

EXHIBIT 1

109th CONGRESS
1st Session
S. 686

AN ACT

For the relief of the parents of Theresa Marie Schiavo.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RELIEF OF THE PARENTS OF THERESA MARIE SCHIAVO.

The United States District Court for the Middle District of Florida shall have jurisdiction to hear, determine, and render judgment on a suit or claim by or on behalf of Theresa Marie Schiavo for the alleged violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.

SEC. 2. PROCEDURE.

Any parent of Theresa Marie Schiavo shall have standing to bring a suit under this Act. The suit may be brought against any other person who was a party to State court proceedings relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain the life of Theresa Marie Schiavo, or who may act pursuant to a State court order authorizing or directing the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life. In such a suit, the District Court shall determine de novo any claim of a violation of any right of Theresa Marie Schiavo within the scope of this Act, notwithstanding any prior State court determination and regardless of whether such a claim has previously been raised, considered, or decided in State court proceedings. The District Court shall entertain and determine the suit without any delay or abstention in favor of State court proceedings, and regardless of whether remedies available in the State courts have been exhausted.

SEC. 3. RELIEF.

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.

SEC. 4. TIME FOR FILING.

Notwithstanding any other time limitation, any suit or claim under this Act shall be timely if filed within 30 days after the date of enactment of this Act.

SEC. 5. NO CHANGE OF SUBSTANTIVE RIGHTS.

Nothing in this Act shall be construed to create substantive rights not otherwise secured by the Constitution and laws of the United States or of the several States.

SEC. 6. NO EFFECT ON ASSISTING SUICIDE.

Nothing in this Act shall be construed to confer additional jurisdiction on any court to consider any claim related--

- (1) to assisting suicide, or
- (2) a State law regarding assisting suicide.

SEC. 7. NO PRECEDENT FOR FUTURE LEGISLATION.

Nothing in this Act shall constitute a precedent with respect to future legislation, including the provision of private relief bills.

SEC. 8. NO AFFECT ON THE PATIENT SELF-DETERMINATION ACT OF 1990.

Nothing in this Act shall affect the rights of any person under the Patient Self-Determination Act of 1990.

SEC. 9. SENSE OF THE CONGRESS.

It is the Sense of Congress that the 109th Congress should consider policies regarding the status and legal rights of incapacitated individuals who are incapable of making decisions concerning the provision, withholding, or withdrawal of foods, fluid, or medical care.

Passed the Senate March 20, 2005.

EXHIBIT 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

11/16/05

Case No. 8:05-cv-530-T-27TBM

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

Plaintiffs,)

vs.)

MICHAEL SCHIAVO,)
JUDGE GEORGE W. GREER and)
THE HOSPICE OF THE FLORIDA)
SUNCOAST, INC.)

Defendant.)

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER**

Plaintiff, by and through her parents and next friends, Robert and Mary Schindler, and pursuant to FED. R. CIV. P. RULE 65(b), hereby moves this Court for a temporary restraining order restraining and preliminary injunction enjoining Respondent Michael Schiavo, his agents, employees, successors, attorneys, and all those acting in active concert or participation with them, from further withholding nutrition and hydration from Petitioner Theresa Marie Schiavo pending a hearing and determination of Petitioner's Complaint for Preliminary and Permanent

Injunction and for Declaratory Relief and Damages, filed with this Court on March 21, 2005. Petitioner shows the following in support of her Motion for Temporary Restraining Order.

1. On February 25, 1990, Petitioner's brain was deprived of oxygen during a medical incident. Due to her incapacity resulting from this incident, her husband, Respondent Michael Schiavo, was appointed plenary guardian of his wife on June 18, 1990.

2. On May 11, 1998, Michael Schiavo petitioned the Circuit Court for Pinellas County, Florida, Sixth Judicial Circuit, Probate Division, for authority to discontinue Terri's "artificial life support," which consisted only of assisted feeding through a PEG (percutaneous endoscopic gastrostomy) tube.

3. The case was tried before the state trial court and on February 11, 2000, the trial court:

ORDERED AND ADJUDGED that the Petition for Authorization to Discontinue Artificial Life Support of Michael Schiavo, Guardian of the Person of Theresa Marie Schiavo, an incapacitated person, be and the same is hereby **GRANTED** and Petitioner/Guardian is hereby authorized to proceed with the discontinuance of said artificial life support for Theresa Marie Schiavo.

The execution of the Order was stayed to permit the Schindlers time to appeal.

4. On February 25, 2005, the state trial court ordered the removal of all nutrition and hydration from Terri. In relevant part, the Order provides that it is:

ORDERED AND ADJUDGED that absent a stay from the appellate courts, 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.

5. On March 8, the trial court denied the Schindlers' motion to allow health care professionals to attempt to feed Terri by normal means.

6. On March 18, 2005, at approximately 1:45 p.m., pursuant to the instructions of Michael Schiavo as ordered by the trial court, Hospice health care staff removed the port through which Terri's received her food and water.

7. Since that time, more than three days as of the time of this filing, Terri has had no food or water.

8. Unless this motion for temporary relief is granted, and until a hearing may be had on Plaintiff's motion for permanent injunctive relief, Plaintiff will suffer immediate and irreparable injury, including death, by Defendants' intentional denial to her of nutrition and hydration.

