IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION

IN RE: THE GUARDIANSHIP OF
THERESA MARIE SCHIAVO, **File No. 90-2908-GD-003**
Incapacitated.

MICHAEL SCHIAVO,
Petitioner,
v.
ROBERT SCHINDLER and MARY SCHINDLER,
Respondents.

MOTION OF THE COMMITTEE ON GOVERNMENT REFORM OF THE U.S. HOUSE OF REPRESENTATIVES TO MODIFY FEBRUARY 25, 2005 ORDER

Pursuant to Rule 1.100(b) of the Florida Rules of Civil Procedure, the Committee on Government Reform of the U.S. House of Representatives ("Committee"), through counsel, respectfully moves for an order modifying this Court's Order dated February 25, 2005. Specifically, the Committee requests that the Court modify its Order to state that the guardian, Michael Schiavo, shall cause the removal of nutrition and hydration from his ward, Theresa Schiavo, **at 1:00 p.m. on March 29, 2005, rather than at 1:00 p.m. today**.

A memorandum of points and authorities is below, and a proposed order is attached. Due to the exigency of this matter, the Committee requests an immediate oral argument on this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On February 25, 2005, this Court issued an Order stating that "the guardian, MICHAEL SCHIAVO, shall cause the removal of nutrition and hydration from the ward, THERESA

SCHIAVO, at 1:00 p.m. on Friday, March 18, 2005." Order (attached as Exhibit 1).

This morning, the Committee on Government Reform issued subpoenas (attached as Exhibit 2) to Michael Schiavo, Victor Gambone, Stanton Tripodis, Annie Santamaria and Theresa Schiavo.[1] The subpoenas require the recipients to testify at a Committee field hearing and to produce "all medical and other equipment that provides nutrition and hydration to Theresa Schiavo – in its current and continuing state of operations – and all data, information, and records relating to the functioning of such medical and other equipment, subject only to such routine and necessary maintenance as is necessary to ensure its continued proper functioning to provide such nutrition and hydration to Theresa Schiavo." The field hearing at which the subpoena recipients are required to testify and produce the listed items is scheduled for March 25, 2005 – a week from today – and will occur at the Hospice of the Florida Suncoast, where Theresa Schiavo is currently located. This morning, the Chairman of the Committee formally notified Committee Members of the field hearing. *See* Notice of Field Hearing (attached as Exhibit 3).

II. ARGUMENT

A. Modification of This Court's February 25, 2005 Order Is Necessary to Prevent a Serious Constitutional Conflict.

The subpoena recipients are currently faced with a grave constitutional dilemma. On the

[1] Victor Gambone and Stanton Tripodis are doctors charged with the care of Theresa Schiavo, and Annie Santamaria is a hospice administrator also charged with the care of Theresa Schiavo. It is the Committee's understanding that these three individuals will all be involved in the removal of nutrition and hydration from Theresa Schiavo.

one hand, this Court's February 25, 2005 Order requires them to cause the removal of nutrition and hydration from Theresa Schiavo at 1:00 p.m. today. On the other hand, congressional subpoenas require them to produce, a week from today, Theresa Schiavo's medical equipment in its "current and continuing state of operations," which specifically means they may *not* cause the removal of nutrition and hydration to Theresa Schiavo at 1:00 p.m. today. If the subpoena recipients comply with the Court's Order, they impede Congress's constitutional authority to obtain information and thus face criminal charges for obstruction of justice and contempt of Congress. If they comply with the congressional subpoena, they face contempt of court for violating this Court's February 25, 2005 Order.

We respectfully submit that the Court may easily resolve this dilemma by simply modifying the February 25, 2005 Order so as to require Michael Schiavo to cause the removal of nutrition and hydration from Theresa Schiavo on March 29, 2005 – only eleven days later than the February 25, 2005 Order currently mandates. This will allow the subpoena recipients to comply with the Committee subpoena, and will give the Committee the opportunity to fulfill its investigative function at its field hearing on March 25, 2005.

1. The Committee's Subpoena Is Well Within Its Constitutional Power.

It has long been recognized that the Constitution implicitly grants both the House of Representatives and the Senate broad authority to subpoena documents and testimony in furtherance of their legislative responsibilities. *See, e.g.*, *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504 (1975) ("Issuance of subpoenas such as the one in question here has long been held to be a legitimate use by Congress of its power to investigate."); *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927) ("the power of inquiry – with the process to enforce it – is

an essential and appropriate auxiliary to the legislative function"). Moreover, it is equally well-established that "the subpoena power may be exercised by a committee acting . . . on behalf of one of the Houses." *Eastland*, 421 U.S. at 505.

