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**Jeb Bush v. Michael Schiavo**

CHIEF JUSTICE: GOOD MORNING, LADIES AND GENTLEMEN, AND WELCOME TO THE FLORIDA SUPREME COURT . THE FIRST CASE THIS MORNING IS BUSH VERSUS SCHIAVO. ARE THE PARTIES READY ? ALL RIGHT. NOW , I UNDERSTAND THAT YOU ARE SPLIT BE YOUR TIME , AND YOU ARE GOING TO MAKE THE INITIAL ARGUMENT .

YES, YOUR HONOR.

CHIEF JUSTICE: ALL RIGHT. YOU MAY PROCEED. GO AHEAD.

THANK YOU, YOUR HONOR. MY NAME IS ROBERT DESTROW , HERE TO REPRESENT GOVERNOR BUSH IN THIS CASE AND WITH ME ARE KENNETH CONNOR, WHO WILL ARGUE IN REBUTTAL AND CAMIELLE GODWIN .

CHIEF JUSTICE: BEFORE YOU GET INTO YOUR ARGUMENT, THE COURT WOULD APPRECIATE IT IF, IF YOUR ARGUMENT, YOU WOULD ADDRESS THE SEPARATION OF POWERS, FIRST , WITH THE PRIVACY ARGUMENT , AND WITH WHATEVER FREE TIME YOU HAVE , YOU CAN ARGUE THE OTHER ISSUES.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. TERRI SCHIAVO DID NOT HAVE AN INDEPENDENT BENEFIT O F

JUSTICE WELLS : LET'S TRY TO GET INTO THE ARGUMENT ON SEPARATION OF POWERS. LET ME ASK YOU THIS. WOULD YOU AGREE THAT THE GOVERNOR DID NOT HAVE THE POWER TO ORDER A STAY ON OCTOBER 15 , 2003?

YOUR HONOR , NO , I THINK THE ORDER TO , THE STAY IS BASED ON THE ACT , YES , YOUR HONOR .

JUSTICE WELLS : SO THE GOVERNOR'S POWER TO ACT AND ENTER A STAY, CAME SOLELY FROM THE LEGISLATURE.

YES , YOUR HONOR. THE POWER OF PERINS PATRIATE

JUSTICE WELLS : IS THIS SOMETHING UNIQUE TO GIVE THE GOVERNOR THIS POWER OR COULD THE LEGISLATURE GIVE THE POWER TO YOU?

YES , YOUR HONOR , THE LEGISLATURE HAS GIVEN THE POWER T O ANY PERSON IN THE STATE OF FLORIDA, TO RAISE THE QUESTION OF THE RIGHTS OF A VULNERABLE ADULT IN AN APPROPRIATE COURT, AND THAT IS REALLY , ALL THIS ACT DOES .

JUSTICE WELLS : I HAVE GOT ONE MORE QUESTION ALONG THIS LINE. NOW , THIS LEGISLATION, THEN , THAT DELEGATED THIS POWER, IT DID IT TO INVOLVE, IN REALITY , A SINGLE CASE , CORRECT?

NO , YOUR HONOR. IT DID NOT .

JUSTICE WELLS : WELL , WHAT OTHER CASES WOULD MEET THE DESCRIPTION OF SOMEBODY THAT HAD THE COURT ORDER ED , THE WHOLE LINE OF THINGS THAT ARE IN THIS STATUTE , OTHER THAN THE PETITIONER IN THIS CASE?

WELL , YOUR HONOR , THE STATUTE, ITSELF , IS OPEN ENDED . CERTAINLY TERRI SCHIAVO FITS

WITHIN THE DESCRIPTION OF THE STATUTE , BUT IT WOULD BE A QUESTION OF FACT AS TO WHETHER OR NOT THERE ARE OTHER PEOPLE IN THE STATE OF FLORIDA , AT ANY GIVEN, DURING THE TIME THIS STATUTE WAS IN EFFECT , IT WOULD CERTAINLY BE A QUESTION OF FACT, AND THERE ARE OTHER PEOPLE WHO COULD FIT THAT DESCRIPTION.THE STATUTE IS VERY CLEAR ON ITS FACE , THAT YOU DON'T HAVE AN ADVANCED DIRECTIVE, THAT THE COURT HAS FOUND THAT , WHEN NUTRITION AND HYDRATION CAN BE WITHDRAWN, THERE COULD BE ANY NUMBER OF PEOPLE, AND IT WOULD BE A QUESTION OF FACT AS TO HOW MANY WERE IN THE STATE OF FLORIDA AT THAT TIME .

JUSTICE QUINCE : WOULDN'T THIS HAVE TO FIT INTO THIS 15-DAYTIME PERIOD? THIS ACT CAME INTO EFFECT ON A PARTICULAR DAY , AND 15 DAYS LATER , IT IS NO LONGER EFFECT, ISN'T THAT CORRECT?

YES , YOUR HONOR , THAT IS TRUE .

JUSTICE QUINCE : SO AS TO WHETHER SCHIAVO IS THE ONLY PERSON THAT MEETS THE CRITERIA OR SOME OTHER PEOPLE WITHIN THE STATUTE , IT WOULD HAVE TO BE WITHIN THAT SHORT, 15-DAYTIME PERIOD, THAT NOT CORRECT, AND THEY WOULD HAVE TO MEET EACH OF THE CRITERIA OUTLINED IN THAT STATUTE.

YES, YOUR HONOR , IF I CAN JUST ADD, THOUGH, IF THE LEGISLATURE , THE SEPARATION OF POWERS ISSUE THAT THE COURT IS RIGHTLY CONCERNED ABOUT , WOULD ALSO BE THE CASE, IF THE LEGISLATURE HAD AMENDED CHAPTER 765 AND PROVIDED THIS AS A PROCEDURE ACROSS THE BOARD , WHICH IT COULD DO, AFTER THIS CASE , WITH MR. CHIEF JUSTICE

WELL , NOW , LET'S WITH .

CHIEF JUSTICE: WELL , NOW , LET'S GET BACK TO THE ISSUE OF THE SEPARATION OF POWERS. ONE IS A CONSTITUTIONAL ISSUE, WHICH IS IF THIS IS AN UNLAWFUL DELEGATION OF UNFETTERED DISCRETION TO THE EXECUTIVE BRANCH AND THE SECOND ISSUE WE ARE TALKING ABOUT IS WHETHER , IF APPLIED TO TERRI SCHIAVO, IT IS A JUDICIAL BRANCH 'S FINAL ORDER GIVING THE GOVERNOR SUPER APPELLATE POWER , SO ON THE UNFETTERED DISCRETION ISSUE AND GOING BACK TO WHAT JUSTICE WELLS SAYS , ARE YOU SAYING THIS STATUTE COULD HAVE BEEN SET UP AND GIVEN THE POWER TO ISSUE THIS ONE-TIME STAY TO ANYBODY, ANY AGENCY IN THE EXECUTIVE BRANCH?

NO , YOUR HONOR. THE LEGISLATURE GAVE THIS POWER TO THE GOVERNOR, BECAUSE THE GOVERNOR , HISTORICALLY, STANDS IN THE ROLE OF PARENS PATRIAE, THE ULTIMATE DEFENDER OF CIVIL RIGHTS IN THE STATE OF FLORIDA , SWORN TO SEE THAT THE LAW IS FAITHFULLY EXECUTED.