9. In support of this motion, the next friends of Plaintiff file herewith their Verified Complaint in Support of Motion for Temporary Restraining Order and Complaint for Injunctive Relief.

10. The Complaint alleges that Defendant Greer ordered Defendant Schiavo, pursuant to Schiavo's request for authorization, to discontinue Terri's nutrition and hydration without ever having given her the due process of law

protections of a guardian *ad litem*, her own independent counsel, notice of the proceedings, and access to the courts.

11. Terri also alleges that she was denied a fair and impartial trial when Defendant Judge Greer became an advocate in the case by acting in the dual role of Terri's surrogate decisionmaker and the judge purportedly reviewing the decisionmaker's conclusion that Terri's assisted feeding should be withheld. This fundamentally flawed dual role has compromised the integrity of the factual and legal findings made in the state court's proceedings.

12. Terri was also denied the equal protection of the law when Judge Greer appointed himself her "proxy" simply because she is a member of the suspect class of incapacitated persons whose rights must be determined in "substituted judgment" proceedings.

13. Finally, Terri alleges that her right to the free exercise of religion as guaranteed by the First Amendment and 42 U.S.C. § 2000cc was violated when she was compelled to engage in conduct contrary to the tenets of her Roman Catholic faith as declared by Pope John Paul II that continued provision of nutrition and hydration of patients in PVS is morally obligatory for a faithful practicing Catholic.

14. Terri will suffer irreparable harm if this Court does not grant an immediate temporary restraining order. Her nutrition and hydration were

terminated on March 18, 2005, and she has been without food or water since that time. If this Court does not order the reinsertion of the PEG tube providing her with food and water, her death may come at any moment from starvation and dehydration.

15. The immediate risk of Terri's impending death far outweighs any harm to Defendants threatened by the proposed injunction. Defendants purport to be protecting the right of Terri to die. The Defendants can cause her death at any time in the future if they prevail in this Court. Her death, on the other hand, is irremediable.

16. The injunction, if granted would further the public interest in making absolutely certain Terri's end-of-life wishes are truly known. Death is permanent. America's culture of life demands accuracy in any decision to terminate life support.

17. Terri is likely to succeed on the merits of her claim in light of the newly adopted Public Law (S.686, P.L.#_____) that gives her parents the right to take to this Court the alleged violations of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.

18. Mrs. Schiavo's life literally hangs in the balance. Mr. and Mrs. Schindler therefore pray that this Court expedite its consideration of the matters raised herein and make its Order effective immediately.

19. A woman is dying from dehydration and starvation. President Bush recognized this emergency situation where every minute counts by re-arranging his schedule to be in Washington D.C. immediately upon passage of this bill. We would respectfully request that this Court honor the good and noble intentions of the U.S. Congress and the personal sacrifice of the President with the same commitment to save life. A tragedy of unbelievable proportions would occur if the this Court does not respond in time to save Terri Schiavo's life.

Wherefore, the Plaintiff therefore respectfully requests this court to:

a. Enter a temporary restraining order and preliminary injunction prohibiting Defendants and anyone acting in concert or participation with them from further withholding Plaintiff's nutrition and hydration or any medical treatment necessary to sustain her life; and

b. Ordering Hospice to immediately transport Terri by ambulance to Morton Plant Hospital for any medical treatment necessary to sustain her life and to reestablish her nutrition and hydration.

Dated: March 20, 2005

Respectfully submitted,

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THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

No. 8:05-CV-530-J-27JBM

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

Plaintiffs,)

vs.)

MICHAEL SCHIAVO, as Guardian of the)
Person of Theresa Marie Schindler Schiavo,)
Incapacitated; JUDGE GEORGE W. GREER)
and THE HOSPICE OF THE FLORIDA)
SUNCOAST, INC.,)

Defendant.)

JURY TRIAL
DEMANDED

**PLAINTIFF'S COMPLAINT FOR TEMPORARY RESTRAINING
ORDER, DECLARATORY JUDGMENT, AND PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

PLAINTIFF THERESA MARIE SCHINDLER SCHIAVO, by and
through her Parents and Next Friends, PLAINTIFFS ROBERT
SCHINDLER and MARY SCHINDLER, and through their undersigned
counsel, respectfully request this Court to issue a Temporary Restraining
Order, Declaratory Judgment, and Preliminary and Permanent Injunctive

Relief and Damages. In support thereof, Plaintiffs show unto the Court as follows:

PRELIMINARY STATEMENT

1. THERESA MARIE SCHINDLER SCHIAVO [hereinafter, "Terri"] is a forty-one-year-old incapacitated and disabled woman who needs no medical equipment or apparatus to keep her alive other than a feeding tube.
2. On March 18, 2005, the staff of Hospice Woodside in Pinellas Park [hereinafter "Hospice"] removed Terri's feeding tube pursuant to an order from Pinellas County Probate Judge George W. Greer [hereinafter, "Judge Greer"] mandating that Terri's guardian, Michael Schiavo [hereinafter, "Schiavo"], discontinue her nutrition and hydration.
3. As of the filing of this action, Judge Greer, Hospice staff, and Schiavo continue to deny Terri food and water for the third day after her feeding tube was initially withdrawn.
4. This is a civil action whereby Plaintiffs pray for a temporary restraining order, declaratory judgment, damages, and injunctive relief enjoining Defendants, their agents, servants, employees and those acting in concert with actual notice thereof from any further withholding of Terri's nutrition and hydration. The Plaintiffs are entitled to the requested relief

because Defendant Judge Greer has violated and continues to violate Terri's below-referenced rights under the Constitution and laws of the United States and, further, by executing and continuing to execute Defendant Judge Greer's Order to withhold or withdraw food, fluids, and medical treatment necessary to sustain her life, Defendants Schiavo and Hospice have violated and will further violate Terri's below-referenced rights under the Constitution and laws of the United States. The Plaintiffs seek a declaration from this Court that Defendant Judge Greer's Order violates and continues to violate, and that Defendants Schiavo's and Hospice's execution of said Order, violates and continues to violate the First and Fourteenth Amendments to the United States Constitution, the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc et seq., and Title 42 U.S.C. § 1983. Plaintiffs seek a temporary restraining order, and preliminary and permanent injunction requiring Defendant Judge Greer to rescind his Order to withhold food and water from Terri, and to refrain from issuing any further orders that would result in the starvation and dehydration of Plaintiff Terri in order to cause her death. Plaintiffs further seek a temporary restraining order, and preliminary and permanent injunction requiring Defendants Hospice and Schiavo to refrain from further depriving

Terri of nutrition and hydration in order to cause her death. The Plaintiffs also request actual damages, costs, and attorneys fees.

JURISDICTION AND VENUE

5. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and under federal law, specifically, Title 42 U.S.C. § 1983, and § 2000cc et seq. This court has jurisdiction:

- a. Over Plaintiffs' claims relating to the withdrawal of Terri's food, fluids, and medical treatment necessary to sustain her life pursuant to S686, enacted by the Congress and signed into law by President George W. Bush at 1:11 a.m. on March 21, 2005 (see attached exhibit);
- b. Over Plaintiffs' civil claims arising under the United States Constitution and federal law pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983;
- c. Over Plaintiffs' prayer for preliminary and permanent injunctive relief and damages under F.R.C.P. 65(a);
- d. Over Plaintiffs' prayer for declaratory relief under Title 28 U.S.C. § 2201; and,
- e. To award attorneys fees pursuant to Title 42 U.S.C. § 1988.

6. Venue is proper under 28 U.S.C. § 1391 in the Middle District of Florida because this claim arose therein. Each and all of the acts alleged herein were done by the Defendants under the color and pretense of state law, statutes, ordinances, regulations, or customs.

THE PARTIES

PLAINTIFFS

7. Plaintiff Theresa Marie Schindler Schiavo is a citizen of the United States and was, at all times relevant to this complaint, a resident of Pinellas County.

8. Plaintiff Robert Schindler is a citizen of the United States and was, at all times relevant to this complaint, a resident of Gulfport, Pinellas County, Florida; and he is Terri's natural father.

9. Plaintiff Mary Schindler is a citizen of the United States and was, at all times relevant to this complaint, a resident of Gulfport, Pinellas County Florida; and she is Terri's natural mother.

DEFENDANTS

10. Defendant Michael Schiavo is Terri's husband and guardian and was, at all times relevant to this complaint, a resident of Pinellas County, Florida.

11. Defendant Judge George W. Greer is a Circuit Judge for the Sixth Judicial Circuit of the State of Florida and Terri's proxy-guardian and surrogate decision-maker. He is sued in his official capacity and for declaratory and injunctive relief only. At all times relevant to this complaint, the conduct of Defendant Judge Greer was under color and authority of state law.

12. Defendant The Hospice of Florida Suncoast, Inc., a Florida not-for-profit corporation d/b/a Hospice Woodside, is an extended care facility for terminally ill or severely disabled patients. Defendant Hospice's principal place of business is 300 East Bay Drive, Largo, Pinellas County, Florida. The registered agent for the corporation is Mary Labyak, 300 East Bay Drive, Largo, FL 33770. Terri currently resides at Defendant Hospice.

SUMMARY OF FACTS

13. In the early morning hours of February 25, 1990, while at home, Plaintiff Terri Schiavo was deprived of oxygen to her brain for a significant period of time. The incident left her severely brain damaged.

14. Michael Schiavo was appointed plenary guardian of his wife on June 18, 1990.

15. In 1993, Schiavo received a net medical malpractice award of \$300,000 and Terri received a net medical malpractice award of \$700,000.

16. Until the malpractice award was issued, Schiavo was providing his wife, Terri, with food and water, medical treatment, rehabilitation, and therapy.

17. In late 1993, however, after receiving the medical malpractice award money, Schiavo stopped all treatment, rehabilitation, and therapy for Terri.

18. Since 1993, Terri's rehabilitation, therapy, education, socialization, and medical and dental treatment have been virtually non-existent.

19. Schiavo abandoned his marriage to Terri in 1995 by cohabiting with and having two children by a woman other than his wife.

