Suicide

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“Reason Can’t Stand In For Feeling”²

“There is a certain right by which we man deprive a man of life, but none by which we may deprive him of death.”³

In this country, every woman can terminate a pregnancy prior to the stage of viability. Terminally-ill patients may hasten their death by refusing medical treatment. The State intentionally murders those convicted of the most serious crimes, albeit inconsistently. In each of these cases lays a common theme – the government decides when, and under what circumstances, a life, or a potential life, may be ended. There is one realm, however, within which the government may not regulate, and that is the relationship between the human being and itself. That relationship bestows upon the individual the right to determine when, and under what circumstances, its life may be ended.

Every individual in this country who has reached the age of majority should have the right to commit suicide, whether they suffer from mental or physical illness, or are in perfect health. The right to end one’s life, at a time and in a manner of an individual’s choosing, is not only the ultimate expression of freedom, but it is a reflection of how much we value and respect life itself. Of course, this statement would be rejected by “right to life” proponents, whose arguments against issues such as physician-assisted suicide and the right to terminate a pregnancy are predicated precisely upon their own conceptions of the inherent “value” of life.

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³ Friedrich Nietzsche, HUMAN, ALL-TOO-HUMAN, Part One, 88 - “THE PREVENTION OF SUICIDE”
However, while the above statement may sound counterintuitive to “right to life” proponents,” it appears this way only because there are specific ingrained assumptions that have remained unchallenged regarding the definition of “rights,” the inherent “value” of life. Thus, in arguing that suicide is a right that should be unconditionally accorded to every individual (except for those not competent to make such a decision), this Article posits that the concept of “rights” and the “value” of life should be fundamentally re-defined in a manner that emphasizes individual autonomy over the collective good.

When the assumptions of the current framework are challenged, and a new approach to the concept of “rights” and the “value of life” are presented, then the concept of suicide not only becomes palpable, but also becomes an act that represents and re-enforces the most basic civil liberties for an individual in a free society. These liberties, which have already been recognized by the Supreme Court in its substantive due process jurisprudence, and which form the basic foundation for a cognizable right to suicide, include the autonomy to make intimate and personal decisions about your body, your quality of your life, and when and under what circumstance you desire to terminate your life. The government should not – and does not – have any right to interfere with these most personal and private decisions.

Importantly, however, to re-frame the conception of “rights” and the value of life, it is critical to identify and refute the basic assumptions that underlie how we approach individual decisions regarding the body, bodily integrity, and the quality of life. The first of these assumptions is predicated upon the notion of duration. Under this conception, life should be preserved and protected until it reaches its natural end. The only exception exists where an individual has drafted an advanced directive stating unambiguously that
he does not want to be kept alive through artificial means, i.e., feeding tubes, which ineluctably hastens to dying process. The second assumption is based upon the concept of irrationality. Here, the traditional presumption is that there is something “wrong” with people who want to commit suicide, namely, they suffer from a demonstrable medical illness, such as major depressive or bi-polar disorder. This argument contends that the act of suicide can never -- and is never -- the product of rational thought or deliberative decision-making. The third assumption is the malem in se notion. This view holds that suicide is an inherently bad act that should be proscribed by both the courts and legislature. The fourth assumption is based upon a collective, rather than individual, premise. Specifically, suicide is wrong because it would send a message that taking life is an acceptable act, and thus create a culture where others who would otherwise be deterred from doing so would now feel that they could do so without reprisal. This can also be characterized as the “slippery slope” argument.” The final, and most critical assumption underlying the current “value of life” concept, is predicated upon a limited definition of individual rights and, concomitantly, an overbearing view of state’s rights. Under this view, the State may simply assert a general interest in protecting and preserving life itself as a means to prevent an individual from making the decision to terminate life, even where there exists no harm to third parties. Taken in combination, “pro-life” proponents would assert that these assumptions reflect an unwavering commitment to the value of each individual’s life and liberty.

However, they do exactly the opposite. These assumptions curtail and delimit the most basic and fundamental rights that lie at the core of our constitutional guarantees: life, liberty and privacy. There can be no greater expression of liberty than that which
involves an individual’s most intimate and personal decision regarding his body, its function and integrity. Guided by these core values, the Supreme Court’s substantive due process jurisprudence has held that certain rights are “fundamental” to the individual, meaning that the state cannot interfere with them absent a “compelling interest.” In fact, the Court has specifically found that individuals have the “right” to make decisions regarding the termination of both potential life and life itself. For example, the state may not, under any circumstances, prevent a woman from ending a pregnancy prior to viability. Additionally, provided there is an advanced directive, the state cannot prevent a terminally-ill patient from refusing life-sustaining measures, i.e. a feeding tube, thus hastening death. Underlying each of these landmark decisions is the notion that the state may not interfere with an individual’s “liberty” interests, and these interests include the ability to make intimate decisions regarding one’s body and quality of life.

The unconditional right to suicide is, at the very least, and if not more, encompassed with the Court’s paradigm. Implicit in the Court’s opinions is a view regarding the concept of “rights,” as well as the “value” of life, that undermines the assumptions of and differs substantially from that of the traditional “right to life” proponents. First, the Court’s decisions promote a notion of “rights” which permit the individual to claim ownership over his body and make decisions with respect thereto, provided that they are the product of consent, rational thought, and do not infringe on the rights of third parties. In addition, the Court’s holding contemplates a “value” of life in a more individualized and subjective sense, that is, they make it more difficult for the state to interfere with decisions relating to a person’s life, liberty, privacy, and body.
The fundamental right to suicide logically follows from these decisions.\textsuperscript{4} However, as set forth \textit{infra}, the right to suicide should not simply be deemed a fundamental right. Rather, it should be deemed an \textit{absolute} right, to be curtailed only in the most limited circumstances, i.e., when an individual is not of sound mind and body, subject to abuse or coercion, or otherwise not in a position to freely, knowingly and unconditionally make that choice.

Ultimately, therefore this Article strives to push discussion of values and rights forward to give greater freedom to the individual in decisions relating to life and liberty. This Article argues that the “value” of life is best expressed when the concept of “value” is given a \textit{subjective} rather than \textit{objective} meaning. In other words, the value of one’s life should be determined by the individual himself, and not forced upon that individual by a definition or determination made by a third party with no understanding of an individual’s private end-of life choices. Life has value not because of how others define it, but by how each individual defines it. Life has different value for different people. Thus, their actions in response to that assessment will differ, and that may include making the decision to end their life. They have the right to make that choice. The individual has the right to decide how to live his life, on his own terms, and in accord with his own judgments and discretion. The Constitution protects this interest, but more important, the nature of human existence protects this interest.

Part II discusses the Supreme Court’s substantive process jurisprudence, and why it provides the legal basis for an unconditional right to suicide. Part III provides the

\textsuperscript{4} For purpose of clarity, this article is not discussing physician-assisted suicide. It is also not limited suicide to those who are terminally-ill. Instead, it asserts that every adult, even an individual who is perfectly healthy and rational, has a right to end their lives.
theoretical basis for a right to suicide. Part IV endorses the right to commit suicide and argues that there should be an organization that helps individuals safely and peacefully end their lives. However, this right, which is based upon notions of privacy and liberty, is not absolute. There must be procedures in place to ensure, among other things, that the individual is of sound mind and body. In other words, we need to make sure that those individuals have the actual desire to commit suicide, and are not merely acting irrationally, i.e., from a temporary emotional or physical trauma. Thus, procedures must be in place to ensure that it is the product of rational and deliberative choice.

**PART II**

**SUICIDE**

**THE CONSTITUTIONAL AND LEGAL FOUNDATION**

The Supreme Court’s substantive due process jurisprudence provides the legal basis upon which to justify an unconditional right to suicide. The Court’s decisional law develops the concept of liberty and privacy in a manner that protects the individual’s right to make the most intimate decisions regarding their body and bodily integrity. These holdings not only support the right to suicide in a fundamental sense, but in an absolute sense as well.

A. **THE SUBSTANTIVE DUE PROCESS JURISPRUDENCE**

1. **MEYER V. NEBRASKA**

In *Meyer v. Nebraska*,\(^5\) the state enacted a law prohibiting the teaching of any subject in a language other than English.\(^6\) The plaintiff, a schoolteacher, taught the

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\(^5\) 262 U.S. 390 (1923).

\(^6\) *Id.*
subject of reading in German, and was thereafter convicted under the statute. In reversing the conviction pursuant to the Fourteen Amendment, the Supreme Court held as follows:

While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

In what is arguably the beginning of its substantive due process jurisprudence, the Court explained that the “established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competence of the state to effect.”

2. **Pierce v. Society of Sisters**

In *Pierce v. Society of Sisters* the state of Oregon enacted a criminal statute that required every parent, guardian or individual responsible for the care, custody or control of a child to send him to a public school within the district where that the child resided. Appellee was an organization dedicated to providing its children (including orphans) with

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7 *Id.* at 396.


9 262 U.S. at 399-400.

10 268 U.S. 510 (1925).