CHIEF JUSTICE: SO WITH THAT , THE GOVERNOR WOULD BE THE ONLY PROPER PERSON THAT THE LEGISLATURE COULD GIVE THIS SUPER APPELLATE POWER OF REVIEW TO.

I WOULD ARGUE SOMEWHAT WITH YOUR CHARACTERIZATION THAT THIS IS A SUPER APPELLATE POWER. IN POINT OF FACT , YOUR HONOR, THIS IS THE OPPORTUNITY FOR THE GOVERNOR TO RAISE THE DUE PROCESS QUESTIONS ON BEHALF OF TERRI SCHIAVO , THAT THE ALLEGATION HERE IS THAT TERRI SCHIAVO WAS DENIED DUE PROCESS , IN THE PROCEEDINGS BELOW .

CHIEF JUSTICE: BUT IF THE GOVERNOR HAD TRIED TO INTERVENE IN THE ONGOING PROCEEDINGS AND RAISED SOME QUESTIONS AS AN INTERESTED PARTY , AS TO WHETHER TERRI SCHIAVO 'S DUE PROCESS RIGHTS HAD BEEN INTERFERED WITH, WE WOULD BE IN A DIFFERENT SITUATION.WHAT WE ARE HERE WITH IS THE ISSUE OF WHETHER THIS LAW IS FACIALLY UNCONSTITUTIONAL , BY GIVING THE GOVERNOR THE POWER TO ISSUE THIS ONE-TIME STAY BUT IT IS NOT REQUIRED TO DO SO , LIFT THE STAY AT ANY TIME , MAY DO SO , AND MAY REVOKE THE

STAY , ALL WITHOUT ANY STANDARDS .

WELL , YOUR HONOR , THIS IS THE PROBLEM THAT I HAVE WITH THAT PARTICULAR ARGUMENT , IS THAT THE , THIS LAW DOES NOT MAKE ANY SENSE , UNLESS IT IS READ IN PARI MATERIA , WITH CHAPTER 765 AND CHAPTER 744. IN FACT WE WOULD ARGUE THAT , IN POINT OF FACT THAT CONSTITUTIONALLY, IN ORDER TO GIVE PEOPLE WITH SEVERE DISABILITIES THE RIGHT TO QUESTION THE ADEQUACY OF THEIR REPRESENTATION BELOW , YOU HAVE TO READ THESE STATUTES IN PARI MATERIA.

IT IS IN PARI MATERIA .

JUSTICE CANTERO : IT IS NOT DESIGNED TO BE ADDED TO CHAPTER 765, IS IT?

NOT ADDED TO CHAPTER 765. IT IS ON ITS FACE .

JUSTICE CANTERO. IS IT ADDITIONAL LEGISLATION?

I THINK AT THIS TIME IT WAS DONE QUICKLY.

JUSTICE CANTERO : DID THE LEGISLATURE AMEND CHAPTER 765 TO ADD A NEW SECTION , WHICH IS THIS LAW?

I THINK YOU SHOULD READ IT THAT WAY , YES, BUT IT IS NOT ON THE FACE THOUGH .

JUSTICE CANTERO : I AM ASKING IF THE LEGISLATURE SAID IT WAS AMENDING CHAPTER 765 OR ANY OTHER NEW CHAPTER , BY EFFECTING THE LEGISLATION.

NO , YOUR HONOR , BUT WHAT IT PROVIDES IS TIED VERY CLEARLY TO 744 AND 765.

JUSTICE CANTERO : IS THERE ANY OTHER CASE BEFORE THIS COURT IN WHICH WE HAVE READ INTO AN ACT THAT IT AMENDS THE CHAPTER OF THE FLORIDA LAWS , WHEN IT DOESN'T SPECIFICALLY SAY SO?

YOUR HONOR , THIS COURT HAS SAID INFERRING YOU SON VERSUS STATE AND IN OTHER CASES, THAT WHEN THE FACE OF THE STATUTE SHOWS THAT IT IS CLEARLY RELATED TO OTHER STATUTES , IT SHOULD BE READ IN PARI MATERIA WITH THEM. IF IT IS CLEAR ON ITS FACE THAT IT CAN STAND ALONE , AND OUR ARGUMENT IS THAT IT SIMPLY CANNOT STAND ALONE.

CHIEF JUSTICE: IN TERMS OF THE PURPOSE OF LOOKING AT THIS LAW, AND I AM NOT SURE, WHEN WE GET INTO SEPARATION OF POWERS WHETHER THAT IS THE RELEVANT INQUIRY , BUT COULD YOU THEN ADDRESS, BECAUSE I KNOW THE WHOLE ARGUMENT IS THIS IS GIVING THIS PROTECTION. WHAT , WHERE THE 15-DAY EXPIRATION DATE , IN OTHER WORDS , AN IDEA THAT WE ARE GOING TO PROTECT A WHOLE CLASS OF DISABLED INDIVIDUALS , SEVERELY DISABLED INDIVIDUALS , WHO ALREADY HAVE BEEN FOUND TO BE IN A PERSISTENT VEGETATIVE STATE, WHO ALREADY HAVE HAD HYDRATION WITHDRAWN , AND , BUT IT ONLY LASTS FOR 15 DAYS?

WELL , YOUR HONOR , GIVEN THE NATURE OF THE , OF WHAT WAS GOING ON, NOT ONLY IN THIS CASE BUT IN ALL CASES IN WHICH NUTRITION AND HYDRATION IS WITHDRAWN , THERE IS A TEMPORAL IMPERATIVE THAT THERE BE AN ACTION BEFORE ALL THE CONSTITUTIONAL RIGHTS TO DUE PROCESS , EQUAL PROTECTION , AND PRIVACY ARE LOST .

JUSTICE QUINCE : ARE THERE ANY OTHER PLACES IN THE FLORIDA STATUTE, WHERE THE GOVERNOR HAS THIS KIND OF POWER TO STAY PROCEEDINGS?

WELL , YOUR HONOR , ACTUALLY THE GOVERNOR DOES HAVE THE POWER IN DEATH CASES, TO

STAY PROCEEDINGS .

JUSTICE QUINCE : YOU ARE TALKING ABOUT CHAPTER 92322.

YES, THE CLEM CHAPTER 922.

YES, THE CLEMENCY POWER .

JUSTICE QUINCE : AND IN CHAPTER 922 , AREN'T THEIR PROCEDURES THAT THE GOVERNOR HAS T O ABIDE BY , IF HE ENTERS A A STAY?

YES , YOUR HONOR , AND WE SAY THAT CHAPTER 744 AND 765 PROVIDE THE STANDARDS , BECAUSE THE GOVERNOR MAKES A DISCRETIONARY FINDING ABOUTWHETHER OR NOT HE FEELS PROBABLE CAUSE HAS BEEN MADE TO PUT A STAY I N .

JUSTICE QUINCE : UNDER THIS ACT, WHAT IS THE GOVERNOR REQUIRED TO DO? AS I READ IT, THE GOVERNOR ISN'T REALLY REQUIRED TO DO ANYTHING. THE STATE COULD STAY INDEFINITELY.

