The Schiavo Odyssey: A Tale of Two Legislative Reprieves

Miriam Rosenblatt-Hoffman
Cardozo Law School

Follow this and additional works at: http://scholarship.law.marquette.edu/elders

Part of the Elder Law Commons

Repository Citation
Available at: http://scholarship.law.marquette.edu/elders/vol7/iss2/8

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Elder's Advisor by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.
THE SCHIAVO ODYSSEY: A TALE OF TWO LEGISLATIVE REPRIEVES

Miriam Rosenblatt-Hoffman

Terri Schiavo’s brief and tragic life was filled with acrimonious litigation. Terri’s plight became a battlefield between the conservative right and the liberal left. There were

---

1. Miriam Rosenblatt-Hoffman is a May 2006 J.D. candidate at Cardozo Law School, and is currently a visiting student at the University of Miami. She graduated magna cum laude with a B.A. from Yeshiva University in 2003. She would like to thank Professor Julian H. Kreeger for inspiring her interest in the Terri Schiavo litigation, and Russell E. Carlisle for his invaluable assistance in getting this article published. Finally, she would like to thank her husband, Daniel, for his never-ending patience and support.

2. "It is difficult to conceive of a dispute more contentious and with more twists and turns than the multiple litigations and political machinations concerning whether Terri Schiavo’s artificial nutrition and hydration should be withdrawn." Michael P. Allen, Life, Death, and Advocacy: Rules of Procedure in the Contested End-of-Life Case, 34 STETSON L. REV. 55, 66 (2005). In addition to the Schindlers and Michael Schiavo, “[m]any characters with widely varied agendas ... joined in to make this struggle even more surreal in its own horror.” M. Garey Eakes & William Colby, Planning Lessons Learned from End-of-Life Disputes, 17 NAELA Q. 21, 26 (Summer 2004).

3. See Michael J. Offenheiser, Is the Right to Private Property More Sacred than the Right to Life? The Case of Terri Schiavo, 3 AVE MARIA L. REV. 705, 738 (2005) (“It is indeed perplexing that American law currently provides more protection to an individual’s right in property than to his right to life.”); O. Carter Snead, Dynamic Complementarity: Terri’s Law and Separation of Powers Principles in the End-of-Life Context, 57 FLA. L. REV. 53, 54 (2005) (“[T]he public debate on this matter has been framed as a conflict between or a balancing of abstract concepts such as ‘the right to die,’ ‘the sanctity of life,’ and ‘the rights of the disabled.’”). See also Case Comment, In re Guardianship of Theresa Marie Schiavo: Brief of Amicus Curiae Not Dead Yet et al., 19 ISSUES L. & MED. 145 (2003).

4. See Terri D. Keville & Jon B. Eisenberg, Bush v. Schiavo and the Separation of Powers: Why a State Legislature Cannot Empower a Governor to Order Medical Treatment When There Is a Final Court Judgment That the Patient Would Not Want It, 7 J. L. & SOC. CHALLENGES 81, 110 (2005) (“We ... fervently hope that state and federal legislators will not cave in to pressure from a small but vocal minority and destroy the established right—which clearly is supported by the majority—to refuse artificial nutrition and hydration (as
public debates ranging from whether Terri recognized her parents and demonstrated any meaningful responses\(^5\) to whether she was in a perpetual vegetative state.\(^6\) People questioned whether spousal abuse caused or aggravated Terri’s initial incident and if her husband, Michael, waited too long in 1990 to seek emergency assistance.\(^7\) Or, was Michael a scheming spouse only interested in inheriting his wife’s money?\(^8\) Among these debates, key questions emerged. Had Terri ever expressed a desire to disconnect artificial means to keep her alive, as her husband, Michael, asserted?\(^9\) Did Terri have a right to privacy under the Florida\(^10\) or the U.S. Constitutions,\(^11\) and was that right

---


6. As discussed, infra, every lower court and appellate decision that reviewed the evidence concluded, in accordance with Pinellas Circuit Judge Greer’s original February 11, 2000 decision, that Terri was in a perpetual vegetative state with no chance of rehabilitation.


8. See Keville & Eisenberg, supra note 4, at 84 (Michael Schiavo recovered $300,000 for his loss of consortium claim and the Guardianship of Theresa Schiavo received $700,000 for Terri’s damages, as proceeds from a settlement in February 1993 from a medical malpractice action against Terri’s physicians who had treated her for an eating disorder. A dispute arose between Michael and Terri’s parents, the Schindlers, regarding the allocation of the settlement proceeds.). See also Darren P. Mareiniss, *A Comparison of Cruzan and Schiavo: The Burden of Proof, Due Process, and Autonomy in the Persistently Vegetative Patient*, 26 J. LEGAL MED. 233, 240 (2005) (The Schindlers always questioned whether Michael was acting in the best interest of Terri since he would profit monetarily from his wife’s death as her sole heir, as would his two children out of wedlock with his girlfriend.).


10. FLA. CONST. art. I, § 23 (“Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life . . . .”).

11. U.S. CONST. amend. XIV, §2. The right to privacy is also protected by the Due
being protected?12 Did she have a protected "right to life?"13 Should a spouse or surrogate have the ultimate right to terminate another person's life, absent a living will providing definitive directives?14

In response to these questions, there were over forty state and federal reported decisions15 before trial, appellate and supreme courts. However, a major issue was largely ignored, at least by the federal courts: the constitutionality of the special emergency law passed by Congress and signed into law by President George Bush on March 21, 2005.16 This special

Process Clause of the Fourteenth Amendment to the United States Constitution. See Cruzan v. Director, Missouri Dep't of Health, 497 U.S. 261, 278 (1990) (right to privacy protected by the Fourteenth Amendment has been inferred to include "constitutionally protected liberty interest in refusing unwanted medical treatment . . . ."). See also Mareiniss, supra note 8, at 239.

12. Guardianship of Browning, 568 So. 2d 4, 10-17 (Fla. 1990) (holding that all Floridians have a fundamental right of privacy, including the inherent right to refuse medical treatment. This right may be exercised through a surrogate or proxy.).

13. Charles E. Rice, Rights and the Need for Objective Moral Limits, 3 AVE MARIA L. REV. 259, 262-4 (2005) (Terri Schiavo's rights have been compared to a "fetus' right to life," criticizing the U.S. Supreme Court's landmark decision in Roe v. Wade because the Court considered an unborn child a "nonperson."). See also Barbara A. Noah, Politicizing the End of Life: Lessons From the Schiavo Controversy, 59 U. MIAMI L. REV. 107, 115 (2004) ("[T]he American Center for Law and Justice (ACLJ), a pro-life group established by Christian Coalition founder Pat Robertson, allied itself with Theresa Schiavo's parents, offering to assist their attorney in defending the constitutionality of "Terri's Law.".")


