IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CHARLES R. McNABB,	)	
	)	
Petitioner,	)	NO. 77359-9
	)	
v.	)	
	)	
DEPARTMENT OF CORRECTIONS, an agency of the state of Washington; JOSEPH D. LEHMAN, secretary of Department of Corrections, in his official capacity,	)	EN BANC
	)	
Respondents.	)	Filed April 10, 2008

FAIRHURST, J. – Charles R. McNabb seeks review of a published Court of Appeals decision affirming summary judgment in favor of the Department of Corrections (DOC). McNabb sued DOC and Joseph D. Lehman, secretary of DOC, in his official capacity (hereinafter collectively DOC), seeking to have DOC's force-feeding policy declared unconstitutional, illegal, and invalid as applied to him and to enjoin DOC from enforcing the policy. McNabb argues that he has a right to refuse

artificial means of nutrition and hydration arising independently from the explicit privacy guaranty in article I, section 7 of the Washington Constitution[1] and from his common law right to refuse medical treatment. He also argues the State may infringe that right only if it has a narrowly drawn compelling interest.

We conclude that an independent state constitutional analysis of the right to refuse artificial means of nutrition and hydration is warranted under article I, section 7. We also conclude that the State's interests in applying DOC's force-feeding policy to McNabb outweigh his right to refuse artificial means of nutrition and hydration. We affirm the Court of Appeals.

I. PROCEDURAL HISTORY

McNabb arrived at Airway Heights Corrections Center (AHCC) from the Spokane County Jail in July 2004, at which time he had not eaten voluntarily for over five months.[2] AHCC staff began to force-feed McNabb by nasogastric tube one or two days after he arrived because he refused food and drink. After DOC force-fed him for several days, McNabb agreed to eat on his own.[3] He has not been

[1]Article I, section 7 of the Washington Constitution states, "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law."

[2]The record is limited because the trial court granted summary judgment for the State sua sponte before the parties had an opportunity for discovery. McNabb states that he has not eaten voluntarily since February 5, 2004. McNabb also states that he was force-fed on one occasion while at Eastern State Hospital in either December 2003 or January 2004.

[3]The dissent begins, "Charles McNabb, while at Eastern State Hospital, was force-fed by a tube through his nose. He was strapped into a chair for 28 hours straight, during which time it

force-fed since.

McNabb filed suit in Spokane County Superior Court shortly after he began to eat on his own. He claimed that DOC's force-feeding policy violated his right to privacy under article I, section 7 and his common law right to be free of bodily invasion. He sought a declaratory judgment, preliminary injunction, consolidation of hearing on the merits, and summary judgment. DOC objected, arguing that McNabb was no longer being force-fed and that there had not been sufficient opportunity for discovery. At the hearing, the trial court concluded that the case involved only questions of law, found that McNabb did not have a right to refuse artificial means of nutrition and hydration while in state custody, and entered an order sua sponte granting summary judgment in favor of DOC.

McNabb appealed the trial court order to Division Three of the Court of Appeals, arguing that he has a fundamental constitutional right to refuse artificial means of nutrition and hydration arising under article I, section 7 and a common law

---

was impossible for him to sleep. From the force-feeding he suffered bleeding from the nose for a day, pain and nausea." Dissent at 1. The dissent leaves the impression that what allegedly occurred at Eastern State Hospital (ESH) five months prior to McNabb's arrival to AHCC is relevant to this case. It is not. McNabb challenges the constitutionality of the force-feeding policy at AHCC. There are no allegations against ESH. *See* Pet. for Review at 1-2; Br. of Appellant at 2. All McNabb says about DOC's force-feeding is "I arrived at Airway Heights Corrections Center on or about July 12, 2004. Within one or two days afterward, the medical staff inserted a tube through my nose and into my stomach to force-feed me. I was force-fed through the tube for several days." Clerk's Papers (CP) at 7.