20. Schiavo exploited his ward, Terri, by using, with approval of Judge Greer, the medical malpractice money awarded for Terri's care for "the rest of her life" in order to pay his own attorney fees to seek court authorization to terminate Terri's "artificial life support," which consisted only of a feeding tube to provide Terri with nutrition and hydration.

21. Schiavo, who is not a Roman Catholic, further refused to permit Terri, who is a Catholic, to be taken to Mass. Additionally Schiavo refused, in his role as Terri's guardian, to respect the teachings of her Catholic faith by seeking a court order from Defendant Judge Greer granting him

permission after her death to dispose of her body by cremation, rather than by the preferred method of Terri's church, which is burial.

22. Because of the neglect and abuse Terri has suffered at the hands of Defendants Hospice and Schiavo, and at the orders of Defendant Judge Greer, all done under the color of law, Terri suffers from severe contractures of her wrists and feet.

23. On May 11, 1998, Schiavo, as guardian of his wife, petitioned the Circuit Court for Pinellas County, Florida, Sixth Judicial Circuit, Probate Division, for authority to discontinue Terri's "artificial life support," which consisted only of assisted feeding through a PEG (percutaneous endoscopic gastrostomy) tube. The petition was filed as an adversary action, with the Schindlers, as Terri's parents, being served with notice of the proceeding to terminate her assisted feeding and hydration in order to cause her death.

24. Terri did not have a guardian *ad litem* appointed to represent her own interests during the critical legal proceedings that were intended to terminate her assisted feeding and hydration intended to cause her to die.

25. Terri was never given notice of the proceeding to terminate her assisted feeding and hydration intended to cause her to die.

26. Terri never had an independent attorney appointed to represent her interests in the legal proceedings to terminate her assisted feeding and hydration intended to cause her to die.

27. Terri was never brought to court so that Defendant Judge Greer could make his own assessment as to her cognitive abilities and her responsiveness. Furthermore, Defendant Judge Greer never personally saw or observed Terri in any setting prior to ordering her death by starvation and dehydration.

28. Judge Greer became the "surrogate decision-maker" regarding Terri's purported wish to die by starvation and dehydration rather than to live on "artificial life support," which consisted only of a feeding tube.

29. Judge Greer was charged with the statutory duty to conduct an impartial review of the "surrogate's decision-maker" (i.e., himself) regarding Terri's end-of-life wishes.

30. The case was tried before Judge Greer, and on February 11, 2000, the judge/surrogate decision-maker found, without ever having seen her, that Terri was in a persistent vegetative state (pvs), and that it would not be her wish to live that way, and he, therefore:

ORDERED AND ADJUDGED that the Petition for Authorization to Discontinue Artificial Life Support of Michael Schiavo, Guardian of the Person of Theresa Marie Schiavo, an incapacitated person, be and the same is hereby **GRANTED** and

Petitioner/Guardian is hereby authorized to proceed with the discontinuance of said artificial life support for Theresa Marie Schiavo.

The execution of the Order was stayed to permit the Schindlers to appeal it.

32. On January 24, 2000, the Florida District Court of Appeal, Second District, affirmed the trial judge/surrogate's decision that Terri wanted to die. *In re Guardianship of Schiavo*, 780 So. 2d 176 (Fla. 2nd DCA 2001).

33. Terri's assisted feeding was discontinued for the first time on April 24, 2001, when her feeding tube was capped; however, it was later restored pursuant to an order of another judge of in the civil division of the circuit court in response to an injunctive action filed by the Schindlers.

34. Terri's assisted feeding was discontinued again on October 15, 2003, when her nutrition and hydration PEG tube was entirely removed. This time, Judge Greer no longer authorized, but mandated, the removal of Terri's feeding tube when he:

ORDERED AND ADJUDGED that the Guardian, Michael Schiavo, shall cause the removal of the nutrition and hydration tube from the Ward, Theresa Marie Schiavo, at 2:00 p.m. on the 15th day of October, 2003.

35. Terri's feeding tube was reinserted six days later by Executive Order of Florida Governor Jeb Bush pursuant to Chapter 2003-418, Florida Laws (referred to herein as "Chapter 2003-418").

36. During the six days Terri was without food and water in 2003, Schiavo, Hospice, and Judge Greer, or one or more of them, prohibited Monsignor Malanowski, Terri's spiritual advisor, from administering the Catholic sacrament of the Extreme Unction, either prior to or during Terri's starvation and dehydration as a result of the removal of Terri's feeding tube.

37. Terri's third and most recent death order, which is the ongoing cause of this prayer for relief, was issued by Judge Greer on February 25, 2005, mandating the removal, not only of Terri's feeding tube, but also of all nutrition and hydration in any form. In relevant part, the Order provided:

ORDERED AND ADJUDGED that absent a stay from the appellate courts, 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.

38. On March 9, 2005, Judge Greer denied the Schindlers' request to give Terri a swallowing test and/or swallowing therapy in order to determine whether she could swallow and intake nutrition and hydration without the assistance of her feeding tube.

39. On March 7, 2005, Judge Greer denied the Schindlers' request to have medical personnel attempt to feed and/or hydrate their daughter by mouth after her feeding tube was removed, despite some evidence, such as swallowing her saliva, that Terri has some swallowing ability.