15. Thompson, supra note 9, at 486 ("Nineteen judges in six different courts toiled over the existing laws and relevant evidence, ultimately determining that Terri's husband, Michael Schiavo, had the legal right to withdraw the nutrition and hydration tubes that had kept his wife alive for over fifteen years.").

16. David Rogers, Congress Takes on the Schiavo Case as Debate Flares, WALL ST. J., Mar. 21, 2005, http://online.wsj.com/article/SB11111682593518379.html (The media reported how Congress interrupted its Easter recess to conduct "[t]he rare Palm Sunday session . . . focused on a bill giving the parents of Terri Schiavo special access to the federal courts to try to overturn a Florida judge's order that allowed for the removal of a feeding tube for their daughter."). See also David E. Sanger, In Reading Bush on Court, Words Don't Always Help, N.Y. TIMES, July 5, 2005, at A15 ("[President] Bush rushed back from his ranch during the Congressional Easter break to sign legislation in the middle of the night
emergency law was designed to assist aggrieved litigants Robert and Mary Schindler in keeping their daughter, Terri, alive after they had exhausted all available judicial remedies.17

At the urgings of Florida Governor Jeb Bush and his brother, President George Bush, the Florida18 and U.S. legislatures19 passed special laws to assist Terri’s parents in having her feeding tube reinserted to keep her alive.20 Such legislative interference, by both the state and federal legislatures, in pending judicial proceedings is unprecedented.21 This article discusses the circumstances under which the legislation arose and proposes explanations as to why this improper legislative meddling was not strongly condemned by the federal courts.

A CHRONOLOGICAL HISTORY OF THE SCHIAVO LITIGATION

To fully understand the state and federal Schiavo legislation, it is necessary to understand from whence it came. On February 25, 1990, Terri Marie Schindler Schiavo, twenty-seven years of age, suffered cardiac arrest with resulting oxygen deprivation, later attributed to a potassium imbalance.22 Her husband, Michael, called 911 and Terri was rushed to the hospital, but she never regained consciousness.23 Beginning in 1990, Terri was fed and hydrated by tubes, with round-the-clock care in nursing
homes. For purposes of this discussion, only the key lower court and appellate decisions that led up to the intervention of state and federal legislatures will be addressed.

The dispute began six years after Terri fell into the coma. At that time, her parents, Robert and Mary Schindler, requested and obtained an order from the Florida Circuit Court to be kept abreast of developments regarding Terri, including annual reports prepared by her guardian, Michael Schiavo. The court directed Michael to provide written permission to nursing homes to discuss Terri's medical condition with her parents. Michael was further directed by the court to provide the Schindlers with copies of any neurological reports and other medical information regarding any changes in Terri's condition.

The pivotal decision that lays the background and foundation for all future state and federal decisions came from Florida Circuit Court Judge George W. Greer on February 22, 2000. Michael Schiavo had petitioned the court for authorization to discontinue artificial life support for his wife. The court heard testimony from eighteen witnesses, reviewed all of the medical records, and entered a detailed and thoughtful opinion. The opinion described Terri's childhood, her marriage to Michael, the events leading up to the cardiac arrest on February 25, 1990, and her medical care and condition thereafter. Judge Greer found that the earlier amicable relationship between the Schindlers and their son-in-law, Michael, was severed as a result of Michael's unwillingness to equally divide his consortium award with the Schindlers. Judge Greer's decision stated, "The parties have literally not spoken since that date. Regrettably, money overshadows this entire case and creates potential of conflict of interest for both

24. Id.
26. Id. at *1.
27. Id.
29. Id.
30. Id.
31. Id. at *2.
sides.” 32 The court found that Michael Schiavo had been “very motivated in pursuing the best medical care for his wife.” 33 The court further found that there were no written declarations by Terri as to her desires regarding life support. 34 The court found “beyond all doubt that Theresa Marie Schiavo [was] in a persistent vegetative state,” 35 based upon the medical evidence. In addition, the court found that “she ha[d] no hope of ever regaining consciousness and therefore capacity, and that without the feeding tube she w[ould] die in seven to fourteen days.” 36 The court noted that pursuant to Guardianship of Browning, 37 “everyone has a fundamental right to the sole control of his or her person.” 38 The court applied the Browning criteria to the facts of the Schiavo case and specifically looked at “whether or not there [was] clear and convincing evidence that Theresa Marie Schiavo made reliable oral declarations which would support what her surrogate (Michael Schiavo) [wished] to do.” 39 The court specifically found from testimony by Michael Schiavo and members of his family that Terri had made oral declarations that she would never want to be “kept alive on a machine.” 40 The court declared the testimony “reliable” and stated that it rose “to the level of clear and convincing evidence . . . .” 41 Judge Greer granted Michael Schiavo’s Petition for Authorization to Discontinue Artificial Life Support on February 11, 2000. 42 But, Michael Schiavo was unable to

32. Id. The court also noted that were Terri to die, Michael would inherit her estate. If the Schindlers were to prevail, with Michael divorcing Terri, then they would be appointed guardians and would become Terri’s heirs. There were potential conflicts of interest on both sides.

33. Id.
34. Id. at *3.
35. Id. at *4.
36. Id.
37. 568 So. 2d 4 (Fla. 1990).
39. Id. at *6. The court found that the second criteria of Browning was satisfied when it found that Terri “[d]id not have a reasonable probability of recovering competency.” Id.
40. Id.
41. Id.
42. Id. Judge Greer, a conservative jurist, simply followed the law and called the shots as he saw them, reaching a decision that was apparently contrary to his personal beliefs. Ironically, his adherence to the rule of law and his ability to set aside his own convictions were largely unappreciated. This conservative life-time Republican received death threats. See Carol Marbin Miller, Judge and Schiavo Drama Never Sought Political Spotlight, MIAMI HERALD, Mar. 18, 2005, at 13A.
effectuate that order until March, 2005, over five years later.

Terri's parents appealed Judge Greer's order directing that artificial life support be discontinued for Theresa Schiavo, but on February 22, 2001, the Second District Court of Appeal affirmed the decision. The appellate court concluded: "The trial court's decision is supported by competent, substantial evidence and ... correctly applies the law." In reaching its decision, the second district discussed the history of the Schiavo litigation and the "overwhelming" evidence demonstrating that Theresa was in a permanent or persistent vegetative state. The court relied extensively on the earlier pronouncements of the Florida Supreme Court in Browning. The court rejected the Schindlers' request for a guardian ad litem to be appointed for Terri because Michael stood to inherit money from Terri's death. The court found the evidence in support of the trial court's determination to be "clear and convincing." On April 18, 2001 the Supreme Court of Florida denied review.