WELL , YOUR HONOR , AGAIN , THAT IS THE IMPORTANCE OF READING THIS, IN LIGHT OF CHAPTER 765 AND CHAPTER 744 , BECAUSE THE GOVERNOR TAKES , HE GOES AND HE ASKS THE CIRCUIT COURT FOR A GUARDIAN AD LITEM . THEY WADE FOR THE GUARDIAN AD LITEM TO COME BACK WITH THE REPORT. HE REPORTS BACK. THIS CASE HAS TO BE SEEN, IN LIGHT OF THE ONGOING GUARDIANSHIP JURISDICTION OF THE CIRCUIT COURT I AM SORRY. JUSTICE WELLS.

JUSTICE WELLS : LET ME GETBACK TO , ISN'T THE CARDINAL PRINCIPLE OF SEPARATION OF POWERS, SET FORTH BY, IN THE UNITED STATES SUPREME COURT , CASE , THIS BEN THRIFT CASE , WHICH SAYS THAT A LEGISLATURE , WITHOUT EXCEEDING ITS PROVINCE, CANNOT REVERSE A DETERMINATION , ONCE MADE IN A PARTICULAR CASE , THOUGH IT MAY PRESCRIBE A NEW RULE FOR FUTURE CASES. AND ISN'T WHAT, IN REALITY , WHEN THIS IS ALL BOILED DOWN TO, THE LEGISLATURE STEPPEDIN HERE AND REVERSED A DECISION THAT WAS FINAL IN A SPECIFIC CASE?

NO , YOUR HONOR, IT DIDN'T H IN FACT, THE FACE OF THE STATUTE MAKES IT VERY CLEAR THAT THE LEGISLATURE PROVIDED A RULE , A PROSPECTIVE RULE O F PROCEDURE, THAT WOULD TAKE PLACE AFTER THE MANDATE WAS CARRIED OUT. IT DID NOT , LIKE IN PLOAUT , GO BACK AND ISSUE A RULE THAT WAS IN PLACE. THE MANDATE WAS CARRIED OUT , AND WHAT IT DID WAS ENACT A PROCEDURAL RULE , THE PROCEDURAL PROS ES WAS GOING PROCESS THAT WAS GOING FORWARD THAT DID NOTHING TO EMPOWER THE COURT.

CAN WE EXPLORE THE PARAMETERS FOR YOUR ARGUMENT , AND CERTAINLY WE HAVE GOT A SET OF FACTS THAT WE ARE DEALING WITH HERE, BUT WOULD THE LEGISLATURE HAVE THE POWER TO DELEGATE TO THE GOVERNOR, THE ABILITY TO SET ASIDE ANY CIVIL JUDGMENT , ON THE BASIS OF THE GOVERNOR'S VIEW , THAT DID NOT MEET DUE PROCESS REQUIREMENTS ? A CIVIL MONETARY DAMAGES , CASES INVOLVING FAMILY LAW , THAT THE JUDGE DID NOT ADEQUATELY PROTECT THE CHILDREN I N THIS, THE WAY THAT CUSTODY WAS HANDLED. WOULD YOU EXPLORE FOR US, THE PARAMETERS . I MEAN, WHAT ARE WE OPENINGUP HERE, IF WE START TALKING ABOUT THIS? HOW BROAD IS THIS O R HOW NARROW IS IT?

ACTUALLY, YOUR HONOR, I THINK THIS IS A VERY NARROW PRINCIPLE, BECAUSE WHAT WE ARE DEALING WITH HERE IS THE FULL IMPLICATIONS OF THE BROWNING DECISION, WHERE THIS COURT HELD THAT , AN INCOMPETENT PERSON HAS THE SAME RIGHTS THAT A COMPETENT PERSON HAS , AND EVENTUALLY THIS CASE WAS GOING TO HAVE TO COME UP , BECAUSE SOMEBODY , AND IF IT IS NOT GOING TO BE THE GOVERNOR , AND I THINK IT IS A RATIONAL CHOICE FOR THE LEGISLATURE TO MAKE , TO SAYTHAT THE GOVERNOR CAN STAND IN THIS PERSON'S SHOES AND ASSURE AND TO RAISE THEQUESTIONS , WAS THERE ADEQUATE REPRESENTATION IN THE COURT BELOW .

CHIEF JUSTICE: THE ACT DOES NOT EVEN REQUIRE THE GOVERNOR TO TAKE INTO ACCOUNT THE PATIENT'S WISHES , WHICH YOU WOULD AGREE THAT, WHAT THE UNDERLYING LITIGATION WAS , THAT WENT OVER A SIX-YEAR PERIOD, WAS TO DETERMINE WHAT TERRI SCHIAVO 'S WISHES WOULD HAVE BEEN , I F SHE WERE IN A POSITION TO ASSERT THEM , AT THE TIME THAT THE FINAL JUDGMENT WAS ENTERED. DO YOU AGREE WITH THAT , THAT WE ARE NOT LOOKING AT WHAT IS IN THE BEST INTEREST OF AN ADULT , BUT WHAT IS , WOULD BE THEIR WISHES. DO YOU AGREE WITH THAT?

WELL , YOUR HONOR , THE GOVERNOR MR. CHIEF JUSTICE

THAT IS GOVERNOR :

CHIEF JUSTICE: THAT IS WHAT BROWNING SAYS?

YES, YOUR HONOR, THE GOVERNOR IS SWORN TO UPHOLD THIS COURT'S RULING IN BROWNING AND CHAPTER 765 , AND MUST MAKE SURE THAT TERRI 'S RIGHTS ARE PROTECTED .

CHIEF JUSTICE: WHERE IS THAT STATED WITHIN THE CONFINES OF THE LAW THAT WAS ENACTED BY THE LEGISLATURE , AND THAT GETS ME BACK TO THE ISSUE OF UNFETTERED DISCRETION. THERE IS NO STANDARDS NEWYORK CITY REQUIREMENT THAT STANDARDS BE PROMULGATED . THERE IS NO LENGTH OF TIME THAT THE STAY REMAINS IN EFFECT , AND ESSENTIALLY , THERE IS NO INDIVIDUAL OR ENTTY THAT CAN OVERRULE THAT STAY NO INDIVIDUAL OR ENTITY THAT CAN OVERRULE THAT STAY .

YOUR HONOR , THIS IS WHERE WE WOULD ARGUE THE CONSTITUTIONAL READING O F PARI MATERIA , WITHIN 765, BECAUSE THAT DOES PROVIDE THE STANDARDS.

CHIEF JUSTICE: BUT 765 IS THE STANDARD THAT WAS FOLLOWED, THAT WAS ENACTED BY THE LEGISLATURE , THAT WAS NOT AMENDED I N THE LAST LEGISLATIVE SESSION, IT THAT GIVES A VERY , VERY SUBSTANTIAL PROCEDURE , WHEN INDIVIDUALS WANT TO CHALLENGE THE DECISION OF A PROXY. AND THERE HAS BEEN NO ALLEGATION THAT THAT PROCEDURE WAS NOT SCRUPULOUS LY ADHERED TO IN THE CASE OF TERRI SCHIAVO .

BUT , YOUR HONOR , IN THIS CASE, TERRI SCHIAVO 'S PROXY WAS THE JUDGE, AND THE DIFFICULTY WITH THE , WITH THAT PROCEDURE , IS THAT TERRI SCHIAVO IS NOW THE GOVERNOR AND TERRI SCHIAVO , WHO I S STANDING IN HER SHOES UNDER THE STATUTE, IS FORCED TO LITIGATE AGAINST THE JUDGE, WHICH THIS COURT SAID IN TW, IN FOOTNOTE THREE, IS ABSOLUTELY INTOLERABLE , AS A MATTER OF DID DUE PROCESS , SO THAT THE AS A MATTER OF DUE PROCESS , SO THAT THIS IS REALLY WHERE THOSE STATUTES FIT TOGETHER . I KNOW I AM INTO M Y REBUTTAL TIME. THANK YOU , YOUR HONOR .