11 *Id.* at 530.
private secular and religious education, and thus did not comply with the statute’s provisions.\textsuperscript{12} In finding the statute unconstitutional, the Court held that it “interferes with the liberty of parents and guardians to direct the upbringing of children under their control.”\textsuperscript{13} The Court explained that “rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state.”\textsuperscript{14} In fact, “[t]he fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only.”\textsuperscript{15} Put differently, “[t]he child is not the mere creature of the state; those who nurture him and his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”\textsuperscript{16}

3. GRISWOLD V. CONNECTICUT

In \textit{Griswold v. Connecticut},\textsuperscript{17} a significant decision in the Court’s substantive due process jurisprudence, the Court reviewed the constitutionality of a statute that prohibited the use of contraceptives by \textit{any} person, including married couples.\textsuperscript{18} In examining the “wide range of questions that implicate the Due Process Clause of the Fourteen

\textsuperscript{12} Id. at 531-532.

\textsuperscript{13} Id. at 534-535.

\textsuperscript{14} Id. at 535.

\textsuperscript{15} Id.

\textsuperscript{16} Id.; see also \textit{Skinner v. Oklahoma}, 316 U.S. 535 (1942) (holding that the forced sterilization of males who were convicted of two or more felonies involving “moral turpitude” was unconstitutional. In so holding, the Court stated that “[m]arriage and procreation are fundamental to the very existence and survival of the race … [h]e is forever deprived of a basic liberty.)

\textsuperscript{17} 381 U.S. 479 (1965).

\textsuperscript{18} Id. at 480.
Amendment,

19 the Court found the statute constitutionally infirm. In so doing, the Court recognized that there exists a personal right to privacy encompassed within the Bill of Rights, and recognized under the Fourteenth Amendment. More specifically, the Court held that there exist fundamental rights accorded to every individual even though they are not explicitly mentioned in the Constitution:

The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents’ choice – whether public or private or parochial – is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights … The right to freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read, and freedom of inquiry, freedom of thought, and freedom to teach … [w]ithout those peripheral rights the specific rights would be less secure.

In other words, “[t]he foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance.” Part of that substance relates to “zones of privacy,” and prohibiting the use of contraceptives to individuals “concerns a relationship lying within

19 Id. at 481.

20 Id. at 484-485; see also Bloom, Lackland H., Jr. “25th Anniversary of Griswold and the Right to Privacy,” 16 OHIO N. U. L. REV. 511 (1989) (stating that “[i]f Griswold is remembered for one thing, it is surely for having effectively given birth to the concept of an independent constitutional right of privacy … it relied on the right of privacy as an aspect of the constitutional source for its abortion decisions from Roe onward.”)

21 381 U.S. at 482-483; see also Bloom, supra note 20, at 516 (explaining that Justice Douglas, writing for the majority in Griswold, noted how the concept of privacy was implied in the third, fourth, fifth and ninth amendments, quoting language from the famous old fourth and fifth amendment case of Boyd v. United States and the much more recent fourth amendment case of Mapp v. Ohio, which referred to ‘the privacies of life,’ and ‘the right to privacy,’ respectively. Justice Douglas was thus able to establish that some sort of ‘right to privacy had been recognized as a constitutional concept in a variety of contexts.”); Colb, Sherry, “The Qualitative Dimension of Fourth Amendment ‘Reasonableness,” 98 COLUM. L. REV. 1642 (discussing privacy in the Fourth Amendment context.

22 381 U.S. at 484.

23 Id.
the zone of privacy created by several fundamental constitutional guarantees.”

Thus, as the Griswold Court stated, “[w]e deal with a right of privacy older than the Bill of Rights older than our political parties… [m]arriage is a coming together for better or for worse, hopefully enduring and intimate to the degree of being sacred.” It is, in the most fundamental way, “an association that promotes a way of life… a harmony in living…” and a relationship “for as noble a purpose as any involved in our prior decisions.”

4. 

EISENSTADT V. BAIRD

In Eisenstadt v. Baird the state of Massachusetts enacted legislation prohibiting non-married couples from obtaining contraceptives for the purpose of preventing pregnancy. In finding the Massachusetts statute unconstitutional, the Court discussed not only the notion of a right to privacy, but also a liberty interest that lies at the core of the Constitutional framework:

If under Griswold the distribution of contraceptives to married persons cannot be prohibited, a ban on distribution to unmarried persons would be equally impermissible. It is true that in Griswold the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an

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24 Id. at 485.
25 Id. at 486.
26 Id.
27 Id.
28 Id.
29 Id.
31 Id. at 440-441.
32 Id. at 444; see also Conkle, Daniel O., “Three Theories of Substantive Due Process,” 85 N.C. L. REV. 63 (2006) (discussing the evolution of substantive due process and stating, how “the contemporary Supreme Court has shifted its terminology from the ‘right of privacy’ to liberty…”).
independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional make-up. *If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person* as the decision whether to bear or beget a child.  

Importantly, the Court’s rejection of the intimation that morality was sufficient basis upon which to justify the legislation, stating, “[t]o say that contraceptives are immoral as such, and are to be forbidden to unmarried persons … means that such persons must risk for themselves an unwanted pregnancy…” Indeed, “[s]uch a view of morality is not only the very mirror image of sensible legislation; we consider that it conflicts with fundamental human rights.” Thus in the absence of *demonstrated harm*, we hold that it is beyond the competency of the state.

5. **ROE V. WADE**

The pioneering decision of *Roe v. Wade* was not groundbreaking simply because it held that a woman could terminate a pregnancy during the first trimester without state

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33 405 U.S. at 444 (emphasis added).
34 *Id.* at 452.
35 *Id.* at 453.
36 *Id.* (emphasis added); *see also Loving v. Commonwealth of Virginia*, 388 U.S. 1, 12 (1967) (invalidating a ban on interracial marriages because marriage constitutes one of the “basic civil rights of man” and is “fundamental to our very existence and survival.”) Accordingly, “[t]o deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principles of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State’s citizens of liberty without due process of law … Under our Constitution, the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State); *Moore v. City of East Cleveland*, 431 U.S. 494, 504-505 (1977) (holding unconstitutional a housing ordinance that limited occupancy of a dwelling to “single family unit,” which was narrowly defined and did not include petitioner and her living arrangement, namely, she was a mother living with her son and two grandsons, both of which were first cousins. In finding the ordinance unconstitutional, the Court held that there were basic fundamental rights under the Fourteenth Amendment according to family members went far beyond just the nuclear family).

interference.\textsuperscript{38} What made \textit{Roe} even more remarkable is that, under its substantive due process jurisprudence, the Court found \textit{within} the right of privacy the concomitant right to make a decision with respect to the termination of life, or at the very least, potential life.\textsuperscript{39}

In \textit{Roe}, the petitioners challenged a Texas statute which criminalized all abortions, except those that were required to save the life of the mother.\textsuperscript{40} In finding the statute unconstitutional, the Court “recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution.”\textsuperscript{41} The Court also explained that the right to privacy was based upon, \textit{inter alia}, “the concept of liberty guaranteed by the first section of the Fourteenth Amendment.”\textsuperscript{42} In so holding, the Court clarified its concept of “rights, stating that “only personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty’ … are included in the guarantee of personal privacy.”\textsuperscript{43} When a right is deemed “fundamental,” “limiting these rights may be justified only by a ‘compelling state interest.’”\textsuperscript{44}

Based upon these principles, the Court held the “right of privacy … is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”\textsuperscript{45}

\begin{footnotes}
\footnotetext[38]{\textit{Id} at 154, 163-164.}
\footnotetext[39]{\textit{Id}. at 154.}
\footnotetext[40]{\textit{Id}. at 117.}
\footnotetext[41]{\textit{Id}. at 152.}
\footnotetext[42]{\textit{Id}.}
\footnotetext[43]{\textit{Id}. (citations omitted).}

Importantly, however, “while the right of privacy includes the abortion decision,”46 it is not “unqualified and must be considered against important state interests in regulation.”47 Specifically, “at some point, the state interests as to protection of health, medical standards, and prenatal life, become dominant [and compelling].”48 In determining where the mother’s fundamental right to privacy is outweighed by the State’s “important and legitimate interest in the health of the mother …”49 the Court found that the “‘compelling’ point is at viability … approximately the end of the first trimester.”50

The Court’s justification for permitting state interference at this juncture was also predicated upon life-based concerns, namely, those of the mother and fetus.51 Specifically, because mortality rates after the first trimester were the same during the remaining parts of the pregnancy, “the State may regulate the procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health.”52 For example, the state may enact regulations concerning “the qualifications of the person who is to perform the abortion … the licensure of that person … [the] qualifications of the person who is to perform the abortion … whether it must be in a hospital or may be a

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46 410 U.S. at 154.
47 Id. at 154.
48 Id. at 155.
49 Id. at 163.
50 Id.
51 Id. at 163-164.
52 Id. at 163.
In other words, “[t]he privacy right involved … cannot be said to be absolute.”

Additionally, the Court’s holding also recognized the “State’s important and legitimate interest in potential life,” which is held to exist at the point of “viability.” The Court reasoning was predicated upon the notion that “the fetus then has the capability of meaningful life outside the mother’s womb … [and] state regulation protective of fetal life after viability thus has both logical and biological justification.” Accordingly, after viability the state “may go so far as to proscribe abortion … except when it is necessary to preserve the life or health of the mother.”

Therefore, **Roe** is a critical decision because it involves the Court’s application of the fundamental right to privacy to decisions involving both the termination (abortion), as well as the commencement (viability) of life. Importantly, the Court did not explain how the right to terminate a potential life could properly be deduced under the privacy rubric. It did, however, provide some guidance concerning the circumstances under which a state

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53 *Id.*

54 *Id.* at 154. More specifically, the Court held as follows: The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus … The situation therefore is inherently different from marital intimacy, or bedroom possession of obscene material, or marriage, or procreation, or education, with which Eisenstadt and Griswold, Stanley, Loving, Skinner, and Pierce and Meyer were respectively concerned … it is reasonable and appropriate for a State to decide that at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved. The woman’s privacy is no longer sole and any right of privacy she possesses must be measured accordingly.