Several months later, on July 11, 2001, the Second District Court of Appeal considered three consolidated appeals brought by Michael Schiavo and the Schindlers. The Schindlers were appealing denial of a motion in the lower court for relief from the order discontinuing Terri's life-prolonging procedures. The appellate court affirmed, agreeing with the trial court that the motion was "facially insufficient." The Schindlers were given an opportunity, however, on remand, to file an amended

44. Id. at 177.
45. Id. at 179. Although the lower court decision was reviewable for an abuse of discretion, the appellate court effectively reviewed the evidence de novo and still affirmed Judge Greer's decision.
46. Id. at 179.
47. 568 So. 2d 4 (Fla. 1990). The court also relied on its earlier Browning decision in Guardianship of Browning, 543 So. 2d 258, 273-74 (Fla. Dist. Ct. App. 1989), where the court discussed, in dicta, judicial review of a surrogate's decision regarding life support. The Second District stated in Browning that in close cases, "a surrogate decision maker should err on the side of life." Guardianship of Browning, 543 So. 2d at 273. But, the court concluded in Schiavo that "the trial judge had clear and convincing evidence" to find that Terri would not have wanted to live in a persistent vegetative state. Guardianship of Schiavo, 780 So. 2d at 179-80.
48. Guardianship of Schiavo, 780 So. 2d at 179.
51. Id. at 554.
52. Id.
motion for relief from judgment based on newly discovered evidence.\textsuperscript{53}

The court also reversed an injunction entered by the general civil division in a separate action filed by the Schindlers against Michael Schiavo where the order “lacked the necessary findings,”\textsuperscript{54} and the pleadings and evidence supporting the injunction “were insufficient.”\textsuperscript{55} The Schindlers alleged that Terri “was in imminent danger of death”\textsuperscript{56} and irreparable injury would occur if she were not kept alive pending resolution of this new evidence.\textsuperscript{57} However, the court noted that earlier proceedings, resulting in Judge Greer’s order of February 11, 2000, established that “most, if not all, of Mrs. Schiavo’s cerebral-cortex – the portion of her brain that allows for human cognition and memory – is either totally destroyed or damaged beyond repair.”\textsuperscript{58} In the third of the consolidated appellate proceedings, the court denied Michael Schiavo’s motion to enforce the appellate court’s earlier mandate directing the discontinuation of life-prolonging procedures for Terri.\textsuperscript{59} The appellate court was unwilling to conclude that the filing of any subsequent motions by the Schindlers “would be so baseless or frivolous as to constitute a violation of our mandate”\textsuperscript{60} and denied the motion to enforce the mandate presented by Michael Schiavo.\textsuperscript{61} The guardianship court was encouraged to “resolve this matter with all deliberate speed,”\textsuperscript{62} and the appellate court promised to “expedite any appeal of a future order in this case.”\textsuperscript{63} In its concluding paragraph, the second district reminded the litigants that it was doing its best to “honor Theresa Marie Schiavo’s constitutional right of privacy as it affects her medical

\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} Guardianship of Schiavo, 792 So. 2d at 556.
\textsuperscript{57} Id. The new evidence included testimony from a former girlfriend of Michael Schiavo’s that Michael told her that he and Terri had never discussed Terri’s wishes about life support, contrary to Michael’s sworn testimony. Id. at 555.
\textsuperscript{58} Id. at 560.
\textsuperscript{59} Id. at 563. See FLA. STAT. § 765.101(10) (West 2000) (The court noted that “life-prolonging procedure” was now statutorily defined.)
\textsuperscript{60} Id.
\textsuperscript{61} Id.
\textsuperscript{62} Guardianship of Schiavo, 792 So. 2d at 564.
\textsuperscript{63} Id.
Less than four months later, the Second District Court of Appeal again rendered an opinion in *Schiavo III*, on October 17, 2001. In *Schiavo III*, the court referenced its decisions in *Schiavo I* and *Schiavo II*. This time, the appellate court reversed in part Judge Greer’s decision. The appellate court found that the Schindler’s motion and supporting affidavits “state a ‘colorable entitlement’ to relief concerning the issue of whether Mrs. Schiavo might elect to pursue a new medical treatment before withdrawing life-prolonging procedures.” The court noted that, on remand from *Schiavo II*, the Schindlers had filed a motion for relief from judgment, a petition for an independent medical examination, a petition to remove the guardian, and a motion to disqualify Judge Greer. The appellate court affirmed the trial court’s denial of the petition for removal of guardian and the motion for disqualification. As to the new evidence that addressed whether Terri had ever expressed her opinions or desires with respect to life-prolonging procedures and whether the trial court could determine Terri’s wishes, *Schiavo III* found that Judge Greer had not abused his discretion in finding that this “new evidence failed to present a colorable claim for entitlement to relief from the judgment.” But, as to new evidence addressing Terri’s medical prognosis, the court held that the Schindlers “must establish that new treatment offers sufficient promise of increased cognitive function in Mrs. Schiavo’s cerebral cortex—significantly improving the quality of... life — so that she herself would elect to undergo this treatment and would reverse the prior decision to withdraw life-prolonging procedures.” The Second District further found in *Schiavo III* that the affidavit of Dr. Webber suggested that “available treatment could restore cognitive function to Mrs. Schiavo,” thereby raising the motion for relief from judgment

64. *Id.*
68. Guardianship of Schiavo, 800 So. 2d. at 641-2.
69. *Id.* at 642-3.
70. *Id.* at 643.
71. *Id.*
72. *Id.* at 645.
73. *Id.* at 646.
to the level of "colorable entitlement requiring an evidentiary hearing." Once again, the trial court was directed to "conduct this discovery and hearing as expeditiously as possible without undue delay." On March 14, 2002 the Florida Supreme Court denied Michael Schiavo's request for a review of Schiavo III.

Pursuant to the mandate in Schiavo III and following the evidentiary hearings of October 11 and October 22, 2002, including expert testimony of five board certified physicians, Judge Greer carefully outlined the new evidence. Judge Greer concluded that there was no credible evidence that any treatment would offer sufficient promise of increased cognitive function for Terri's cerebral cortex so as to significantly improve her quality of life. He stated, "The [m]andate requires something more than a belief, hope or 'some' improvement." Judge Greer denied all relief to the Schindlers and, pursuant to the mandate in Schiavo III, he ordered that Michael Schiavo, as guardian, "withdraw or cause to be withdrawn the artificial life support (hydration and nutrition tube) from Theresa Marie Schiavo at 3:00 p.m. on January 3, 2003."

