ban thus does not involve a claimed "right to assisted suicide" or a claimed "right to die." It involves the specific question of whether the "liberty" protected by the Fourteenth Amendment's due process clause embraces the right of a terminally ill person to hasten inevitable death, and if so, whether Michigan's absolute ban on the use of physician-prescribed medications to hasten inevitable death is unconstitutional as imposing an "undue burden" on that right. In actual constitutional litigation, that issue must be confronted directly with reference to applicable constitutional doctrine and the Court's precedents, and it cannot be avoided by slippery slope and "but what if" kinds of arguments. While such arguments may be appropriate for academic and political discourse, they have no place in constitutional litigation and cannot be relied on to avoid confronting the specific constitutional issue presented in the case before the court.

The Right to Hasten Inevitable Death

Let me now briefly summarize the constitutional argument on the specific issue that *is* presented in the ACLU challenge to Michigan's ban on assisted suicide. The first part of the argument is that the "liberty" protected by the Fourteenth Amendment's due process clause embraces the right of a terminally ill person to hasten inevitable death. Here we argue that the essence of the "liberty" protected by the due process clause is *personal autonomy*. This means that a person has the right to bodily integrity, to control his or her own body, and to define his or her own existence. As the Supreme Court recently stated in *Casey:*

> It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter.... It is settled now ... that the Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood, as well as bodily integrity.... At the heart of liberty is the right to define one's own concept of existence, of [the] meaning of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.[17]

A person's entitlement to bodily integrity and control over one's own body protects a person's right to refuse unwanted medical treatment, including the right of a competent adult to make the personal decision to discontinue lifesaving medical treatment.[18] It protects the right of a woman to have an abortion and the right of all persons to use contraception to prevent pregnancy. For the same reasons as people have a right to refuse unwanted medical treatment, to have an abortion, and to use contraception, we contend that a terminally ill person's right to control over that person's own body must include the right to make decisions about the voluntary termination of that person's life. Thus, we contend that the decision of a terminally ill person to hasten inevitable death involves an important liberty interest that is protected by the Fourteenth Amendment's due process clause.

The second part of the argument is that an absolute ban on the use of physician-prescribed medications imposes an *undue burden* on the right of a terminally ill person to hasten inevitable death. This part of the argument is likewise based on the *Casey* decision, where the Supreme Court held that the state may not impose an undue burden on the exercise of a person's fundamental right to bodily integrity and control over his or her own body. In that case, the Court held that a law imposes an undue burden on the exercise of a woman's right to have an abortion when it places a *substantial obstacle* in the path of a woman seeking an abortion of a nonviable fetus. Thus the government may not prohibit a woman from having an abortion prior to viability. Nor may it require notification to a married woman's husband of her intention to have an abortion, since the threat that her husband may commit an act of violence against her would effectively prevent a small number of women from making the decision to have an abortion.

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To say the least, a ban on the use of physician-prescribed medications obviously places a substantial obstacle in the path of a terminally ill person seeking to hasten that person's inevitable death. Indeed, a more extreme burden on the exercise of that right cannot be imagined, and for this reason we contend the ban on the use of physician-prescribed medications is unconstitutional.[19]

Professor Kamisar, of course, does not address the constitutionality of a ban because he insists on the "constitutional identity" of all self-inflicted deaths; that is, he insists that for constitutional purposes there is no prin-

cipled way to distinguish between terminally ill persons seeking to hasten their inevitable death and anybody else desiring "death by suicide." In arguing that any constitutional protection to a "right to die" does not include protection to a "right to assisted suicide," he says that there is a difference between the withholding or withdrawal of life-sustaining medical treatment and affirmatively committing suicide. This observation is true. But it is also completely irrelevant to resolving whether the right of terminally ill persons to hasten their inevitable death is a protected "liberty" interest under the Fourteenth Amendment's due process clause and whether an absolute ban on the use of physician-prescribed medications is an undue burden on the exercise of that right.

> The Constitution equally protects the person's right to choose *not* to hasten inevitable death.

