

05-11556-D

IN THE
United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

THERESA MARIE SCHINDLER SCHIAVO,
Incapacitated *ex rel.* ROBERT SCHINDLER
and MARY SCHINDLER, her Parents and Next Friends,

Petitioner-Appellant

---v.---

MICHAEL SCHIAVO, as Guardian of the
Person of Theresa Marie Schindler
Schiavo, Incapacitated,

and

THE HONORABLE GEORGE W. GREER

and

THE HOSPICE OF THE FLORIDA SUNCOAST, INC.,

Respondents-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

**MOTION FOR LEAVE TO FILE AS AN INTERESTED PARTY
TO PRESERVE MEANINGFUL APPEAL**

The Honorable J. Dennis Hastert, Speaker of the House

The Honorable Tom DeLay, House Majority Leader

The Honorable Roy Blunt, House Majority Whip

The Honorable F. James Sensenbrenner, Jr., Chairman, House Judiciary Committee

The Honorable Dave Weldon, M.D.

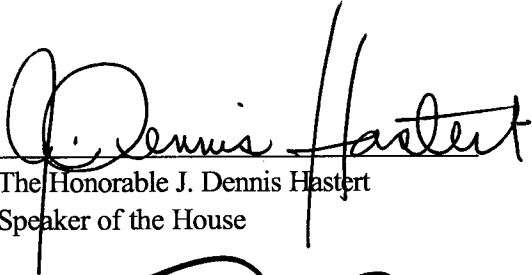
House Committee on the Judiciary Chairman F. James Sensenbrenner, Jr. was the Floor Manager of S. 686, and the author of identical legislation, H.R. 1452. In the proceedings below, the Eleventh Circuit failed to adhere to the plain meaning of the statute. In addition, the Court failed to properly assess the legislative history of S. 686 by failing to consider its full legislative history, including the record in the House of Representatives, a co-equal branch of the Congress.

In Chairman Sensenbrenner's opening statement supporting S. 686, he stated clearly that "Also, and of critical importance, S. 686 does *not* contain a provision that might have authorized the Federal court to deny desperately needed nutritional support to Terri Schiavo during the pendency of her claim ... [W]hat this bill does is it *requires the reinsertion of the feeding tube* for so long as it takes for a Federal Court to determine whether or not her Federal constitutional or statutory rights are violated. And that is reasonable, because she should not be allowed to die while the courts are determining what her legal rights are and whether anybody has violated them." 151 Cong. Rec. H1701, H1707 (daily ed. Mar. 20, 2005) (emphasis added). It was the intent of those who shepherded the legislation that became Public Law 109-3 through the House that, by its clear terms, such legislation did *not* allow a federal judge to "deny desperately needed nutritional support to Terri Schiavo during the pendency of her claim." *Id.* at H1701. It was the intent of those who shepherded the legislation that became Public Law 109-3 through the House that the legislation "*requires the reinsertion of the feeding tube.*" *Id.* at H1707.

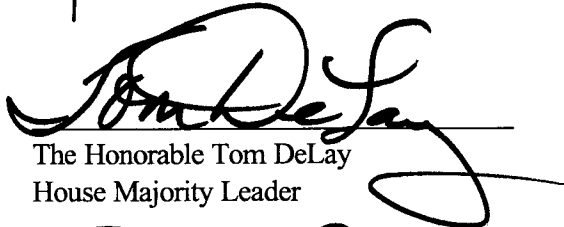
And indeed, the text that survived the legislative process and became Public Law 109-3 clearly states that "The United States District Court for the Middle District of Florida *shall have jurisdiction* to hear, determine, and render judgment" in a suit seeking review of any "claim of a violation of any right of Theresa Marie Schiavo within the scope" of Public Law 109-3. P.L. 109-3, §§ 1, 2 (emphasis added). In addition, the Middle District of Florida must accept such jurisdiction over Theresa Marie Schiavo's claims long enough to review those claims "*de novo,*" and provide a completely independent review of such claims, including a review of any related factual claims that must necessarily be decided to review those claims. *Id.* at § 3. Public Law 109-3 also clearly requires that "*After a determination of the merits of a suit brought under this Act, the District Court shall issue such declaratory and injunctive relief as may be necessary to protect the rights of Theresa Marie Schiavo under the Constitution and laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.*" *Id.* (emphasis added). Clearly, the Middle District of Florida is required by Public Law 109-3 to keep Theresa Marie Schiavo alive until such time as a *de novo* review of her claims occur.

As the Eleventh Circuit has stated, federal courts have "the *constitutional obligation* to protect their jurisdiction ... to carry out Article III functions." *Procup v. Strickland*, 792 F.3d 1069, 1074 (11th Cir. 1986) (en banc) (emphasis added). The All Writs Act allows the federal courts to fulfill this constitutional obligation by providing that "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions ..." 28 U.S.C. § 1651.

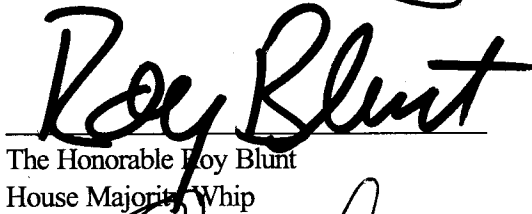
The plain meaning and legislative history of Public Law 103-9 in the House of Representatives, combined with its mandate of jurisdiction over the federal claims of Theresa Marie Schiavo for a period necessary to review those claims "de novo," and the Middle District of Florida's constitutional obligation to protect the jurisdiction it is required to accept under Public Law 109-3, clearly require that a temporary restraining order be issued. This is required to ensure that desperately needed nutritional support is provided to Terri Schiavo to keep her alive during the pendency of her claim.



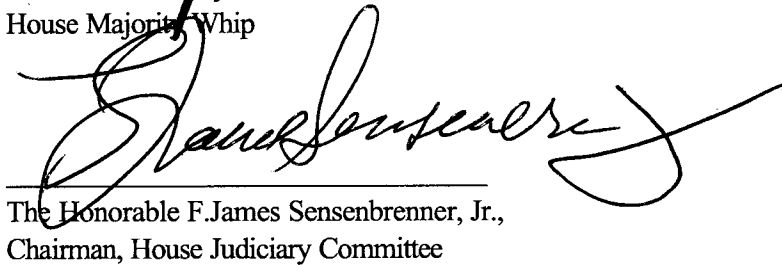
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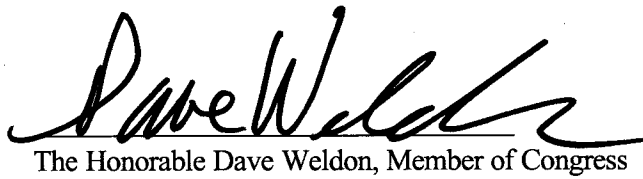
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