55 *Id.*

56 *Id.*

57 *Id.*

58 *Id.* at 163-164.
may intervene to prevent a person from making an end of life decision regarding another viable life. The critical question, however, is whether these justifications can be applied to override the fundamental right to privacy and prevent the individual from making to decision to commit suicide. For the reason set forth infra, they cannot.

6. **Bowers v. Hardwick**

In *Bowers v. Hardwick*, the petitioner challenged the constitutionality of a statute that criminalized the act of homosexual sodomy. In finding the statute constitutional, the Court framed its substantive due process inquiry somewhat differently than it had in its prior jurisprudence. Specifically, at the outset, the Court framed the issue as “whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal and have done so for a very long time.”

In answering this question in the negative, the Court found that the right of privacy in the Fourteenth Amendment does not extend and encompass homosexual sodomy. As the Court explained, while the privacy interest of the Fourteenth Amendment created the right to child rearing, education, procreation, marriage, contraception and abortion, “none of the rights asserted in those cases bears any resemblance to the claimed constitutional right of homosexuals to engage in acts of sodomy …” Furthermore, “[n]o connection between family, marriage or procreation on

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60 Id.

61 Id. at 190.

62 Id.

63 Id. at 190-191.
the one hand and homosexuality on the other has been demonstrated …”\textsuperscript{64} With respect to the Fourteenth Amendment’s privacy interest, the Court also held that “any claim that these cases [i.e., Griswold, Roe] … stand for the proposition that any kind or private sexual conduct between consenting adults is constitutionally insulted from state proscription is unsupportable.”\textsuperscript{65}

The Court’s reasoning also attacked the basic premises upon which its substantive due process jurisprudence was predicated. Specifically, recognizing that the “fundamental rights” recognized in cases such as \textit{Griswold} were based on freedoms that were “‘implicit in the concept of ordered liberty’\textsuperscript{66} such that “‘neither liberty nor justice would exist if [they] were sacrificed’”\textsuperscript{67}, the Court held that a right to homosexual sodomy could not survive under either principle. In fact, as the Court clarified, at least one case defined the concept of fundamental rights as those that are “‘deeply rooted in our nation’s history and tradition.’”\textsuperscript{68} Under this formulation, there could be no recognition of a right to homosexual sodomy, because “[p]roscriptions against that conduct have ancient roots.”\textsuperscript{69} Specifically, “[s]odomy was a criminal offense at common

\textsuperscript{64} \textit{Id.} at 191.

\textsuperscript{65} \textit{Id.}

\textsuperscript{66} \textit{Id} (\textit{quoting Palko v. Connecticut}, 302 U.S. 319, 325 (1937)).

\textsuperscript{67} 478 U.S. at 191-192 (\textit{quoting Palko}, 302 U.S. at 325).

\textsuperscript{68} 478 U.S. at 192 (\textit{quoting Moore v. City of East Cleveland}, 431 U.S. 494, 503 (1977));

\textsuperscript{69} 478 U.S. at 192.
law and was forbidden by the laws of the original thirteen States when they ratified the Bill of Rights."

Thus, Bowers was an important decision because it highlighted the three lines of analysis by which the Court could recognize new rights under the Fourteenth Amendment’s Due Process Clause. What was perhaps more interesting; however, was how the Court framed the inquiry, namely, whether homosexuals had the right to engage in sodomy. If, for example, the Court had framed the issue as whether consenting adults have the right to engage in private sexual conduct free from state regulation, the result might have been different. These formulation, therefore, directly impact the Court’s decisions and the nature of how we conceive “rights” under the Constitution.

7. CRUZAN v. DIRECTOR, MISSOURI DEPARTMENT OF HEALTH

In Cruzan v. Director, Missouri Department of Health, the petitioners, who were the parents of their daughter (co-petitioner Nancy Cruzan), who sustained severe injuries in an automobile accident and was in a persistent vegetative state, sought to terminate her artificial nutrition and hydration, thus resulting in her death. The State of

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70 478 U.S. at 192-193; see also Williamson, Brett J., “The Constitutional Privacy Doctrine after Bowers v. Hardwick: Rethinking the Second Death of Substantive Due Process,” 62 S. CAL. L. REV. 1297, 1312, 1313 (1989) (stating that the majority’s opinion in Bowers was based on three principles. First, “the Court held that the Griswold line of cases extended the privacy protection only to matters concerning the family, marriage, or procreation --- categories into which homosexual sodomy clearly does not fit.” In addition, the identification of a right as fundamental “and thus worthy of protection under the due process clause depended on whether it met the tests implied by the well-worn quotes ‘implicit in the concept of ordered liberty,’ and ‘deeply rooted in the Nation’s history and tradition.’” Finally, “the majority expressed a general disapproval of expanding the universe of Court created rights, holding that ‘there should be … great resistance to expand the substantive reach of the due process clause, particularly if it requires redefining the category of rights deemed to be fundamental.’” (citation omitted); Conkle, Daniel O., “The Second Death of Substantive Due Process,” 62 IND. L. J. 215 (1987); Phillips, Michael J., The Nonprivacy Applications of Substantive Due Process,” 21 RUTGERS L.J. 537 (1990) (stating that “[t]he Supreme Court’s … decision in Bowers v. Hardwick sparked some commentators to speculate whether the doctrine of substantive due process was once again headed for obscurity”).


72 Id.
Missouri opposed this request because, pursuant to a state statute governing the withdrawal of medical treatment, there was not clear and convincing evidence from Cruzan herself that, if ever in a vegetative state, she would wish to discontinue such treatment. The only evidence that did exist stemmed from a conversation with a friend in which Cruzan indicated that she would wish to “continue her life” if in such a state. As a result, this matter presented the difficult issue of when, and under what circumstances, a person’s desire to refuse medical treatment (and thus hasten death), can outweigh, or be outweighed, by the State’s interest in preserving life.

The Court began its analysis by recognizing that “a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment,” which could be “inferred from our prior decisions.” In fact, “[i]t cannot be disputed that the Due Process Clause protects an interest … in refusing life-sustaining medical treatment.” For example, a person has a right to refuse medication, such as anti-psychotic drugs, because “[t]he forcible injection of medication into a non[-]consenting person’s body represents a substantial interference with that person’s liberty.” However, the determination that a person “has a ‘liberty interest’ under the Due Process Clause does not end the inquiry; ‘whether respondent’s constitutional rights have been violated

73 Id.
74 Id. at 262.
75 Id. at 278.
76 Id.; see also Jacobson v. Massachusetts, 197 U.S. 11, 24-30 (1905)).
77 497 U.S. at 281.
78 Id. at 278.
must be determined by balancing his liberty interests against the relevant state interest.”

In this case, the Court found in favor of the state, but on grounds that neither abridged nor infringed upon the fundamental right to refuse medical treatment and thus hasten death. As the Court held, the “United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition.”

However, because Cruzan was in a vegetative state, she was not able to “make an informed and voluntary choice” to exercise her constitutional right to refuse medical treatment.” As a result, “[s]uch a ‘right’ must be exercised for her, if at all, by some sort of surrogate, which in this case was her parents.

Given the fundamental right at stake, and Cruzan’s inability to express her own wishes, the Court held that Missouri’s statute, which required Cruzan’s parents to demonstrate by clear and convincing evidence that she would have wanted to refuse the lifesaving medical treatment, was constitutionally permissible. The Court found that Missouri had an important interest in “the protection and preservation of human life,” and

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79 Id. at 279 (quoting Youngsberg v. Romeo, 457 U.S. 307, 321 (1982)).

80 497 U.S. at 279.

81 Id. at 280.

82 Id. In finding Missouri’s statute constitutional, the Court held as follows:

An incompetent person is not able to make an informed and voluntary choice to exercise a hypothetical right to refuse treatment or any other right … Here, Missouri has in effect recognized that under certain circumstances a surrogate may act for the patient in electing to have hydration and nutrition withdrawn in such a way as to cause death, but it has established a procedural safeguard to assure that the action of the surrogate conforms as best it may to the wishes expressed by the patient while competent. Missouri requires that evidence of the incompetent’s wishes as to the withdrawal of treatment be proved by clear and convincing evidence. The question, then, is whether the United States Constitution forbids the establishment of this procedural requirement by the State. We hold that it does not.

83 Id. at 280.
was not required “to remain neutral in the face of an informed and voluntary decision by a physically able adult to starve to death.”

Indeed, because “[t]he choice between life and death is a deeply personal decision of obvious and overwhelming finality,” the State “may legitimately seek to safeguard the personal element of this choice through the imposition of heightened evidentiary requirements [the clear and convincing standard].”

Additionally, “a State may properly decline to make judgments about the ‘quality’ of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual.” This interest had particular force here because Cruzan was unable to express her own wishes regarding the desire to terminate medical treatment, leaving to rely upon surrogates, who will not necessarily act in the patient’s best interest. As the Court noted, “‘[t]here will, of course, be some unfortunate situations in which family members will not act to protect the patient.’” Accordingly, the State “is entitled to guard against potential abuses in such situations.”