Rather, the resolution of these issues must take place with reference to constitutional doctrine relating to the right of personal autonomy that has been promulgated by the Supreme Court. We have discussed this doctrine above, particularly the Court's application of that doctrine in the recent *Casey* decision. Professor Kamisar does not explicate any principled difference, *in terms of the constitutional doctrine relating to the right of personal autonomy,* between the right of a competent terminally ill person to hasten inevitable death by refusing to continue life-sustaining medical treatment, and the right of the same competent terminally ill person to hasten inevitable death by the use of physician-prescribed medications. No such principled difference can be found in the applicable constitutional doctrine, and Professor Kamisar does not suggest any. Just as the personal autonomy reflected in the constitutional right of reproductive freedom protects both the right of a woman to use contraception to prevent pregnancy from occurring and her right to have an abortion to terminate a pregnancy that has already occurred, the right of a terminally ill person to bodily integrity includes the right to hasten inevitable death, both by discontinuing lifesaving medical treatment and by taking a lethal dose of physician-prescribed medications.

Looking to the Supreme Court's ringing affirmation of the right of personal autonomy in *Casey* I would submit that terminally ill persons do indeed have the right to make the "most basic decisions about bodily integrity," that they have the right to "define [their] own concept of existence" and "the attributes of [their] personhood," without the "compulsion of the state," and that they have the right to make the *choice* whether to continue to undergo unbearable suffering until death comes "naturally" or to hasten their inevitable death by the use of physician-prescribed medications. The right to make this choice is surely a right protected by the "liberty" of the Fourteenth Amendment's due process clause, and Michigan's absolute ban on terminally ill persons using physician-prescribed medications to hasten their inevitable death clearly imposes an undue burden on this right.

The state cannot assert any valid interest in requiring a terminally ill person to undergo unbearable pain and suffering until death comes "naturally." The interest typically asserted to justify a ban on assisted suicide is that of "preserving life," or as Professor Kamisar puts it, in preventing the disregard for life that he sees resulting from a "suicide-permissive" society.[20] *But there can be no valid interest in "preserving life" when there is no "life left to preserve."* A ban on the use of physician-prescribed medications by a terminally ill person to hasten inevitable death does not advance any conceivable interest in "preserving life." Quite to the contrary, it does nothing more than force a terminally ill person to undergo continued unbearable suffering until death mercifully intervenes.

Getting the Question Right

As stated at the outset, in constitutional litigation it is "critically important that we get the questions right and the answers right." The question presented in the ACLU challenge to Michigan's ban on assisted suicide is specifically whether the absolute ban on the use of physician-prescribed medications by terminally ill people to hasten their inevitable death is an "undue burden" on the liberty protected by the Fourteenth Amendment's due process clause. In this article, I have tried to demonstrate why the answer to this question, in terms of the constitutional doctrine applicable to the right of personal autonomy, should be resoundingly in the affirmative.

However, a holding that a ban on assisted suicide *is* unconstitutional as applied to prohibit the use of physician-prescribed medications by terminally ill people to hasten their inevitable death is only a holding on this specific and narrow issue. The holding will be a relevant precedent in a future case involving the constitutionality of a law that prohibits "suicide assistance" to a person who is not terminally ill, or that prohibits "suicide machines" or "physician euthanasia," but it will not be controlling. As a precedent, the case will have recognized that the right of terminally ill persons to hasten inevitable death is a right entitled to significant constitutional protection. Whether or not that precedent will be extended in future cases will be determined only if and when those cases arise.

In arguing that the Constitution should not protect a "right to assisted suicide," Professor Kamisar says that in certain circumstances life may be "unendurable" for one who is not terminally ill, and asks if that person should have the same "right to assisted suicide" that is being asserted for one who is terminally ill (p. 36). The question for the Court in such a case, as in all constitutional cases in-

volving personal autonomy, would be whether the state can assert a valid *justification* for the particular interference with that autonomy. Perhaps the state's interest in preventing a "suicide-permissive" society is of sufficient importance to outweigh the interest of a nonterminally ill person in ending a life that has become "unendurable." But perhaps it is not.[21] The question can only be answered when it arises, and must be answered in light of the constitutional doctrine applicable to the right of personal autonomy that has been promulgated by the Supreme Court. Again, the state's justification for the ban on assisted suicide must be balanced against the resulting interference with the personal autonomy of the person seeking to end a life that that person no longer wishes to endure, and this justification may or may not be found sufficient in the balancing equation. Constitutional protection to the right of personal autonomy is even-handed in the sense that autonomy means the right to *choose* between available alternatives. The same Constitution that I submit protects the right of a terminally ill person to choose to hasten inevitable death equally protects that person's right to choose *not* to hasten inevitable death. The spectre of putting the "old and sick" on the modern equivalent of the ice floe thus would be constitutionally impermissible. More specifically, governmental efforts to "ration" medical care are subject to serious constitutional challenge precisely because they interfere with the right of "old and sick" people and of people who are terminally ill to make the choice to "go on with their lives." I seriously doubt that the justification of "we have to control medical costs," and "treatment won't do them any good anyway," will be found to be constitutionally sufficient to overcome a person's "right to go on living."