40. On March 9, 2005, Judge Greer denied the Schindlers' request to conduct up-to-date medical and rehabilitative tests on Terri, using advanced 2005 medical technology, rather than causing Terri to die based upon out-dated medical evaluations of pvs conducted more than three years ago without state of the art equipment and evaluative techniques.

41. On March 7, 2005, Judge Greer denied the Schindlers' request to allow them to bring their daughter home to die.

42. On March 7, 2005, Judge Greer denied the Schindlers' request to have Terri's body buried rather than cremated in violation of her religious faith.

43. The Florida District Court of Appeal, Second District, affirmed the trial court's order to deprive Terri of food and water on March 16, 2005. (*In re Guardianship of Schiavo*, No. 90-2908- GD-003, 2005 WL 459634 at *5 (Fla. Cir. Ct. Feb. 25, 2005) (*Schiavo V*).

44. Defendants Hospice, Schiavo, and Judge Greer caused all provision of food and water for Terri to be discontinued at approximately 2:45 p.m., on March 18, 2005.

45. Terri has been without food and water since mid-afternoon, Friday, March 18 and will continue to be without food and water until she dies unless this Court enjoins Judge Greer, Hospice, and Schiavo from

further withholding of her nutrition and hydration and directs them to immediately and without delay reinsert Terri's feeding tube in order to reestablish her assisted feeding and hydration.

COUNT ONE
VIOLATION OF FOURTEENTH AMENDMENT
DUE PROCESS RIGHT TO A FAIR AND IMPARTIAL TRIAL

46. Plaintiffs incorporate by reference paragraphs 1 through 45 as if fully restated here and further state the following.

47. Judge Greer became Terri's health-care surrogate during the proceeding for state authority to withdraw her assisted feeding.

48. Proxy Greer also purported to act as the impartial trial judge in the same proceeding for state authority to withdraw Terri's assisted feeding and hydration.

49. Once Proxy Greer became an advocate for Terri's death, it became impossible for Judge Greer to maintain his role as an impartial judge in order to review his own decision that Terri would want to die.

50. Judge Greer's dual and simultaneous roles as judge and health-care surrogate denied Terri a fair and impartial trial in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

COUNT TWO
VIOLATION OF FOURTEENTH AMENDMENT
PROCEDURAL DUE PROCESS RIGHTS

51. Plaintiffs incorporate by reference paragraphs 1 through 50 as if fully restated here and further state the following.

52. A proceeding for the purpose of obtaining state authority to terminate Terri's nutrition and hydration is a proceeding for state authorization to deprive Terri of her life, liberty, and property.

53. Judge Greer failed to appoint a guardian *ad litem* to represent Terri's own right to privacy in critical hearings and proceedings for state authority to withdraw her assisted feeding in order to cause her death by starvation and dehydration.

54. Judge Greer failed to appoint an independent attorney to represent Terri's legal rights in the proceedings for state authority to withdraw her assisted feeding in order to cause her death by starvation and dehydration.

55. Judge Greer denied Terri access to court and, he failed to ever meet Terri personally, and he did not require Schiavo to bring her to court in order for him to be able to personally assess Terri's level of cognition and her responsiveness before he authorized, and later mandated, the withdrawal of her assisted feeding and hydration in order to cause her death.

56. Judge Greer's total failure to afford Terri a guardian *ad litem*, her own independent counsel, and access to court, was a violation of Terri's right to procedural due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT THREE
VIOLATION OF FOURTEENTH AMENDMENT
RIGHT TO EQUAL PROTECTION OF THE LAW

57. Plaintiffs incorporate by reference paragraphs 1 through 56 as if fully restated here and further state the following.

58. Chapter 244 of Florida guardianship law expressly forbids judges to serve as surrogate decision-makers for anyone other than a close family member.

59. Florida judges may serve as proxies only in "substituted judgment" cases where there are reasonable grounds to believe that those otherwise eligible to serve will not provide their ward with effective assistance.

60. The only Florida citizens who are not entitled under Florida law to an impartial judge are incapacitated persons like Terri whose rights must be determined in "substituted judgment" proceedings.

61. Denying Terri a fair and impartial judge merely because she is incapacitated and disabled violates her right to equal protection of the law under the Fourteenth Amendment to the United States Constitution.

COUNT FOUR
VIOLATION OF RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS ACT (RLUIPA)

62. Plaintiffs incorporate by reference paragraphs 1 through 61 as if fully restated here and further state the following.

63. Defendant Judge Greer is an official acting on behalf of the judicial branch of the government of the State of Florida.

64. Defendant Hospice is an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), as incorporated by reference in RLUIPA (42 U.S.C. 2000cc-1).

65. Defendant Hospice is a program or activity that receives Federal financial assistance, and is thus a person acting under color of Federal law for purposes of 42 U.S.C. § 2000cc et seq.

66. Terri is a person residing in or confined to an institution, as defined in § 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), as incorporated by reference in RLUIPA (42 U.S.C. 2000cc-1).

67. Defendant Judge Greer's Order to cause Terri to die by removal of her feeding tube, in a manner disapproved by the highest ecclesiastical

authority of her Catholic Church, imposes a substantial burden on Terri's free exercise of religion.