The Schindlers immediately appealed, but in Schiavo IV the appellate court concluded that the guardianship court had complied with the mandate in Schiavo III and "did not abuse its discretion in denying the motion for relief from judgment." The court noted that two of the Schindlers' experts testified that Terri Schiavo was not in a persistent or permanent vegetative state, based on her "responses to a few brief stimuli, primarily involving physical and verbal contact with her mother." The other experts testified to the contrary. Judge Greer delayed the removal of nutrition and hydration pending review by the Second District. The court in Schiavo IV declined to conduct a

74. Guardianship of Schiavo, 800 So. 2d. at 646.
75. Id. at 647.
76. Schiavo v. Schindler, 816 So. 2d 127 (Fla. 2002).
78. Id. at *5.
79. Id.
80. Id.
82. Id. at 183.
83. Id. at 185.
84. Id.
85. Id.
de novo review, as urged by the Schindlers, but noted that "this court has closely examined all the evidence in the record."86 Noting that parents who raise and nurture a child would understandably hold out hope, the appellate court stressed that "in the end, this case is not about the aspirations that loving parents have for their children. It is about Theresa Schiavo's right to make her own decision . . . ."87 The court concluded that the "extensive additional medical testimony in this record only confirms once again the guardianship court's initial decision."88 The Supreme Court of Florida denied review on August 22, 2003.89 The Schindler's petition for a writ of prohibition was denied by the district court of appeal on October 14, 2003.90

GOVERNOR JEB BUSH AND THE FLORIDA LEGISLATURE INTERVENE—ENACTING "TERRI'S LAW"

The Florida Legislature passed "Terri's Law" on October 21, 2003.91 Michael Schiavo filed a declaratory judgment action challenging the constitutionality of the law, as well as the authority of Governor Bush to act pursuant to that newly enacted law.92 The Schindler's motion for leave to intervene on

86. Id. at 186.
87. Guardianship of Schiavo, 851 So. 2d at 186.
88. Id. at 187.
89. Schindler v. Schiavo, 855 So. 2d 621 (Fla. 2003).
91. See Fla. Stat. §765.401 (The Florida Legislature conducted a special session of the Legislature and passed "Terri's Law," authorizing the Governor to stay a court ordered removal of a gastric feeding tube and require the appointment of a guardian ad litem who would present recommendations to the Florida Governor.).
92. Schiavo v. Bush, No. 03-008212-20, 2003 WL 22762709 (Fla. Cir. Ct. Nov. 4, 2003). Journalists throughout the United States condemned Governor Bush and the Florida Legislature in enacting Terri's Law. Ellen Goodman, Signing Away the Choice of Life or Death, BOSTON GLOBE, Oct. 26, 2003, at DI1 (Terri's Law "allow[s] legislatures to trump a family, a doctor, a patient, a court . . . . [W]hen push comes to shove, [people] lose the right to make complicated decisions about life and death."); Carl Hiaasen, Politics Turns a Tragedy into a Cruel Charade, MIAMI HERALD, Oct. 26, 2003, at IL ("In an act of callous political opportunism, Gov. Jeb Bush last week basically kicked down the door of a hospice and forced a feeding tube down poor Terri Schiavo's throat. It doesn't get any lower than that—capitalizing on the plight of a brain-damaged woman to score points with religious fundamentalists . . . . [whose] support is seen as essential to reelecting George W. Bush in 2004."); Editorial, Schiavo Vote Provokes Constitutional Crisis, MIAMI HERALD, Oct. 23, 2003, at 22A ("[T]he governor and Legislature have provoked a constitutional crisis, substituted a hasty legislative order for years of court rulings; defied sound medical judgment; and made a mockery of Florida's right-to-privacy and death-with-dignity laws. They did so for no good reason other than to curry political favor with religious-
that action was denied on November 4, 2003 by Circuit Court Judge Douglas Baird.\textsuperscript{93} Although formal intervention was denied, the court granted leave to file an amicus curiae brief to the Schindlers "regarding the constitutionality of the Act."\textsuperscript{94}

On December 10, 2003, the Second District Court of Appeal, in \textit{Schiavo V},\textsuperscript{95} denied Governor Bush's motion to disqualify Judge Douglas Baird from presiding over the declaratory judgment proceeding that challenged the constitutionality of "Terri's Law."\textsuperscript{96} Governor Bush argued that the trial judge had pre-judged the matter by characterizing the legislation as "presumptively unconstitutional."\textsuperscript{97} Judge Baird stated that the legislation deprived Terri of her right to privacy in connection with his consideration of the then pending motion to lift the automatic stay.\textsuperscript{98} \textit{Schiavo V} found the trial judge's pronouncement legally insufficient to warrant disqualification and denied the petition for writ of prohibition with prejudice.\textsuperscript{99}

Approximately two months later, the Second District Court of Appeal, in \textit{Schiavo VI},\textsuperscript{100} granted Governor Bush’s petition for a writ of certiorari. The Second District Court of Appeal nullified a protective order that had prohibited Governor Bush from taking the depositions of seven witnesses, including lay and medical witnesses, with knowledge of Terri’s condition.\textsuperscript{101} Further discovery commenced. Then Governor Bush challenged the jurisdiction of the trial court, asserting lack of jurisdiction and improper venue.\textsuperscript{102} The trial court found it had jurisdiction to hear the controversy,\textsuperscript{103} and the appellate court affirmed in \textit{Schiavo VII}.\textsuperscript{104}

In a lengthy and detailed opinion, the guardianship judge declared "Terri’s Law" unconstitutional "both on its face and as conservative voters in Florida and elsewhere.").