Ultimately, the Court held that “Missouri has permissibly sought to advance these interests through the adoption of a ‘clear and convincing evidence’ standard of proof” when surrogates are seeking to exercise a patient’s right to refuse unwanted, life-saving

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84 Id. at 281.
85 Id.
86 Id.
87 Id.
88 Id.
89 Id. (quoting In re Jobes, 108 N.J. 394, 419 (1987)).
90 497 U.S. at 281.
medical treatment.\textsuperscript{91} Thus, because Cruzan’s expressed wishes regarding the refusal of medical treatment did not meet this standard then her parents could not constitutionally withdraw the life-saving treatment that she was receiving.\textsuperscript{92}

8. **PLANNED PARENTHOOD V. CASEY**

In *Planned Parenthood v. Casey*\textsuperscript{93} the Court returned to applying Fourteenth Amendment’s liberty and privacy interests to a case involving, at the very least, potential life. Here, the petitioners challenged several provisions of a statute, which placed various limitations and regulations on the ability to obtain an abortion.\textsuperscript{94} Specifically, the statute: (1) required a woman to give informed consent prior to the procedure; (2) mandated the informed consent of a parent in the event that a minor was seeking an abortion (although there was a judicial bypass procedure); (3) required a married woman seeking an abortion to obtain the consent of her husband; (4) provided a “medical emergency” exception that exempted a woman from any of the foregoing requirements; and (5); imposed certain reporting requirements on facilities providing abortion services.\textsuperscript{95} The Court’s decision was a pivotal moment in its substantive due process jurisprudence because the statute tested just how far a state could intrude upon and interfere with a woman’s right to terminate a pregnancy prior to viability.

\textsuperscript{91} *Id.* at 282.

\textsuperscript{92} *Id.* at 285-286.

\textsuperscript{93} 505 U.S. 833 (1992).

\textsuperscript{94} *Id.*

\textsuperscript{95} *Id.*
In rendering its decision, the core holding of *Roe*, as well as the privacy and liberty interests that underscored its decision, were upheld.96 The Court began by recognizing “the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State.”97 In support of this holding, the Court explained that “protection of the woman’s decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment … [and] the controlling word … is liberty.”98 The concept of “liberty” means, at its very core, “a promise of the Constitution that there is a realm of personal liberty which the government may not enter,“99 and the “substantive liberties protected by the Fourteenth Amendment”100 are not limited to “those recognized by the Bill of Rights,”101 or those that “were protected against governmental interference … when the Fourteenth Amendment was ratified.”102 In other words, the liberty and privacy interests guaranteed by the Fourteenth Amendment are not limited to “those rights already guaranteed to the individual against federal interference,”103 or in the “precise terms of the specific guarantees elsewhere provided in the Constitution.”104

96 *Id* at 846-847.
97 *Id* at 846.
98 *Id*.
99 *Id* at 847.
100 *Id*.
101 *Id*.
102 *Id*.
103 *Id*.
104 *Id* at 848.
Instead, the Fourteenth Amendment protects the notion “liberty” and “privacy” in a much broader sense that encompasses rights nowhere mentioned in the Constitution. For example, “[m]arriage is mentioned nowhere in the Bill of Rights and interracial marriage was illegal in most States in the 19th century, but the Court was no doubt correct in finding it to be an aspect of liberty protected against state interference by the substantive component of the Due Process Clause.”

In other words, the “liberty” protected by the Due Process Clause “is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion … and so on …”, rather, it is a “rational continuum which, broadly speaking, includes freedom from all substantial arbitrary impositions and purposeless restraints.” Ultimately, due process “has not been reduced to any formula,” and instead reflects the “traditions from which it developed as well as the traditions from which it broke…,” and, under all circumstances, that tradition “is a living thing.”

It was precisely upon this basis that the core ruling of *Roe* was upheld. Critically, however, the reasoning in *Roe* had implications far beyond its holding, which implicitly recognized the type and nature of independence that the Constitution provides to each individual. In its analysis, referring to basic fundamental rights such as marriage and procreation, the Court stated, “[t]hese matters, involving the most intimate and personal

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105 *Id.* at 847-848.
106 *Id.* at 848.
107 *Id.*
108 *Id.* at 849.
109 *Id.* at 850.
110 *Id.*
choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.”\textsuperscript{111} As the Court stated, “[a]t the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”\textsuperscript{112} Indeed, “[b]eliefs about these matters could not define the attributes of personhood were they formed under the compulsion of the State.”\textsuperscript{113}

Thus, when re-affirming a woman’s right to terminate a pregnancy, a decision that originates “within the zone of conscience and belief,”\textsuperscript{114} the Court was guided by these principles.\textsuperscript{115} In addressing this complex issue, the Court did recognize that abortion is “a unique act,” and that “some deem nothing short of an act of violence against innocent human life.”\textsuperscript{116} Significantly, however, it did “not follow that the State is entitled to proscribe it in all instances … because … the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law.”\textsuperscript{117} As the Court held:

The mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear. That these sacrifices have from the beginning of the human race been endured by a woman with a pride that ennobles her in the eyes of others and gives to the infant a bond of love cannot alone be grounds for the State to insist she make the sacrifice. Her suffering is too intimate and personal for the State to insist, without more, upon its own vision of the woman’s role, however dominant that vision has been in the

\textsuperscript{111} Id. at 851.
\textsuperscript{112} Id.
\textsuperscript{113} Id.
\textsuperscript{114} Id.
\textsuperscript{115} Id. at 852.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
course of our history and our culture. The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society.\textsuperscript{118}

Accordingly, “it was this dimension of personal liberty that Roe sought to protect, and its holding invoked the reasoning and traditions of the precedent we [the Court] have discussed, granting protection to substantive liberties of the person.”\textsuperscript{119} Based upon these principles, the Court re-affirmed Roe, invalidated certain parts of the Pennsylvania statute, and held that the state may not place an “undue burden”\textsuperscript{120} upon a woman’s right to terminate a pregnancy prior to viability.\textsuperscript{121} The Court’s holding recognized “that the urgent claims of a woman to retain the ultimate control over her destiny and her body,”\textsuperscript{122} are claims “implicit in the meaning of liberty.”\textsuperscript{123}

9. \textsc{Washington v. Glucksberg}

In \textit{Washington v. Glucksberg},\textsuperscript{124} the Court confronted the issue of whether the “liberty” interest under the Due Process Clause protects the right of assisted suicide for,

\begin{itemize}
  \item \textsuperscript{118} \textit{Id}.
  \item \textsuperscript{119} \textit{Id}. at 853.
  \item \textsuperscript{120} \textit{Id}. at 876; see also Wimberly, Mary Helen, “Rethinking the Substantive Due Process Right to Privacy: Grounding Privacy in the Fourth Amendment, 60 VAND. L. REV. 283, 304 (2007) (discussing \textit{Casey} and explaining as follows:

  Under the undue burden standard, \textit{Casey} authorized a regulation requiring informed consent [prior to an abortion], overruling previous decisions to the contrary. \textit{Casey} also permitted a mandatory twenty-four hour waiting period, even though this also had previously been held unconstitutional. However, the Court struck down a regulation requiring spousal notification as unduly burdensome. The only distinction between these regulations appears to be the Court’s subjective determination of what constitutes an undue burden.

  \item \textsuperscript{121} 505 U.S. at 869-870.
  \item \textsuperscript{122} \textit{Id}. at 869.
  \item \textsuperscript{123} \textit{Id}.
  \item \textsuperscript{124} 521 U.S. 702 (1997).
\end{itemize}
among others, terminally ill patients. The State of Washington enacted a statute providing that “[a] person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide.”125 The statute also provided that the “withholding or withdrawal of life-sustaining treatment … shall not, for any purpose, constitute a ‘suicide’ and that ‘[n]othing in this chapter shall be construed to condone, authorize or approve mercy killing.”126

In upholding the statute, the Court held that the Fourteenth Amendment does not encompass a fundamental right to assisted suicide.127 The Court’s analysis focused upon the notion that the Due Process Clause “specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition …’”128 Using this standard, the Court explained that “[i]n almost every State indeed, in almost every western democracy—it is a crime to assist a suicide … and assisted suicide bans are …longstanding expressions of the States’ commitment to the protection and preservation of all human life.”129 In fact, “opposition to and condemnation of suicide—and, therefore, of assisting suicide— are consistent and enduring themes of our philosophical, legal and cultural heritages.”130 Furthermore, “for over 700 years, the Anglo-American common-law tradition has punished or otherwise disapproved of both

125 Id. at 707 (quoting WASH. REV. CODE §9A.36.060(1) (1994)).

126 521 U.S. at 717 ((quoting WASH. REV. CODE §§70.122.070(1); 70.122.100 (1994)).

127 521 U.S. at 751.

128 Id. at 720-721 (quoting Snyder v. Massachusetts, 291 U.S. 97, 105 (1934)).

129 521 U.S. at 710.

