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Attorneys at Law
595 Main Street
Dunedin, Florida 34698

FACSIMILE COVER SHEET

TO: ~~The Honorable Charlie Crist, Geo. Leinoux, DEPT. A.G.~~
FIRM: ~~Attorney General of the State of Florida~~
YOUR FAX NO: (850) 488-4872 427-2564
FROM: George J. Felos, Esq.
DATE: October 21, 2003
NO. OF PAGES (INCLUDING COVER SHEET) 9/13

OUR REFERENCE: *Theresa Marie Schiavo*

COMMENT: See attached Petition for Declaratory Judgment and
Request for Temporary Injunction, and Notice of Hearing in

CASE 03008212C1-20, AND MIA SUIT IN 90-2908-603

If you do not receive all of the pages, please call back immediately at
(727) 736-1402.

Francine Wolf
TELECOPIER OPERATOR
FAX NO: (727) 736-5050

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IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

MICHAEL SCHIAVO, as Guardian of
the person of THERESA MARIE SCHIAVO,

CASE NO. 03008212CI-20

Petitioner,

vs.

JEB BUSH, Governor of the State of Florida,
and CHARLIE CHRIST, Attorney General
of the State of Florida,

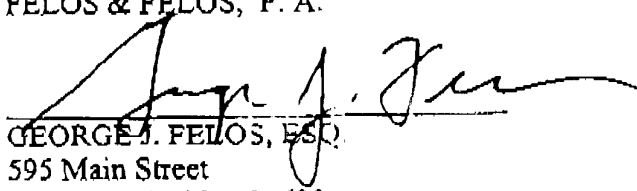
Respondents.

NOTICE OF HEARING

PLEASE TAKE NOTICE that the Request for Temporary Injunction as set forth in the Petition for Declaratory Judgment has been set for hearing before the Honorable Charles Cope, Judge of the above court, by telephone at (727) 736-1402, on the 21st day of October 21, 2003, at 7:00 p.m. or as soon thereafter as counsel may be heard.

I HEREBY CERTIFY that a copy of the foregoing was furnished by Fax and U. S. Mail this 21st day of October 2003, to Christa Calamas, Esq., Assistant General Counsel for The Hon. Jeb Bush, Governor of the State of Florida, and George LeMieux, Deputy Attorney General of the State of Florida, The Capitol, Tallahassee, Florida 32399.

FELOS & FELOS, P. A.


GEORGE J. FELOS, ESQ.
595 Main Street
Dunedin, Florida 34698
Telephone (727) 736-1402
SPN: 00030478 FBN: 226653

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

MICHAEL SCHIAVO, as Guardian of
the person of THERESA MARIE SCHIAVO,

CASE NO. 03008212C1-20

Petitioner,

vs.

JEB BUSH, Governor of the State of Florida,
and CHARLIE CHRIST, Attorney General
of the State of Florida,

Respondents.

**PETITION FOR DECLARATORY JUDGMENT AND REQUEST FOR
TEMPORARY INJUNCTION**

COMES NOW, MICHAEL SCHIAVO, as guardian of the person of
THERESA MARIE SCHIAVO, and states:

1. This Court has jurisdiction pursuant to Section 86.011 Florida Statutes, and petitioner is the duly appointed guardian of the ward in this Pinellas County guardianship.

2. The ward's feeding tube was removed October 15, 2003 pursuant to the guardianship court's orders of February 11, 2000 and September 17, 2003, and the June 6, 2003 mandate of the Second District Court of Appeal.

3. The ward's entitlement to withdrawal of artificial life support was adjudicated by the guardianship court pursuant to her right of privacy as guaranteed in Article I, Section 23, of the Constitution of the State of Florida, as enunciated in *Guardianship of Browning*, 568 So.2d 4 (Fla. 1990).

4. The guardianship court, as affirmed by the Second District Court of

Appeal, has found by clear and convincing evidence that the ward would not wish to be kept alive by artificial feeding in her current condition.

5. The ward is now six days into a death process that the guardianship court has determined would last between seven and fourteen days, and has begun to evidence signs of organ failure.

6. Restoring gastric feeding to the ward would require a surgical procedure to reinstate the feeding tube. While such resumption of artificial feeding might temporarily prolong the ward's life, her permanent organ damage may nevertheless result in an inevitable and physically distressful death.

7. The attached statute has been passed by the legislature, signed into law by the governor, and the governor has indicated that he will immediately implement the statute on the ward. The statute as regards the Constitution of the State of Florida is unconstitutional on its face and unconstitutional as applied to the ward for any or all of the following reasons:

A. It is repugnant to a patient's right of privacy because it permits the governor to override the patient's medical treatment choice.

B. It is repugnant to a patient's right of privacy because it permits a family member an opportunity to override the patient's medical treatment choice.

C. It diminishes the right of incapacitated patients to choose or reject medical treatment.

D. It violates the separation of powers and encroaches upon the judiciary by permitting the governor to override judicial decisions.

