24 QUINCY ROAD, CHESTNUT HILL, MASSACHUSETTS 02467
TEL: 617.552.1861 FAX: 617.552.1863 EMAIL: PUBLIFE@[illegible] WWW.BC.EDU/BOISI

BOSTON COLLEGE

BOI I CEN E
FO ELIGION AND AME ICAN P_ BLIC LIFE

Symposium on Religion and Politics

Liberty and the Body

Table of Contents:

24 quincy road, chestnut hill, massachusetts 02467
tel: 617.552.1861 fax: 617.552.1863 email: publife@bc.edu web: www.bc.edu/boisi

PLANNED PARENTHOOD OF SOUTHEASTERN PA. v. CASEY, 505 U.S. 833 (1992)

505 U.S. 833

PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA, ET AL. v. CASEY, GOVERNOR OF PENNSYLVANIA, ET AL., CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT Nos. 91-744
Argued April 22, 1992
Decided June 29, 1992 *

II

Constitutional protection of the woman's decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment. It declares that no State shall "deprive any person of life, liberty, or property, without due process of law." The controlling word in the cases before us is "liberty." Although a literal reading of the Clause might suggest that it governs only the procedures by which a State may deprive persons of liberty, for at least 105 years, since Mugler v. Kansas, 123 U.S. 623, 660 -661 (1887), the Clause has been understood to contain a substantive component as well, one "barring certain government actions regardless of the fairness of the procedures used to implement them." Daniels v. Williams, 474 U.S. 327, 331 (1986).

It is conventional constitutional doctrine that, where reasonable people disagree, the government can adopt one position or the other. See, e.g., Ferguson v. Skrupa, 372 U.S. 726 (1963); Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483 (1955). That theorem, however, assumes a state of affairs in which the choice does not intrude upon a protected liberty. Thus, while some people might disagree about whether or not the flag should be saluted, or disagree about the proposition that it may not be defiled, we have ruled that a State may not compel or enforce one view or the other. See West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624 (1943); Texas v.

v. Baird, and Carey v. Population Services International afford constitutional protection. We have no doubt as to the correctness of those decisions. They support [505 U.S. 833, 853] the reasoning in Roe relating to the woman's liberty, because they involve personal decisions concerning not only

III. C

their constitutional ideals. If the Court's legitimacy should be undermined, then, so would the country be in its very ability to see itself through its constitutional ideals. The Court's concern with legitimacy is not for the sake of the Court, but for the sake of the Nation to which it is responsible.

The Court's duty in the present case is clear. In 1973, it confronted the already-divisive issue of governmental power [505 U.S. 833, 869] to limit personal choice to undergo abortion, for which it provided a new resolution based on the due process guaranteed by the Fourteenth Amendment. Whether or not a new social consensus is developing on that issue, its divisiveness is no less today than in 1973, and pressure to overrule the decision, like pressure to retain it, has grown only more intense. A decision to overrule Roe's essential holding under the existing circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy, and to the Nation's commitment to the rule of law. It is therefore imperative to adhere to the essence of Roe's original decision, and we do so today.

IV

From what we have said so far, it follows that it is a constitutional liberty of the woman to have some freedom to terminate her pregnancy. We conclude that the basic decision in Roe was based on a constitutional analysis which we cannot now repudiate. The woman's liberty is not so unlimited, however

The second reason is that the concept of viability, as we noted in Roe, is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can, in reason and all fairness, be the object of state protection that now overrides the rights of the woman. See Roe v. Wade, 410 U.S., at 163 . Consistent with other constitutional norms, legislatures may draw lines which appear arbitrary without the necessity of offering a justification. But courts may not. We must justify the lines we draw. And there is no line other than viability which is more workable. To be sure, as we have said, there may be some medical developments that affect the precise point of viability, see supra, at 17-18, but this is an imprecision within tolerable limits, given that the medical community and all those who must apply its discoveries will continue to explore the matter. The viability line also has, as a practical matter, an element of fairness. In some broad sense, it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child. [505 U.S. 833, 871]

The woman's right to terminate her pregnancy before viability is the most central principle of Roe v. Wade. It is a rule of law and a component of liberty we cannot renounce.

On the other side of the equation is the interest of the State in the protection of potential life. The

JUSTICE SCALIA, with whom THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE THOMAS join, concurring in the judgment in part and dissenting in part.