130 Id. at 711.
suicide and assisting suicide.”\textsuperscript{131} Stated simply, “[t]he history of the law’s treatment of assisted suicide in this country has been and continues to be one of the rejection of nearly all efforts to permit it.”\textsuperscript{132} Accordingly, in part due to the “consistent and almost universal tradition”\textsuperscript{133} against permitting assisted suicide, the Court concluded that it was “not a fundamental liberty interest protected by the Due Process Clause.”\textsuperscript{134}

Finally, the \textit{Glucksberg} Court held that the State’s interest in prohibiting assisted suicide outweighed a terminally-ill patient’s right hasten death. Specifically, the Court held that “[t]hose who attempt suicide-terminally ill or not- often suffer from depression or other mental disorders.”\textsuperscript{135} In addition, the Court found legitimate the State’s interest in protecting “vulnerable groups-including the poor, the elderly, and disabled persons,”\textsuperscript{136} “subtle coercion and undue influence in end-of-life decisions.”\textsuperscript{137} Critically, however, five justices who wrote concurring opinions in \textit{Glucksberg} suggested that, at a certain point in the future, assisted suicide statute may be declared unconstitutional.\textsuperscript{138}

\begin{flushright}
\textsuperscript{131} \textit{Id.}.
\textsuperscript{132} \textit{Id.} at 728.
\textsuperscript{133} \textit{Id.} at 723.
\textsuperscript{134} \textit{Id.} at 728.
\textsuperscript{135} 521 U.S. at 730.
\textsuperscript{136} \textit{Id.} at 731.
\textsuperscript{137} \textit{Id.} at 732.
\textsuperscript{138} See Elmer, Jerry H., “Physician Assisted Suicide,” 46-FEB R.I. B.J. 13, 34 (1998). Elmer states as follows:

Of far greater interest than Justice Rehnquist’s remarkably shallow opinion for the Court in Glucksberg, is the fact that five justices (O’Conner, Stevens, Souter, Ginsburg and Breyer) – that is, a majority of the Court – wrote concurring opinions \textit{expressly leaving open the possibility that assisted-suicide statutes might be declared unconstitutional in the future on substantive due process grounds}. Justice O’Connor, in her very brief concurrence, put the matter most succinctly. This case, she said, presented only a facial challenge to the
\end{flushright}
10. **Lawrence v. Texas**

In *Lawrence v. Texas*,\(^\text{139}\) the Court was again faced with the issue concerning the constitutionality of a Texas statute criminalizing homosexual sodomy between consenting adults.\(^\text{140}\) In *Lawrence*, the Court not only took the extraordinary step of invalidating the statute and overturning *Bowers*, but it also fundamentally re-framed the substantive due process analysis.\(^\text{141}\)

First, the Court held that the *Bowers* majority erred when it formulated the due process inquiry as whether the Constitution “‘confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal and have done so for a very long time.’”\(^\text{142}\) This formulation, the Court noted, failed “to appreciate the extent of the liberty interest at stake.”\(^\text{143}\) Specifically, “[t]he laws involved in *Bowers* and here are … statutes that purport to do no more than prohibit a particular sexual act,”\(^\text{144}\) but their “penalties and purposes … have more far-reaching consequences, touching upon the most private

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\(^{139}\) 539 U.S. 558 (2003).

\(^{140}\) *Id.* at 563 (the statute also prohibited oral sex).

\(^{141}\) *Id.* at 577-578.

\(^{142}\) *Id.* at 566-567.

\(^{143}\) *Id.* at 567.

\(^{144}\) *Id.*
human conduct, sexual behavior, in the most private of places, the home.”¹⁴⁵ In other words, “the statutes … seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals.”¹⁴⁶ The Court found this constitutionally impermissible:

> It suffices for us to acknowledge that adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons. When sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitutions allows homosexuals the right to make this choice.¹⁴⁷

Thus, the Court’s reasoning “should counsel against attempts by the State, or a court, to define the meaning of the relationship or to set its boundaries absent injury to a person or abuse of an institution that law protects.”¹⁴⁸

Importantly, the Court’s holding also re-shaped the due process inquiry when determining whether newly asserted rights are entitled to constitutional protection. Specifically, while the Court did examine the Nation’s “history and tradition”;¹⁴⁹ with respect to homosexual conduct, it stated that “‘history and tradition are the starting point, but not in all cases the ending point of the substantive due process inquiry.’”¹⁵⁰ Thus, while disagreeing with Bowers and finding, as a historical matter, that “there is no longstanding history in this country of laws directed at homosexual conduct as a distinct

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¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ Id.

¹⁴⁸ Id.

¹⁴⁹ Id. at 572.

¹⁵⁰ Id. (quoting County of Sacramento v. Lewis, 523 U.S. 833, 857 (1998) (Kennedy, J., concurring)).
matter.”\textsuperscript{151} the Court held that “our laws and traditions in the past half century are of most relevance here.”\textsuperscript{152} Using this more contemporary framework, the Court held that “[t]hese references show an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.”\textsuperscript{153}

In fact, the Court relied upon the language in \textit{Planned Parenthood v. Casey} to support its holding, re-iterating that matters “central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.”\textsuperscript{154} Furthermore, “[a]t the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”\textsuperscript{155} The Court also supported its decision by relying upon decision law from the European Court of Human Rights, namely, \textit{Dudgeon v. United Kingdom}\textsuperscript{156}, which held that laws proscribing homosexual conduct were invalid under the European Convention on Human Rights.\textsuperscript{157}

It was precisely this type of private, consensual and autonomous conduct that the Court found to lay outside the purview of state regulation. As the Court explained, “[t]he present case does not involve minors,”\textsuperscript{158} or “persons who might be injured or

\textsuperscript{151} 539 U.S. at 568.
\textsuperscript{152} \textit{Id.} at 571-572.
\textsuperscript{153} \textit{Id.} at 572.
\textsuperscript{154} \textit{Id.} at 574 (\textit{quoting Casey}, 505 U.S. at 851).
\textsuperscript{155} 539 U.S. at 574 (\textit{quoting Casey}, 505 U.S. at 851).
\textsuperscript{156} 45 EUR. CT. H.R. (1981) ¶52; see also \textit{Lawrence}, 539 U.S. at 576 (noting that “[o]ther nations, too, have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct.”)
\textsuperscript{157} 45 EUR. CT. H.R. (1981) ¶52.
\textsuperscript{158} 539 U.S. at 578.
coerced,“159 or individuals “who are situated in relationships where consent might not easily be refused.”160 It also does not “involve whether the government must give formal recognition to any relationships that homosexual persons seek to enter.”161 Instead, it involves “two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle.”162 Stated simply, “the petitioners are entitled to respect for their private lives,”163 and the State cannot “demean their existence or control their destiny”164 by criminalizing their private sexual conduct. The liberty interest entitles them to “engage in their conduct without intervention of the government.”165 That interest reflects the settled principle that “‘there is a realm of personal liberty which the government may not enter.’”166

The Court’s holding, however, went further. It expressed that the recognition of new “fundamental rights,” that reflect greater and more contemporary notions of freedom would – and should – be part of the Court’s jurisprudence. As the majority stated, “[h]ad those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities,

159 Id.
160 Id.
161 Id.
162 Id.
163 Id.
164 Id.
165 Id.
166 Id (quoting Casey, 505 U.S. at 847).
they might have been more specific.”167 However, they “did not presume to have this insight,”168 and were aware that “times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress.”169 “As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”170

B. THE RIGHT TO SUICIDE – THE LEGAL BASIS

The Supreme Court’s Fourteenth Amendment jurisprudence provides an initial framework for analyzing an unconditional right to suicide because it provides some guidance concerning not only what the Constitution prohibits and permits, but for what it represents. Specifically, in cases such as *Griswold, Roe, Planned Parenthood* and *Lawrence*, the Court decisions are based upon several recurrent themes that provide the substantive and supporting basis for recognizing individual (and fundamental) “rights” in a free society.

The first is autonomy. The Court’s cases recognize that the “individual” is a fundamentally free entity. Implicit in these decisions is the notion that individual freedom is a subjective enterprise which vests in each person the right to control, direct, and decide how their life will be lived, whether it is on a physical, metaphysical or spiritual level. In other words, freedom allows the individual to claim ownership over their lives, and in so doing, act according to their values and beliefs while remaining free, in most circumstances, from external interference. The Court’s decisions recognize this intrinsic

167 539 U.S. at 578.
168 Id. at 578-579.
169 Id. at 579.
170 Id.
concept of freedom by identifying “liberty” and “privacy” interests that lie at the core of the Due Process Clause, which cannot be abridged by the state absent compelling interests.

The second theme, which is based on the autonomy principle, is the right for the individual to make decisions regarding his body, bodily integrity, quality of life, and destiny. For example, in *Roe*, the Court emphasized that a woman can terminate a pregnancy before viability because she has the right to make fundamental choices regarding her body and spiritual beliefs.\(^{171}\) The woman’s liberty interests outweighed the State’s interest in protecting pre-natal life, even though, before viability, most agree that the fetus is a potential person.\(^{172}\) In *Cruzan*, the Court expressly recognized that terminally ill-patient has the right to refuse unwanted, end-of-life treatment, essentially hastening death.\(^{173}\)

In *Planned Parenthood*, the Court re-affirmed *Roe* and relied upon principles central to freedom, such as personal dignity, autonomy, and “right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”\(^{174}\) Of course, while *Glucksberg* declined to recognize a right to assisted suicide, it did so based primarily upon the fact that this right was not, historically, accorded legal or statutory protection.\(^{175}\) Importantly, however, *Lawrence* modified this approach in

\(^{171}\) 410 U.S. at 154.

\(^{172}\) *Id.*

\(^{173}\) 497 U.S. at 278.

\(^{174}\) 505 U.S. at 851.