E. It violates a patient's right to equal protection of the law because it singles out vegetative patients as persons whose medical treatment wishes can be overridden.

F. It violates a patient's right to equal protection of the law because it singles out patients with family members, or patients with disagreeing family members, as persons whose medical treatment wishes can be disregarded.

G. It violates Article III, Section 10, because it is a special law enacted without publication of notice of intention to seek enactment.

F. It is overly broad and vague because it does not specify any method or procedure by which the governor can "stay" or "prevent" the withholding of nutrition and hydration once that has already occurred, it does not authorize the governor to trespass upon property, violate the ward's physical person, or compel third parties to enforce the "stay," and it does not specify any penalty or consequence to third parties who do not act in accordance with the "stay."

G. If applied to the ward it would operate to override her medical treatment wishes.

H. If applied to the ward, it would operate to overturn the judicial decisions that implement and enforce her right of privacy.

I. If applied to the ward, it diminishes her right to refuse medical treatment because of her incapacity.

8. If such a "stay" is issued by the governor, the guardian may be under two opposite demands of state officials. He is affirmatively ordered by the guardianship court to withhold artificial provision of nutrition and hydration to the ward, as mandated by the Second District Court of Appeal, yet, at the same time, may be requested, required or coerced by the governor to reinstitute such artificial feeding under threat of some unknown penalty. The guardian is therefore uncertain of what his rights and responsibilities are under these circumstances.

9. The ward will suffer irreparable harm if a temporary injunction is not

issued. Her right to privacy will be violated, her physical person will be invaded against her will, and her death process will be interrupted and prolonged. The guardian will suffer irreparable harm if a temporary injunction is not issued because he may be subject to contempt of court for disobeying the mandatory injunction to remove artificial life support, or in the alternative, subject to prosecution for refusing to comply with the governor's "stay." No remedy at law can adequately address such harms.

10. The subject statute is so repugnant to the constitution and the norms of civilized society, and is so obviously unconstitutional, there is a clear legal right to the relief requested.

11. A temporary injunction will serve the public interest because it will affirm the rights of Floridians to be free from unwanted governmental interference, and will also maintain citizens' faith in a free and independent judiciary.

12. Bond is not required because the relief sought is to prevent the physical injury or abuse of the ward. If this Court determines that bond is required, it should be in a minimal amount.

WHEREFORE, the petitioner respectfully requests that:

A. The Court issue a judgment declaring the subject statute to be unconstitutional on its face and unconstitutional as applied to the ward;

B. Issue a temporary injunction restraining the governor, and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice on the injunction, from instituting or attempting or causing to be instituted, the resumption of the ward feeding or hydration, and from otherwise attempting in any manner to

enforce or implement the subject statute; and

C. Grant such other and further relief this Court deems just and proper.

(5)

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Attorneys for Guardian

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION

IN RE: GUARDIANSHIP OF

THERESA MARIE SCHIAVO,

FILE NO. 90-2908-GD3

Incapacitated.

MICHAEL SCHIAVO, as Guardian of
the person of THERESA MARIE SCHIAVO,

Petitioner,

vs.

JEB BUSH, Governor of the State of Florida,
and CHARLIE CHRIST, Attorney General
of the State of Florida,

Respondents.

**PETITION FOR DECLARATORY JUDGMENT AND REQUEST FOR
TEMPORARY INJUNCTION**

COMES NOW, MICHAEL SCHIAVO, as guardian of the person of
THERESA MARIE SCHIAVO, and states:

1. This Court has jurisdiction pursuant to Section 86.011, Florida Statutes, and has continuing jurisdiction over the ward as enunciated in *Schindler v. Schiavo, (Guardianship of Schiavo)*, 792 So.2d 551, 562 (Fla. 2d DCA 2001).
2. The ward's feeding tube was removed October 15, 2003 pursuant to this Court's orders of February 11, 2000 and September 17, 2003, and the mandate of the Second District Court of Appeal.
3. The ward's entitlement to withdrawal of artificial life support was adjudicated by this Court pursuant to her right of privacy as guaranteed in Article

I, Section 23, of the Constitution of the State of Florida, as enunciated in *Guardianship of Browning*, 568 So.2d 4 (Fla. 1990).

4. This Court, as affirmed by the Second District Court of Appeal, has found by clear and convincing evidence that the ward would not wish to be kept alive by artificial feeding in her current condition.

5. The ward is now six days into a death process that this Court has ~~determined would last between seven and fourteen days, and has begun to~~ evidence signs of organ failure.

6. Restoring gastric feeding to the ward would require a surgical procedure to reinstate the feeding tube. While such resumption of artificial feeding might temporarily prolong the ward's life, her permanent organ damage may nevertheless result in an inevitable and physically distressful death.

