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OP-ED

## Pregnant and dead in Texas: A bad law, badly interpreted

Maintaining Marlise Munoz on machines, against an advance directive and the wishes of her family, violates her rights.

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Erick Munoz stands with a picture of his wife, Marlise, and son Mateo. (Ron T. Ennis / Associated Press / January 3, 2014)

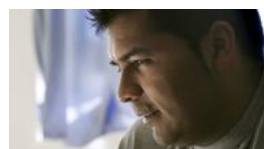
By Arthur L. Caplan and Thaddeus M. Pope  
*January 16, 2014*

Marlise Munoz is dead. Yet her body is in a hospital intensive care unit, maintained on a ventilator. Why?

The 33-year-old paramedic and mother of one from Fort Worth, Texas, apparently suffered a fatal pulmonary embolism in her home Nov. 26. She was found by her husband, Erick, who is also a paramedic, unconscious on their kitchen floor. She had lain there, not breathing, for some minutes. She was taken to nearby John Peter Smith Hospital, where doctors put her on ICU technologies, including a ventilator, and restored a heartbeat. But doctors



Case of brain-dead pregnant woman goes to Texas court



Marlise Munoz: Can a fetus survive after mother becomes brain-dead?

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In Jahi's case, past time for a reality check

soon determined that Munoz had suffered brain death, "irreversible cessation of all spontaneous brain function." She was dead. Her husband, accordingly, asked that all the machines be stopped.

The hospital staff refused. At the time, Munoz was 14 weeks pregnant. The hospital's position is that it has no choice but to maintain her body artificially. Texas law, hospital officials say, does not permit removing ICU technologies from a woman who is pregnant.

Every state permits individuals to specify, in advance of being incapacitated and critically ill, under what circumstances they want doctors to administer life-sustaining treatments. The Munozes, being familiar with life-support and resuscitation as paramedics, had done exactly that, a fact confirmed by their families. But a majority of states also have a limit on controlling one's life-support in advance when the patient is pregnant.

States take three main approaches to overriding a pregnant woman's autonomy. Five states create a presumption in favor of treatment that can be rebutted with a specific

advance directive. Fourteen require continued treatment if the fetus can develop to live birth or viability. Twelve, including Texas, categorically require continued treatment for all pregnant women, regardless of the wishes of the patient or her family or the viability of the embryo or fetus.

The Texas Advance Directives Act, Section 166.049, provides that "a person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient." The Texas law, like similar laws in other states, is almost always applied when the woman is incapacitated and terminally or irreversibly ill.

It does not, however, on any reading, apply to a pregnant patient who has died.

The Texas Advance Directives Act defines "life-sustaining treatment" as that which "sustains the life of a patient and without which the patient will die." Because Munoz has died, cardiopulmonary or any other form of support is not, and cannot be, "life-sustaining." The law requires only that a living pregnant woman be kept alive.

Given the clarity of this statutory language, it is hardly surprising courts have determined it inapplicable after a determination of death. For example, in a similar case in Houston, a Texas court ordered a hospital to continue treatment for a comatose Tammy Martin, who was then 15 weeks pregnant. But the court reversed the order, a few weeks later, once Martin had been declared dead.

Not only does the Texas law not apply, it is almost certainly unconstitutional.

The definition of pregnancy in the Texas law and the dozen others like it does not distinguish between being a day pregnant and being 8 1/2 months pregnant. Treating all instances of pregnancy as voiding a woman's right not to be treated is far too broad an intrusion on her autonomy, privacy and liberty.

And there is no guarantee that Munoz's fetus is either viable or healthy. Going without oxygen for a prolonged period not only gravely damaged Munoz but also may well have done great harm to her fetus. The Texas law, even when applied correctly, affords no choice in the face of uncertainty and doubt about the health of the fetus, which reasonable people might have.

Although the Texas law does not apply to pregnant patients who are dead, it does apply to those in a coma or a vegetative state. But should it? Lawsuits in Washington state and North Dakota have challenged similar statutes as unconstitutional in that they impose undue burdens on the right to terminate pregnancy, deprive women of liberty without due process in violation of the 14th Amendment, and discriminate on the basis of gender, in violation of the equal protection guarantee of the 4th Amendment. But because those cases were brought by healthy, non-pregnant women, the courts would not rule on them.

In contrast, Munoz's case provides an opportunity to overturn a bad law. Her husband filed suit Tuesday to force the hospital to honor her well-informed desire to refuse treatment. No one denies that she made her wishes known over and over again.

The only question in Fort Worth is who knows best what to do when a body is being used as an incubator for a nonviable and possibly damaged fetus: a woman and her family or the Legislature of Texas? The answer, in a state whose laws often stress the need to respect personal liberty, ought to be clear.

*Arthur L. Caplan is the director of medical ethics at NYU Langone Medical Center in New York. Thaddeus M. Pope is the director of the Health Law Institute at Hamline University School of Law in Minnesota.*

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**theantipalin** at 7:41 PM January 15, 2014

The right-wing loves to whine about the intrusions of government. This is obviously a huge intrusion in government into a decision that belongs only with the family. But Texas is run by men like Rick Perry, Ted Cruz and the dreadful Louis Gohmert. Disgusting.

**mg6ninety** at 7:25 PM January 15, 2014

Hopefully the baby will be delivered full term so that good can come out of all this trauma.

**AdamWickPrk1717** at 7:21 PM January 15, 2014

Arthur L. Caplan is a sick man. I have no respect of him as a person. Anyone who advocates for just letting a fetus die along with the mother, when saving it is possible has a truly warped, sick and twisted mind.

That's all.

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