\(^{175}\) 521 U.S. at 711, 728.
holding that history and tradition do not end the fundamental right inquiry.\textsuperscript{176} Rather, contemporary notions of freedom, liberty and privacy are most relevant to inform our constitutional discourse.\textsuperscript{177}

The third theme is privacy. In holding that “there is a realm of personal liberty which the government may not enter,”\textsuperscript{178} the Court, whether it is the termination of a pregnancy or refusal of medical treatment, is saying that the individual’s body, and decision made with respect thereto, are entitled to be made by the individual in conjunction with his conscience and subjective view regarding the quality of life. The right to make these decisions in private, therefore, is a logical expression of freedom, because it ensures that the individual can make decisions without undue interference or influence from the state.

The fourth theme is consent. The Court’s cases have intimated that decisions regarding an individual’s body are more likely to receive constitutional protection where they are the product of deliberation and rational choice. The right to terminate a pregnancy and refuse medical treatment underscores this notion. On the contrary, the Court’s ruling in Glucksberg (against physician assisted suicide), was based, in part, on the view that an individual’s end-of-life decisions could be the subject of irrationality, mental illness, or coercion.\textsuperscript{179}

The fifth theme is specificity. When seeking to interfere with an individual’s decision regarding the quality and duration his life, the State must, or at the very least

\textsuperscript{176} 539 U.S. at 572.

\textsuperscript{177}  Id. at 578-579.

\textsuperscript{178}  Casey, 505 U.S. at 847.

\textsuperscript{179}  Id. at 732.
should, have a specific, rather than general, reason justifying the intrusion. This is true *a fortiori* because the rights which the State seeks to regulate are fundamental and “implicit in the concept of ordered liberty.”¹⁸⁰ Ultimately, therefore, the Court’s opinions support an individual’s right to make decisions regarding her body, which includes the termination of both life and potential life. These rights are only restricted when an individual is incapable of giving consent (*Cruzan*), making a rational choice or subject to coercion (*Glucksberg*), or when a third-party is involved (*Roe* post-viability).

None of these justifications can justify prohibiting an individual – whether they are mentally or physically ill, or in perfect health – from committing suicide. As individuals, we own our bodies. That carries with it certain rights. We have the right to examine the world and define, for ourselves, the concepts of meaning and purpose. That can and will inform how we choose to live our life, whether it is the occupation we choose or the place within which we choose to live. We have the right to think for ourselves and determine whether there is a God or an afterlife, which will, in turn, affect our values and beliefs. We have the right to form relationships with other people on a variety of levels, and to experience the many events that contribute to our ethical and moral constitution. Most importantly, we have the right to determine the quality of our lives. As adults, we are allowed to refuse unwanted medical care that is detrimental to our physical health. We can refuse medication to successfully treat mental illnesses. We can make a variety of choices that can affect the health of our bodies, and our susceptibility to disease. We can make these choices because we own our bodies. The principles reflect those that lie at the core of the Court’s substantive due process

¹⁸⁰ 410 U.S. 113.
jurisprudence. “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”¹⁸¹

It could be argued that people who contemplate suicide are inherently incapable of exercising rational judgment because they suffer from a mental illness. First, it is highly presumptuous to assume that all individuals who decide to commit suicide are mentally ill. Second, it should not matter. At some point, those who do suffer from mental illnesses may decide, as they are entitled, that their quality of life is such that they no longer wish to live. They own their bodies and are entitled to make this choice.

Importantly, however, the unconditional right to suicide is not simply based upon legal principles. As set forth below, an individual’s right to end his life is predicated upon a different conception of “rights,” and a definition of “values” that is subjective, rather than objective. The theoretical basis for suicide re-defines and re-positions these terms by arguing that they have no inherent meaning unless and until each individual, as a separate entity, gives them meaning. That meaning, however, has no objective validity, but is merely an expression of the individual’s perception of life itself and how it should be lived. It is within this framework that the right to suicide necessarily belongs to the individual and, unless an individual is not competent to exercise this right, it cannot be taken away from the State under any circumstances. Using this formulation, suicide should not only be permitted, but seen as an essential expression of freedom in its purest form.

¹⁸¹ Casey, 505 U.S. at 851.
PART III

SUICIDE
THEORETICAL FOUNDATION

The unconditional right to commit suicide implicates the question of how we define individual “rights,” as well as the “value” of life. These concepts neither have an objective nor fixed meaning. To the degree that these are portrayed as having a settled definition or as inherently prohibiting certain acts, this is so only because of prevailing political and/or social forces. The question of rights, where they come from, what they mean, and how they can be exercised, goes beyond the traditional sources from which we divine their existence.

Furthermore, the concept that life is objectively “valuable,” for all individuals in all circumstances, imposes upon people a condition that prevents them from living their lives freely, in accordance with their values and beliefs. In other words, our conception of by defining the “value” of life in abstract terms, i.e., by saying that the State has the general interest in protecting and preserving life, actually demeans the value of life itself.

A. INDIVIDUAL “RIGHTS”

The concept of rights implicates a variety of issues and inquiries. First, how do we define a right? Where do rights come from? Are human beings entitled to rights? Even if an individual has a certain right, how and under what circumstances may that individual exercise this right? What actions may an individual engage in as a logical result of possessing a certain right? Can there ever be a limitation on the exercise of this right, and if so, under what circumstances? Can human beings force an individual to forfeit a right, and if so, can that right be restored to the individual?
1. **HOW IS A RIGHT DEFINED?**

A right is necessarily capable of a precise and/or universal meaning. Having said that, a right is something that belongs to the individual. It is something that the individual owns. Importantly, a right, in and of itself is not self-executing. Rather, this Article defines a right as “something tangible that empowers the individual to engage in a certain action or actions without interference from others, provided that the exercise of this right does not interfere or infringe upon the safety of another or exercise of another’s right(s).” Accordingly, a right confers both unconditional and conditional status to an individual. The exercise of the right, is absolute unless and until it compromises the absolute exercise of the right of another individual.

2. **WHERE DO RIGHTS COME FROM?**

A right can come from a variety of sources. First, a right can be created and conferred by humans, whether it is through legislative or judicial action. However, this is the weakest source of rights, because they are not inherent, that is, they are not automatically granted to the individual by virtue of their existence. A right can also be conferred by a written document, such as the Constitution, but this is similar to rights granted through legislative or judicial decree.

A right originates from a more fundamental source. As human beings, our existence, at its most basis level, has certain attributes. We are intelligent beings that are capable of making rational choices. We have dominion over our physical and mental constitution. We have the ability to perceive and define for ourselves the nature of reality, what it means to us, and how is shapes our destiny. In other words, rights originate from the very essence of our existence. We have the right to exercise all of the faculties and
attributes that constitute a “human being,” both in the physical, mental, physical and
cognitive realm. Put differently, human beings have the right to own themselves and be
the authors of their actions, free from interference or infringement, as long as our actions
do not produce infringement or interference with the safety of others who are engaging in
the same exercise, or otherwise compromise another from exercising his rights. Rights,
therefore, are the means by which human are free beings.

3. **ARE HUMAN BEINGS INHERENTLY ENTITLED TO RIGHTS?**

It can be argued that human beings are not entitled to rights. At the very least,
some may argue that humans are entitled only to the most basic rights, which do not
include many of the far reaching rights found by either the Supreme Court in its
substantive due process jurisprudence or advocated by this Article. Instead, rights are
created only when they are given to humans by those who are in power and thus
authorized to create them. Under this view, rights are the subject of a political system.

This argument has no merit for a variety of reasons. First, it demeans the value of
human existence. To say that rights are dependent upon the decisions of other humans is
to demean the very concept of a right itself. It also devalues human beings, at the expense
of others because it creates a power imbalance between those who create rights and those
who are dependent on rights to realize the fullest exercise of their existence. Thus, to the
extent that humans are engaged in the rights enterprise, it should only be in the area of
regulating or limiting a right. More specifically, that should only be where the exercise of
a right has the potential to interfere or infringe upon the exercise of another person’s
right, i.e., cause mental, physical or emotional suffering to a third party.
Every human being is entitled to various rights by virtue of being human, and these rights include the right to make independent choices regarding the body, mind and spirit. When other human beings attempt to interfere with these rights, they are inherently de-valuing life itself, and acting against the nature of our existence.

4. **Under what circumstances may an individual exercise a right?**

An individual’s possession of and entitlement to a right does not necessarily mean that the individual may exercise that right under all, or any, circumstances. A right is designed to empower to individual. The exercise of a right has, as its underlying principle, the notion that individuals are entitled to be free entities. Integral to that freedom is the need for control, namely, control over everything that makes us human, particularly the physical and mental constitution. However, when the exercise of these rights affects third parties, then there is room for restraint and restriction. An individual cannot unconditionally exercise all rights because that would ultimately undermine the principle of rights itself, because it would create inequality among those whose rights can and cannot be most effectively utilized.

5. **What actions may an individual engage in as a logical extension of a particular right?**

The possession of a right in the abstract means nothing unless the individual is entitled to engage in actions that are a logical outgrowth of that right. For example, an individual has the fundamental right to own his body. As a logically matter, that individual thus has control over matters such as how that life is lived, where that life is lived, and when that life ends. Without these latter actions, then the right itself ceases to exist.
Some might argue that, while humans should not be engaged in the granting or creating of rights itself, they should be permitted to regulate precisely those actions that constitute the logical outgrowth of the right. The problem with this argument, however, is that it has the effect of eviscerating the right itself, because without the logical outgrowth the right is meaningless. In addition, it takes control of the right away from the individual, and places it in the hand of others, who already have the same rights as the individual, thus creating a situation where one individual has “super-rights” (individual rights plus control over the exercise of others’ rights), while the other has restricted rights.