\textsuperscript{93} \textit{Schiavo}, 2003 WL 22762709, at *1.
\textsuperscript{94} \textit{Id}.
\textsuperscript{96} \textit{Id.} at 507.
\textsuperscript{97} \textit{Id}.
\textsuperscript{98} \textit{Id}.
\textsuperscript{99} \textit{Id}.
\textsuperscript{101} \textit{Id}.
\textsuperscript{103} \textit{Id.} at 1013.
\textsuperscript{104} \textit{Id.} at 1014.
applied to Mrs. Schiavo." The court found "an unconstitutional delegation of legislative power to the Governor" who has, pursuant to the Act, "the unfettered discretion to control the nutrition and hydration, indeed the life or death, of a limited class of Florida citizens." The court noted that Article I, section 23 of the Florida Constitution provides everyone, including Terri Schiavo, the right to be let alone and free from governmental intrusion into the person's private life. Pursuant to Browning, the right to privacy may be exercised by an incapacitated person "by proxies or surrogates such as close family members or friends." "Florida's right of privacy is a fundamental right warranting 'strict' scrutiny." The trial court found that the State of Florida's interests were insufficient to override the privacy interests of an individual who falls within the terms of the Act. The court characterized "Terri's Law" as "extraordinary legislation" and warned of the "dangers of good intentions." The trial court further found an unlawful encroachment upon judicial power when Governor Bush effectively rescinded a duly entered final judgment that vested in Terri Schiavo the right to discontinue further life-prolonging medical procedures. This violated "separation-of-powers" under Article II, section 3 of the Florida Constitution. The court further found that Terri's Law was unconstitutional retroactive legislation. It declared the Act to be unconstitutional; Governor Bush's Executive Order was "declared to be void and of no further legal effect."

106. Id.
107. Id. at *2.
108. Id.
109. 568 So. 2d at 13.
111. Id. at *4.
112. Id.
113. Id. at *5.
114. Id.
115. Id.
117. Id.
118. Id.
119. Id. at *12.
Governor Bush was enjoined and restrained from exercising any authority or ordering any conduct pursuant to the provisions of "Terri’s Law." The Appeals to the Second District Court of Appeal by Governor Bush and the Schindlers were transferred directly to the Florida Supreme Court.

The Supreme Court of Florida issued its opinion on September 23, 2004, finding that "Terri’s Law" violates the fundamental constitutional tenet of separation of powers and is therefore unconstitutional both on its face and as applied to Theresa Schiavo. The court discussed the history of the Schiavo litigation, noting that "the procedural history is important because it provides the backdrop to the Legislature’s enactment of the challenged law." Because the court found the separation of powers issue dispositive, it declined to reach the other constitutional issues that had been addressed by the trial court. The Florida Supreme Court held that Article II, section 3 of the Florida Constitution expressly prohibits one branch [of government] from exercising the powers of the other two branches, referring to separation of powers as the "cornerstone of American democracy." The court found 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." The court further found that "Terri’s Law" was also unconstitutional on its face because "it delegates legislative power to the Governor." Relying on its precedent in In re Guardianship of Browning, which honored a patient’s right to withdraw life-prolonging procedures, the court contrasted the "standardless, open-ended delegation of authority by the Legislature to the Governor . . . ." The Florida Supreme Court

120. Id.
121. Schindler v. Schiavo, 875 So. 2d 619 (Fla. 2004); Bush v. Schiavo, 895 So. 2d 414 (Fla. 2004).
123. Id. at 324.
124. Id.
125. FLA. CONST. art. II, §3.
127. Id.
128. Id. at 332.
129. Id.
130. 568 So. 2d at 12.
emphasized that "this case is about maintaining the integrity of a constitutional system of government with three independent and co-equal branches. . . ."132 Were "Terri's Law" to be declared constitutional, "[v]ested rights could be stripped away based on popular clamor."
133 "No court judgment could ever be considered truly final and no constitutional right truly secure . . . ."134 The Supreme Court of the United States denied review on January 24, 2005.135

The Schindlers filed a number of pleadings, including a motion for an emergency stay of execution pending further appellate review;136 a renewed petition to remove Michael Schiavo as guardian; and requests for a further stay pending review of a petition for writ of certiorari before the U.S. Supreme Court addressing the "effect of a Papal pronouncement."137 The trial court noted that it had just received yet another motion for reconsideration, filed pursuant to Rule 1.540(b)(5) of the Florida Rules of Civil Procedure, based on alleged new medical procedures and experimental treatment, commenting that minutes before the hearing, the Florida Department of Children and Families had also moved to intervene.138 Judge Greer expressed his frustration because there was "no finality in sight to this process"139 and stated that the court "is no longer comfortable in continuing to grant stays pending appeal of Orders . . . since there will always be 'new' issues that can be pled."140 The motion for emergency stay was denied and the court ordered that the guardian, Michael Schiavo, "shall cause the removal of nutrition and hydration from the ward, Theresa

132. Id. at 337.
133. Id.
134. Id.
137. Id. at *1. See Stacey A. Tovino & William J. Winslade, A Primer on the Law and Ethics of Treatment, Research, and Public Policy in the Context of Severe Traumatic Brain Injury, 14 ANNALS HEALTH L. 1, 53 n.2 (2005) ("Pope John Paul II stated that health care providers [must] provide food and water to individuals in the persistent vegetative state because such patients 'retain human dignity and have a right to be monitored for clinical signs of eventual recovery.' According to the Pope, denying food and water would constitute 'euthanasia by omission' . . . ").
139. Id.
140. Id.
Schiavo, at 1:00 p.m. on Friday, March 18, 2005."141

Two days before the nutrition and hydration tubes were to be removed, the Second District Court of Appeal, in Schiavo VIII,142 affirmed Judge Greer's denial of the emergency motion for stay.143 The court noted that prior to the time "Terri's Law" was declared unconstitutional, Governor Bush had requested, pursuant to the Act, that the Chief Judge of the Sixth Judicial Circuit appoint a special guardian ad litem for Theresa Schiavo.144 Dr. Jay Wolfson, with degrees in both law and public health, was appointed and submitted his lengthy ad litem report. Dr. Wolfson concluded that "the trier of fact and the evidence that served as the basis for the decisions regarding Theresa Schiavo were firmly grounded within Florida statutory and case law."145 The court further noted that the guardian ad litem "visited Mrs. Schiavo many times in 2003. He was unable to independently observe any 'consistent, repetitive, intentional, reproduceable interactive and aware activities.'"146 The court explained that it must follow "the rule of law even in this case."147 The court further stated, "we issue our mandate in conjunction with this opinion, and we will not entertain any motions for a rehearing."148 The Schindler's application for a further stay before the United States Supreme Court was denied on March 17, 2005.149 The Florida Supreme Court dismissed all writs filed by the Florida Department of Children and Families on March 17, 2005.150

141. Id. at *2.
143. Id.
144. Id. at 816.
145. Id. Ironically, although appointed pursuant to "Terri's law," the guardian ad litem did not render a report that was in any way helpful to the Schindlers or Governor Bush. Instead, the ad litem report provided further support for Judge Greer's original determination of February 11, 2000.
146. Id. at 818.
147. Id. at 819.
148. Id.
150. Florida Dep't of Children and Families v. Schiavo, 900 So. 2d 553 (Fla. 2005).
THE SCHIAVO ODYSSEY

OFF TO FEDERAL COURT—CONGRESS PASSES AND PRESIDENT BUSH SIGNS ON PALM SUNDAY, AN ACT “FOR THE RELIEF OF THE PARENTS OF THERESA MARIE SCHIAVO.”