CHIEF JUSTICE: THANK YOU VERY MUCH. AND MR . GOULD .

FELOS .

JUSTICE CANTERO : MR . FELOS, COULD YOU FOLLOW-UP WITH THAT RESPONSE , BECAUSE IT DOESN'T ADDRESS THE PROXY AND THE PROXY MAKING THE DECISION. COULD YOU ADDRESS THE ARGUMENT THAT, IN THIS CASE THE JUDGE BECAME THE PROXY ?

JUSTICE ANSTEAD : COULD YOU FIRST INTRODUCE YOURSELF , THOUGH, AND TELL US WHO YOU ARE REPRESENTING. TIME GEORGE FELOS , COUNSEL FOR MICHAEL SCHIAVO , H ERE THIS MORNING WITH CO-COUNSEL MARSHAL RANDALL, THE DIRECTOR OF THE AMERICAN CIVIL LIBERTIES UNION OF FLORIDA AND ALSO COOPERATING COUNSEL WITH THE FLORIDA ACLU , AND ON BEHALF OF MY CLIENT, WE DID WANT TO THANK THE COURT FOR ACCEPTING THE BYPASS

CERTIFICATION AND CONSIDERING EXPEDITED CONSIDERATION OF THIS CASE , AND IN ANSWER TO YOUR QUESTION, IT SEEMS TO ME THAT, IF YOU READ THE BRIEFS TO INVOKE THIS COURT'S DISCRETIONARY JURISDICTION , IN SCHIAVO ONE , THESE ARE THE QUESTIONS THAT WE ARGUED. THOSE WERE THE ARGUMENTS OF TERRI 'S PARENTS, IN SEEKING REVIEW OF THE INITIAL SCHIAVO ONE DECISION. OR THE DUE PROCESS RIGHTS OF THE WARD AFFECTED BY THE TRIAL JUDGE HAVING A , IN ESSENCE , ACTING AS A PROXY, AND OBVIOUSLY THIS COURT DIDN'T THINK SO , THREE YEARSAGO , B Y ELECTING NOT TO TAKE ITS DISCRETIONARY JURISDICTION, AND I JUST WANT T O HIGHLIGHT, IN ESSENCE WHAT THE GOVERNOR I S TRYING TO DO IN THIS CASE , IS RELITIGATE AND FORCE A READJUDICATION O F TERRI SCHIAVO 'S RIGHTS , WHICH HAVE ALREADY BEEN FULLY AND FINALLY LITIGATED IN THE COURTS OF THE STATE .

CHIEF JUSTICE: THE PROCEDURE THAT WAS FOLLOWED WAS THE PROCEDURE AS SET FORTH IN BROWNING AND THEN SUBSEQUENTLY PUT INTO STATUTORY FORMAT LIE THE LEGISLATURE , WHICH -FORMAT , BY THE LEGISLATURE, WHICH ANTICIPATES THAT, IF THEREIS A DISPUTE BETWEEN THE PARTIES THAT, THE JUDGE WOULD SET FORTH A DECISION, BUT PROSPECTIVELY, THE LEGISLATURE DETERMINED THAT THERE SHOULD BE A PROCEDURE THAT, SAY , TAKES THE INITIAL ASPECT OF THIS VERY , VERY PRIVATE DECISION , OUT OF THECOURT , AND STARTS WITH SOME ADMINISTRATIVE PROCESS , AND REQUIRES THERE BE A GUARDIAN AD LITEM APPOINTED FOR AN INCOMPETENT ADULT. WOULD YOU SEE ANY CONSTITUTIONAL INFIRMITY IN SUCH AN ACT , AND HOW DOES THIS, WHAT WE HAVE IN FRONT OF US , DIFFER FROM THAT?

YES , YOUR HONOR. I WOULD SEE CONSTITUTIONAL INFIRMITY, FOR A NUMBER OF REASONS. FIRST OFF , FROM THE ASPECT OF THE CONSTITUTIONAL RIGHTTO PRIVACY HERE , THE VIOLATION HERE , IS TAKING FROM THE PATIENT AND GIVING TO THE STATE , THE POWER TO MAKE MEDICAL TREATMENT CHOICES , AND IF YOU ARE CONTEMPLATING A PROCEDURE IN WHICH THE CURRENT FORMAT OF HAVING A GUARDIAN , A SPOUSE , AN ADULT CHILD , CLOSE FAMILY MEMBERS , MAKE A DECISION FOR AN INCAPACITATED PATIENT , AND YOU REMOVE THAT , AND GIVE THAT DECISION-MAKING TO THE STATE , EVEN IF IT IS IN THE CONTEXT OF A LEGISLATIVE SCHEME, YES , I THINK THERE ARE PROBLEMS .

CHIEF JUSTICE: BUT ISN'T THAT WHAT WE DO WITH THE DEPARTMENT OF CHILDREN AND FAMILIES? IN OTHER WORDS, WHEN WE ARE IN A SITUATION WHERE WE ARE CONCERNED WHETHER THE RIGHTS OF AN INDIVIDUAL WHO CANNOT EXPRESS HIMSELF O R HERSELF, EITHER BY MINORITY OR B Y INCOMPETENCY, THE IDEA OF HAVING ADDITIONAL PROCEDURES TO MAKE SURE THAT THE STATE'S INTEREST IN PRESERVING LIFE , IS HONORED , AND THAT IS, THAT IS THE NORM , WHY WOULDN'T A PROCEDURE LIKE THAT BE APPROPRIATE , AND ISN'T THAT WHAT THEY ARE TRYING TO DO , MAYBE BE LATEEDLY , IN THIS SITUATION ?

YOUR HONOR, I WOULD DISAGREE THAT THAT IS WHAT THEY ARE TRYING TO DO BE LATELY . IT IS OBVIOUS HERE THAT , THE INTENT OF THE LEGISLATUREHERE WAS TO OVERTURN A FINAL JUDGMENT OF A COURT OF THIS STATE THAT THEY WERE PARTICULARLY DISPLEASED WITH, BUT GETTING BACK TO YOUR QUESTION, YOUR HONOR , A GUARDIAN IS ALREADY APPOINTED UNDER CHAPTER 765 , AND WHEN YOU ASK , IF YOU ASKCAN WE TAKE AN ADMINISTRATIVE , AN ADMINISTRATION OF A PATIENT'S CONSTITUTIONALRIGHTS OR DISPUTE AND TAKE IT OUT OF THE COURT SYSTEM INTO ANOTHER FORUM , I GUESSI WOULD WANT TO KNOW WHAT TYPE OF FORUM THERE IS AND WHO THE DECISION-MAKER IS. YOU KNOW, YOU HAVE TO REMEMBER THESE ARE INTENSELY PERSONAL AND PRIVATE RIGHTS WE ARE TALKING ABOUT HERE .

JUSTICE WELLS : LET ME ASKYOU , YOUR OPPONENTS MAKE THE POINT THAT WE ARE NOT REALLY , THOUGH, TALKING ABOUT A JUDGMENT WHICH WAS FINAL , SINCE THIS ISSUE IN THIS GUARDIANSHIP , IS NOT FINAL, AS LONG AS MS. SCHIAVO IS STILL ALIVE. NOW , WHAT IS YOUR ANSWER TO THAT , THAT THIS IS ALWAYS A PROSPECTIVE TYPE OF SITUATION?