My views on this matter are unchanged from those I set forth in my separate opinions in Webster v. Reproductive Health Services, 492 U.S. 490, 532 (1989) (opinion concurring in part and concurring in judgment), and Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 520

Beyond that brief summary of the essence of my position, I will not swell the United States Reports with repetition of what I have said before; and applying the rational basis test, I would uphold the Pennsylvania statute in its entirety. I must, however, respond to a few of the more outrageous arguments in today's opinion, which it is beyond human nature to leave unanswered. I shall discuss each of them under a quotation from the Court's opinion to which they pertain.

- "The inescapable fact is that adjudication of substantive due process claims may call upon the Court, [505 U.S. 833, 982] in interpreting the Constitution, to exercise that same capacity which, by tradition, courts always have exercised: reasoned judgment". Ante, at 849.

Assuming that the question before us is to be resolved at such a level of philosophical abstraction, in such isolation from the traditions of American society, as by simply applying "reasoned judgment," I do not see how that could possibly have produced the answer the Court arrived at in Roe v. Wade, 410 U.S. 113 (1973). Today's opinion describes the methodology of Roe, quite accurately, as weighing against the woman's interest the State's "`important and legitimate interest in protecting the potentiality of human life.'" Ante, at 871 (quoting Roe, supra, at 162). But "reasoned judgment" does not begin by begging the question, as Roe and subsequent cases unquestionably did by assuming that what the State is protecting is the mere "potentiality of human life." See, e.g., Roe, supra, at 162; Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 61 (1976); Colautti v. Franklin, 439 U.S. 379, 386 (1979); Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 428 (1983) (Akron I); Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476, 482 (1983). The whole argument of abortion opponents is that what the Court calls the fetus and what others call the unborn child is a human life. Thus, whatever answer Roe came up with after conducting its "balancing" is bound to be wrong, unless it is correct that the human fetus is in some critical sense merely potentially human. There is, of course, no way to determine that as a legal matter; it is, in fact, a value judgment. Some societies have considered newborn children not yet human, or the incompetent elderly no longer so.

The authors of the joint opinion, of course, do not squarely contend that Roe v. Wade was a correct application of "reasoned judgment"; merely that it must be followed, because of stare decisis. Ante, at 853, 861, 871. But in their exhaustive discussion of all the factors that go into the determination [505 U.S. 833, 983] of when stare decisis should be observed and when disregarded, they never mention "how wrong was the decision on its face?" Surely, if "[t]he Court's power lies . . . in its legitimacy, a product of substance and perception," ante, at 865, the "substance" part of the equation demands that plain error be acknowledged and eliminated. Roe was plainly wrong - even on the Court's methodology of "reasoned judgment," and even more so (of course) if the proper criteria of text and tradition are applied.

The emptiness of the "reasoned judgment" that produced Roe is displayed in plain view by the fact that, after more than 19 years of effort by some of the brightest (and most determined) legal minds in the country, after more than 10 cases upholding abortion rights in this Court, and after dozens upon dozens of amicus briefs submitted in this and other cases, the best the Court can do

to explain how it is that the word "liberty" must be thought to include the right to destroy human fetuses is to rattle off a collection of adjectives that simply decorate a value judgment and conceal a political choice. The right to abort, we are told, inheres in "liberty" because it is among "a person's most basic decisions," ante, at 849; it involves a "most intimate and personal choic [e]," ante, at 851; it is "central to personal dignity and autonomy," ibid.; it "originate[s] within the zone of conscience and belief," ante, at 852 it is "too intimate and personal" for state interference, ibid.;, it reflects "intimate views" of a "deep, personal character," ante, at 853; it involves "intimate relationships" and notions of "personal autonomy and bodily integrity," ante, at 857; and it concerns a particularly "`important decisio[n],'" ante, at 859 (citation omitted). 2 But it is [505 U.S. 833, 984] obvious to anyone applying "reasoned judgment" that the same adjectives can be applied to many forms of conduct that this Court (including one of the Justices in today's majority, see Bowers v. Hardwick, 478 U.S. 186 (1986)) has held are not entitled to constitutional protection - because, like abortion, they are forms of conduct that have long been criminalized in American society. Those adjectives might be applied, for example, to homosexual sodomy, polygamy, adult incest, and suicide, all of which are equally "intimate" and "deep[ly] personal" decisions involving "personal autonomy and bodily integrity," and all of which can constitutionally be proscribed because it is our unquestionable constitutional tradition that they are proscribable. It is not reasoned judgment that supports the Court's decision; only personal predilection. Justice Curtis' warning is as timely today as it was 135 years ago:

- "[W]hen a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean." Dred Scott v. Sandford, 19 How. 393, 621 (1857) (dissenting opinion).

