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October 21, 2004

The Honorable George W. Greer
Pinellas County Courthouse - Room 484
315 Court Street
Clearwater, FL 33756

By FAX No.: (727) 464-5471

Re: Guardianship of Theresa M. Schiavo

Dear Judge Greer:

This is to inform you that we have been advised this date by the Florida Supreme Court that it has denied the Governor's motions for rehearing in *Bush v. Schiavo*, and that we should receive that court's mandate tomorrow. Although we believe the guardian is legally authorized to remove Mrs. Schiavo's feeding tube upon receipt of the mandate, (as more fully explained below), we will not do so until we have received this court's order on the parents' latest 1.540(b)(5) motion, which the court indicated would also be issued tomorrow.

As the court may recall, the February 11, 2000 final judgment, granting the guardian's petition for authorization to discontinue artificial life support, stated that the guardian "is hereby authorized to proceed with the discontinuance of said artificial life support for Theresa Marie Schiavo." That final judgment neither sets a specific date for removal of the feeding tube, nor does it require the guardian to seek such a date from the guardianship court. While the court of appeal, in connection with prior 1.540(b)(5) motions, instructed this court to set a date for the removal of the feeding tube, those 1.540(b)(5) proceedings have been fully concluded. Further, before such instructions were given by the appellate court, the February 11, 2000 final judgment had been stayed. Here, no stay has been entered concerning the pending 1.540(b)(5) motion, and, as held by the court of appeal, "a motion for relief for judgment does not operate to stay a judgment." *Schiavo II*, 792 So. 2d at 561.

In essence, the removal of Mrs. Schiavo's feeding tube on October 15, 2003 was interrupted by the unconstitutional action of the Legislature and Governor. Upon issuance of the Supreme Court mandate affirming Judge Baird's final judgment, we believe the legal status of this case returns to the posture immediately preceding the Governor's unconstitutional action: the ward disconnected from artificial life support. As the Florida Supreme Court ruled in *Bush v. Schiavo*, "the fact that a final judgment may be subject to recall under a rule of procedure, if certain circumstances can be proved, does not negate its finality. Unless and until a judgment is vacated by judicial order, it is 'the last word of the judicial department with regard to a particular case or controversy.'" Slip. Op. at 16-17. Therefore, we believe the guardian is authorized to remove the feeding tube upon issuance of the mandate, without further order of this court.

In order to avoid any confusion: the guardian will not remove the ward's feeding tube until receipt and review tomorrow of this court's order on the pending 1.540(b)(5) motion; if this court grants the motion and sets an evidentiary hearing, the guardian will not remove the feeding tube pending further proceedings; and, if the court denies the motion, the guardian will proceed to remove the feeding tube.

If this court disagrees with the guardian and believes that it must, in its order, state a date for the removal of the feeding tube, the guardian requests that such date be no later than October 29, 2004. That period of time is more than ample for the ward's parents to file a notice of appeal and seek a stay from this court, if they so choose, and should this court enter an order denying a stay, have the appellate court review any such order. Any greater period of time would unduly delay implementation of the ward's constitutional rights and would serve no constructive purpose.

Respectfully,


George J. Felos

GJF/fw

cc: David C. Gibbs, III, Esq., by FAX