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### **The Terri Schiavo Crisis**

Terri Schindler-Schiavo has lived in a persistent vegetative state in Florida for thirteen years, since her collapse and resuscitation at age 26 due to apparent severe hypokalemia. She has been kept alive with a jejunal feeding tube these many years, life support that her husband claims she would not want. For five years her husband has claimed that Terri "...would not want to live this way" and asked that the tube feedings be discontinued, arguing in multiple court proceedings that the right to privacy mandates compliance with Terri's previously expressed wish.<sup>i</sup> Though Terri has no written health care directive, the husband claims that her verbal statement is clear and convincing evidence of Terri's desire not to continue existing in her present condition. The Florida courts agreed and on October 15, 2003, for the second time, her feedings were discontinued with the expectation that death would soon follow. A major dispute has encompassed this decision, however.

Terri's parents are in strong opposition with the husband and disagree with the diagnosis of PVS, claiming that Terri responds to her environment and that she can be rehabilitated such that the feeding tube can one day be removed when she is able to eat on her own. They also argue that Terri's husband is an invalid surrogate because of numerous conflicts of interest.<sup>ii</sup> Mr. Schiavo stands to inherit a substantial amount of money contained in a medical support fund that was established to provide for Terri's care. He is also living with another woman who he plans to marry and with whom he has already had a child. They also claim that allowing the feeding tube to be removed is violating Terri's civil rights because there is no actual proof that withdrawing the comfort and support of her feedings is what she would want. Florida's legislature and Governor Jeb Bush have support the family's claim and on October 21, 2003 the Florida Legislature passed Bill 35E (Terri's Bill) allowing the Governor to issue a one time executive order requiring that nutrition and hydration be resumed for a patient in this particular circumstance where the family disagrees with the decision to withdraw. The order was given the next day and Terri's constitutional crisis is now in full flower.

There has been a long history of ethical and legal debate in this country regarding the right of patients to refuse or terminate life support. Many have also argued that patients should be allowed to choose when and how they will die if they are suffering from terminal illness.<sup>iii</sup> Like *Schiavo*, both *Quinlan* and *Cruzan* argued for the right of privacy in allowing life support to be withdrawn if there was no hope of recovery and if so desired by the patient. In 1976 *Quinlan* recognized the usefulness of ethics committees for dispute resolution and in 1990 *Cruzan*, for the first time, identified feedings tubes as "life support technology" that could be removed at the behest of the patient or their surrogate. Most states, including Florida and Missouri, have statutes that clearly protect

the patient's right to refuse and withdraw treatment. Ethical and legal precedent for voluntary refusal of artificial hydration and nutrition has been well established when it is of no use or becomes burdensome to the patient.<sup>iv</sup> The Schiavo case is remarkable because of the dispute that rages within the family, and the fact that a state legislature has authorized the undoing of a judicial decision. This is in direct conflict with the U.S. Supreme Court who ruled in 1995 that Congress is prohibited from reopening final court decisions, which would be in violation of the doctrine of separation of powers as dictated by the U.S. Constitution.

These days we are living an historic moment. A constitutional crisis is unfolding and a good judicial thumping of Florida may well be in the offing. But as Terri's loved ones rage, as the lawyers and judges deliberate, and as the media feeding frenzy continues, someone somewhere must still answer the question, "What would Terri want?" She may have already told us, folks...as a society maybe we just aren't listening.

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<sup>i</sup> Goodnough, Abby. Spouse Fights New Law Over Feeding Tube. *The New York Times*. October 30, 2003.

<sup>ii</sup> Terri's Situation. <http://www.terrisfight.org/situation.htm>

<sup>iii</sup> Campo-Flores, A. Who Has the Right to Die? *Newsweek*. November 3, 2003: 50-52.

<sup>iv</sup> Florida Bishops Reject "Euthanasia" in Terri Schiavo Case.  
<http://www.townhall.com/news/politics/200308/CUL20030829d.shtml>