right to determine what is done with his body. The Court of Appeals concluded that Washington precedent prohibiting "unconsented invasions of the body" does not support McNabb's claim that an inmate has a constitutional right to refuse artificial means of nutrition and hydration. *McNabb v. Dep't of Corrs.*, 127 Wn. App. 854, 858, 112 P.3d 592 (2005). It concluded there was no Washington case law suggesting that article I, section 7 provides greater protection to prison inmates than the federal constitution. *Id.* at 859. The court also concluded that the privacy right McNabb has to refuse artificial means of nutrition and hydration is not absolute and the court must balance the right against the State's interests in protecting life, preventing suicide, and preserving the internal order and discipline of the prison system. *Id.* at 859-60. It held that although DOC's force-feeding policy might violate McNabb's privacy right to refuse artificial means of nutrition and hydration, the State's interests outweigh his right. *Id.* at 861.

McNabb petitioned this court to determine whether he has a right to refuse artificial means of nutrition and hydration that arises independently from the privacy guaranty in article I, section 7 and whether the State can infringe on that right only if it has a narrowly drawn compelling interest. We granted review. *McNabb v. Dep't of Corrs.*, 156 Wn.2d 1016, 132 P.3d 734 (2006).

II. ISSUES

A. Should the court analyze the right to refuse artificial means of nutrition and hydration under article I, section 7 on independent state constitutional grounds?

B. Does article I, section 7 guarantee an otherwise healthy and competent inmate the absolute right to refuse artificial means of nutrition and hydration after he or she has engaged in a prolonged fast with the intent to die as a result?

C. Do the State's interests outweigh McNabb's right to refuse artificial means of nutrition and hydration?

III. STANDARD OF REVIEW

We normally review denial of an injunction for abuse of discretion. *State v. Kelley*, 77 Wn. App. 66, 69, 889 P.2d 940 (1995) (citing *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)). We review an order of summary judgment in a declaratory judgment action de novo and perform the same inquiry as the trial court. *Simpson Tacoma Kraft Co. v. Dep't of Ecology*, 119 Wn.2d 640, 646, 835 P.2d 1030 (1992). Facts and reasonable inferences are considered in the light most favorable to the nonmoving party and questions of law are reviewed de novo. *Coppernoll v. Reed*, 155 Wn.2d 290, 296, 119 P.3d 318 (2005).

IV. ANALYSIS

As a preliminary matter, we will define the terms used to describe the constitutional right at issue here. The dissent characterizes the right McNabb

asserts as the right to bodily integrity. Dissent at 6. McNabb describes his claim as the right of "bodily integrity" of which "the right to refuse artificial means of nutrition and hydration" is a subset. Pet. for Review at 4. Previously, we characterized the right to refuse nasogastric intubation as the right to refuse "artificial means of nutrition and hydration." *In re Guardianship of Grant*, 109 Wn.2d 545, 565, 747 P.2d 445, 757 P.2d 534 (1988). This right is subject to the same analysis used to examine the right to refuse life-sustaining medical treatment. *Id.* at 562. Consistent with the vernacular in *Grant*, we will refer to McNabb's asserted right as the right to refuse artificial means of nutrition and hydration.

McNabb claims that he has a right to refuse artificial means of nutrition and hydration but would have the court consider this issue in relative isolation of the circumstances that precipitated the involuntary nasogastric intubation. We think the events leading up to DOC applying its force-feeding policy bear significant import to the right being asserted. Prior to the medical intervention, McNabb fasted willfully for a period of five months. McNabb is not terminally ill or chronically debilitated by disease. However, he asks the court to allow him to refuse artificial means of nutrition and hydration so that his fast may "'take its course'" with the inevitable and intended consequence of death. Br. of Appellant at 2 (quoting

Clerk's Papers (CP) at 7). Accordingly, this opinion discusses the right to refuse artificial means of nutrition and hydration in the context of an inmate whose intentional acts procured the circumstances giving rise to the condition necessitating nasogastric intubation.

A. Should the court analyze the right to refuse artificial means of nutrition and hydration under article I, section 7 on independent state constitutional grounds?