The scope of inquiry "is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Barrenblatt v. United States*, 360 U.S. 109, 111 (1959). The Supreme Court has stated:

> The power of Congress to conduct investigations is inherent in the legislative process. It encompasses inquiries concerning the administration of existing laws, as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic, or political system for the purpose of enabling Congress to remedy them.

Watkins v. United States, 354 U.S. 178, 187 (1957).

A valid congressional subpoena must be properly authorized in accordance with House Rules, and must seek information pertinent to a valid purpose within the jurisdiction of the particular committee. *Wilkinson v. United States*, 365 U.S. 399, 407 (1961). Here, the subpoenas were properly authorized and issued by the Chairman of the Committee pursuant to House Rule XI(2)(m)(3)(A)(i) (attached as Exhibit 4), which provides that the power to authorize and issue subpoenas may be delegated the chairman of a committee "pursuant to such rules and limitations as the committee may prescribe." Committee Rule 18(d) (attached as Exhibit 5) provides that the Chairman shall "authorize and issue subpoenas as provided in House Rule XI, clause 2(m)." Thus, there is no dispute that the subpoenas were validly authorized and issued in accordance with House Rules.

Furthermore, there is no question that the subpoenas seek information pertinent to a valid inquiry within the Committee's jurisdiction. The Committee on Government Reform is the

principal investigative committee in the House of Representatives. Under the House Rules, "[T]he Committee on Government Reform may at any time conduct investigations of any matter . . . ." House Rule X(4)(c)(2) (attached as Exhibit 6). The House has given the Committee on Government Reform this broad oversight jurisdiction so that the Committee can make "findings and recommendations . . . available to any other standing committee having jurisdiction over the matter involved." *Id.* As such, the Committee's investigation into federal health care policy is a "matter" within the oversight jurisdiction of Congress and the Committee on Government Reform.[2]

The subpoenas to testify and produce objects and records at the March 25, 2005 field hearing are necessary for the Committee to examine the federal government's role in health care. The field hearing will provide the Committee an opportunity to closely review the role of the federal government in long-term care of incapacitated patients. The hearing will focus on the cost, treatment, personnel and any management inefficiencies involved in such care.

The Committee's subpoenas are clearly pertinent to a valid investigation within the scope of its jurisdiction. This is particularly true given the broad deference that the courts are required to show to a congressional committee's determination of its own jurisdiction. *See Eastland*, 421 U.S. at 506 ("'The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province.'") (quoting *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951)).

[2] Moreover, House Rule X(2)(b)(1) (attached as Exhibit 7) provides that "[e]ach standing committee . . . shall review and study, on a continuing basis - (A) the application, administration, execution, and effectiveness of law and programs addressing subjects within its jurisdiction."

2. Congress's Constitutional Authority to Obtain Information, Enforceable Through Federal Criminal Law, Prohibits the Subpoena Recipients From Causing the Removal of Nutrition and Hydration From Theresa Schiavo at 1:00 p.m. Today.

Now that the Committee has exercised Congress's constitutional right to obtain information, three federal statutes prohibit the subpoena recipients from causing the removal of nutrition and hydration from Theresa Schiavo at 1:00 p.m. today. First, 18 U.S.C. Section 1505 states that whoever "by threats or force . . . influences, obstructs, or impedes or endeavors to influence, obstruct, or impede . . . the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress," thereby commits a criminal offense. Second, 18 U.S.C. Section 1512 states that whoever "kills or attempts to kill another person, with intent to - (A) prevent the attendance or testimony of any person in an official proceeding; (B) prevent the production of a record, document, or other object, in an official proceeding," thereby commits a criminal offense.

Third, and most importantly, the constitutional authority of Congress to obtain information is enforceable through criminal contempt of Congress. 2 U.S.C. Section 192 provides that "[e]very person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House . . . or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any questions pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor . . . ."