68. Defendants Hospice's and Schiavo's execution of Defendant Judge Greer's Order to remove her feeding tube imposes a substantial burden on Terri's religious free exercise.

69. The substantial burden that Defendant Judge Greer's Order imposes and that Defendants Hospice's and Schiavo's compliance therewith further imposes is not in furtherance of any compelling governmental interest.

70. The substantial burden that Defendant Judge Greer's Order imposes and that Defendants Hospice's and Schiavo's compliance therewith further imposes is not the least restrictive means of furthering any governmental interest, whether compelling or not.

COUNT FIVE
THE FREE EXERCISE OF RELIGION CLAUSE

71. Plaintiffs incorporate by reference paragraphs 1 through 70 as if fully restated here and further state the following.

72. Terri's religious beliefs are burdened by Defendant Judge Greer's Order and by Defendants Hospice's and Schiavo's execution of that Order in that Terri is being forced to engage in an activity contrary to the tenets of her Roman Catholic faith as established by Pope John Paul II in

March 2004, namely that it is a moral obligation for persons of the Catholic faith who are in pvs to continue to receive nutrition and hydration, even though it is through a feeding tube.

73. Defendants have a constitutional duty to accommodate Terri's sincerely-held religious beliefs. Defendants' conduct, however, constitutes a failure to give reasonable accommodation to Terri's sincerely-held religious beliefs.

74. On its face, Defendants' Order forcing Plaintiff to engage in conduct proscribed by her Catholic faith specifically targets religion for special disabilities without a compelling reason for so doing. Accordingly, Defendants, acting under color of state law, have deprived and continue to deprive Plaintiff of her free exercise rights guaranteed by the First and Fourteenth Amendment to the United States Constitution, thus violating the Civil Rights Act of 1866, 42 U.S.C. § 1983.

WHEREFORE, Plaintiff respectfully prays that this Court grant the following relief.

1. An immediate hearing on Plaintiffs' Motion for Temporary Restraining Order, and, upon hearing, enter an Order restraining Defendants from further withholding Terri's nutrition and hydration.

2. Enter a declaration that the February 11, 2000, Order authorizing the termination of Plaintiff's nutrition and hydration is void because of the total denial of her procedural due process rights;

3. Award an amount over the jurisdictional limits of the court in damages to Plaintiff for denying her federal constitutional and statutory rights.

4. Award Plaintiffs the reasonable costs and expenses of this action, including attorneys fees in accordance with 42 U.S.C. § 1988.

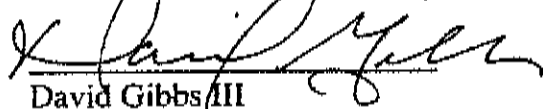
5. Grant such other and further relief as this Court shall seem just and equitable.

6. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order.

Dated: March 21, 2005

Respectfully submitted,

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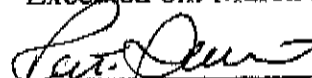
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ATTORNEYS FOR PLAINTIFFS

Verification

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: March 21, 2005



Robert Schindler

Verification

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: March 21, 2005



Mary Schindler

EXHIBIT 3

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
No. 8:05-CV-530-T-27-TBM

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

Plaintiffs,)

vs.)

MICHAEL SCHIAVO, as Guardian of the)
Person of Theresa Marie Schindler Schiavo,)
Incapacitated; JUDGE GEORGE W. GREER)
and THE HOSPICE OF THE FLORIDA)
SUNCOAST, INC.,)

Defendant.)

**Memorandum in Support of
Motion for Temporary Restraining Order**

Come now Plaintiffs, Theresa Marie Schindler Schiavo, Incapacitated, *ex rel.* Robert Schindler and Mary Schindler, her parents and next friends and hereby submit this Memorandum of Law in Support of Motion for Temporary Restraining Order filed earlier today with their Complaint for Temporary Restraining Order, Declaratory Judgment, and Preliminary and Permanent Injunctive Relief. As grounds for the Temporary Restraining Order Plaintiffs show the following.

I. Introduction

On February 25, 1990, Terri's brain was deprived of oxygen during a medical incident. Due to her incapacity resulting from this incident, her husband, Defendant Michael Schiavo ("Schiavo"), was appointed plenary guardian of his wife on June 18, 1990. On May 11, 1998, Schiavo petitioned the Circuit Court for Pinellas County, Florida, Sixth Judicial Circuit, Probate Division, for authority to discontinue Terri's "artificial life support," which consisted only of assisted feeding through a PEG (percutaneous endoscopic gastrostomy) tube.

The case was tried before the state trial court and on February 11, 2000, the trial court:

ORDERED AND ADJUDGED that the Petition for Authorization to Discontinue Artificial Life Support of Michael Schiavo, Guardian of the Person of Theresa Marie Schiavo, an incapacitated person, be and the same is hereby **GRANTED** and Petitioner/Guardian is hereby authorized to proceed with the discontinuance of said artificial life support for Theresa Marie Schiavo.

The execution of the Order was stayed to permit the Schindlers time to appeal. On February 25, 2005, the state trial court ordered the removal of all nutrition and hydration from Terri. In relevant part, the Order provides that it is:

ORDERED AND ADJUDGED that absent a stay from the appellate courts, 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.