McNabb argues that it is well established that he has a right to refuse artificial means of nutrition and hydration arising independently from the explicit privacy guaranty of article I, section 7 that is "far stronger than any in federal law." Pet. for Review at 5. To support this proposition, he cites a line of cases[4] in which he claims this court has held that individuals may refuse medical treatment, including artificial nutrition and hydration. DOC counters that no Washington court has previously considered the specific question of whether a right to refuse artificial means of nutrition and hydration arises independently from the privacy guaranty of article I, section 7 and urges us to hold that it does not.

When a party claims a provision of the state constitution provides greater

[4]*Grant*, 109 Wn.2d 545; *In re Welfare of Colyer*, 99 Wn.2d 114, 660 P.2d 738 (1983); *Smith v. Shannon*, 100 Wn.2d 26, 666 P.2d 351 (1983); *Keogan v. Holy Family Hosp.*, 95 Wn.2d 306, 622 P.2d 1246 (1980); *Ze Barth v. Swedish Hosp. Med. Ctr.*, 81 Wn.2d 12, 499 P.2d 1 (1972).

protection than a provision of the federal constitution, we conduct a two-step inquiry.

First, we determine whether an independent analysis of the state constitutional provision is warranted. As part of this inquiry, we ask whether it is settled law that an independent analysis should be conducted when interpreting the state constitutional provision. If so, we go to step two and proceed with our independent analysis. However, if it is not settled law that an independent analysis should be conducted--because we have not been asked or because we have historically followed federal precedent in interpreting a state constitutional provision--we will determine whether the state constitutional provision "should be given an interpretation independent from that given to the corresponding federal constitutional provision," but only if the parties brief the six nonexclusive factors set out in *State v. Gunwall*, 106 Wn.2d 54, 64, 720 P.2d 808 (1986). *State v. McKinney*, 148 Wn.2d 20, 26, 60 P.3d 46 (2002) (citing *Gunwall*, 106 Wn.2d at 64). The *Gunwall* factors include (1) the text of the state constitutional provision at issue, (2) textual differences between parallel state and federal constitutional provisions, (3) state constitutional and common law history, (4) preexisting state law, (5) structural differences between state and federal constitutions, and (6)

whether the case involves matters of particular state or local concern. 106 Wn.2d at 61-62.

If we determine an independent analysis is warranted, we next determine, in the second step of our inquiry, "whether the provision in question extends greater protections for the citizens of this state." *McKinney*, 148 Wn.2d at 26. This second analysis focuses on whether our state constitution provides greater protection of the claimed right in the particular context than the federal constitutional provision, and the scope of that protection.

For step one, we conclude that it is unnecessary to engage in a *Gunwall* analysis where prior case law employing *Gunwall* establishes that a certain state constitutional provision has an "independent meaning" from the federal constitution. *Id.* It is well settled that the privacy protections provided by article I, section 7 of the Washington Constitution have an independent meaning from that provided by the federal constitution. *Id.* (citing *City of Seattle v. McCready*, 123 Wn.2d 260, 267, 868 P.2d 134 (1994)). We have also recognized that "[i]t is by now commonplace to observe Const. art. 1, § 7 provides protections for the citizens of Washington which are qualitatively different from, and in some cases broader than, those provided by the Fourth Amendment." *McCready*, 123 Wn.2d at 267. In

accord with these cases, we conclude that it is unnecessary to engage in a *Gunwall* analysis to determine whether a claim under article I, section 7 warrants a constitutional analysis on independent state grounds.

At present, McNabb asserts his right to refuse artificial means of nutrition and hydration under article I, section 7 of the state constitution. Relying on our previous holdings, we conclude that an independent state constitutional analysis of the privacy protections contained in article I, section 7 is warranted. Next, we determine the second step of the inquiry, whether article I, section 7 extends greater protection than the federal constitution and the scope of that protection.