The Schindlers petitioned the federal court for a writ of habeas corpus, seeking a temporary restraining order to enjoin the withholding of food and fluids from Theresa Schiavo. On March 18, 2005, U.S. District Court Judge Moody considered the Schindlers’ Emergency Petition for Temporary Injunction and Petition for a Writ of Habeas Corpus and found he was without jurisdiction to review the claims under the Rooker-Feldman doctrine. The district court further found that the Schindlers had failed to satisfy the elements for a temporary restraining order.

Three days later, the matter was again before Judge Moody. In the interim, while petitioners’ appeal was pending before the Eleventh Circuit, Congress passed and the President signed the Act for the Relief of the Parents of Theresa Marie Schiavo. The Eleventh Circuit immediately vacated the March 18, 2005 order of dismissal of Judge Moody, based on the new Act. The Eleventh Circuit remanded the case so that the Schindlers could file their amended petition, asserting new rights arising as a result of the newly passed legislation. Judge Moody accordingly vacated his earlier order of dismissal, with leave for the Schindlers to file their amended petition pursuant to the Act.

The following day, March 22, 2005, District Court Judge James E. Whittemore considered the Schindler’s amended

153. Greer, 2005 WL 754121, at *1. (The Rooker-Feldman doctrine prohibits a losing party in state court from seeking in effect appellate review of the state court judgment in a federal district court on the assertion that the state judgment violates the loser’s federal rights.)
154. Id.
156. Id. at *1.
157. Id.
158. Id.
159. Id.
motion for a temporary restraining order, requesting that Michael Schiavo and Hospice be directed to transport Terri to a hospital for "medical treatment to sustain her life and to reestablish her nutrition and hydration." The action was brought "pursuant to a Congressional Act signed into law by the President during the early morning hours of March 21, 2005." The Act provided that the United States District Court for the Middle District of Florida shall have jurisdiction to hear, determine, and render judgment on a suit or claim by or on behalf of Theresa Marie Schiavo for the alleged violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain life.

While acknowledging that there might be "substantial issues concerning the constitutionality of the Act," the court presumed that the Act was constitutional pursuant to Benning v. Georgia. The court noted that the Schindlers "ignore[] the role of the presiding [state] judge as judicial fact-finder and decision-maker under the Florida statutory scheme." "[N]o federal constitutional right is implicated when a judge merely grants relief to a litigant in accordance with the law he is sworn to uphold and follow." In his very detailed opinion, Judge Whittemore found that Judge Greer (i) had not violated Terri's

161. Id.
162. Id. (The Act, Pub. L. No. 109-3 (March 21, 2005), further provided that Terri Schiavo’s parents would have standing to bring suit under the Act; the district court would consider any such claim de novo, notwithstanding any prior litigation on the same issues in state court; the district court would have jurisdiction to grant declaratory and injunctive relief as necessary to protect Terri Schiavo’s rights; such a lawsuit would be timely filed if filed within thirty days after enactment of the Act; nothing in the Act shall be construed to create substantive rights not otherwise secured by the Constitution; nothing in the Act will confer additional jurisdiction regarding any claims of assisted suicide; and nothing in the Act will constitute precedent for any future legislation.)
163. Id. at 1382.
164. 391 F.3d 1299, 1303 (11th Cir. 2004). See B.C. v. Florida Dep’t. of Children and Families, 887 So. 2d 1046, 1055 n.6 (Fla. 2004) (citing Singletary v. State, 322 So. 2d 551, 552 (Fla. 1975)). (Generally, courts do not pass upon the constitutionality of a statute where the question that arises may be disposed of on other grounds.)
165. Schiavo ex rel. Schindler, 357 F.Supp. 2d at 1385.
166. Id.
right to a fair and impartial trial;\textsuperscript{167} (ii) did not deny Terri access to the courts;\textsuperscript{168} (iii) did not violate any procedural due process regarding the appointment of a guardian ad litem or in refusing to appoint independent counsel;\textsuperscript{169} (iv) that the Schindlers failed to show a substantial likelihood of success on the merits of the equal protection claim;\textsuperscript{170} and (v) that they failed to meet the requirements for claims under the free exercise clause and the Religious Land Use and Institutionalized Persons Act, or the First Amendment free exercise of religion clause.\textsuperscript{171} Judge Whittemore noted that "[t]his court appreciates the gravity of the consequences of denying injunctive relief. Even under these difficult and time-strained circumstances, however, and notwithstanding Congress' expressed interest in the welfare of Theresa Schiavo, this court is constrained to apply the law to the issues before it."\textsuperscript{172}

By the following day, March 23, 2005,\textsuperscript{173} the Eleventh Circuit Court of Appeals affirmed Judge Whittemore's finding that there was no abuse of discretion;\textsuperscript{174} that the newly enacted statute authorizing the Schindlers to bring their action in federal court did not mandate entry of a temporary or permanent injunction;\textsuperscript{175} and that the All Writs Act\textsuperscript{176} could not be used to evade the requirements for a preliminary injunction.\textsuperscript{177} The court noted that the district court had conducted a \textit{de novo} review of the Schindlers' claims and that the appellate court would consider the issues under the abuse of discretion standard.\textsuperscript{178} The court concluded that the "district court's carefully thought-out decision to deny temporary relief in these circumstances is not an abuse of discretion."\textsuperscript{179} Significantly, the court declined to consider the constitutional challenges:

\textsuperscript{167.} Id.
\textsuperscript{168.} Id. at 1387.
\textsuperscript{169.} Id.
\textsuperscript{170.} Id.
\textsuperscript{171.} Schiavo ex rel. Schindler, 357 F.Supp. 2d at 1388.
\textsuperscript{172.} Id.
\textsuperscript{173.} The opinion of the Eleventh Circuit was subsequently corrected on March 25, 2005.
\textsuperscript{174.} Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1223, 1226 (11th Cir. 2005).
\textsuperscript{175.} Id.
\textsuperscript{176.} 28 U.S.C. § 1651(a).
\textsuperscript{177.} Schiavo ex rel. Schindler, 403 F.3d at 1229.
\textsuperscript{178.} Id. at 1226.
\textsuperscript{179.} Id.
Defendants contend that the legislation is so extraordinary that it is unconstitutional in several respects. We need not decide that question. For purposes of determining whether temporary or preliminary injunctive relief is appropriate, we indulge the usual presumption that congressional enactments are constitutional.\(^{180}\)