- Liberty finds no refuge in a jurisprudence of doubt. Ante, at 844.

The Court's reliance upon stare decisis can best be described as contrived. It insists upon the necessity of adhering not to all of Roe, but only to what it calls the "central holding." It seems to me that stare decisis ought to be applied even to the doctrine of stare decisis, and I confess never to have heard of this new, keep-what-you-want-and-throw-away-the-rest version. I wonder whether, as applied to Marbury v. Madison, 1 Cranch 137 (1803), for example, the new version of stare decisis would be satisfied if we allowed courts to review the constitutionality of only those statutes that (like the one in Marbury) pertain to the jurisdiction of the courts.

I am certainly not in a good position to dispute that the Court has saved the "central holding" of Roe, since, to do that effectively, I would have to know what the Court has saved, which in turn would require me to understand (as I do not) what the "undue burden" test means. I must confess, however, that I have always thought, and I think a lot of other people have always thought, that the arbitrary trimester framework, which the Court today discards, was quite as

central to Roe as the arbitrary viability test, which the Court today retains. It seems particularly ungrateful to carve the trimester framework out of the core of Roe, since its very rigidity (in sharp contrast to the utter indeterminability of the "undue burden" test) is probably the only reason the Court is able to say, in urging stare decisis, that Roe "has in no sense proven `unworkable,'" ante, at 855. I suppose the [505 U.S. 833, 994] Court is entitled to call a "central holding" whatever it wants to call a "central holding" - which is, come to think of it, perhaps one of the difficulties with this modified version of stare decisis. . . .

The Court's description of the place of Roe in the social history of the United States is unrecognizable. Not only did Roe not, as the Court suggests, resolve the deeply divisive issue of abortion; it did more than anything else to nourish it, by elevating it to the national level, where it is infinitely more difficult to resolve. National politics were not plagued by abortion protests, national abortion lobbying, or abortion marches on Congress before Roe v. Wade was decided. Profound disagreement existed among our citizens over the issue - as it does over other issues, such as the death penalty - but that disagreement was being worked out at the state level. As with many other issues, the division of sentiment within each State was not as closely balanced as it was among the population of the Nation as a whole, meaning not only that more people would be satisfied with the results of state-by-state resolution, but also that those results would be more stable. Pre-Roe, moreover, political compromise was possible.

Roe's mandate for abortion on demand destroyed the compromises of the past, rendered compromise impossible for the future, and required the entire issue to be resolved uniformly, at the national level. At the same time, Roe created a vast new class of abortion consumers and abortion proponents by eliminating the moral opprobrium that had attached to the act. ("If the Constitution guarantees abortion, how can it be bad?" - not an accurate line of thought, but a natural one.) Many favor all of those developments, and it is not for me to say that they are wrong. But to portray Roe as the statesmanlik mh4u4eted 2 Tm8' aborIf the

so would the country be in its very ability to see itself through its constitutional ideals." Ante, at 867-868.

The Imperial Judiciary lives. It is instructive to compare this Nietzschean vision of us unelected, life-tenured judges - leading a Volk who will be "tested by following," and whose very "belief in themselves" is mystically bound up in their "understanding" of a Court that "speak[s] before all others for their constitutional ideals" - with the somewhat more modest role envisioned for these lawyers by the Founders.

- "The judiciary . . . has . . . no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment. . . ." The Federalist No. 78, pp. 393-394 (G. Wills ed. 1982).

Or, again, to compare this ecstasy of a Supreme Court in which there is, especially on controversial matters, no [505 U.S. 833, 997] shadow of change or hint of alteration ("There is a limit to the amount of error that can plausibly be imputed to prior Courts," ante, at 866), with the more democratic views of a more humble man:

- "[T]he candid citizen must confess that, if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." A. Lincoln, First Inaugural Address (Mar. 4, 1861), reprinted in Inaugural Addresses of the Presidents of the United States, S. Doc. No. 101-10, p. 139 (1989).

. . . .

