

Florida Governor Jeb Bush intervenes in “right-to-die” case: A cruel pandering to the religious right

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Florida Governor Jeb Bush issued an order on October 21 directing doctors to resume life support to vegetative patient Terri Schiavo. The order came six days after Schiavo had been taken off feeding tubes. Jeb Bush—the brother of President George W. Bush—acted in accordance with a statute passed that day by the state legislature giving him the authority to overrule a court decision.

At his October 28 press conference, President Bush said he supported the actions of his brother in the Schiavo case.

Terri Schiavo is once again being artificially fed. Her husband, Michael Schiavo, who fought in court for the right to remove the feeding tubes, will file a suit this week challenging the constitutionality and legality of the new statute and Jeb Bush's order. Michael Schiavo has been opposed by Terri's biological family, which has sought to block the removal of the feeding tubes.

The legislation passed in the Florida House and Senate and the order issued by Bush are without legal foundation and in conflict with fundamental democratic and constitutional principles. Bush's order is a cruel maneuver, exploiting a personal and family tragedy for crass political motives. It is calculated to solidify Bush's support among Christian fundamentalist layers that have taken up the Schiavo case—elements that form a principal base of support for the Republican Party—and whip up the most backward social forces.

Terri Schiavo suffered temporary heart failure in 1990, depriving her brain of oxygen and leaving it severely damaged. For the past 13 years she has been in a persistent vegetative state. This is a medical term for a condition characterized by wakefulness and spontaneous breathing without conscious functions or thought. Terri Schiavo is capable of only reflexive activity, and must be sustained through a feeding tube.

She left no living will giving instructions on how far doctors should go to maintain her life in the event of such a debilitating accident. Because she is incapable of having thoughts on the matter, let alone communicating these thoughts to doctors and her family, guardianship has been transferred to her husband. This is in accordance with the legally established hierarchy of guardianship. If she had no husband, guardianship would fall to her adult children, and if she had no children, to her parents.

The case is a tragic one by any measure—for Terri Schiavo and for her family, including her husband. Disputes between family members over whether to maintain life support for an individual in a vegetative state or with a terminal illness are, unfortunately, not uncommon. They are never easy to resolve, but there is a definite legal procedure for doing so.

A Florida law passed in 1990 stipulates that a person in a vegetative state can be removed from life support if it can be demonstrated that it is their wish to do so. In 1995 the US Supreme Court ruled that a person being fed through a tube could be permitted to die if “clear and convincing evidence” indicated that that was what the person wanted.

Michael Schiavo has fought in court for years to this end.

A Florida court ruled in favor of Mr. Schiavo in 2001, finding that the evidence was clear that Terri would not want to continue in her state. The Schindler family—Terri's biological kin—repeatedly appealed this decision until all appeals were exhausted earlier this month.

The court's decision rested in part on the fact that Terri Schiavo's condition is irreversible. It is the consensus of the medical community that any person who has been in a vegetative state for a prolonged period has no chance of emerging from it, since the parts of the brain that have been damaged are incapable of being regenerated.

The family has made much of a video that appears to show Schiavo reacting with others, as well as a widely published picture that appears to show her smiling at her mother. However, these reactions are purely involuntary—controlled by areas of her brain that still function—and do not indicate any conscious activity. Like any animal, a human being will react to certain external stimuli without the activity of the cerebral cortex—which in Terri's case is completely destroyed—and therefore without thought or genuine awareness.

Speaking about vegetative patients, Dr. Walter Bradley, a neurologist at the University of Miami School of Medicine, noted, “You squeeze their hand and say, ‘Darling I love you,’ and they look at you. You think, ‘It's wonderful. My loved one is coming back to me.’ But it's reflex.”

He continued: “You can destroy a very extensive part of the cerebral cortex, yet that human being will open their eyes in the morning and will follow movements that are in front of the face, will still have some reactions to pain...But when you talk about spontaneous [that is, not merely reflexive] speech and spontaneously looking at something, none of those things are present.”

Given the medical facts of the case and the status of the husband as guardian, the decision by the courts followed naturally. Normally this would have been the end of the dispute.

What distinguishes the case of Terri Schiavo is the forceful intervention of right-wing forces with whom the Schindler family has become aligned. Relative to their small size, these forces exert a vastly disproportionate influence on the politics of the Republican Party, and the entire country.

The Schindler family has received the support of a number of right-wing groups, and has worked closely with Randall Terry, the founder and former leader of the anti-abortion group Operation Rescue. Operation Rescue is a religious fundamentalist organization aligned with various evangelical Christian and ultra-right groups around the Republican Party. Pat Andersen, the lawyer for the Schindler family, is currently being paid by the Alliance Defense Fund, a legal organization founded by evangelical Christians.

These groups, together with right-wing talk show hosts and politicians, have galvanized a small layer in Florida, prompting thousands of e-mails

to Florida congressmen and daily prayer vigils outside of the hospice where Terri Schiavo is being cared for.