While Washington courts have recognized a competent individual's right to refuse artificial means of nutrition and hydration arising independently from article I, section 7 of the state constitution and from the common law informed consent doctrine, they have relied on the federal constitution for their analysis. *Grant*, 109 Wn.2d at 554. Federal courts have historically recognized a competent individual's right to refuse artificial nutrition and hydration under the specific guaranties in the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. *Cruzan v. Mo. Dep't of Health*, 497 U.S. 261, 279, 110 S. Ct. 2841, 111 L. Ed. 2d 224 (1990); *In re Welfare of Colyer*, 99 Wn.2d 114, 119-20, 660 P.2d 738 (1983). Federal courts

have also recognized a competent individual's right to refuse "life- sustaining treatment" deriving from the common law right to be free from bodily invasion and the informed consent doctrine. *Cruzan*, 497 U.S. at 270; *Colyer*, 99 Wn.2d at 121. Based on Washington courts' reliance on the federal constitution, we conclude the protection granted under article I, section 7 in this context is coextensive with, but not greater than, the protection granted under the federal constitution.

B. Does article I, section 7 guarantee an otherwise healthy and competent inmate the absolute right to refuse artificial means of nutrition and hydration after he or she has engaged in a prolonged fast with the intent to die as a result?

McNabb argues that he has an absolute right to refuse artificial means of nutrition and hydration under article I, section 7, even if refusal would result in his death. DOC responds that the right McNabb asserts does not exist. DOC argues that courts acknowledge the right to refuse artificial means of nutrition and hydration, but only when the individual is "in an advanced state of a terminal or incurable illness" or "suffering severe permanent mental or physical deterioration." DOC's Answer to Pet. for Review at 12. Because McNabb is neither, DOC argues that McNabb is asserting a right to commit suicide, something no court has ever recognized.

Washington courts have considered the right to refuse medical treatment,

including artificial nutrition and hydration, only in the context of nonincarcerated individuals who suffer from a terminal or debilitating condition.[5] In most of those cases, the individual's right has been upheld.[6] *Grant*, 109 Wn.2d at 565 (granting a mother's request to authorize future withholding of life sustaining procedures from her daughter who was suffering from a terminal illness, noting that we did not endorse suicide or euthanasia and withholding of treatment would not be the cause of death); *In re Guardianship of Ingram*, 102 Wn.2d 827, 829, 689 P.2d 1363 (1984) (reversing a trial court order imposing surgery rather than an alternative treatment for a woman with multiple physical ailments and malignant cancer of the larynx who opposed surgery to correct the cancer); *Colyer*, 99 Wn.2d at 123 (concluding there were "no compelling state interests opposing the removal of life sustaining mechanisms from [a patient in a chronic vegetative state] that outweighed

---

[5]The individuals' conditions in those cases varied, but all involved nonincarcerated individuals who had some form of terminal or debilitating condition. *See, e.g., Grant*, 109 Wn.2d at 556 (terminally ill and severely impaired both physically and mentally); *Colyer*, 99 Wn.2d at 120 (incurably and terminally ill); *Schuoler*, 106 Wn.2d at 507 (mentally ill). For the sake of brevity, we use the nonspecific phrase "terminal or debilitating condition" in the remainder of this opinion unless quoting or citing a source that describes the individual's condition with particularity.

[6]In only one case, the court concluded that the State's compelling interest in ordering electroconvulsive therapy (ECT) for a mentally disabled woman outweighed her right to refuse treatment. *Schuoler*, 106 Wn.2d at 508. While agreeing with prior Washington precedent that the woman had a right to be free from an unwanted ECT, the court nevertheless concluded that the State had a compelling interest in treating Schuoler because her repeated admissions to medical facilities created a financial burden for the State. *Id.* at 509.

her right to refuse such treatment").

When analyzing the scope of the right to refuse artificial means of nutrition and hydration as applied to nonincarcerated individuals, Washington courts have determined that the individual's right to refuse artificial means of nutrition and hydration is not absolute and that narrowly drawn, compelling state interests may outweigh that right. *In re Det. of Schuoler*, 106 Wn.2d 500, 508, 723 P.2d 1103 (1986) (citing *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973)). Compelling state interests include "(1) the preservation of life; (2) the protection of interests of innocent third parties; (3) the prevention of suicide; and (4) maintenance of the ethical integrity of the medical profession." *Colyer*, 99 Wn.2d at 122; *Ingram*, 102 Wn.2d at 842; *Schuoler*, 106 Wn.2d at 508; *Grant*, 109 Wn.2d at 556.