YOUR HONOR , THIS IS A FINAL JUDGMENT FOR A NUMBER OF REASONS. NUMBER ONE , IT WAS A

FINAL STATEMENT OR FINAL WORD OF THE COURT SYSTEM OF THE STATE OF FLORIDA . IT WAS ACKNOWLEDGED BY THE COURT OF APPEAL MANY TIMES , AS A FINAL JUDGMENT . ALSO APPEALED AS A FINAL JUDGMENT. BUT THE FACT , YOUR HONOR , THAT UNDER OUR SYSTEM OF JUSTICE UNDER THE RULES OF PROCEDURE , A FINAL JUDGMENT CAN BE VACATED UNDER CERTAIN GROUNDS AND THIS GROUND AND THE PURPORTED GROUNDS HERE IS RULE 1.540-B-5 , THE FACT THAT A FINAL JUDGMENT COULD BE VACATED IN THE FUTURE , DOESN'T MAKE IT ANY LESS FINAL FOR SEPARATION OF POWERS. TO FOLLOW THAT LOGIC, YOUR HONOR , EVERY CIVIL JUDGMENT IN THIS STATE WOULD NO LONGER BE FINAL AND SUBJECT TO LEGISLATIVE RESCINDMENT , BECAUSE IT COULD BE VACATED , POTENTIALLY VACATED UNDER RULE 1.540-B-5.

DID THE GOVERNOR FILE A MOTION

JUSTICE CANTERO : COULD THE GOVERNOR FILE A MOTION UNDER RULE 1.540 RIGHT NOW , SAYING THE CIRCUMSTANCES HAVE CHANGED OR THERE IS NEW EVIDENCE?

YOUR HONOR , I DON'T BELIEVE SO. I BELIEVE THAT 1.540-B-5 , IS CONCERNED AND PERTAINS TO PARTIES IN THE CASE , BUT I , ALSO , DID , BECAUSE IT IS A VERY IMPORTANT POINT AS TO WHETHER THIS IS A FINAL JUDGMENT, BECAUSE THAT TRIGGERS THE SEPARATION OF POWERS ANALYSIS , YOUR HONOR , YOUR HONOR BROUGHT UP THE ANALOGY OF A CHILD CUSTODY CASE. IT IS VERY TRUE THAT, IN A FAMILY LAW SITUATION , WHEN A JUDGE AWARDS A CUSTODY OF A MINOR CHILD TO ONE PARENT , THAT BECOMES A FINAL JUDGMENT . IT CAN BE APPEALED , BUT THE TRIAL COURT OR THE FAMILY LAW COURT RETAINS JURISDICTION OVER THAT CASE , OVER THAT CHILD , UNTIL THE CHILD REACHES EMANCIPATION , AND UNDER THAT THEORY , BECAUSE THE TRIAL COURT COULD ADDRESS THE CUSTODY ISSUE AT SOME TIME IN THE FUTURE , IF WE ARE SAYING THAT IS NOT A FINAL JUDGMENT , THEN THE SEPARATION OF POWERS PROTECTION, THE FIREWALL OF SEPARATION OF POWERS, IS ERADICATED IN FAMILY LAW CASES, AND THAT IS CERTAINLY NOT THE LAW OF THIS STATE .

JUSTICE CANTERO : CAN YOU ADDRESS THE GOVERNOR'S ARGUMENT OR COUNTERARGUMENT TO THAT , THAT HE IS NOT BOUND BY THAT , IF IT IS A JUDGMENT, HE IS NOT BOUND BY THAT JUDGMENT BECAUSE HE WASN'T A PARTY TO THAT PROCEEDING AND THEREFORE COLLATERAL ESTOPPEL OR RACE JUDICATA PRINCIPLES DO NOT HAVE TO APPLY TO HIM .

IT IS A RED HERRING , YOUR HONOR , BECAUSE THE FACT THAT HE WAS NOT A PARTY TO THE JUDGMENT, DOES NOT ALTER THE FACT THAT THE JUDGMENT WAS ENTERED, AND IF WE FOLLOW THAT LOGIC , WELL , THE GOVERNOR FOR SEPARATION OR THE LEGISLATURE CAN RESCIND JUDICIAL JUDGMENTS , TO WHICH THE LEGISLATURE OR GOVERNOR WERE NOT A PARTY, WELL , THEN, THE VAST MAJORITY OF JUDGMENTS WOULD BE SUBJECT TO LEGISLATIVE RESCINDMENT .

JUSTICE QUINCE : IF THE GOVERNOR CANNOT INTERVENE , BASED ON RULE 1.540 , IS THERE ANY PROCEDURE WHICH THE GOVERNOR COULD, IN FACT, HAVE INTERVENED IN THIS PROCEEDING?

I DON'T BELIEVE SO, YOUR HONOR , BUT THE STATE'S INTERESTS ARE PROTECTED IN THESE CASES. IF YOU READ BROWNING , IF YOU READ THE DUBRIEL DECISION , THE ONES DECISION , THIS COURT WAS VERY CLEAR TO SAY AND IT AROSE IN THE CONTEXT OF A HEALTH CARE PROVIDER. IF A HEALTH CARE PROVIDER DISAGREES WITH THE PATIENT'S MEDICAL TREATMENT CHOICE , DO THEY HAVE STANDING TO CONTEST IT IN COURT? THIS COURT SAID NO, WHAT THE HEALTH CARE PROVIDER WOULD HAVE TO DO IS GO TO THE STATE ATTORNEY AND GIVE THIS INFORMATION TO THE STATE ATTORNEY, AND IT WOULD BE UP TO THE STATE ATTORNEY TO DECIDE WHETHER TO INTERVENE IN A PARTICULAR CASE. SO IT IS NOT TO SAY THAT THE STATE'S INTERESTS IN PRESERVING LIFE OR WHATEVER INTERESTS THEY MIGHT ASSERT, CANNOT BE ADDRESSED, BUT NOT BY THE GOVERNOR .

JUSTICE CANTERO : CAN I ASK A QUESTION , IN THE SECOND DCA'S OPINION OF JULY '01 , IT

REFERS SPECIFICALLY TO THE ORDER IN THE TERMS OF A MANDATORY INJUNCTION AND NOT AS A FINAL JUDGMENT, AND IT SAYS UNTIL THE LIFE PROLONGING PROCEDURES ARE DISCONTINUED, SUCH AN ORDER IS ENTIRELY EXECUTOR I AND AWARDED T O THE GUARDIAN TO BE UNDER THE JURISDICTION AND SUPERVISION OF THE GUARD JAN SHIP GUARDIANSHIP COURT , AND IT I S SUBJECT TO RECALL. ADDRESS THAT IN FINALITY .