But whether it would "subvert the Court's legitimacy" or not, the notion that we would decide a case differently from the way we otherwise would have in order to show that we can stand firm against public disapproval is frightening. It is a bad enough idea, even in the head of someone like me, who believes that the text of the Constitution, and our traditions, say what they say and there is no fiddling with them. But when it is in the mind of a Court that believes the Constitution [505 U.S. 833, 999] has an evolving meaning, see ante, at 848; that the Ninth Amendment's reference to "othe[r]" rights is not a disclaimer, but a charter for action, ibid.; and that the function of this Court is to "speak before all others for [the people's] constitutional ideals" unrestrained by meaningful text or tradition - then the notion that the Court must adhere to a decision for as long as the decision faces "great opposition" and the Court is "under fire" acquires a character of almost czarist arrogance. . . .

. . . . Instead of engaging in the hopeless task of predicting public perception - a job not for lawyers but for political campaign managers - the Justices should do what is legally right by asking two questions: (1) Was Roe correctly decided? (2) Has Roe succeeded in producing a settled body of law? If the answer to both questions is no, Roe should undoubtedly be overruled.

. . . .What makes all this relevant to the bothersome application of "political pressure" against the Court are the twin facts that the American people love democracy and the American people are not fools. As long as this Court thought (and the people thought) that we Justices were doing essentially lawyers' work up here - reading text and discerning our society's traditional understanding of that text - the public pretty much left us alone. Texts and traditions are facts to study, not convictions to demonstrate about. But if in reality our process of constitutional adjudication consists primarily of making value judgments; if we can ignore a long and clear tradition clarifying an ambiguous text, as we did, for example, five days ago in declaring unconstitutional invocations and benedictions at public high school graduation ceremonies, Lee v. Weisman, 505 U.S. 577 (1992); if, as I say, our pronouncement of constitutional law rests primarily on value judgments, [505 U.S. 833, 1001] then a free and intelligent people's attitude towards us can be expected to be (ought to be) quite different. The people know that their value judgments are quite as good as those taught in any law school - maybe better. If, moreover, the "liberties" protected by the Constitution are, as the Court says, undefined and unbounded, then the people should demonstrate, to protest that we do not implement their values instead of ours. Not only that, but the confirmation hearings for new Justices should deteriorate into question-and-answer sessions in which Senators go through a list of their constituents' most favored and most disfavored alleged constitutional rights, and seek the nominee's commitment to support or oppose them. Value judgments, after all, should be voted on, not dictated; and if our Constitution has somehow accidentally committed them to the Supreme Court, at least we can have a sort of plebiscite each time a new nominee to that body is put forward. JUSTICE BLACKMUN not only regards this prospect with equanimity; he solicits it. Ante, at 943.

***

. . . . It is no more realistic for us in this case than it was for him in that to think that an issue of the sort they both involved - an issue involving life and death, freedom and subjugation - can be "speedily and finally settled" by the Supreme Court, as President James Buchanan, in his inaugural address, said the issue of slavery in the territories would be. See Inaugural Addresses of the Presidents of the United States, S.Doc. No. 101-10, p. 126 (1989). Quite to the contrary, by foreclosing all democratic outlet for the deep passions this issue arouses, by banishing the issue from the political forum that gives all participants, even the losers, the satisfaction of a fair hearing and an honest fight, by continuing the imposition of a rigid national rule instead of allowing for regional differences, the Court merely prolongs and intensifies the anguish.

We should get out of this area, where we have no right to be, and where we do neither ourselves nor the country any good by remaining.

--

U.S. Supreme Court

No. 96-110

WASHINGTON, et al., PETITIONERS v. HAROLD GLUCKSBERG et al.

on writ of certiorari to the united states court of appeals for the ninth circuit

[June 26, 1997]

Chief Justice Rehnquist delivered the opinion of the Court.

The question presented in this case is whether Washington's prohibition against "caus[ing]" or "aid[ing]" a suicide offends the Fourteenth Amendment to the United States Constitution. We hold that it does not.