7. The attached statute reportedly will be imminently passed by the legislature, signed into law by the governor, and immediately implemented by the governor thereafter. The statute as regards the Constitution of the State of Florida is unconstitutional on its face and unconstitutional as applied to the ward for any or all of the following reasons:

A. It is repugnant to a patient's right of privacy because it permits the governor to override the patient's medical treatment choice.

B. It is repugnant to a patient's right of privacy because it permits a family member an opportunity to override the patient's medical treatment choice.

C. It diminishes the right of incapacitated patients to choose or reject medical treatment.

D. It violates the separation of powers and encroaches upon the judiciary by permitting the governor to override judicial decisions.

E. It violates a patient's right to equal protection of the law because it singles out vegetative patients as persons whose medical treatment wishes can be overridden.

F. It violates a patient's right to equal protection of the law because it singles out patients with family members, or patients with disagreeing family members, as persons whose medical treatment wishes can be disregarded.

~~G. It violates Article III, Section 10, because it is a special law enacted~~
without publication of notice of intention to seek enactment.

F. It is overly broad and vague because it does not specify any method or procedure by which the governor can "stay" or "prevent" the withholding of nutrition and hydration once that has already occurred, it does not authorize the governor to trespass upon property, violate the ward's physical person, or compel third parties to enforce the "stay," and it does not specify any penalty or consequence to third parties who do not act in accordance with the "stay."

G. If applied to the ward it would operate to override her medical treatment wishes.

H. If applied to the ward, it would operate to overturn the judicial decisions that implement and enforce her right of privacy.

I. If applied to the ward, it diminishes her right to refuse medical treatment because of her incapacity.

8. If such a "stay" is issued by the governor, the guardian may be under two opposite demands of state officials. He is affirmatively ordered by this Court to withhold artificial provision of nutrition and hydration to the ward, as mandated by the Second District Court of Appeal, yet, at the same time, may be requested, required or coerced by the governor to reinstitute such artificial feeding under

threat of some unknown penalty. The guardian is therefore uncertain of what his rights and responsibilities are under these circumstances.

9. The ward will suffer irreparable harm if a temporary injunction is not issued. Her right to privacy will be violated, her physical person will be invaded against her will, and her death process will be interrupted and prolonged. The guardian will suffer irreparable harm if a temporary injunction is not issued because he may be subject to contempt of this Court for disobeying the mandatory injunction to remove artificial life support, or in the alternative, subject to prosecution for refusing to comply with the governor's "stay." No remedy at law can adequately address such harms.

10. The subject statute is so repugnant to the constitution and the norms of civilized society, and is so obviously unconstitutional, there is a clear legal right to the relief requested.

11. A temporary injunction will serve the public interest because it will affirm the rights of Floridians to be free from unwanted governmental interference, and will also maintain citizens' faith in a free and independent judiciary.

12. Bond is not required because the relief sought is to prevent the physical injury or abuse of the ward. If this Court determines that bond is required, it should be in a minimal amount.

WHEREFORE, the petitioner respectfully requests that:

A. The Court issue a judgment declaring the subject statute to be unconstitutional on its face and unconstitutional as applied to the ward;

B. Issue a temporary injunction restraining the governor, and his officers, agents, servants, employees, and attorneys, and those persons in active

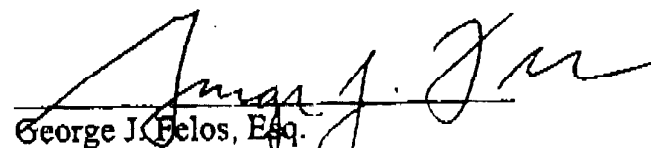
concert or participation with them who receive actual notice on the injunction, from instituting or attempting or causing to be instituted, the resumption of the ward feeding or hydration, and from otherwise attempting in any manner to enforce or implement the subject statute; and

C. Grant such other and further relief this Court deems just and proper.

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Michael Schiavo

The foregoing was sworn to as true and subscribed before me by Michael Schiavo, this 21st day of October, 2003.

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Notary Public


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HB 0035E

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A bill to be entitled

An act relating to the authority for the Governor to issue a one-time stay to prevent the withholding of nutrition and hydration from a patient; authorizing the Governor to issue a one-time stay to prevent the withholding of nutrition and hydration under certain circumstances; providing for expiration of the stay; authorizing the Governor to lift the stay under certain circumstances; providing that a person is not civilly liable and is not subject to regulatory or disciplinary sanctions for taking action in compliance with any such stay; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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

(a) The patient has no written advance directive;

(b) The court has found the patient to be in a persistent vegetative state;

(c) The patient has had nutrition and hydration withheld;
and

(d) A member of the 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 that authority does not impact the validity or the effect of any stay issued pursuant to this act. The Governor may revoke the stay upon a finding that a change in the condition of the

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31 patient warrants revocation. A person may not be held civilly
32 liable and is not subject to regulatory or disciplinary
33 sanctions for taking any action to comply with a stay issued by
34 the Governor pursuant to this act.

35 Section 2. This act shall take effect upon becoming a law.