6. **CAN THERE EVER BE A LIMITATION ON THE EXERCISE OF A RIGHT?**

Rights can be both absolute and non-absolute. The exercise of a right is absolute when it is made: (1) by the individual; (2) with the individual’s consent; (3) without undue interference or influence from third parties; (4) by the product of a sound mind and mental state; and in a way that does not interfere with the actions of or cause injury to third parties.

This is an area where the State may have an interest in regulating the exercise of a right. It certainly has an interest in ensuring that the individual’s exercise of a right is the product of consent, free will, and rational choice. In this way, the State is not interfering with the right itself, but simply ensuring that the individual is not being injured by a third party who is, in actuality, attempting to injure the individual by manipulating his exercise of the right.
7. **Can Human Beings Force an Individual to Forfeit a Right**

A right can be forfeited when an individual materially harms another person’s rights. The forfeiture depends on the severity of the harm. Physical, financial, and emotional harm are all categories within which forfeiture of the harm may be effectuated. With respect to restoration of the right, it should again be based upon the severity of the injury caused.

**B. The “Value” of Life**

The theoretical idea that life has inherent value is undoubtedly correct. However, the idea that other individuals or institutions have the continuing right to impose a generalized, or even particularized, definition of “value” on another’s life, and thus prohibit them from exercising a right, to end their life, is to demean the value of life itself. Put differently, the word value, when considered in the context of a human life, is not capable of objective meaning. Rather, the value of life is one that is defined and determined by the individual who lives that life. Some individuals will define the value of life more than others. Some will find that life is meaningless and without purpose. Others will find that it is a place full of opportunity and purpose. The value of life for these individuals is different. They have to the right to define value this way and act, under the conditions set forth above, according to this belief. In other words, if an individual desires to commit suicide because he does not find any value in life, he has a right to make this choice.

Consequently, if we are to promote a universal definition that “all life is valuable” as a method to restrict individuals from exercising rights relating to their physical and
emotional well-being, then, for to *those* individuals, life often becomes *invaluable*, because they cannot act and make life-altering decisions in accordance with their own valuations of life itself. The power is then shifted to the State, which then regulates when and under what circumstances the individual may make end-of-life decisions. Nothing could be more anathema to personal freedom. Individuals have a right to end their lives, regardless of whether they suffer from a physical illness, mental illness, or are in perfect health.

1. **Physical Ailments**

It is largely undisputed that terminally-ill patients may refuse end-of-life medical care, thereby hastening their death. This is not a novel proposition. These individuals are often in excruciating pain. There is little, if anything, the medical profession can do to alleviate their condition, except to ease their pain. The prognosis does not concern whether they will recover from their illness, but at which point they are likely to die. The circumstances are horrible, and aside from the physical pain, the emotional anguish about death, the departure from family members and loved ones, is certain to be overwhelmingly traumatic. The termination of life-sustaining medical care is a way for individuals to end their anguish and die a peaceful death with loved ones at their side.

However, there are many individuals without terminal medical illnesses who suffer from the same anguish, both physically and mentally. An individual may suffer from a debilitating medical condition which restricts his movement. An individuals sensory systems may be somewhat, if not entirely compromised. An individual may have lost the ability to move certain, if not all, parts of his body. Another person may have suffered severe cognitive injuries that may make it impossible to engage in the type of
activities that were commonplace prior to an injury. An individual may have lost certain parts of his body due to an accident. There are many physical ailments that may debilitate an individual and cause physical, mental and emotional suffering.

To be sure, many individuals with these ailments will react in a positive manner and lead productive, meaningful and fulfilling lives. Many will become leaders in the community. Many will live their dreams and passions. However, there are also people who will not be able to accept this condition, and who suffer daily from the fact that they cannot engage in the type of daily functions and activities to which they were formerly accustomed. The emotional suffering that they may feel can be horribly painful, and for those individuals, the very act of living can be a traumatic and unwelcome experience. For these people, ending their lives can become an option as a way to alleviate the physical and emotional hardships from which they suffer.

While one would hope that a person could arrive at another choice, it is not our right to impose our views on them. Our conception if the value of life is not substitute for the value that they place on their lives. It is not for us to determine when a person’s illness is severe enough such that the ending of a life, i.e., refusal of medical treatment, is appropriate. That choice belongs to the individual because it is their body. While this is a sad and very difficult reality, it would be more difficult to ignore the physical and emotional suffering that these individuals are experiencing, and force them to endure a life that resembles nothing even remotely similar to what they had envisioned. If we respect liberty and freedom, then we respect that individual choice, provided that the individual is making a rational choice, free from coercion, abuse, or undue influence or pressure.
2. **Mental Illness**

Mental illness can – and often does – affect individuals for the duration of their life. It can be a powerful force with consequences on every aspect of daily life. Whether it is depression, bi-polar disorder, schizophrenia, or others, mental illness affects an individual’s ability to function, whether it is in a relationship, an occupation, or performing simple tasks to maintain the quality of their living environment. Interacting with people is very difficult. It often leads to isolation. Mental illness is and can be physically painful, and impedes a person’s ability to achieve happiness and the goals that they seek to achieve in their life. Also, many people who suffer from mental illness are placed on medication, which sometimes work and sometimes do not, often coming with debilitating side effects. Most importantly, people with mental illnesses often perceive the world very differently, and find existence far more difficult, painful, and challenging, often on a daily basis. This can last for years. In fact, people who suffer from mental illnesses die, on average, twenty-five years earlier than the general population.

However, many people do recover from mental illnesses and go one to lead happy and fulfilling lives. Unfortunately, for some people, mental anguish affects every aspect of their lives. It also can cause extraordinary frustration and desperation because it is not something that is “cured,” but rather something that one can hope to only “manage” or keep under control. Most importantly, is can substantially affect an individual’s view about the value of life. At a certain point, an individual may decide that he does not want to lead this life anymore. The struggle to be happy, to lead a “normal” life,” to find

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182 The list of these symptoms can be found at [http://www.mentalwellnessadvice.com/](http://www.mentalwellnessadvice.com/).

fulfilling relationships, may become overwhelming, and the person may no longer wish to continue living.

They have the right to make this choice. Also, it is a mistake to argue that people suffering with mental illnesses are inherently acting irrationally. There is no support whatsoever for this assertion, and to argue as such is to stigmatize those suffering from mental illness as incapable of making other less important decisions as the one to commit suicide. They deserve more respect than this, as does their valuation of life.

3. **People in Perfect Health**

Individuals in perfect health have an unconditional right to commit suicide, provided they are of sound mind and body. People see the world differently. Thus, people value life differently. For some, the world has no meaning. It is comprised of “nothingness.” Everything we do, every goal we achieve, every award we obtain, ultimate has no purpose. For these people, life is artificial and everything that we do to provide meaning is simply to hide the fact that the world has none. As a result, they may view their live as a futile enterprise. Perhaps there is no afterlife. Maybe there is. Maybe is does not matter. Whatever the case, life may not have any value. As a result, people in perfect physical and mental health may desire to end their lives because they cannot accept the feeling or emotions that accompany this worldview. These people do not need therapy. They do suffer from a mental illness or abnormality. They are rational individuals who can make the rational choice to end their lives. Other humans are in no position to infringe upon this right because we are free beings and exercising a right that is inherent to human existence itself, namely, ownership and control over the body and its destiny.
That is precisely why suicide constitutes a right that any individual may exercise under all but the narrowest of circumstances. First, committing suicide is an act by the individual, an expression of freedom in its purest sense that neither infringes upon nor interferes with the exercises of another’s rights. Second, the act of committing suicide is a logical outgrowth of the rights that are inherent in human existence itself. As humans, we are intelligent beings capable of taking actions based upon mental and cognitive processes. The physical body is the manner by which we manifest the choices we have made. In other words, we have control over our mind and body. This logically includes the right to commit suicide, just as it includes to right to an abortion and to refuse end-of-life, unwanted medical care. Stated simply, without the right to take actions with our physical body, the “right” itself, which is not self-executing, is meaningless. Importantly, the only circumstance within which an individual may not exercise the right to commit suicide is whether it is not the product of rational thought, without the person’s informed consent, or the subject of abuse or coercion. Otherwise, committing suicide is a near-absolute right. As set forth below, this right should be facilitated by having an organization that provides for the peaceful and painless termination of life.

**PART IV**

**SUICIDE**

**MAKING IT PEACEFUL AND POSSIBLE**

Some may react harshly to the notion that there should be an organization dedicated to providing individuals with a peaceful way to end their lives. What they may not know, however, is that their already exists an institution doing such work called, *Dignitas*, which is located in Switzerland. The function is to help mostly terminally ill-individuals peacefully end their lives, while ensuring that this is their actual desire, and
not irrational decision, i.e., resulting from a temporary emotional or physical trauma. Rather, it must be the product of a conscious and deliberative choice. Of course, while Dignitas does not advocate for suicide under the circumstances advocated in this Article, it does provide procedures that are similar to those which would ensure that an individual’s choice was the product of free and unbridled will.

A. DIGNITAS

Dignitas is an organization in Switzerland that assists both physically and mentally ill people end their lives. Of course, it has many procedures operating in place before the suicide is consummated.