The question of whether an incarcerated individual not suffering from a terminal or debilitating condition has a right to refuse artificial means of nutrition and hydration is an issue of first impression for this court, and, therefore, both parties have turned to other jurisdictions to support their claims.

Six courts in other jurisdictions have expressly recognized that competent individuals who are incarcerated have a right to refuse artificial means of nutrition and hydration but the right is not absolute and must be balanced against the state's

interests. *People ex rel. Ill. Dep't of Corrs. v. Millard*, 335 Ill. App. 3d 1066, 782 N.E.2d 966, 970, 270 Ill. Dec. 407 (2003); *Singletary v. Costello*, 665 So. 2d 1099, 1104 (Fla. Dist. Ct. App. 1996); *Laurie v. Senecal*, 666 A.2d 806, 808-09 (R.I. 1995); *State ex rel. Schuetzle v. Vogel*, 537 N.W.2d 358, 360 (N.D. 1995); *In re Caulk*, 125 N.H. 226, 480 A.2d 93, 95 (1984); *State ex rel. White v. Narick*, 170 W. Va. 195, 292 S.E.2d 54, 57-58 (1982).[7] All of these courts concluded that inmates' rights are more limited than those of nonincarcerated individuals because courts must consider the state's additional interests related to incarceration. *Millard*, 782 N.E.2d at 970; *Singletary*, 665 So. 2d at 1104; *Senecal*, 666 A.2d at 808-09; *Schuetzle*, 537 N.W.2d at 360; *Caulk*, 480 A.2d at 95; *White*, 292 S.E.2d at 57-58.

In a similar vein, we have recognized that "'[t]here is no iron curtain drawn between the Constitution and the prisons of this country.'" *State v. Hartzog*, 96

[7]Two courts in other jurisdictions did not recognize the right of competent individuals to refuse artificial means of nutrition and hydration in analyzing the rights of inmates. *Commonwealth v. Kallinger*, 134 Pa. Commw. 415, 580 A.2d 887, 889-90 (1990); *Von Holden v. Chapman*, 450 N.Y.S.2d 623, 87 A.D.2d 66, 68-70 (N.Y. App. Div. 1982). Both courts focused their analysis on the right of an inmate to commit suicide rather than on the more generalized right to refuse medical treatment. *Kallinger*, 580 A.2d at 890-93; *Chapman*, 87 A.D.2d at 67-70. One court recognized an unspecified right to privacy and held that "'[t]he State has no right to monitor this man's physical condition against his will; neither does it have the right to feed him to prevent his death from starvation if that is his wish.'" *Zant v. Prevatte*, 248 Ga. 832, 286 S.E.2d 715, 716 (1982) (quoting superior court order).

Wn.2d 383, 391, 635 P.2d 694 (1981) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 555-56, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)). An individual retains a modicum of constitutional protection while incarcerated. However, "many rights and privileges are subject to limitation in penal institutions because of paramount institutional goals and policies." *Id*. (citing *Bell v. Wolfish*, 441 U.S. 520, 545-46, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979); *Wolff*, 418 U.S. at 555-56; *Rhodes v. Chapman*, 452 U.S. 337, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981)). Therefore, in accord with holdings from other jurisdictions, we conclude that McNabb retains a limited right of privacy, including the limited right to refuse artificial means of nutrition and hydration[8] subject to the goals and policies of the prison system.

C. Do the State's interests outweigh McNabb's right to refuse artificial means of nutrition and hydration?

DOC argues that because this case involves an inmate, we should consider the state interests recognized by the United States Supreme Court in *Turner v. Safley*, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987).[9] *Turner*

---

[8]The concurrence maintains that the Natural Death Act (NDA), chapter 70.122 RCW, affirmatively excludes the right of nonterminally ill individuals to refuse medical treatment. Concurrence at 3. The NDA concerns the right of adult individuals to refuse life sustaining treatment which "serves only to prolong the process of dying" given that the person's condition is terminal or permanent. RCW 70.122.020(9). McNabb endured a medical treatment that effectively saved him from the condition hastening his death, and therefore the NDA is inapplicable here.