It has always been a crime to assist a suicide in the State of Washington. In 1854, Washington's first Territorial Legislature outlawed "assisting another in the commission of self murder." [1] Today, Washington law provides: "A person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide." Wash. Rev. Code 9A.36.060(1) (1994). "Promoting a suicide attempt" is a felony, punishable by up to five years' imprisonment and up to a $10,000 fine. §§ 9A.36.060(2) and 9A.20.021(1)(c). At the same time, Washington's Natural Death Act, enacted in 1979, states that the "withholding or withdrawal of life sustaining treatment" at a patient's direction "shall not, for any purpose, constitute a suicide." Wash. Rev. Code § 70.122.070(1). [2]

Petitioners in this case are the State of Washington and its Attorney General. Respondents Harold Glucksberg, M. D., Abigail Halperin, M. D., Thomas A. Preston, M. D., and Peter Shalit, M. D., are physicians who practice in Washington. These doctors occasionally treat terminally ill, suffering patients, and declare that they would assist these patients in ending their lives if not for Washington's assisted suicide ban. [3] In January 1994, respondents, along with three gravely ill, pseudonymous plaintiffs who have since died and Compassion in Dying, a nonprofit organization that counsels people considering physician assisted suicide, sued in the United States District Court, seeking a declaration that Wash. Rev. Code 9A.36.060(1) (1994) is, on its face, unconstitutional. Compassion in Dying v. Washington, 850 F. Supp. 1454, 1459 (WD Wash. 1994). [4]

The plaintiffs asserted "the existence of a liberty interest protected by the Fourteenth Amendment which extends to a personal choice by a mentally competent, terminally ill adult to commit physician assisted suicide." Id., at 1459. Relying primarily on Planned Parenthood of Casey v. 505 U.S. 833 (1992), and Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261 (1990), the District Court agreed, 850 F. Supp., at 1459-1462, and concluded that Washington's assisted suicide ban is unconstitutional because it "places an undue burden on the exercise of [that] constitutionally protected liberty interest." Id., at 1455. [5] The District Court also decided that the

Washington statute violated the Equal Protection Clause's requirement that "`all persons similarly situated . . . be treated alike.'" Id., at 1466 (quoting Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985)).

A panel of the Court of Appeals for the Ninth Circuit reversed, emphasizing that "[i]n the two hundred and five years of our existence no constitutional right to aid in killing oneself has ever been asserted and upheld by a court of final jurisdiction." Compassion in Dying v. Washington, 49 F. 3d 586, 591 (1995). The Ninth Circuit reheard the case en banc, reversed the panel's decision, and affirmed the District Court. Compassion in Dying v. Washington, 79 F. 3d 790, 798 (1996). Like the District Court, the en banc Court of Appeals emphasized our Casey and Cruzan decisions. 79 F. 3d, at 813-816. The court also discussed what it described as "historical" and "current societal attitudes" toward suicide and assisted suicide, id., at 806-812, and concluded that "the Constitution encompasses a due process liberty interest in controlling the time and manner of one's death--that there is, in short, a constitutionally recognized `right to die.' " Id., at 816. After "[w]eighing and then balancing" this interest against Washington's various interests, the court held that the State's assisted suicide ban was unconstitutional "as applied to terminally ill competent adults who wish to hasten their deaths with medication prescribed by their physicians." Id., at 836, 837. 6 The court did not reach the District Court's equal protection holding. Id., at 838. 7 We granted certiorari, 519 U. S. ___ (1996), and now reverse

II

The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. Collins v. Harker Heights, 503 U.S. 115, 125 (1992) (Due Process Clause "protects individual liberty against `certain government actions regardless of the fairness of the procedures used to implement them' ") (quoting Daniels v. Williams, 474 U.S. 327, 331 (1986)). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. Reno v. Flores, 507 U.S. 292, 301 -302 (1993); Casey, 505 U.S., at 851 . In a long line of cases, we have held that, in addition

panel of the Court of

The Ninth C1 496,9446 sc g 1 0 0

action. We must therefore "exercise the utmost care whenever we are asked to break new ground in this field," ibid, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the members of this Court, Moore, 431 U.S., at 502 (plurality opinion).

Our established method of substantive due process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," id., at 503 (plurality opinion); Snyder v. Massachusetts, 291 U.S. 97, 105 (1934) ("so rooted in the traditions and conscience of our people as to be ranked as fundamental"), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," Palko v. Connecticut, 302 U.S. 319, 325 , 326 (1937). Second, we have required in substantive due process cases a "careful description" of the asserted fundamental liberty interest. Flores, supra, at 302; Collins, supra, at 125; Cruzan, supra, at 277-278. Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decision making," Collins, supra, at 125, that direct and restrain our exposition of the Due Process Clause. As we stated recently in Flores, the Fourteenth Amendment "forbids the government to infringe . . . `fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." 507 U.S., at 302 .

