

LDR650-OB: Medical Law

Legal Summary of Bush V. Schiavo

Tyler, Timothy

Siena Heights University

Professor Tyler Roebke

November 22, 2019

## LEGAL SUMMARY OF BUSH V. SCHIAVO

**Facts:** The decedent Theresa Schiavo lived in a vegetative state for over ten years due to a cardiac arrest. For eight years, the decedent's husband and plaintiff, Michael Schiavo, petitioned the court to authorize the termination of life-prolonging procedures. Theresa's parents, Robert and Mary Schindler, opposed Michael's petition. The decedent, who did not have a written advance directive, would have chosen to terminate life support if she was competent to make the decision herself. The court granted the plaintiff's request. The nutrition and hydration tube that had been prolonging Shiva's life was removed. A week later, the Florida legislature passed a statute empowering the governor to issue a one-time stay to prevent the withholding of nutrition and hydration from a patient. The governor's authority was to expire fifteen days after the statute became effective. The plaintiff challenged the executive order and the stay. The circuit court granted summary judgment on the plaintiff's behalf favor. Governor Jeb Bush appealed to the Florida Supreme Court.

**Issues:** Were the actions of the Florida legislature enacting a statute granting the governor the power to issue a one time stay to prevent the withholding of nutrition and hydration from a patient is unconstitutional?

**Rules:** Fla. Laws ch. 418 contained no guidelines or standards to limit the governor from exercising completely unrestricted discretion in applying the law.

**Analysis:** The Legislature enacted the law giving the governor the power to reinsert a feeding tube which a court had given another person the power to remove. This act is a violation of the separation of the capabilities of the executive, judicial, and legislative branches. The Florida supreme court ultimately ruled (2004) that Terri's Law was unconstitutional and violated Terri Schiavo's right to privacy. In 2005, after a Florida appeals court again refused to block the tube's removal, both Houses of the U.S. Congress attempt to block its removal using their subpoena power, a move regarded by most legal experts as overreaching or illegitimate, and the Florida judge rejected the move and ordered the tube removed.

**Conclusion:** The Florida legislature's grant of authority to issue the stay under was not a valid exercise of the state's *parens patriae* power. Congress passed a law allowing for a federal district court in Florida to determine whether the rights of the decedent were violated. The federal judge rejected the decedent's parent's argument that her constitutional right to due process was being violated. The decision was upheld on appeal. The circuit court's judgment was affirmed. Terri Schiavo died on March 31, 2005, less than two weeks after the feeding tube had been removed.

## References

Bush v. Schiavo - Case Brief for Law Students | Casebriefs.

<https://www.casebriefs.com/blog/law/wills-trusts-estates/wills-trusts-estates-keyed-to-dukeminier/nonprobate-transfers-and-planning-for-incapacity/bush-v-schiavo/>

Showalter, J. S. (2017). The law of healthcare administration. Chicago, IL: Health Administration Press.