[9]In *Turner*, prisoners claimed that a prison regulation was unconstitutional because it required prisoners to have a compelling reason and obtain the superintendent's permission before

acknowledged that while inmates retain their fundamental constitutional rights, difficulties inherent in prison administration diminish an inmate's rights. *Id.* at 84-85.

DOC urges the court to use the factors delineated in *Turner* to dispose of this case. However, *Turner* does not resolve the present dispute since it merely provided the framework for determining whether a prison regulation was reasonable on its face. The present claim does not involve a facial challenge to a prison policy. McNabb contests the constitutionality of the policy as applied to him. Therefore, the factors outlined in *Turner* do not assist the court with balancing the competing interests of McNabb and DOC. The twin principles set forth in *Turner* do inform the disposition of this case by identifying an additional state interest that should be considered when determining whether the State's interests prevail over the right to refuse artificial means of nutrition and hydration in the prison setting.

Turner calls for judicial deference to the decisions of prison administrators in light of their unique interest in maintaining security and day-to-day order. *Id.* at 85.

---

they could marry. 482 U.S. at 82. The court acknowledged that the right to marry was fundamental but held that it was appropriate to apply a lesser standard of review in evaluating the constitutionality of the prison regulation. *Id*. at 89. Unlike the strict scrutiny that is applied to violations of the fundamental rights of the nonincarcerated, *Turner* held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Id*.

In turn, Washington courts have adopted this basic premise when evaluating facial challenges to prison policies and regulations. *See In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 405, 978 P.2d 1083 (1999) (citing *Turner* for the proposition that Washington courts accord particular deference to the "professional expertise" of prison officials in "the day to day operation of prisons"); *Sappenfield v. Dep't of Corrs.*, 127 Wn. App. 83, 88, 110 P.3d 808 (2005) (citing *Turner* for the proposition that "[m]atters affecting a prison's internal security are generally the province of prison administrators, not the courts"); *In re Pers. Restraint of Arseneau*, 98 Wn. App. 368, 374-76, 989 P.2d 1197 (1999) (noting that the "lenient" reasonableness standard of *Turner* controls where prison security and administration motivate the policy or regulation at issue); *In re Pers. Restraint of Goulsby*, 120 Wn. App. 223, 231, 84 P.3d 922 (2004) (citing *Turner* for the proposition that "[t]he courts recognize that the prison system should not be micromanaged by the courts, particularly as to issues relating to prison security").

Consonant with *Turner* and the majority view amongst our sister states, we conclude that the unique demands of prison administration warrant judicial deference to prison administrative decisions. We hold that this principle should be considered in addition to the four established compelling state interests adopted by

Colyer when determining whether the right of an incarcerated individual to refuse artificial means of nutrition and hydration outweigh the State's interests. Therefore, the court will weigh McNabb's right to refuse artificial means of nutrition and hydration against the existence of *five* compelling state interests: (1) the maintenance of security and orderly administration within the prison system, (2) the preservation of life, (3) the protection of innocent third parties, (4) the prevention of suicide, and (5) the maintenance of the ethical integrity of the medical profession.

Applying the above interests to the facts of this case, we conclude that the State's interests in applying DOC's force-feeding policy to McNabb outweigh his right to refuse artificial means of nutrition and hydration.

First, the State has a compelling interest in maintaining security and orderly administration in its prison system. Prison administration is the unique province of the State and should be afforded due deference by the courts. *Turner*, 482 U.S. at 85; *see also Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 21, 978 P.2d 481 (1999) ("Judicial deference has been typically accorded to measures relating to prison management of inmate discipline and institutional security."). Further, state prisons occupy a caretaking role with respect to inmates. By statute, DOC must provide "basic medical services as may be mandated by the federal Constitution and

the Constitution of the state of Washington."[10] RCW 72.10.005. It follows that the courts should give prison officials due deference regarding the manner in which the officials carry out their mandate to provide medical services to incarcerated individuals.

McNabb was intubated pursuant to DOC policy that states, "[o]ffenders in total confinement shall be provided with the nutrition necessary to preserve their health and life" and that authorizes staff to force-feed an inmate under certain conditions.[11] CP at 22. Here, the DOC force-feeding policy as applied to McNabb promotes the State's mandate to provide basic medical services. Allowing McNabb to disrupt the policy is inimical to the State's interest in orderly prison administration.