Justice Souter, relying on Justice Harlan's dissenting opinion in Poe v. Ullman, would largely abandon this restrained methodology, and instead ask "whether [Washington's] statute sets up one of those `arbitrary impositions' or `purposeless restraints' at odds with the Due Process Clause of the Fourteenth Amendment," post, at 1 (quoting Poe, 367 U.S. 497, 543 (1961) (Harlan, J., dissenting)). 17 In our view, however, the development of this Court's substantive due process jurisprudence, described briefly above, supra, at 15, has been a process whereby the outlines of the "liberty" specially protected by the Fourteenth Amendment--never fully clarified, to be sure, and perhaps not capable of being fully clarified--have at least been carefully refined by concrete examples involving fundamental rights found to be deeply rooted in our legal tradition. This approach tends to rein in the subjective elements that are necessarily present in due process judicial review. In addition, by establishing a threshold requirement--that a challenged state action implicate a fundamental right--before requiring more than a reasonable

decisions about how to confront an imminent death"), we were, in fact, more precise: we assumed that the Constitution granted competent persons a "constitutionally protected right to refuse lifesaving hydration and nutrition." Cruzan, 497 U.S., at 279 ; id., at 287 (O'Connor, J., concurring) ("[A] liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions"). The Washington statute at issue in this case prohibits "aid[ing] another person to attempt suicide," Wash. Rev. Code 9A.36.060(1) (1994), and, thus, the question before us is whether the "liberty" specially protected by the Due Process Clause includes a right to commit suicide which itself includes a right to assistance in doing so. 18

We now inquire whether this asserted right has any place in our Nation's traditions. Here, as discussed above, supra, at 4-15, we are confronted with a consistent and almost universal tradition that has long rejected the asserted right, and continues explicitly to reject it today, even for terminally ill, mentally competent adults. To hold for respondents, we would have to reverse centuries of legal doctrine and practice, and strike down the considered policy choice of almost every State. See Jackman v. Rosenbaum Co., 260 U.S. 22, 31 (1922) ("If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it"); Flores, 507 U.S., at 303 (%The mere novelty of such a claim is reason enough to doubt that `substantive due process' sustains it").

Respondents contend, however, that the liberty interest they assert is consistent with this Court's substantive due process line of cases, if not with this Nation's history and practice. Pointing to Casey and Cruzan, respondents read our jurisprudence in this area as reflecting a general tradition of "self sovereignty," Brief of Respondents 12, and as teaching that the "liberty" protected by the Due Process Clause includes "basic and intimate exercises of personal autonomy," id., at 10; see Casey, 505 U.S., at 847 ("It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter"). According to respondents, our liberty jurisprudence, and the broad, individualistic principles it reflects, protects the "liberty of competent, terminally ill adults to make end of life decisions free of undue government interference." Brief for Respondents 10. The question presented in this case, however, is whether the protections of the Due Process Clause include a right to commit suicide with another's assistance. With this "careful description" of respondents' claim in mind, we turn to Casey and Cruzan.

In Cruzan, we considered whether Nancy Beth Cruzan, who had been severely injured in an automobile accident and was in a persistive vegetative state, "ha[d] a right under the United States Constitution which would require the hospital to withdraw life sustaining treatment" at her parents' request. Cruzan, 497 U.S., at 269 . We began with the observation that "[a]t common law, even the touching of one person by another without consent and without legal justification was a battery." Ibid. W

person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions." Id., at 278. Therefore, "for purposes of [that] case, we assume[d] that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition." Id., at 279; see id., at 287 (O'Connor, J., concurring). We concluded that, notwithstanding this right, the Constitution permitted Missouri to require clear and convincing evidence of an incompetent patient's wishes concerning the withdrawal of life sustaining treatment. Id., at 280-281.

Respondents contend that in Cruzan we "acknowledged that competent, dying persons have the right to direct the removal of life sustaining medical treatment and thus hasten death," Brief for Respondents 23, and that "the constitutional principle behind recognizing the patient's liberty to direct the withdrawal of artificial life support applies at least as strongly to the choice to hasten impending death by consuming lethal medication," id., at 26. Similarly, the Court of Appeals concluded that "Cruzan, by recognizing a liberty interest that includes the refusal of artificial provision of life sustaining food and water, necessarily recognize[d] a liberty interest in hastening one's own death." 79 F. 3d, at 816.