Dignitas was founded on May 19, 1998 and “has helped a total of 1060 people to end their lives gently, safely, without risk and usually in the presence of family members and/or friends.”\(^{184}\) However, during this time, Dignitas “has also helped several thousand people continue to live despite their difficult health conditions.”\(^{185}\) While these people initially desired to commit suicide, “it was possible to show them – usually with the assistance of doctors – an alternative to prematurely ending their life.”\(^{186}\) Importantly, Dignitas “has not limited itself to offering this help only in Switzerland,” as “a person’s wish to end his or her life is a human right recognized by the Federal Supreme Court of Switzerland and protected by Article 8 of the European Human Rights Convention …”\(^{187}\)

When an individual contact Dignitas and expresses a desire to commit suicide,

\(^{184}\) The information regarding Dignitas can be found on its website a: [http://www.dignitas.ch/index.php?id=117&Itemid=166&option=com_content&task=view](http://www.dignitas.ch/index.php?id=117&Itemid=166&option=com_content&task=view).

\(^{185}\) Id.

\(^{186}\) Id.

\(^{187}\) Id.
that individual is subject to a lengthy process before their wish is honored. The first step for individuals seeking assisted suicide is to complete an application for membership.\textsuperscript{188} When the application is received, membership is awarded.\textsuperscript{189} Prior to membership, though, a person may make a request for the preparation of an assisted suicide.\textsuperscript{190} The person must state the “health matters”\textsuperscript{191} that are significantly affecting the quality of his life, and provide medical documentation.\textsuperscript{192} The applicant is also required to provide an account of his life, including information about his “character as well as their family and work situations.”\textsuperscript{193} Importantly, if Dignitas becomes aware of a doctor in that person’s “immediate” vicinity that can offer help – particularly in cases of physical pain – then they are referred to such doctor before any additional action is taken.\textsuperscript{194}

When the application is received, Dignitas reviews it, and gives “consideration to the question of whether the applicant can be given any immediate recommendations for possible alternatives with the hope of being able to continue life under better conditions.”\textsuperscript{195} Alternatives include therapy and palliative care.\textsuperscript{196} However, in some

\begin{footnotes}
\ref{188} Id.  \\
\ref{189} Id.  \\
\ref{190} Id.  \\
\ref{191} Id.  \\
\ref{192} Id.  \\
\ref{193} Id.  \\
\ref{194} Id.  \\
\ref{195} Id.  \\
\ref{196} Id. 
\end{footnotes}
cases, because of the severity of a patient's medical condition, these options may not be available.

After *Dignitas* considers alternatives and examines all of the relevant information, a doctor evaluates the documentation and then either approves or rejects the administration of a lethal prescription for the patient.¹⁹⁷ Sometimes the doctor will give a temporary refusal contingent upon the receipt of further information, or simply give a "provision green light" to prescribe the lethal medication.¹⁹⁸ However, before the provision green light is given, the doctor must meet with the patient twice, to be sure that there are no signs of "impaired or doubtful mental capacity … signs of pressure from a third party with regard to a premature death, or evidence of an acute depressive phase."¹⁹⁹

*Dignitas* also informs the patient that family members are allowed to be present when the assisted suicide is consummated. After this, the assisted suicide is scheduled.²⁰⁰ At this point, however, *Dignitas* does not proceed until the next step or initiate any further proceeding until the patient expresses the desire to continue with the process.²⁰¹ Should the patient indicate a desire to move forward, *Dignitas* proceeds to ensure that all medical records are up-to-date and civil documents are present.²⁰² Then the member must

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¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*
have two more consultations with the doctor, which is “necessary so that the question of writing the prescription can finally and definitively be decided upon.”\textsuperscript{203}

After these and other procedures are completed, the rules governing the suicide itself are implemented. First, “two members of the assistance team are always assigned\textsuperscript{204} to assist in completing the patient’s wishes. Then, the patient and family members are greeted at Dignitas, and another meeting is held with the patient, ensuring that he still wishes to proceed.\textsuperscript{205} In this meeting, the medical process is explained to the patient, and if there are any lingering doubts, the procedure is cancelled.\textsuperscript{206} If the patient is of sound mind and wishes to proceed, a final document is prepared giving Dignitas authority to complete the assisted suicide.\textsuperscript{207} After this is completed, the patient may say good-bye to his family members before the medication is administered, and they may be present in the room as the process is completed.

\textbf{B. Suicide in the United States}

Everyone has the right to commit suicide. The right, however, is not absolute. There are two instances where suicide should be prevented. First, people that are not competent to make that choice, i.e., those that are cognitively impaired, can never make such a decision. Second, those who claim that they want to commit suicide – but actually do not – must be identified, to the extent possible, and prevented from completing the act. Of course, there will always be individuals that commit suicide in the privacy of their
own home or in a way where the possibility of intervention is remote. Advocating for a “right” to suicide is highly unlikely to change this fact, nor is it likely to result in more people committing suicide, because there is no evidence whatsoever that it illegality acts as a deterrent for people who wish to end their lives.

However, for people who want to end their lives, there should be safeguards in place to ensure the administration of lethal medication that will result in a peaceful, painless and dignified death.

1. **AN ORGANIZATION FOR THE ADMINISTRATION OF ASSISTANCE WITH END-OF LIFE DECISIONS.**

Similar to Dignitas, there should be an organization that assists people who desire to end their lives. The object of such organization would be to ensure that the individuals wishes are based upon a deliberative and contemplative choice, free from coercion, undue pressure and influence, the product of rational thought, and made with the knowledge that there exist alternatives available to assist the individual in whatever capacity they may need.

Even though every individual has the right to commit suicide, the organization should require a statement of reasons underlying the desire to commit suicide. This statement should include, among other things, the individual’s background, childhood, education, occupation(s), medical history, current and former relationships, existence of family members, current residence, and any prior attempts, if any, to mitigate the individual’s desire to commit suicide.

There should be an intake interview. The individual should have the opportunity to provide informed consent. Put differently, the individual should be provided with any and all alternatives to suicide that may assist in changing his mental state, alleviating a
medical condition, or re-framing a particular view or disposition toward life and happiness. After the individual is provided with this information, he must sign a contract stating that he has been provided with such information, and still wishes to proceed. At that point, there should be a waiting period before the suicide is consummated.

2. **Consultation with a Medical Doctor**

The individual should be required to see a physician before the request is honored. The physician would be required to conduct a thorough physical examination of the patient, including all relevant tests and procedures, to ensure that the patient is capable of making a rational and conscious choice to end his life. Any conditions that can, or may, have the potential to impair cognitive functioning, or otherwise interfere with the individual’s ability to make an informed judgment, should warrant a refusal to carry out the individual’s request.

3. **Consultation with a Psychiatrist**

A consultation with a psychiatrist is necessary to ensure that the individual is not suffering from a medical condition that would impair his ability to reason, make informed judgments and appreciate the consequences of his decisions. For example, traumatic brain injuries may make it difficult for the individual to make a rational choice to commit suicide. Importantly, however, a diagnosis of a mental illness alone is not sufficient to prevent an individual from committing suicide. The only grounds for recommending that the suicide be rejected is if the individual’s cognitive capacities are impaired due to a mental abnormality or defect, or if the individual exhibits signs that he is unable to control his behavior.
4. **Consultation with a Psychologist**

Consultation with a psychologist is necessary because an individual’s desire to commit suicide may be temporary or fleeting. Such a desire may be the result of recent, albeit significant, emotional traumas, such as the death of a family member, the loss of a job, or break-up of a marriage. The psychotherapist is in the best position to assess whether the suicidal thoughts are the product of these traumas and thus best dealt with through alternative measures other than suicide. Should the therapist determine that the suicidal desires are in fact the result of underlying emotional or physical traumas, then in no circumstance can suicide be an option.

5. **Consultation with Friends and Family Members**

If the individual has friends and/or family members, he should be strongly encouraged to consult with them prior to making a decision of such finality. Often, people do not realize the type of support that there exists for them until they reach out to others who sincerely care for them and would do much to help them through difficult periods in their life. Of course, the individual need not consult with anyone. The right to suicide belongs with the individual alone.

6. **Consultation with Others Similarly Situated**

The individual, as well as others seeking to end their lives, should be required to participate in multiple group therapy sessions in which they discuss their individual decisions to end their lives, as well as the underlying reasons which motivated them to make such decision. These discussions may provide therapeutic value to some or any of the individuals and therefore deter them from completing their request to die.
7. **TREATMENT FOR PHYSICAL AILMENTS**

If the individual’s suicide request is predicated upon a *curable* physical ailment, then any and all attempts shall be made to persuade the individual that alternative treatments are available to remedy this ailment and allow the individual to lead a normal, fully functioning life. However, the individual has the right to reject this advice and proceed accordingly with his request.

**CONCLUSION**

The idea that people should be allowed to commit suicide is very difficult to accept. It is also difficult to allow extremely unpopular, and sometimes racist, sexist or homophobic, groups to march or have demonstrations in support of their views. We may despise those who burn the American flag, or who denigrate those who serve in the armed forces. Yet we allow this activity, however unpopular, because we believe in freedom, particularly that which belongs to the individual. The concept of freedom lies at the core of human existence, because it along us to exercise ownership over our physical and mental capacities, and express ourselves in whatever form we deem meaningful. The most fundamental aspect of that ownership, and of freedom itself, is the right to control how we use, direct and protect our bodies. Our life belongs to us, and that includes the right to determine the quality of how we live, and the time when we decide to die. If we deny this right, we deny something more fundamental – the right to choose our own story of where things begin and where they end. We are the authors of ourselves – and nobody can take that away.