YOUR HONOR , IN THE SECOND DISTRICT OPINION, IT SPECIFICALLY REFERS TO THE ORDER OF THE GUARDIANSHIP AS A FINAL ORDER , AND THE SECOND DISTRICT ALSO SAID THE PROCEDURE BY WHICH THAT ORDER COULD BE REOPENED , IS THE 1.540-B-5 PROCEDURE, AND I THINK IT IS ABSOLUTELY EXTRAORDINARY FOR THE GOVERNOR TO ARGUE THAT THE LEGISLATURE , IN 18 HOURS AND THE GOVERNOR IN A MATTER OF HOURS , SOMEHOW POSSESSES SOME INHERENT WISDOM IN , REGARDING THE MATTERS OF TERRI SCHIAVO , THAT COULD NOT HAVE BEEN ASCERTAINED BY THE JUSTICES OF THIS STATE IN OVER A SIX -YEAR PERIOD , AND

JUSTICE WELLS : LET'S APPROACH THAT.ARE YOU SUGGESTING

JUSTICE LEWIS : LET'S ADDRESS THAT . WE HAVE NUMEROUS CHILDREN IN THIS STATE THAT CANNOT MAKE DECISIONS FOR THEMSELVES. ARE YOU SUGGESTING THAT THE LEGISLATURE CANNOT COME IN AND PLACE SAFEGUARDS TO PROTECT THE WELL-BEING AND THE VIRTUAL LIFE OF THESE DISABLED CHILDREN?

ABSOLUTELY NOT, BUT TERRI SCHIAVO , TERRI SCHIAVO WAS A COMPETENT ADULT, WHO EXPRESSED MEDICAL TREATMENT CHOICES .

JUSTICE LEWIS : YOU ARE GOING INTO PROCEDURE. ARE YOU SUGGESTING THAT THE LEGISLATURE COULD NOT PROHIBIT THIS KIND OF PROCEDURE , THAT YOU MUST HAVE SOMETHING IN WRITING , YOU MUST HAVE A PROCEDURE OTHER THAN SOMEONE'S FRIEND COMING IN AND EXPRESSING WHAT THIS EVENING THE PERSON WANTS? WE DIDN'T HAVE THE TESTIMONY OF MS. SCHIAVO IN THIS CASE , DID WE? IT WAS ALL TESTIMONY OF OTHER INDIVIDUALS.

OF OTHER INDIVIDUALS.

JUSTICE LEWIS : AND THAT WOULD NOT ALWAYS BE THE CASE , WOULD IT NOT , WITH INCOMPETENCE OF DISABLED CHILDREN IN THIS STATE?

YOUR HONOR, IF THE LEGISLATURE AMENDED CHAPTER 765 AND SAID WE ARE NOT GOING TO PERMIT REMOVAL OF ARTIFICIAL LIFE-SUPPORT , UNLESS SOMEBODY HAS A WRITTEN ADVANCE DIRECTIVE, NO, THAT LAW WOULD BE UNCONSTITUTIONAL, BECAUSE THIS COURT HAS DECLARED, IN THE BROWNING CASE THAT , IN ORDER T O , IN ORDER TO RECOGNIZE AND IMPLEMENT AN INDIVIDUAL 'S RIGHT OF PRIVACY , ORAL DECLARATIONS ARE SUFFICIENT TO ESTABLISH, AS LONG AS THEY ARE BY CLEAR AND CONVINCING EVIDENCE, THE INTENT O F THE PATIENT, SO SUCH A LEGISLATIVE ENACTMENT IN THAT CASE , IN MY OPINION WOULD BE UNCONSTITUTIONAL .

JUSTICE LEWIS : SO YOUR ARGUMENT IS THE LEGISLATURE WOULD ACT CONTRARY TO THE WAY A JUDICIAL SYSTEM HAS INTERPRETED A PRIVACY RIGHT. THAT IS THE FUNDAMENTAL BASIS OF YOUR ARGUMENT THEN.

I WOULD SAY , YOUR HONOR , THAT THE BROWNING CASE PROVIDES THE MINIMUM RIGHT OF PRIVACY THAT A PATIENT IS ENTITLED TO. AND THE LEGISLATURE MAY CERTAINLY LEGISLATE I N THE FIELD , TO PROTECT THE PUBLIC AND TO MAKE SURE THAT THE RIGHT OF PRIVACY IS HE HAVE HE CAN WAITED , BUT IS EFFECTUATE!!ED , BUT THEY CAN'T FALL BELOW THAT MINIMUM.

CHIEF JUSTICE: IF YOU LOOK AT WHAT THE SUPREME COURT AND THE JURY DID IN THE CRUSE

CASE, THEY DECIDED THAT THE TESTIMONY OF A NEIGHBOR WAS NOT CLEAR AND CONVINCING EVIDENCE OF THE PERSON'S WISHES , SO I MEAN , IF WE ARE , AND PROBABLY WE MAY BE GETTING A LITTLE FAR AFIELD OF WHAT WE HAVE TO DECIDE IN THIS CASE , BUT , BECAUSE THE ISSUE ISN'T WHETHER THE LEGISLATURE COULD ENACT SOMETHING MUCH MORE COMPREHENSIVE , TO BETTER ADDRESS THIS TYPE OF SITUATION, WHICH IS , YOU KNOW , TRAGIC FOR EVERYBODY, SO COULD YOU GET BACK TO THE ISSUE ON , WITH THE SEPARATION OF POWERS , COULD THE LEGISLATURE, IF THIS WASN'T TERRI SCHIAVO , WE ARE JUST LOOKING AT THE FACIAL CHALLENGE , WHAT IS WRONG WITH WHAT THE LEGISLATURE DID, IN THIS CASE , AS FAR AS GIVING THIS POWER TO STAY FOR ONE TIME , THE WITHHOLDING OF HYDRATION , ON A ONE-TIME BASIS?

ASIDE FROM THE INTRUSION INTO THE JUDICIARY , WHICH IS THE SEPARATION OF POWERS VIOLATION , AS APPLIED TO TERRI SCHIAVO .

CHIEF JUSTICE: THE APPLIED CHALLENGE.

AS A FACIAL CHALLENGE , THERE ARE TWO, THE IMPERMISSIBLE LEGISLATIVE DELEGATION , AS YOUR HONOR MENTIONED. THERE ARE NO STANDARDS. NOW , THE TEST FOR IMPERMISSIBLE DELEGATION OF LEGISLATION IS THIS, COULD THE COURT, IN REVIEWING A DECISION , BE ABLE TO ASCERTAIN WHETHER THE DECISION-MAKER ACTED WITH INDISCRETION OR ABUSED DISCRETION AND THAT STATUTE FAILS IN THIS WAY, IF THERE WERE JUDICIAL REVIEW PERMITTED , AND OF COURSE THERE IS NO JUDICIAL REVIEW SO THAT COULD NEVER OCCUR IN THIS CASE, BUT IF THERE WERE JUDICIAL REVIEW, HOW WOULD WE EVER KNOW, HOW COULD WE EVEN BEGIN TO MAKE THAT DETERMINATION , WHEN WE DON'T EVEN KNOW WHAT THE BASIS FOR THE GOVERNOR'S DECISION IS , BECAUSE HE IS NOT REQUIRED UNDER THIS ACT, TO TELL US THE BASIS OF HIS DECISION .

JUSTICE CANTERO : WELL , CAN YOU ADDRESS THE GOVERNOR'S ARGUMENTS, YOUR COUNSEL 'S ARGUMENTS , THAT YOU HAVE TO READ THIS ACT IN CONJUNCTION WITH PARI MATERIA WITH THE ACT IN 765 AND 744 AND THOSE PROVIDE THE GUIDELINES.