On March 18, 2005, at approximately 1:45 p.m., pursuant to the instructions of Schiavo as ordered by Judge Greer, Hospice health care staff surgically removed the port through which Terri received her nutrition and hydration.

Terri has had no food or water since Friday, March 18, 2005, at 1:45 p.m.

Unless this motion is granted until a hearing may be had on Plaintiff's motion for injunctive relief, Plaintiff will suffer immediate and irreparable injury, including death, by Defendants' intentional denial to her of nutrition and hydration.

II. The newly enacted S. 686 authorizes this suit to be brought in this Court to ask for injunctive relief to sustain the life of Theresa Marie Schindler Schiavo.

Plaintiffs filed their Complaint for Temporary Restraining Order, Declaratory Judgment, and Preliminary and Permanent Injunctive Relief pursuant to the "For the relief of the parents of Theresa Marie Schiavo Act" signed into law by President Bush at 1:11 a.m., on the morning of March 21, 2005. (S. 686, 109th Cong. 1st Sess. (enacted March 21, 2005) is attached hereto as Exhibit 1).

The new Act gives jurisdiction to the United States District Court, Middle District of Florida to hear, determine, and render judgment on a suit or claim by or on behalf of Theresa Marie Schiavo ("Terri") for the alleged violation of any of her rights under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life. (S. 686, Section 1, Relief of the Parents of Theresa Marie Schiavo).

The law gives Mr. and Mrs. Schindler procedural standing to bring a suit against any person who was a party to State court proceedings relating to the withholding or withdrawal of food, fluid, or medical treatment necessary to sustain Terri's life. It also gives the District Court authority to determine *de novo* any claim of a violation of any right of Terri within the scope of the Act notwithstanding any prior State court determination and regardless of whether such a claim has previously been raised, considered, or decided in State court proceedings. The District Court will be able to proceed to a final determination of the suit without delay or abstention in favor of even on-going State court proceedings. (*Id.*, Section 2, Procedure).

The Act authorizes this Court to issue such declaratory and injunctive relief necessary to protect the rights of Terri 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.*, Section 2, Procedure).

Of course, the enactment, once signed by the President, must be presumed to be constitutional. *I.N.S. v. Chadha*, 462, 919, 944 (1983); *Fairbanks v. U.S.*, 181 U.S. 283, 285 (1901); *Benning v. Georgia*, 391 F.3d 1299, 1303 (11th Cir. 2004).

III. This case meets the temporary restraining order standards.

A party seeking a temporary restraining order must establish that : (1) there is a substantial likelihood that the moving party will prevail on the merits; (2) the moving party will suffer irreparable injury if the temporary restraining order is not granted; (3) the threatened injury to the moving party outweighs the threatened harm the proposed injunction may cause the opposing party; and (4) the injunction, if issued, would not be adverse to the public interest. *Johnson v. U.S. Dept. of Agriculture*, 734 F.2d 774, 781 (11th Cir. 1984). A temporary restraining order “is to preserve, for a very brief time, the status quo, so as to avoid irreparable injury pending a hearing on the issuance of a preliminary injunction.”)

A. Irreparable Injury and Relative Harms

The case herein is plainly one in which the threatened harm to Terri Schiavo if the TRO is not granted far outweighs the harm to Defendants if it

is granted. If it is not granted, Terri will die of starvation and dehydration within days. Death is absolutely irreparable. The injury of an unjust, state-ordered death cannot be remedied if this Court later determines that Terri was entitled to more protections than the State of Florida gave her.

Clearly, the threatened harm to Mrs. Schiavo far outweighs whatever harm might befall Respondents by being forced to wait a while before they cause her death. Maintaining the status quo—and taking Florida's default position of choosing life when there is doubt¹—while the courts consider issues that directly impact the rights available to the disabled in a proceeding to terminate life-support measures will not disserve the public interest. To the contrary, clarifying the equal status of the disabled in Florida's courtrooms will greatly serve the public interest.

B. Likelihood of Success on the Merits

Plaintiff's Complaint raises her claim that Defendant Schiavo was given state authority to withdraw her nutrition and hydration to cause her to die without her ever having received any due process rights. As a disabled, incapacitated woman, she was denied her right to the appointment of a guardian *ad litem* to represent her personal interests in this so very important issue of whether she would want to live or die. She was never appointed an

¹ "In cases of doubt, we must assume that a patient would choose to defend life in exercising his or her right of privacy." *In re Guardianship of Browning*, 543 So.2d 258, 273 (Fla. 2d DCA 1989).

attorney to represent her interests, but instead had to rely upon counsel retained by the guardian who had his own personal agenda in causing her death. She never received notice of the proceedings intended to take her life. She never had a fair and impartial trial or access to court. Why? Because she never wrote down her end-of-life wishes and she now suffers from a disability that requires someone to make a "substituted judgment" as to what her wishes would be about receiving continued sustenance through a feeding tube during a part of each day.

Our courts are careful about protecting the due process rights of the litigants before them. They are even more particular about doing so when the party before them is a child or a vulnerable adult. And they should be. Throughout the years of proceedings, Terri has never been heard. It is time that she is.

