

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
No. 8:05-CF-530-7-27TBM**

THERESA MARIE SCHINDLER SCHIAVO	)	
Incapacitated <i>ex rel.</i> ROBERT SCHINDLER	)	
and MARY SCHINDLER, her Parents and	)	
Next Friends,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
MICHAEL SCHIAVO, as Guardian of the	)	
Person of Theresa Marie Schindler Schiavo,	)	
Incapacitated; JUDGE GEORGE W. GREER	)	
and THE HOSPICE OF THE FLORIDA	)	
SUNCOAST, INC.	)	
	)	
Defendants.	)	

**MOTION FOR LEAVE TO FILE AMICUS BRIEF OF THE
AMERICAN CENTER FOR LAW AND JUSTICE AND LIBERTY COUNSEL
IN SUPPORT OF PLAINTIFFS' REQUEST FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE RELIEF**

Amici curiae the American Center for Law and Justice (ACLJ) and Liberty Counsel (LC) hereby move this Court, pursuant to Rule 7, Fed. R. Civ. P., for leave to file the accompanying brief.

The ACLJ is a nonprofit public interest legal organization committed, *inter alia*, to the defense of innocent, vulnerable human beings such as Terri Schiavo. ACLJ attorneys represented Terri's parents, Mary and Robert Schindler, in the state court challenge to Terri's Law. *See Bush v. Schiavo*, 885 So. 2d 321 (Fla. 2004), *cert. denied*, 125 S. Ct. 1086 (2005). The ACLJ therefore has a special familiarity with, and interest in, this case.

Liberty Counsel is a nonprofit public interest law firm dedicated to preserving the sanctity of human life at all stages. Liberty Counsel has a special interest in this case given its mission to expend resources and conduct litigation to preserve the sanctity of human life.

The accompanying brief is concise and thus will not unduly burden these proceedings.

WHEREFORE, amici pray that this Court will GRANT the present motion for leave.

Respectfully submitted this 21st day of March, 2005.

LIBERTY COUNSEL

**AMERICAN CENTER FOR LAW AND
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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2005, I caused the foregoing Motion for Leave to File Amicus Brief of the American Center for Law and Justice and Liberty Counsel in Support of Plaintiffs' Request for Temporary Restraining Order and Preliminary Injunctive Relief to be served by first-class mail, postage pre-paid, and by facsimile on:

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Defendants.	)	

**AMICUS BRIEF OF THE AMERICAN CENTER FOR LAW AND JUSTICE
AND LIBERTY COUNSEL IN SUPPORT OF PLAINTIFFS' REQUEST FOR
A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

ARGUMENT

This is not a “right to die” case. Rather, this case is about efforts to protect a vulnerable, disabled young woman from harm at the hands of those with manifest conflicts of interests.

I. Factual assumptions

Because this case arrives at an emergent pleadings/TRO stage, this Court must indulge all factual inferences in favor of the plaintiffs. Thus, this Court must assume that Terri Schiavo is *not* in a “persistent vegetative state,” that she is aware and able to communicate, and that she could benefit from rehabilitation therapy. Further, this Court must assume that Terri does *not* wish to die

from starvation and dehydration, and that respondent, her estranged husband and legal guardian, wants Terri to die for his own selfish reasons (to inherit her estate and to marry his live-in fiancée).

It is black-letter law that, at the pleadings stage, a court must assess the facts in the light most favorable to the complaining party. *E.g., Nelson v. Campbell*, 124 S. Ct. 2117, 2120 (2004) (“we assume the allegations in [the] complaint to be true”). In the present case, that means this Court must assume the following:

- Terri Schiavo is *not* in a “persistent vegetative state,”¹
- Terri’s condition is neither terminal² nor untreatable; rather, she could benefit from therapy and regain some or all of the functions she has lost;
- Terri is aware of her surroundings and is able to communicate;³ with therapy, Terri might regain some or all of her speech skills;
- Terri *did not and does not want to die*, especially by starvation and dehydration;⁴
- Michael Schiavo, Terri’s legal husband and guardian and a defendant here, is living with another woman who has borne him two children; he wants Terri to die so he can marry this other woman without divorcing Terri;

¹See Fla. Stat. § 765.101(12) (“persistent vegetative state” defined to require “unconsciousness,” total absence of voluntary action and cognition, and inability to “communicate or interact purposefully”). Terri plainly does not satisfy this definition. *See infra* note 3.

²Terri turned 41 on December 3, 2004.

³See www.terrisfight.org (linking to videos of Terri).

⁴In his previous challenge to a Florida law that authorized the restoration of food and fluids to Terri, Michael Schiavo himself conceded in the state supreme court that, under his legal theory, determining Terri’s “intent” is “not material,” and that even if a “hundred juries” found against him on the issue of Terri’s intent, the challenged law would still supposedly be unconstitutional under the Florida constitution. Answer Brief at 9, *Bush v. Schiavo* (Fla. July 23, 2004). If Schiavo defends the current action on purely legal grounds, the same point would hold. If he defends on factual grounds, by contrast, an evidentiary hearing would be necessary, and the need for interim relief to preserve Terri’s life pending such a hearing would be obvious.

- Michael Schiavo refuses to divorce Terri because to do so would cut off his inheritance of what remains of her assets;
- Michael does *not* have Terri's best interests at heart; in fact, he may be responsible for having caused her condition (by battering her) and may have repeatedly physically abused Terri when she was still competent.⁵

Michael Schiavo certainly has the right to contest the facts. In the present posture of the case, however, these factual suppositions must be taken as true.

II. Life-threatening situation

Terri Schiavo's life is in imminent jeopardy. If she were a cat or a dog, her death by starvation and dehydration would not be tolerated. If she were a convicted felon, her death by starvation and dehydration would not be tolerated. *Cf. State ex rel. White v. Narick*, 170 W. Va. 195, 292 S.E.2d 54 (1982) (convict has no right to starve to death in prison, even voluntarily); *People ex rel. Ill. Dep't of Corrections v. Millard*, 335 Ill. App. 3d 1066, 1070, 782 N.E.2d 966, 969 (2003) (same) (citing cases). That Terri is a gravely mentally disabled woman should not place her beyond basic human decency.

To delay is to sentence Terri to an inhumane death. An injunction can always be reversed. But this Court has no power to resurrect the dead. *Cruzan v. Director, Mo. Dep't of Health*, 497 U.S. 261, 283 (1990) ("An erroneous decision to withdraw life-sustaining treatment . . . is not susceptible of correction").

CONCLUSION

This Court should grant immediate relief, restoring food and fluids to Terri Schiavo.

⁵See www.terrisfight.org/images/bonescan.jpg (bone scan report finding evidence of "history of trauma").

Respectfully submitted this 21st day of March, 2005.

LIBERTY COUNSEL

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