The Eleventh Circuit quoted from the legislative history of the Senate bill to illustrate that while the Act required that the federal courts entertain a petition for relief, Congress had considered and specifically rejected any provisions that would have "mandated, or permitted with favorable implications, the grant of the pretrial stay."\(^{181}\) The majority concluded that "[w]hile the position of our dissenting colleague has emotional appeal, we as judges must decide this case on the law."\(^ {182}\) That same day, the majority of the Eleventh Circuit Court of Appeals denied rehearing en banc, with Circuit Judge Wilson dissenting.\(^ {183}\) The Schindlers' application for stay of enforcement of the decision of the Eleventh Circuit was denied by the U.S. Supreme Court on March 24, 2005.\(^ {184}\)

United States District Judge Whittemore conducted another hearing on March 24, 2005 on the Schindlers' motion for temporary restraining order as to those counts that had not been addressed by the Eleventh Circuit's Opinion. On March 25, 2005, the trial court denied all relief.\(^ {185}\) The court determined that it had jurisdiction under newly enacted Public Law Number 109-3 (the "Act") and determined *de novo* the Schindlers' claims, including their argument that deprivation of food and water violated Schiavo's rights under the Americans with Disabilities Act ("ADA").\(^ {186}\) The court reasoned that Michael Schiavo is not

\(^{180}\) *Id.* at 1226-27. (Federal and state appellate courts generally avoid passing on constitutional challenges if the matter can be determined on other grounds. Under these extraordinary circumstances, it was imperative for the courts to set an example with *Schiavo*, advising future litigants that lobbying for favorable legislation is not a "last resort" where the judicial process offers no relief to litigants.).

\(^{181}\) *Id.* at 1227. The dissent disagreed, reasoning that the "denial of Plaintiffs' request for an injunction frustrates Congress' intent, which is to maintain the status quo by keeping Theresa Schiavo alive until the federal courts have a new and adequate opportunity to consider the constitutional issues raised by Plaintiffs." *Id.* at 1237.

\(^{182}\) *Id.* at 1229.

\(^{183}\) *Schiavo ex rel. Schindler*, 403 F.3d at 1237.


\(^{186}\) *Id.* at 1164.
a "public entity" under the ADA and was not acting "under color of state law," as required by the statutory requirements of actions brought under the ADA. 187 Nor were there any cognizable violations alleged under the Rehabilitation Act of 1973, 188 the Fourteenth Amendment's due process rights, 189 or the Eighth Amendment's prohibition against cruel and unusual punishment. 190 The Court further denied relief under claims for violation of the Fourteenth Amendment's right to life and The All Writs Act. 191

Also on March 25, 2005, the Eleventh Circuit Court of Appeals reviewed Judge Whittemore's order denying relief, and in a unanimous opinion affirmed the district court's denial of the temporary restraining order. 192 The court noted that the district court had held a hearing on the evening of March 24, 2005, and "after working through the night, issued an order earlier today denying the motion." 193 The court discussed the doctrine of law of the case and its applicability to issues that had been decided explicitly or by necessary implication in the earlier appeal, only days before, on March 23, 2005. 194 As to those matters that had not been addressed in its prior opinion, the Eleventh Court found that neither the guardian nor Hospice had violated the ADA; there were no violations of the Rehabilitation Act; Terri's Eighth Amendment' rights had not been violated; nor were any of Terri's substantive or procedural due process rights violated. 195 The Schindlers filed an immediate application for stay of enforcement of judgment, pending the filing and

187. Id. at 1164-65.
188. Id. at 1166.
189. Id. at 1167.
190. Id.
192. Schiavo ex rel. Schindler, 403 F.3d 1289, 1303 (11th Cir. 2005) (Circuit Judge Wilson, who had previously dissented, concurred, stating that the Schindlers "have been unable to come forward in their second amended complaint with any new claims palpably alleging the denial of a right secured by the Constitution or laws of the United States.").
193. Id. at 1291.
194. Id.
195. Id. at 1294-1295. (The Eleventh Circuit rejected the argument that under Cruzan, the Due Process Clause required clear and convincing evidence before hydration and nutrition could be withdrawn from an incapacitated person. The court noted that Cruzan only established that a state could, if it so desired, require clear and convincing evidence. In any event, the court reasoned that Florida has adopted the very requirement that was approved in Cruzan in Guardianship of Browning, 568 So. 2d 4, 15 (Fla. 1990), and that standard was applied by the state court in the Guardianship of Schiavo.).
disposition of a petition for writ of certiorari in the United States Supreme Court, which was denied on March 30, 2005.\textsuperscript{196} Rehearing en banc before the Eleventh Circuit was denied on March 30, 2005 with Circuit Judges Tjoflat and Wilson dissenting.\textsuperscript{197}

Theresa Marie Schiavo died on March 31, 2005.\textsuperscript{198}

\textbf{IMPROPER LEGISLATIVE INTERVENTION SHOULD HAVE BEEN STRONGLY CONDEMNED BY THE FEDERAL JUDICIARY}

The Act, by its plain language, required the federal district court to reconsider Terri Schiavo's removal from life support \textit{de novo}.\textsuperscript{199} Although the key purpose of the legislation was to force federal courts to exercise jurisdiction over the Schiavo's issues, the legislation was so facially unconstitutional because of the Act's blatant defects that federal jurisdiction was likely lacking.\textsuperscript{200} Circuit Judge Birch found the Act to be unconstitutional on several grounds in his Specially Concurring Opinion from the Eleventh Circuit's denial of rehearing en banc, of March 30, 2005.\textsuperscript{201} The federal courts, however, instead of

