

Florida Supreme Court Rules "Terri's Law" Is Unconstitutional; Disability Advocates Disappointed But Resolved To Continue Legal Battle

By Dave Reynolds, Inclusion Daily Express

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TALLAHASSEE, FLORIDA--The Florida Supreme Court ruled Thursday that the law keeping Terri Schiavo alive for the past year violates the state Constitution's separation of powers.

Supporters of Terri's parents, who do not want her to starve to death, expressed disappointment at the decision, but resolved to continue the fight to keep her alive.

In its unanimous decision, the court wrote that "it is without question an invasion of the authority of the judicial branch for the Legislature to pass a law that allows the executive branch to interfere with the final judicial determination in a case. That is precisely what occurred here and for that reason the Act is unconstitutional as applied to Theresa Schiavo."

"We are not insensitive to the struggle that all members of Theresa's family have endured since she fell unconscious in 1990," Chief Justice Barbara Pariente wrote. "However, we are a nation of laws and we must govern our decisions by the rule of law and not by our own emotions."

"What is in the Constitution always must prevail over emotion."

The court did not address claims by Michael Schiavo, who wants his wife's feeding tube removed, that "Terri's Law" violated her privacy.

The Florida Legislature passed the quickly-written law on October 21, 2003, giving Governor Jeb Bush specific authority to order Terri's feeding tube replaced just six days after it had been removed under an earlier court order.

Mr. Schiavo, who is also Terri's guardian, immediately sued the governor, accusing Bush and the Legislature of violating her privacy by interfering with what he claims are Terri's wishes. He said that his wife told him, before her collapse, that she would not have wanted to live "by artificial means".

Terri was 26 years old in February 1990 when she collapsed and her brain was without oxygen for several minutes. Some doctors have testified that she is now in a "persistent vegetative state", that she cannot interact with her environment, that she does not feel pain, and that she will not recover.

Her parents disagree. Bob and Mary Schindler have argued that she is alert, laughs and tries to talk to them, and could benefit from therapies that her husband has refused to allow. They argue that Mr. Schiavo should be removed as her guardian because he has a conflict of interest and is engaged to a woman with whom he has fathered two children.

Seventeen disability-related groups filed a brief supporting Governor Jeb Bush and Terri's parents in the case. They have said that the case is important to millions of people with disabilities who are represented by guardians.

"The court in this case has obviously put the constitutional principle of separation of powers over the individual's right to due process," wrote Diane Coleman, president of the disability rights group Not Dead Yet, in a press statement. "The court is more interested in protecting its turf than the people that occupy that turf."

"The dispute between her spouse and parents about whether Terri would have wanted her food and water discontinued has the potential to impact millions of lives," the Not Dead Yet statement read.

"We in the disability community are tired of being pushed aside when it's the lives of people in our own community that are on the line."

Bush's attorneys have 10 days to file an appeal with the court. One said they might consider taking the case to the U.S. Supreme Court.

In a press statement, Terri's family thanked the governor and the Legislature.

"We are pursuing other legal avenues which we hope will save Terri's life," the statement read.

Last week, the Schindlers filed a 28-page memorandum of law citing "a substantial change in circumstances that the court must consider" in deciding whether to set aside the 2000 order that originally gave Mr. Schiavo permission to have his wife's food and water withdrawn.

The Schindlers were referring to a March 2004 address by Pope John Paul II, in which he said that giving food and water always represents "a natural means of preserving life" and that its use should be considered "ordinary and proportionate and as such morally obligatory."

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Terri Schiavo's Right To Live (Inclusion Daily Express Archives)

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