



Judicial Decision-Making and the Constitution

OVERVIEW: The goal of this activity is to understand how judges make decisions through the interpretation and application of law. In this lesson, students will apply the Florida Constitution and case precedent to a real case scenario. The delicate balance of power between the three branches of state government and federal government will be explored.

OBJECTIVES: Upon successful completion of this activity, students will be able to:

- Analyze the separation of powers clause of the Florida Constitution;
- Explain how the three branches of federal government maintain a separation of powers through a system of checks and balances;
- Apply the separation of powers clause of the Florida Constitution and Florida case precedent to a specific case study; and
- Weigh complex issues with regard to the roles of the three branches of state government from a constitutional framework.

MATERIALS NEEDED: Copy of Separation of Powers Clause and Terri's Law/Handout A
PowerPoint Presentation
Florida Supreme Court Case Study Form/Handout B
Bush v. Schiavo Fact Sheet/Handout C
Constitutional Question/Handout D
Court Decisions (for facilitator only)

TIME REQUIRED: 90 minutes recommended. Can be shortened or lengthened. Can also be divided into two lessons.

NEXT GENERATION SUNSHINE STATE STANDARDS:

Grades 6-8:	Grades 9-12:
SS.C.1.3(3)	SS.C.2.4(3)
SS.C.1.3(5)	SS.C.2.4(5)

ACTIVITIES:

This handout will be used in conjunction with the PowerPoint presentation titled: "Bush v. Schiavo, 885 So. 2d 321 (Fla. 2004): A discussion of the separation of powers under the Florida Constitution."

1. **Slides 1-2:** Introduce yourself and let the students know that they will be given an opportunity to act like judges and decide an actual issue that was decided by the Florida Supreme Court.



2. **Slides 3-12:** Ask the students to name the three branches of government. Then ask where these branches are listed. Explain to the students the duties and responsibilities of each branch.

With regard to the executive branch, let students know that this branch encompasses more than just the Governor and the Lieutenant Governor. There are also a number of executive agencies that are part of this branch, such as the Department of Environmental Protection, the Department of Corrections, and the Department of Children and Families. Further, law enforcement officers (including police officers, sheriffs, and Florida Department of Law Enforcement investigators) are part of the executive branch. The individuals in the executive branch photo are Attorney General Pamela Jo Bondi; Adam Putnam, Commissioner of the Florida Department of Agriculture; Governor Rick Scott; and Jeff Atwater, Chief Financial Officer of the Department of Financial Services.

3. **Slides 13-17:** Let the students know that the federal government is also made up of three branches—the legislative, executive, and judicial branches. Tell the students that, like in Florida, federal law enforcement officers and agencies such as the Department of Agriculture and the Department of Defense are part of the executive branch.
4. **Slides 18-19:** Ask students whether it is permissible for one branch of government to perform the duties of another branch. In explaining why the answer is “no,” have students read out loud article II, section 3, of the Florida Constitution—the separation of powers clause.
5. **Slides 20-24.** Let the students know that, unlike the Florida Constitution, the United States Constitution does not have an express separation of powers clause. Tell the students that the United States Constitution created a government system of checks and balances, such that no one branch of the federal government has more power than the other two. Give examples of the checks on power that each branch exercises over the others.
6. **Slides 25-26:** Ask the students where they can find out what the separation of powers clause in the Florida Constitution means. Explain to the students that the Florida Constitution is a body of law, and it is the role of the judiciary to interpret the law. Therefore, they should look to judicial decisions to find out what the clause means.
7. **Slides 27-28:** Explain the two specific types of conduct that are prohibited by the separation of powers clause. Inform the students that if one branch of government engages in either type of prohibited conduct, the conduct is unconstitutional because it violates the separation of powers clause.
8. **Slides 29-30:** Read the students the quote from Trustees Internal Improvement Fund v. Bailey, 10 Fla. 238 (1863), to explain why a separation of powers clause is necessary to the proper operation of government. **Note:** Since the Bailey case is very old, the



language is somewhat archaic; therefore, you may need to explain each portion of the quote to the students in simpler, more modern, terms (e.g., the legislature used to enact laws that would interfere with contracts between individuals; the legislature used to enact laws that would overturn judicial decisions that it did not agree with; the legislature used to enact laws that would basically tell the court how to rule in a pending case, etc.). Essentially the judiciary was at the mercy/whim of the legislative branch.

9. **Slides 31-32:** Begin preparing the students to decide a real case that was previously decided by the Florida Supreme Court. Explain that to assist the students in their task, they should review other cases addressing the separation of powers clause in the Florida Constitution.
10. **Slides 33-36:** Discuss the decisions in Chiles v. Children A, B, C, D, E, and F, 589 So. 2d 260 (Fla. 1991), and B.H. v. State, 645 So. 2d 987 (Fla. 1998), in which the Florida Supreme Court concluded that a separation of powers violation occurred.
11. **Slides 37-41:** Discuss the decisions in State v. Cotton, 769 So. 2d 345 (Fla. 2000), and Marine Industries Association of South Florida v. Florida Department of Environmental Protection, 672 So. 2d 878 (Fla. 4th DCA 1996), in which the Florida Supreme Court and the Fourth District Court of Appeal concluded that a separation of powers violation did not occur.
12. **Slide 42:** Have the students read the facts of Bush v. Schiavo and circle or highlight any important facts. Inform the students that the full text of “Terri’s Law” is printed on Handout A.
13. **Slide 43:** Briefly discuss Florida’s judicial structure. Note that the circuit courts are the courts of general jurisdiction, and this is where Michael Schiavo filed his declaratory action against Governor Bush. Note that, normally, appeals from circuit courts are heard by the district courts of appeal.
14. **Slide 44:** Ask how the facts in Schaivo are similar to those in Chiles, B.H., Cotton, and Marine Industries Association. Ask how they are different. Use the “Court Decisions: For the Facilitator” page to tell the students how the circuit court ruled on Michael Schiavo’s declaratory action, and how the Second District Court of Appeal used “pass-through” jurisdiction so that the appeal filed by the Governor would be heard by the Florida Supreme Court.
15. **Slide 45:** Present, for the first time, the constitutional question to be decided.
16. **Slide 46:** Allow the students to individually answer the questions. Divide participants into groups of five to simulate a Supreme Court conference. In this Supreme Court conference activity, each group should:



- Select a Chief Justice to maintain order and lead discussions. The remaining participants are associate justices.
- Discuss whether “Terri’s Law” is constitutional or unconstitutional based on participants’ knowledge of the separation of powers clause of the Florida Constitution.

The Chief Justice will poll the justices to determine the final decision of the Court. The justices should try to reach a unanimous decision. Give at least 10-15 minutes. Have each group’s Chief Justice come to the front and present the decision of their court. Tally responses.

17. **Slides 47-50:** Debrief with the actual Florida Supreme Court decision.



COURT DECISIONS: FOR THE FACILITATOR

The trial court held that the statute was unconstitutional because it improperly delegated law-making authority to the Governor, and impermissibly allowed the Governor to encroach (intrude) upon the power of the judicial branch.

On appeal, the Second District Court of Appeal decided that this case presented a matter of great public importance that required immediate resolution. Therefore, it utilized a provision of the Florida Constitution that allows district courts to send an appeal directly to the Florida Supreme Court. This type of jurisdiction is referred to as “pass through” jurisdiction.

DO NOT ANNOUNCE UNTIL CONCLUSION OF THE ACTIVITY:

In a unanimous decision, the Florida Supreme Court held that Terri’s Law violated the separation of powers clause of the Florida Constitution and, therefore, was unconstitutional.



ARTICLE II, § 3 – THE FLORIDA CONSTITUTION

Branches of government.-The powers of the state government shall be divided into legislative, executive, and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

TERRI'S LAW

(1) The Governor shall have the authority to issue a one-time stay to prevent the withholding of nutrition and hydration from a patient if, as of October 15, 2003:

- (a) That patient has no written advance directive;
- (b) The court has found that patient to be in a persistent vegetative state;
- (c) That patient has had nutrition and hydration withheld; and
- (d) A member of that patient's family has challenged the withholding of nutrition and hydration.

(2) The Governor's authority to issue the stay expires 15 days after the effective date of this act, and the expiration of the authority does not impact the validity or the effect of any stay issued pursuant to this act. The Governor may lift the stay authorized under this act at any time. A person may not be held civilly liable and is not subject to regulatory or disciplinary sanctions for taking any action to comply with a stay issued by the Governor pursuant to this act.

(3) Upon issuance of a stay, the chief judge of the circuit court shall appoint a guardian ad litem for the patient to make recommendations to the Governor and the court.

Handout A



Case Study/Supreme Court Conference

I. What are the Facts? _____

II. State the Issue to be Decided: _____

III. Arguments For Petitioner/Appellant: _____

IV. Arguments For Respondent/Appellee: _____

V. What Would You Decide? _____

VI. Reasons/Evaluation: _____

VII. Mock Supreme Court Conference Decision: _____

VIII. Actual Decision of the Court: _____



Bush v. Schaivo

On February 25, 1990, Theresa Schiavo suffered cardiac arrest because of a potassium imbalance. She was rushed to the hospital, but never regained consciousness. She was moved to a nursing home where she was given constant care and kept alive with the help of a feeding and hydration tube. In 1998, her husband, Michael Schiavo, requested that the courts authorize the termination of life-prolonging procedures for Theresa. The trial court granted this request based on its finding that Theresa was in a permanent vegetative state and that, if she were able to do so, she would choose to end the procedures that were keeping her alive. On appeal, the appellate court upheld the decision of the trial court. Despite this decision, Theresa's parents, Robert and Mary Schindler, filed an action that challenged the decision of the trial court. This led to a long and bitter litigation battle between Michael and Theresa's parents.

Ultimately, the appellate court determined that the original order permitting the removal of Theresa's feeding and hydration tube was final and should remain in effect. On October 15, 2003, the tube was removed. On October 21, 2003 (six days later), the Florida Legislature enacted a statute that gave the Governor the discretion and authority to order the reinsertion of the feeding and hydration tube. The statute also provided that the Governor at any time could permit the removal of the tube. Governor Jeb Bush signed that legislation into law and then issued an executive order that stayed (halted) the application of the final trial court order which directed that hydration and nutrition be withheld from Theresa. As a result of Governor Bush's executive order, the feeding and hydration tube was reinserted.

The same day, Michael Schiavo filed an action in the trial court, contending that the statute, known as "Terri's Law," violated the separation of powers clause of the Florida Constitution.

Handout C



Issue

Does “Terri’s Law” violate the separation of powers clause of the Florida Constitution?

Handout D