The Christian right has linked the Schiavo case to a broader campaign in the state and nationally to end abortion rights, push for prayer in the public schools and promote other planks in its anti-democratic agenda. Christian fundamentalists and their Republican allies have long campaigned against the “right to die” on the basis that only God can make decisions on life and death, a belief that does not prevent them from supporting the death penalty. Underlying all of their arguments are religious conceptions such as belief in the immortality of the soul. Jeb Bush has pandered to such forces throughout his tenure as governor, and the Schiavo case has provided him with another opportunity.

Bush has attempted to present his decision to intervene as an outgrowth of his own personal values, not a response to pressure from the Christian right. Because he is a Roman Catholic and “values life,” he maintains, he was “driven” to intervene. Even if one were to take him at his word, this explanation would remain an overt affront to core constitutional principles, since it is an endorsement of the imposition of religious beliefs by the state on the public at large, an “establishment of religion” expressly forbidden by the First Amendment to the US Constitution.

In order to advance the agenda of the Christian right it was necessary—given the solid legal foundation of the court’s decision in support of Michael Schiavo—for Bush and the Florida legislature to violate, in addition to the separation of church and state, a number of other constitutional principles.

The bill passed by the legislature was narrowly tailored to apply only to the one case. Without mentioning Schiavo’s name specifically, it allows the governor to issue a “stay” of a court decision to remove feeding tubes under conditions that are particular to the Schiavo case. It is valid for only 15 days, beginning retroactively on October 15. Such a case-specific bill is considered to be a violation of due process, since laws are supposed to be general. It is not in the power of the legislature to decide cases of fact or determine the fate of particular persons. Otherwise, the foundation of the legal system collapses, since any law can be contravened on a case-by-case basis by legislative or executive fiat.

The violation of the privacy rights of the individuals involved—Michael and Terri Schiavo in particular—was highlighted by the fact that the bill was stampeded through the legislature in one day. Most of the congressmen knew little of the case or the court rulings.

It is well established in American constitutional jurisprudence that there is a right to privacy that limits the intrusive powers of government into personal matters. The Schiavo case presents a crude and heartless contravention of this right, with the government stepping in to dictate a matter of the most sensitive and personal nature.

In intervening, the legislature and the governor violated established separation of powers provisions of the Constitution. “The courts should be deciding such cases, not a legislature jumping in,” said Bill Allen, professor of bioethics and law at the University of Florida.

The bill basically says that the governor is not bound by the decisions of the courts. Law professor Steven Gay of Florida State University noted, “The statue tells the governor that he does not have to enforce judicial decisions. That’s sort of George Wallace territory,” referring to the Alabama governor who defied court orders mandating the desegregation of schools.

In considering the significance of the intervention, one need only ask what would happen if the court decided that the Schiavo law was unconstitutional. Could the legislature then intervene and issue a “stay” on that court ruling?

In promoting the perspective of the right-wing forces behind the Schiavo case, the media has played a critical role. Right-wing pundits have called for halting the “execution” of Terri Schiavo, while the mass media has continually aired photographs and video clips that give a false impression

of her conscious activity. This has done much to legitimize the position of the right-wing forces aligned with the Schindler family.

Dr. Ron Cranford, a Minneapolis neurologist who testified as an independent expert in earlier hearings on the case, noted that the video and photographs are part of “a massive propaganda campaign, which has been very successful because it deludes the public into thinking [Terry Schiavo] is really there.” Throughout the entire conflict the media has been a persistent source of misinformation regarding the medical issues involved. For example, Schiavo is often presented as being unable to communicate her thoughts, when in fact she is unable to *have* thoughts in the first place, given the destruction of her cerebral cortex.

The media has provided the venue for a propaganda campaign by a small group of religious fundamentalists. This is a product, on the one hand, of the media’s generally right-wing character, and, on the other hand, of its persistent tendency to treat important legal and ethical issues in the most sensationalist manner and to appeal to the most backward conceptions.

Jeb Bush is in his second and last term of governor, and though there are rumors that he may run for president sometime in the future, the motivations behind his pandering to the religious right go beyond his personal political ambitions. They are bound up with the national strategy of the Bush White House and the Republican Party, as underscored by President Bush’s endorsement of his brother’s intervention.

According to these calculations, the Florida Governor’s action will help win Florida for his brother in the 2004 election by mobilizing the party’s right-wing base. More broadly, the move is an indication of the type of politics upon which the Republican Party plans to base its national campaign in the 2004 elections.

The exploitation of the Schiavo tragedy coincides with the passage in Congress of a bill banning certain types of late-term abortion. It is on such so-called “social issues” favored by the extreme right—opposition to the right to abortion, anti-gay agitation, the demand for prayer in the schools—combined with the promotion of fear and hysteria associated with the “war on terrorism,” that George W. Bush plans to largely base his campaign for a second term as president.



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