The issue in the ACLU challenge to Michigan's assisted suicide ban, however, is whether the state can prohibit terminally ill persons from using physician-prescribed medications to hasten their inevitable death. I hope that I have succeeded in demonstrating why I think the state cannot constitutionally do so.

References

1. The study commission was directed to make recommendations to the legislature on the entire subject of assisted suicide—including whether the practice should be made a criminal offense.

2. The ACLU procedural challenge included the claim that the enactment of the ban violated provisions of the state constitution prohibiting the same bill from containing more than one "object" and prohibiting a "change of purpose" of proposed legislation during its legislative journey through both houses. These provisions, common to many state constitutions, are designed to make legislatures more directly responsible to the electorate by preventing "logrolling" and "hasty, ill-considered legislation." The trial court held that enactment of the assisted suicide ban as an amendment to the bill establishing the study commission violated these state constitutional provisions, and enjoined its enforcement. The trial court's order has been stayed pending an expedited appeal, so at the present time, the ban remains in effect.

If the Michigan appellate courts uphold the trial court's order on this ground of challenge, there will be no occasion for the Michigan courts to resolve the substantive constitutional challenge that is the subject of this article.

3. Yale Kamisar, "Are Laws against Assisted Suicide Unconstitutional?" *Hastings Center Report* 23, no. 3 (1993): 32-41.

4. Robert Dixon, *"Bakke:* A Constitutional Analysis," *California Law Review* 67 (1979): 69-86, at 70.

5. Michigan Compiled Laws §752.1027(3).

6. Michigan Compiled Laws §752.1027(1).

7. Kamisar, "Are Laws against Assisted Suicide Unconstitutional?" p. 38.

8. Kamisar, "Are Laws against Assisted Suicide Unconstitutional?" p. 39.

9. Kamisar, "Are Laws against Assisted Suicide Unconstitutional?" p. 40.

10. See the Supreme Court's classic discussion of this point in Rescue Army v. Municipal Court, 331 U.S. 549, at 569 (1947). The concept of line of growth of constitutional doctrine is explained in Terrance Sandalow, "Constitutional Interpretation," *Michigan Law Review* 79 (1981): 1033-72.

11. See the discussion in Robert A. Sedler, "The Legitimacy Debate in Constitutional Adjudication: An Assessment and a Different Perspective," *Ohio State Law Journal* 44 (1983): 93-137, at 118-20.

12. Skinner v. Oklahoma, 316 U.S. 535 (1942).

13. Griswold v. Connecticut, 381 U.S. 479 (1965).

14. Eisenstadt v. Baird, 405 U.S. 483 (1972).

15. 410 U.S. 113 (1973).

16. In *Planned Parenthood v. Casey* (112 Sup.Ct. 2791 [1992]), the Court recently affirmed that part of the *Roe v. Wade* decision, but held that the state could regulate the abortion procedure, even for the purpose of discouraging women from having an abortion, so long as the particular regulation did not impose an "undue burden" on the woman's decision whether to have an abortion.

17. Planned Parenthood v. Casey, 112 Sup.Ct 2791, 2805-7 (1992).

18. As the Supreme Court has stated simply, "We assume that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition." Cruzan v. Director, Missouri Department of Health, 110 Sup. Ct. 2841, at 2853 (1990).

19. There is no question, of course, that the state, in the exercise of its power to impose reasonable regulations on the practice of medicine, could constitutionally regulate physician participation in assisting the voluntary termination of life. Such regulations would be constitutional so long as they did not impose an undue burden on the decision of a competent terminally ill person to hasten the inevitable termination of life. For example, the state might limit physician participation in assisting the voluntary termination of life to practicing clinical physicians and/or to clinical physicians who have been directly involved in the care of the terminally ill patient. Such a regulation would be assumed to be constitutional, since it would not prevent the competent terminally ill patient from obtaining physician assistance in implementing his or her decision to hasten the inevitable end of life.

20. Kamisar, "Are Laws against Assisted Suicide Unconstitutional?" p. 39.

21. In *Roe v. Wade,* for example, the Court held that the state's interest in protecting potential human life was not of sufficient constitutional importance to outweigh the interest of the pregnant woman in bodily integrity and control of her own body until the pregnancy had reached the stage of viability.