[10]*See also Estelle v. Gamble*, 429 U.S. 97, 103, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976) (state must provide medical care for incarcerated individuals).

[11]First, the policy directs staff to identify inmates who are "at risk," based on two criteria:

1. When any staff member receives information that an offender has not participated in the food service program for more than 72 hours; or
2. When any staff member receives information that an offender is failing to participate in the food service program to the extent that the offender's health may be in jeopardy.

CP at 22. Second, if a staff member identifies an inmate as "at risk," the superintendent may transfer the inmate to a facility for medical treatment and medical staff is authorized to examine the inmate, encourage him or her to eat and drink voluntarily, and explain the medical risks of not eating and drinking. *Id.* at 23-24. Third, if the inmate continues to refuse food and drink, the policy authorizes the superintendent to approve force-feeding, based on a written determination by medical staff that the inmate's life or health is immediately threatened by the refusal of food and drink. *Id.* at 24.

McNabb argues that the dearth of evidence in the record regarding the effect of his fast on other inmates and prison staff precludes the court from concluding that his fast jeopardizes prison security and internal order. Conversely, DOC urges the court to adopt the position of other jurisdictions which recognize that it is likely that allowing an inmate to starve himself will give rise to internal disruptions.

Other jurisdictions have noted that they ordinarily defer to prison officials' expert judgment and that an inmate's death by starvation while in state custody can have an unpredictable negative effect on security and order in the prison. *Senecal*, 666 A.2d 809; *Commonwealth v. Kallinger*, 134 Pa. Commw. 415, 580 A.2d 887, 891 (1990). We agree. It is logical to infer that an inmate's slow death by starvation would have an unpredictable and deleterious effect on both prison staff and the prison population. Therefore, the State's interest in orderly prison administration is implicated by McNabb's refusal of artificial means of nutrition and hydration.

Second, the State has a strong interest in the preservation of life where medical treatment will in fact save the patient's life. *Colyer*, 99 Wn.2d at 123. This interest is weakened where medical treatment will simply prolong life and the treatment is highly invasive. *Id*. *Colyer*, for example, involved a patient in a

chronic vegetative state who required a respirator to breathe. *Id*. at 116. The court determined that the State's interest in the preservation of Colyer's life was weakened because the medical treatment merely prolonged her life by highly invasive means. *Id*. at 122-23.

McNabb argues that the State's interest in preserving his life is meaningless if it "denigrates" that life by imposing such an invasive procedure like force-feeding against his will. Br. of Appellant at 15. However, our case law compels a different conclusion. *Colyer* addressed the issue of removing life-*sustaining* treatment. Here, we examine the issue of refusing life-*saving* treatment. Unlike the patient in *Colyer*, McNabb does not suffer from a terminal condition and DOC's application of its force-feeding policy does not merely temporarily relieve a chronic condition but restores McNabb to a naturally healthy condition. Therefore, the State does have a compelling interest in preserving McNabb's life.

Third, the State has a compelling interest in protecting innocent third parties. Typically, the court considers the interests of the patient's dependents and family members. *See Colyer*, 99 Wn.2d at 123 (observing that the State did not have an interest in protecting third parties where the patient lacked children and her immediate family members supported the decision to withdraw life support); *In re*

President & Dirs. of Georgetown Coll., Inc., 118 U.S. App. D.C. 80, 331 F.2d 1000 (1964) (ordering a blood transfusion out of consideration for the patient's young child). Accordingly, McNabb is correct in his assertion that the State lacks a compelling interest on this count given that he has no dependents. Further, the court is not aware of any contesting family members.

Fourth, the State has a compelling interest in the prevention of suicide. In *Colyer*, we determined that removal of life support is not suicide. We concluded that death resulting from removal of life support is from "natural causes, neither set in motion nor intended by the patient." *Colyer*, 99 Wn.2d at 123; *Grant*, 109 Wn.2d at 564.[12] Therefore, the State lacks a compelling interest in the prevention of suicide where the patient would naturally die due to causes neither set in motion nor intended by the patient.