THAT DOCTRINE , YOUR HONOR , ONLY PERTAINS TO SITUATIONS WHERE THERE IS AMBIGUITY IN THE STATUTE. THIS COURT HELD, IN HOLLY VERSUS ALD , THAT VERSUS AULD THAT, IF THERE IS NO FACIAL AMBIGUITY IN THE STATUTE, THAT THIS COURT CAN'T RESORT TO THAT TYPE OF STATUTORY INTERPRETATION, SO THAT DOCTRINE DOESN'T APPLY HERE. WE ARE NOT TALKING ABOUT AN AMBIGUOUS STATUTE THIS. STATUTE IS CRYSTAL CLEAR WHAT IT DOES. IT GIVES THE GOVERNOR UNFETTERED AND ABSOLUTE AUTHORITY , AND , BUT TO FOLLOW THAT , EVEN IF THERE WERE, EVEN IF THE GOVERNOR DID TELL US OR COULD BE COMPELLED TO TELL US WHAT THE BASIS OF HIS DECISION WAS , THERE IS NO STANDARDS TO APPLY. HOW DO WE KNOW WHETHER THE LEGISLATURE WANTED THE GOVERNOR TO CONSIDER THE COST BENEFIT ANALYSIS FOR PROVIDING MEDICAL TREATMENT? HOW DO WE KNOW WHETHER THE LEGISLATURE WANTED THE GOVERNOR TO TAKE INTO ACCOUNT FAMILY WISHES, RATHER THAN THE WISHES OF THE PATIENT. HOW ARE WE TO KNOW WHETHER THE LEGISLATURE WANTED THE GOVERNOR TO ACT IN THE BEST INTEREST OF THE PATIENT , AS OPPOSED TO DETERMINING THE SUBJECTIVE INTENT OF THE PATIENT .

JUSTICE QUINCE : BASED ON THIS STATUTE, CAN ANYONE LIFT THIS STAY? CAN THIS STAY BE LIFTED?

NO ONE STANDING HERE.

CHIEF JUSTICE: WAS THERE ANY ATTEMPT TO DO THAT IN THE PROCEEDINGS BELOW? TO HAVE THE STAY LIFTED, OR WAS IT ONLY AN ATTACK ON THE CONSTITUTIONALITY ?

ON THE CONSTITUTIONALITY , YOUR HONOR. YOUR HONOR , I DON'T BELIEVE THE STATUTE

PROVIDES ANY MECHANISM, TO HAVE THE GOVERNOR'S DECISION REVIEWED .

JUSTICE QUINCE : SO WHAT IS THE POINT, THEN , O F THAT PART OF THE ACT WHICH SAYS THAT YOU, THEN , APPOINT INTA GUARDIAN , WHO APPOINT A GUARDIAN, WHO REPORTS O R MAKES RECOMMENDATION TO SAY THE GOVERNOR AND THE COURT?

I BELIEVE THE STATUTE SAYS IT MAKES RECOMMENDATION TO SAY THE GOVERNOR. IN TERMS OF POWER AND AUTHORITY , THERE IS NO POINT. WE DON'T KNOW , WE DON'T KNOW WHETHER THE GOVERNOR READ THE REPORT OR DIDN'T READ THE REPORT OR , IF HE DID READ THE REPORT , TOOK IT INTO CONSIDERATION OR YOUKNOW, PICKED IT UP AND TOSSED IT AWAY . SO AS FAR AS THE STATUTE , ITSELF, IT CHANGES NOTHING AS TO THE IMPERMISSIBLE DELEGATION OF AUTHORITY. BUT I, ALSO, SINCE I ONLY HAVE TWO MINUTES LEFT LEFT , YOUR HONOR , WANT TWOMINUTES LEFT, YOUR HONOR , WANTED TO ADDRESS THE FACIAL UNCONSTITUTIONALITY , REGARDING THE RIGHT OF PRIVACY. AND I TOUCHED ON THIS BEFORE. THE ESSENTIAL ISSUE HERE , IS WHO IS ENTITLED TO MAKE ADECISION ON A MATTER SO PERSONAL AND PRIVATE AS WHETHER ONE WOULD WANT ARTIFICIAL LIFE-SUPPORT? DOES THAT POWER CONSTITUTIONALLY , RESIDE WITH THE PATIENT, OR DOES THAT POWER RESIDE WITH THE STATE ?

JUSTICE CANTERO : DO YOU AGREE THAT, IF WE HOLD THAT THE STATUTE IS UNCONSTITUTIONAL, AS A VIOLATION OF SEPARATION POUF POWERS OR AT O F SEPARATION OF POWERS OR AT LEAST AS APPLIED TO TERRI SCHIAVO, IT IS UNCONSTITUTIONAL, IT IS NOT GOING TO APPLY TO ANYBODY ELSE, SO BY HOLDING UNCONSTITUTIONALLY AS IT IS APPLIED , WE ARE REALLY HOLDING IT UNCONSTITUTIONAL FACIALLY AS WELL , PRACTICALLY SPEAKING. IT IS NOT GOING TO APPLY TO ANYBODY ELSE, IS IT?

IT IS NOT GOING TO APPLY TO ANOTHER CASE , BUT WE WOULD ASK THIS COURT SPECIFICALLY TO FIND THAT IT IS UNCONSTITUTIONAL AS APPLIED TO TERRI SCHIAVO , BECAUSE IT IS A UNLAWFUL INTRUSION INTO JUDICIAL POWER, FOR THIS REASON, IF THIS COURT ONLY FOUND THE STATUTE FACIAL LY UNCONSTITUTIONAL, LET'S SAY , FOR IMPROPER DELEGATION OF LEGISLATIVE AUTHORITY , WE DON'T WANT , AND THOSE NOT T O ADDRESS THE AS-APPLIED SEPARATION OF POWER ARGUMENT , WE DON'T WANT TO BE HERE A YEAR FROM NOW , ARGUING THE CONSTITUTIONALITY OR UNCONSTITUTIONALITY O F TERRI 'S LAW TWO. THIS YOUNG WOMAN HAS A RIGHTTO HAVE HER FINAL ADJUDICATION HONORED BY THE COURTS OF FLORIDA. THIS UNLAWFUL INTRUSION INTO THAT RIGHT , SHOULD BE OVERTURNED AND DEFINITELY OVERTURNED, S O HER RIGHT TO PRIVACY CAN BE EFFECTED. THANK YOU.

CHIEF JUSTICE: THANK YOU .

MAY IT PLEASE THE COURT. I AM KEN CONNOR WITH THE FIRM OF WILKES AND McCUE , AND I , ALONG WITH PROFESSOR DECEMBER STRO DESTROWWITH THE GOVERNOR , APPEAR WITHIN THIS ACTION .

JUSTICE LEWIS : THE CLASSIFICATION APPLIES TO ONLY ONE PERSON?

JUDGE , THE FACT THAT IT PLAY MAYE APPLY TO ONLY ONE PERSON DOESN'T MAKE IT A SPECIAL ACT. THERE ARE A NUMBER OF POTENTIAL PEOPLE WHO COULD FALL WITHIN THE PURVIEW OF THE ACT, IF THEY MEET THE CRITERIA, THAT IS THEY DIDN'T HAVE AN ADVANCED WRITTEN DIRECTIVE , THEY HAVE BEEN DEEMED TO BE IN A PERSISTENT VEGETATIVE STATE , NUTRITION AND HYDRATION ARE BEING WITHHELD AND THE FAMILY HAS A CHALLENGE. IF THEY MEET THIS CRITERIA , THEY - -

JUSTICE WELLS : THE COURT HAS FOUND THE PATIENT TO BE IN A PERSISTENT VEGETATIVE STATE , AND THE PATIENT'SFAMILY HAS CHALLENGED THE WITHHOLDING OF HYDRATION ANNUITY RIGS. YOU ARE NOT ASKING US TO REALLY HOLD THAT THIS ACT DOESN'T PERTAIN JUST TO TERRI SCHIAVO .