If the subpoena recipients are required by this Court to cause the removal of nutrition and hydration from Theresa Schiavo at 1:00 p.m. today, the House may hold them in contempt of Congress, which would require the Department of Justice to prosecute them for this offense. 2 U.S.C. § 194. As a separate matter, the Department of Justice may also prosecute the subpoena recipients for obstruction of justice, pursuant to 18 U.S.C. Sections 1505 and 1512.

3. Failure to Permit Compliance With a Congressional Subpoena Would Raise Grave Constitutional Concerns.

If the Court does not modify its February 25, 2005 Order, several serious constitutional issues will arise. At the outset, of course, Michael Schiavo will be faced with the choice of violating this Court's Order, on the one hand, or obstructing the Committee's constitutional right to obtain information (and thus facing criminal penalties for obstruction of justice and contempt of Congress), on the other.

Moreover, for this Court to restrain the subpoena recipients from complying with the Committee's subpoena would conflict with the Supreme Court's teaching in *Eastland*, which involved a congressional subpoena issued to a bank for records of USSF, a servicemen's organization. USSF brought suit for declaratory and injunctive relief to prevent the enforcement of the subpoena, alleging that the subpoena sought information protected by the First Amendment and had been "issued to the bank rather than to USSF and its members . . . 'in order to deprive (them) of their rights to protect their private records, such as the source of their contributions, as they would be entitled to do if the subpoenas had been issued against them directly.'" 421 U.S. at 494 (quoting USSF complaint).

The Supreme Court held that the Speech or Debate Clause of the Constitution, art. I, § 6, cl. 1, serves as "an absolute bar to interference" with a congressional subpoena. *Id.* at 503. The

Court ruled that once it was determined that the issuance of the subpoena fell within the "sphere of legitimate legislative activity," judicial inquiry was at an end because the Speech or Debate Clause "forbid[s] invocation of judicial power to challenge the wisdom of Congress' use of its investigative authority." *Id.* at 511. USSF's allegation that the subpoena directed to the bank would result in a violation of its First Amendment rights without an opportunity for judicial review was irrelevant because "[c]ollateral harm which may occur in the course of a legitimate legislative inquiry does not allow us to force the inquiry to 'grind to a halt.'" *Id.* at 510 n.16.

Although the case at bar is different from *Eastland* because the Court's February 25, 2005 Order restrains Michael Schiavo, rather than the Committee directly, *Eastland* itself initially involved an attempt to enjoin the banks from complying with the subpoena. Nothing in the *Eastland* Court's broadly worded opinion suggests that such indirect interference with a congressional subpoena would be any more permissible than a direct action against a congressional committee itself. Thus, in *Exxon Corp. v. FTC*, 589 F.2d 582, 588 (D.C. Cir. 1978), where the companies seeking to protect their trade secrets from disclosure to Congress sought an injunction restraining the FTC from complying with congressional subpoenas without providing ten days notice to affected parties, the D.C. Circuit concluded that the relief sought "could seriously impede the vital investigatory powers of Congress and would be of highly questionable constitutionality" under *Eastland*.

To avoid such a restraint of "highly questionable constitutionality" on Michael Schiavo's ability to comply with a congressional subpoena, and to prevent "needless friction" between coordinate branches of government, *see Exxon Corp.*, 589 F.2d at 590, the Court should modify its February 25, 2005 Order to allow Michael Schiavo to comply with the Committee's

subpoena.[3]

III. CONCLUSION

For the foregoing reasons, the Court should grant the Committee's Motion.

Respectfully submitted,

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[3] We note that if the Court does not modify its Order, and the friction between the Order and the congressional subpoenas thereby continues to exist, the Supremacy Clause of the Constitution, art. VI, cl. 2, mandates that the congressional subpoena trump the state court order. *See, e.g.*, *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("No state legislator or executive or judicial officer can wage war against the Constitution without violating his undertaking to support it."); *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940) ("The State cannot, in the exercise of control of local law and practice, vest State courts with power to violate the supreme law of the land.").

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CERTIFICATE OF SERVICE

I certify that on March 18, 2005, I served one copy of the foregoing Motion of the Committee on Government Reform of the U.S. House of Representatives to Modify February 25, 2005 Order by facsimile to each of the following:

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"entitled, for the purpose of performing the counsel's functions, to enter an appearance in any proceeding before any court . . . of any State or political subdivision thereof without compliance with any requirement for admission to practice before such court . . . ." 2 U.S.C. § 130f(a).