McNabb's actions fail to meet the two-part proviso set forth in *Colyer*. First, if DOC honored McNabb's refusal of artificial means of nutrition and hydration, McNabb would die by starvation--a force that he set in motion. Second, McNabb has made clear that he intends to die as a result of refusing artificial means of

[12]In *Colyer*, the patient lived in a chronic, vegetative state as a result of a cardiopulmonary arrest from which she suffered severe brain damage due to lack of oxygen for ten minutes. 99 Wn.2d at 116. In *Grant*, we determined that, absent medical intervention, the patient would die due to complications from Batten disease. 109 Wn.2d at 564. Under both of these circumstances, we concluded that the prevention of suicide was not a valid consideration.

nutrition and hydration. In the words of McNabb, "'[m]y only wish is for my personal decision not to eat to be respected and to be left in peace for my fast to take its course.'" Br. of Appellant at 2 (quoting CP at 7). Therefore, death resulting from McNabb's refusal of artificial means of nutrition and hydration will consummate his intent to die. Under these circumstances, the State has a compelling interest in preventing McNabb's intentional death.

Fifth, the State has a compelling interest in the maintenance of the ethical integrity of the medical profession. DOC argues that allowing McNabb to refuse artificial means of nutrition and hydration is tantamount to physician-assisted suicide and is therefore unethical. Br. of Resp't at 15. McNabb argues that involuntary nasogastric intubation violates medical ethics. Pet. for Review at 11-12. Previous cases have addressed this interest from the vantage point of whether a doctor may remove life support and still fulfill his or her ethical duty to preserve life. *Colyer*, 99 Wn.2d at 123; *Grant*, 109 Wn.2d at 557. In *Colyer* and *Grant*, we determined that a doctor's role in caring for a terminally ill patient could validly include facilitating the patient's comfort in light of the slight chance of survival apart from the life support. 99 Wn.2d at 123; 109 Wn.2d at 557.

Both *Colyer* and *Grant* are factually distinct from McNabb's circumstances.

McNabb is not terminally ill and artificial means of nutrition and hydration were the only means by which DOC could restore his health. Accordingly, we decline to place medical professionals in the ethically tenuous position of fulfilling the death order of an otherwise healthy incarcerated individual. Therefore, we conclude that here the State has a compelling interest in maintaining the ethical integrity of the medical profession.

Finally, we must determine whether DOC's force-feeding policy as applied to McNabb is narrowly drawn. The *Schuoler* court held that the imposition of invasive medical treatment upon an involuntarily committed patient was narrowly drawn where the treatment was "necessary and effective" to furthering an identified compelling state interest. 106 Wn.2d at 509. McNabb abstained from eating for five months preceding his arrival to AHCC. According to DOC policy, McNabb would have been identified as an at-risk inmate, informed of the adverse medical consequences of his actions, and encouraged to eat voluntarily. By itself, failure to eat is insufficient to justify force-feeding under this policy. If an inmate continues to refuse food and drink, as McNabb did, then medical staff must issue a written determination that the inmate's health is immediately threatened before the superintendent is authorized to approve force-feeding. McNabb does not present

any evidence that DOC deviated from its policy, and, therefore, we must assume DOC followed its own procedures. Under these conditions, DOC's application of the force-feeding policy was necessary and effective.

V. CONCLUSION

We conclude that it is well settled that the privacy guaranty contained in article I, section 7 of the state constitution warrants an independent state constitutional analysis of the right to refuse artificial means of nutrition and hydration. However, the protection afforded by the state constitution is coextensive with the federal constitution. We find that McNabb has a limited right of privacy as an incarcerated individual but the State's interests in orderly administration of the prison system, preservation of life, prevention of suicide, and maintenance of the ethical integrity of the medical profession outweigh McNabb's limited right. We affirm the Court of Appeals.

AUTHOR:
Justice Mary E. Fairhurst

WE CONCUR:

Justice Susan Owens

Justice James M. Johnson

Bobbe J. Bridge, Justice Pro Tem.