\begin{itemize}
\item 197. Schiavo ex rel. Schindler v. Schiavo, 404 F.3d 1270 (11th Cir. 2005). Petition for rehearing was also denied with Circuit Judge Wilson dissenting. Schiavo ex rel. Schindler v. Schiavo, 404 F.3d 1282 (11th Cir. 2005).
\item 199. That portion of Pub. L. 109-3 provided:
   Any parent of Theresa Marie Schiavo shall have standing to bring a suit under this Act... In such a suit, the District Court shall determine \textit{de novo} any claim of a violation of any right of Theresa Maria Schiavo within the scope of this Act, notwithstanding any prior State court determination and regardless of whether such a claim has previously been raised, considered, or decided in State court proceedings...
\item 200. Schiavo ex rel. Schindler, 404 F.3d at 1276-77. (The Act granted relief solely to the parents of Terri Schiavo. It purported to vest the federal courts with jurisdiction to overrule and undermine a state court determination. The Act also required that all matters be considered \textit{de novo} and provided a limitation of thirty days for the Schindlers to challenge the state court proceedings in federal court.).
\item 201. Schiavo ex rel. Schindler, 404 F.3d at 1271; \textit{Id.} at 1272 (Judge Birch concluded that "this court and the district court are without jurisdiction in this case under that special Act and should refuse to exercise any jurisdiction that we may otherwise have in this case."); ("[W]e may not hypothetically assume jurisdiction to avoid resolving hard jurisdictional questions."); \textit{Id.} at 1274 ("[T]he Act invades the province of the judiciary and violates the separation of powers principle."); \textit{Id.} at 1276 ("[T]he constitutional infirmity of Section 2 of the Act renders the entire Act a nullity.... I conclude that Pub. L. 109-3 is an unconstitutional infringement on core tenets underlying our constitutional system.").
\end{itemize}
sending a powerful message to litigants and the legislators condemning the federal legislation as improper meddling into judicial affairs, validated the interference by presuming the validity of the Schiavo Act.\textsuperscript{202} In contrast, the Florida courts declared "Terri’s Law", equally repugnant legislation that was unconstitutional.\textsuperscript{203}

Although the federal legislation proved worthless to the Schindlers,\textsuperscript{204} the Congressional meddling,\textsuperscript{205} intended to undermine state judicial proceedings, created a very dangerous precedent.\textsuperscript{206} The district court and Eleventh Circuit Court of Appeals took the diplomatic approach\textsuperscript{207} by following the line of cases that entertain the presumption of validity of legislation,\textsuperscript{208} determining, on other grounds,\textsuperscript{209} that the Schindlers were not entitled to any relief from the state court orders.\textsuperscript{210} By doing so, the federal courts missed a golden opportunity to condemn the unprecedented and improper interference by the legislative

\begin{itemize}
\item \textsuperscript{202} Id. at 1272 (In his Specially Concurring Opinion in support of the denial of a rehearing, en banc, Circuit Judge Birch noted that the district court and Eleventh Circuit should not have continued to indulge "this presumption and decline[d] to address the constitutionality of the law which purports to grant federal jurisdiction.").
\item \textsuperscript{204} Schiavo ex rel. Schindler, 403 F.3d at 1226; Schiavo ex rel. Schindler, 357 F.Supp. 2d at 1388 (Both the district court and the Eleventh Circuit Court of Appeals found that "Plaintiffs have not established a substantial likelihood of success on the merits . . ." and denied all relief to the Schindlers and adhered to the decisions of Judge Greer.)
\item \textsuperscript{205} Noah, supra note 13, at 134 (Such legislation was criticized for “their meddling in a single difficult end-of-life decision . . .”).
\item \textsuperscript{206} See Joseph Schuman, \textit{A Political Drama About One Life}, Wall St. J., Mar. 21, 2005 (“This Congress is on the verge of telling states, courts, judges and juries that their decisions do not matter,” quoting Florida Democratic Representative Jim Davis; “We’re not doctors, we just play them on C-SPAN,” noted Massachusetts Representative Barney Frank who argued that politicians were not qualified to make medical decisions.).
\item \textsuperscript{207} National Briefing South: Florida: Poll on Schiavo Case, N.Y. TIMES, Apr. 14, 2005, at A20 (Whether Terri Schiavo should be removed from life support became a divisive national issue—the federal courts issued decisions on the merits rather than throw the Schindlers claims out of court for lack of jurisdiction. However, a poll by the New York Times reported that “[a] majority of the state’s [Florida] voters disapproved of the role Congress, President Bush and Gov. Jeb Bush played in intervening in the Terri Schiavo case . . .”).
\item \textsuperscript{208} See Benning, 391 F.2d at 1303-04; United States v. Harris, 106 U.S. 629, 635 (1883).
\item \textsuperscript{209} See Schiavo ex rel. Schindler, 357 F.Supp. at 1384-88 (finding that plaintiffs failed to establish a substantial likelihood of success on the merits under the various grounds for injunctive relief. This decision was affirmed by the Eleventh Circuit in \textit{Schiavo ex rel. Schindler}, 403 F.3d at 1229.).
\item \textsuperscript{210} Id.
\end{itemize}
branch, thereby discouraging similar meddling in the future.\footnote{See Allen, \textit{supra} note 2, at 1011 ("[T]he Florida Legislature was prompted to take action purely because of politics... as part of a larger political agenda."); Thompson, \textit{supra} note 9, at 512 (In the context of discussing the Florida Legislature's attempts to undermine the judicial process by enacting "Terri's Law" legal scholars condemned the interference, equally applicable to the federal meddling. "Former Chief Justice Gerald Kogan of the Florida Supreme Court stated that 'this particular administration has not yet understood why we have a separation of powers.... They seem to believe that the Governor and the Legislature can do whatever they want and the courts should not interfere and that's not right.'" Harvard Law Professor Laurence Tribe stated "I've never seen a case in which the state Legislature treats someone's life as a political football in quite the way this is being done.").}

**CONCLUSION**

End-of-life decisions are fraught with uncertainty, largely because many Americans dare to dream of a miracle and do not want to let go of a loved one. But few of us would ever choose to linger on life support for fifteen years while family members litigate our fate in state and federal courts.\footnote{Schiavo's Husband Writing a Book, \textit{MIAMI HERALD}, Sept. 19, 2005, at 8B (Michael Schiavo is telling "his side of the story" in a book expected to be published "before the first anniversary of Terri's death."); Mitch Stacy, \textit{Schiavo's Family to Pen Memoir}, \textit{MIAMI HERALD}, Sept. 28, 2005, at 8B (Terri's parents and siblings are also writing a book, a "yet untitled memoir" that will also coincide with the first anniversary of her death.).} Just as the Schiavo saga was finally concludes, the state and federal Legislatures intervened in a way that was repugnant to the rule of law and role of the branches of government. At the end of the day, Pinellas County Circuit Court Judge Greer's February 11, 2000 decision,\footnote{Guardianship of Schiavo, No. 90-2908, 1996 WL 33496839, (Fla. Cir. Ct. Feb. 11, 2000).} following the precedent of \textit{In re Guardianship of Browning},\footnote{568 So. 2d 4 (Fla. 1990).} was dispositive of the issues. All that followed was for naught.