The right assumed in Cruzan, however, was not simply deduced from abstract concepts of personal autonomy. Given the common law rule that forced medication was a battery, and the

The Court of Appeals, like the District Court, found Casey "`highly instructive'" and "`almost prescriptive'" for determining "`what liberty interest may inhere in a terminally ill person's choice to commit suicide'":

"Like the decision of whether or not to have an abortion, the decision how and when to die is one of `the most intimate and personal choices a person may make in a lifetime,' a choice `central to personal dignity and autonomy.' " 79 F. 3d, at 813-814.

Similarly, respondents emphasize the statement in Casey that:

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. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State. 505 U.S., at 851.

Brief for Respondents 12. By choosing this language, the Court's opinion in Casey described, in a general way and in light of our prior cases, those personal activities and decisions that this Court has identified as so deeply rooted in our history and traditions, or so fundamental to our concept of constitutionally ordered liberty, that they are protected by the Fourteenth Amendment. [19] The opinion moved from the recognition that liberty necessarily includes freedom of conscience and belief about ultimate considerations to the observation that "though the abortion decision may originate within the zone of conscience and belief, it is more than a philosophic exercise." Casey, 505 U.S., at 852 (emphasis added). That many of the rights and liberties protected by the Due Process Clause sound in personal autonomy does not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected, San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 33-35 (1973), and Casey did not suggest otherwise.

The 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. That being the case, our decisions lead us to conclude that the asserted "right" to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause. The Constitution also requires, however, that Washington's assisted suicide ban be rationally related to legitimate government interests. See Heller v. Doe, 509 U.S. 312, 319-320 (1993); Flores, 507 U.S., at 305. This requirement is unquestionably met here. As the court below recognized, 79 F. 3d, at 816-817, [20] Washington's assisted suicide ban implicates a number of state interests. [21] See 49 F. 3d, at 592-593; Brief for State of California et al. as Amici Curiae 26-29; Brief for United States as Amicus Curiae 16-27.

First, Washington has an "unqualified interest in the preservation of human life." Cruzan, 497 U.S., at 282. The State's prohibition on assisted suicide, like all homicide laws, both reflects and advances its commitment to this interest. See id., at 280; Model Penal Code § 210.5, Comment 5, at 100 ("[T]he interests in the sanctity of life that are represented by the criminal homicide laws are threatened by one who expresses a willingness to participate in taking the life of another"). [22] This interest is symbolic and aspirational as well as practical:

difficult for the State to protect depressed or mentally ill persons, or those who are suffering from untreated pain, from suicidal impulses.

The State also has an interest in protecting the integrity and ethics of the medical profession. In contrast to the Court of Appeals' conclusion that %the integrity of the medical profession would [not] be threatened in any way by [physician assisted suicide]," 79 F. 3d, at 827, the American Medical Association, like many other medical and physicians' groups, has concluded that "[p] physician assisted suicide is fundamentally incompatible with the physician's role as healer." American Medical Association, Code of Ethics 2.211 (1994); see Council on Ethical and Judicial Affairs, Decisions Near the End of Life, 267 JAMA 2229, 2233 (1992) ("[T]he societal risks of involving physicians in medical interventions to cause patients' deaths is too great"); New York Task Force 103-109 (discussing physicians' views). And physician assisted suicide could, it is argued, undermine the trust that is essential to the doctor patient relationship by blurring the time honored line between healing and harming. Assisted Suicide in the United States, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 104th Cong., 2d Sess., 355-356 (1996) (testimony of Dr. Leon R. Kass) ("The patient's trust in the doctor's whole hearted devotion to his best interests will be hard to sustain").

Next, the State has an interest in protecting vulnerable groups--including the poor, the elderly, and disabledpersons--from abuse, neglect, and mistakes. The Court of Appeals dismissed the State's concern that disadvantaged persons might be pressured into physician assisted suicide as "ludicrous on its face." 79 F. 3d, at 825. We have recognized, however, the real risk of subtle coercion and undue influence in end of life situations. Cruzan,

reasonably related to their promotion and protection. We therefore hold that Wash. Rev. Code 9A.36.060(1) (1994) does not violate the Fourteenth Amendment, either on its face or "as applied to competent, terminally ill adults who wish to hasten their deaths by obtaining medication prescribed by their doctors." 79 F. 3d, at 838. 24

* * *

Throughout the Nation, Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician assisted suicide. Our holding permits this debate to continue, as it should in a democratic society. The decision of the en banc Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered. !