

No. 05-11556-D
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

THERESA MARIE SCHINDLER SCHIAVO)	
Incapacitated <i>ex rel.</i> ROBERT SCHINDLER)	
and MARY SCHINDLER, her Parents and)	
Next Friends,)	On appeal from the United
Plaintiffs-Appellants,)	States District Court for the
	Middle District of Florida
vs.)	District Court No.
	8:05-CV-530-T-27TBM
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-Appellees.)	

AMICUS BRIEF OF CONGRESSMAN DAVE WELDON, THE
AMERICAN CENTER FOR LAW AND JUSTICE, AND LIBERTY COUNSEL
IN SUPPORT OF EMERGENCY INJUNCTIVE RELIEF

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Schiavo ex rel. Schindler v. Schiavo

Eleventh Circuit No. 05-11556-D

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Counsel hereby certifies that, in addition to the parties and entities identified in the Certificates of Interested Persons which the parties and other amici have submitted, the following may have an interest in the outcome of the proceedings:

American Center for Law and Justice (ACLJ), a public interest law firm which is a nonstock corporation. The ACLJ has no parent corporation, subsidiaries, or conglomerates and neither owns nor is owned by any affiliates. No publicly held company owns 10% or more of its stock.

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Liberty Counsel (LC), a public interest law firm which is a nonstock corporation.

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U.S. Congressman Dave Weldon

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**AMICUS BRIEF OF CONGRESSMAN DAVE WELDON, THE
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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. This case has a long and complex history. The overriding question here, however, is whether to restore the status quo -- food and fluids for Terri Schiavo -- so that she will not die before the various important questions at issue can be duly sorted out.

I. Life-threatening situation

Terri Schiavo's life is in imminent jeopardy. Her death will irreparably prejudice the proceedings herein. 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").

To delay is to sentence Terri to an inhumane death. 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, 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 she is a gravely mentally disabled woman should not place her beyond basic human decency.

II. Factual assumptions

Because this case arrives at an emergent pleadings/TRO stage, this Court must indulge all factual inferences in favor of the complainants. 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

defendant Michael Schiavo, 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;

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.

- 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;

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.

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 22nd day of March, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2005, I caused two copies of the foregoing Amicus Brief of Congressman Dave Weldon, the American Center for Law and Justice, and Liberty Counsel in Support of Emergency Injunctive Relief to be served by first-class mail, postage pre-paid, and by facsimile on:

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