BY THE FACE OF IT, YOUR HONOR, IT DOES APPLY TO MORE THAN JUST TERRI . TERRI SCHIAVO'S CASE WAS THE TRIGGERING EVENT FOR IT. WE SEE THAT ALL OF THE TIME, IN THE LEGISLATURE.

JUSTICE WELLS : WE WOULD HAVE TO IGNORE REALITY TO DO THAT , WOULDN'T WE NOT?

THE FACT , JUDGE, THAT WE HAVE MAY GO AND'S LAW , THE FACT THAT WE HAVE SPECIFIC SITUATIONS INVOLVING PARTICULAR INDIVIDUALS THAT TRIGGER THE NEED FOR LEGISLATIVE RELIEF .

JUSTICE WELLS : BUT THESE DON'T INVOLVE PARTICULAR CASES FOR RELIEF. THAT IS WHERE I AM HAVING TROUBLE WITH THIS ACT. WHEN I READ THIS ACT , OBJECTIVELY, I CANNOT COME TO THE CONCLUSION THAT IT DOESN'T PERTAIN TO THIS SINGLE CASE THAT HAS BEEN IN LITIGATION FOR A DECADE , AND THAT WHAT IS GOING ON HERE , IS THAT THE LEGISLATURE SET ABOUT TO SET ASIDE WHAT THE FINAL JUDGMENT OF THE COURT PERTAINING TO THAT CASE!

WITHOUT A DOUBT , YOUR HONOR , IT DOES APPLY IN THIS PARTICULAR CASE, TO TERRI SCHIAVO , BECAUSE SHE MET THE CRITERIA. THERE ARE OTHERS WHO , LIKewise, COULD MEET THE CRITERIA. IT DOES NOT , I RESPECTFULLY SUBMIT , INVOLVE A FINAL REVERSAL OF A JUDGMENT OF A CIRCUIT COURT , PRECISELY FOR THE REASONS INDICATED BY JUDGE BELL IN SCHIAVO TWO, WHERE THE COURT MADE THE POINT THAT THESE ORDERS ARE ENTIRELY EXECUTOR I , AS LONG AS THE - - EXECUTORY, AS LONG AS THE WARD IS ALIVE THE ORDER SUBJECT TO RECALL AND IS EXECUTIVE IN NATURE. THE MANDATE OF THE ORDER HAD BEEN COMPLIED WITH. THE ORDER WAS NOT THAT TERRI SCHIAVO SHOULD HAVE NUTRITION AND HYDRATION WITHDRAWN UNTIL SHE WAS DEAD. IT WASN'T LIKE AN ORDER THAT SAID SO-AND-SO SHOULD BE HANGED BY THE NECK UNTIL SHE IS DEAD.

CHIEF JUSTICE: THE COURT WENT ON AND SPECIFICALLY SAID, BECAUSE THEY UNDERSTOOD THAT THE CHALLENGE WAS BEING RAISED MORE THAN ONE YEAR AFTER , AND THEY WERE REALLY TRYING HARD TO MAKE SURE THAT THE SCHINDLERS HAD SOME OPPORTUNITY TO RAISE THIS NEW CLAIM THAT THERE MIGHT BE SOME NEW LIFE-SAVING TREATMENT, AND WHAT THE COURT, THEN , SAID, IS WE CAUTION , HOWEVER, THAT ANY PROCEEDING TO A CHALLENGE OF A FINAL ORDER ON THIS BASIS , IS EXTRAORDINARY AND SHOULD NOT BE FILED MERELY TO DELAY AN ORDER WITH WHICH AN INTERESTED PARTY DISAGREES OR TO RETRY AN ADVERSARY PROCEEDING, AND THE MECHANISM THEY SET UP WAS RULE 1.540-B-5, WHICH IS FOR CHALLENGES TO FINAL JUDGMENTS , SO WE MUST , YOU KNOW, TO TAKE ONE LINE OUT OF A ONE OPINION THAT , AND THERE IS A SERIES OF FOUR OPINIONS, REALLY, IS NOT THE CORRECT WAY TO LOOK AT THIS.

WELL , YOUR HONOR , UNQUESTIONABLY, THIS LANGUAGE AROSE IN THE CONTEXT OF 1.540 CHALLENGE , BUT THE REALITY OF IT IS THAT THAT IS THE NATURE OF GUARDIANSHIP ORDERS. THEY ARE EXECUTORY, UNTIL THE DISABILITY IS REMOVED .

CHIEF JUSTICE: SO YOU ARE SAYING THAT THERE FOR THEY ARE REVIEWED AS NONFINAL ORDERS, AND ANY INTERESTED PARTY , YEAR AFTER YEAR , CAN COME IN AND MAKE CHALLENGES?

NO, MA'AM. WHAT I AM SAYING IS THAT THE COURTS DO NOT POSSESS THE EXCLUSIVE DOMAIN TO PROTECT THE RIGHTS OF DISABLED PEOPLE AND TO ENSURE THAT THEIR HEALTH CARE CHOICES ARE RESPECTED AND PROTECTED , THAT THERE IS A ROLE FOR THE LEGISLATURE. THERE IS A ROLE FOR THE GOVERNOR.

CHIEF JUSTICE: ARE WE IGNORING IN THIS LAW, WHICH AGAIN , DIDN'T BECOME A PART OF THE AMENDMENT TO THE CHAPTER LAW IN THE SESSION THAT SUCCEEDED THE LAW , WAS A 15-DAY SUNSET. IT APPLIED TO WHOEVER WAS IN THIS SITUATION FOR 15 DAYS , AND THEN THIS GREAT

PROTECTION THAT THE LEGISLATURE WANTED TO GIVE , EXPIRED , AND HAS NOT BEEN RENEWED

YOUR HONOR , THAT DEMONSTRATES, I THINK , HOW THIS LAW IN FACT, WAS NARROWLY TAILORED. THE LEGISLATURE WANTED TO SEE HOW IT WORKED. THEY HAD AN OPPORTUNITY TO TWEAK IT. MY TIME IS UP, YOUR HONORS. I WOULD RESPECTFULLY REQUEST THAT THE COURT RECOGNIZETHAT THERE IS A ROLE FOR THE LEGISLATURE AND THE GOVERNOR IN PROTECTING THE RIGHTS OF THE DISABLED , AND ENSURE !!ING THAT THEIR HEALTH CARE DECISIONS ARE RESPECTED AND PROTECTED.THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. THAT CONCLUDES THE ARGUMENTS. THE COURT WILL TAKE A SHORT RECESS, BEFORE CALLING THE NEXT CASE , AND WE WOULD ASK , OUT OF DEFERENCE TO THE PARTIES, THAT, BEFORE THE REST OF THE COURTROOM MOUNTAINS, THAT THE ATTORNEYS AND THE - - COURTROOM I S EMPTIED , THAT THE ATTORNEYS AND PARTIES BE ALLOWED TO LEAVE THE COURTROOM. THANK YOU VERY MUCH.