C. The injunction would not be adverse to the public interest.

A judicial decree authorizing death is the ultimate "final solution." By its very nature, it rejects the possibility of rehabilitation and enhances the likelihood that Plaintiff Terri Schiavo, will endure extreme suffering as she slowly dies from starvation and dehydration.

An erroneous decision not to terminate results in a maintenance of the status quo; the possibility of subsequent developments such as advancements in medical science, the discovery of new evidence regarding the patient's intent, changes in the law, or

simply the unexpected death of the patient despite ...life-sustaining treatment at least create the potential that a wrong decision will eventually be corrected or its impact mitigated. An erroneous decision to withdraw life-sustaining treatment, however, is not susceptible of correction."

Cruzan, 497 U.S. at 283. Many doctors have declared that Terri can be rehabilitated so as to greatly improve her condition if given the chance. A TRO will give Terri that chance. (Exhibit 3).

Our American culture has taken great strides in protecting our disabled who cannot protect themselves. In this case,

where there are serious questions and substantial doubts, our society, our laws, and our courts should have a presumption in favor of life. Those who live at the mercy of others deserve our special care and concern. It should be our goal as a nation to build a culture of life, where all Americans are valued, welcomed, and protected and that culture of life must extend to individuals with disabilities.

Statement by President George W. Bush, White House Press Release, Office of the Press Secretary, March 17, 2005. (See Exhibit 2). Congress has just passed the bipartisan S. 686 to further this "culture of life" on behalf of Terri Schiavo. Because of the critical importance of these complex issues and the care with which our culture treats our disabled, Mrs. Schiavo's plight will be likely to succeed on the merits when she is represented by counsel who is able to conduct discovery to determine what she would really want.

IV. Conclusion.

The public interest will be served by the issuance of a TRO to protect Terri while her due process and equal protection rights are being litigated in this Court. If an injunction does not issue, any victory will be pointless because she will be dead as a result of a state-mandated death order in which she had no due process rights. Even Ted Bundy had more process than Terri has had thus far.

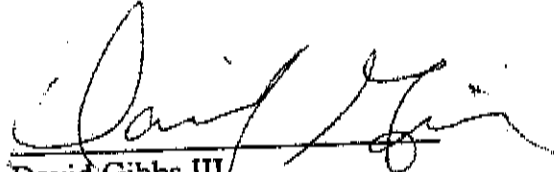
The harm to Plaintiff if the TRO is not granted will be irreparable. She will die. Any harm to the Defendants may be remedied after Terri's due process are litigated. Saving Terri pending the lawsuit will further America's "culture of life" and Florida's default position of choosing life when there is doubt about a patient's wishes. Americans are protective of their disabled and vulnerable adults. Terri will be able to show that she has been completely omitted from the proceedings intended to take her life. She will, therefore, likely succeed on the merits of her claims.

WHEREFORE, Plaintiffs respectfully plead this Court to issue a TRO instructing that Terri's nutrition and hydration be reestablished and that she be transported to the hospital for the medical treatment necessary to sustain her life, and that a hearing date be set on which the merits of Terri's claims may be heard.

Dated: March 21, 2005

Respectfully submitted,

GIBBS LAW FIRM, P.A.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum in Support of Temporary Restraining Order has been furnished by facsimile transmission and United States Mail to George J.

Felos, (727) 736-5050; to Jeffrey W. Gibson, (727) 442-8470; Woodside Hospice (272) 547-1947; and to George Greer (727) 464-5471 on this 21th day of March 2005.

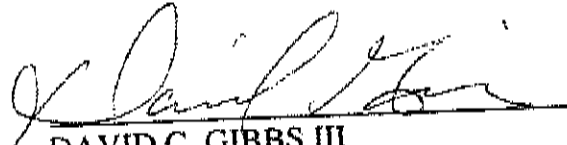

DAVID C. GIBBS III

EXHIBIT 4

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CLERK'S MINUTES - GENERAL

CASE NO. 8:05-CV-530-T-27TBM DATE March 21, 2005

TITLE THERESA MARIE SCHINDLER SCHIAVO vs. MICHAEL SCHIAVO, et al.

TIME 3:05 P.M. - 5:00 P.M.

HONORABLE JAMES D. WHITTEMORE Courtroom Deputy: Anne H. Ohle

Court Reporter: Linda Starr

Attorney(s) for Plaintiff:

David Gibbs, III
George Tragos

Attorney(s) for Defendant(s):

George Felos
Deborah Bushnell
Barry Cohen
Gail Holtzman
Robin Midulla

Interested Parties Counsel

Warren Zimmerman
James Martin, Jr.
Jeffrey Gibson

PROCEEDINGS OF: ***PRELIMINARY INJUNCTION HEARING***

Court hears argument from David Gibbs, counsel for plaintiff, George Felos, counsel for defendant, Michael Schiavo, and Robin Medulla, counsel for Hospice.

Response by David Gibbs and George Tragos, counsel for plaintiff.

Court reserves ruling at this time.

Written Order to follow.

EXHIBIT 5

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

Plaintiffs,

Case No. 8:05-CV-530-T-27TBM

vs.

**MICHAEL SCHIAVO, JUDGE GEORGE W.
GREER and THE HOSPICE OF THE FLORIDA
SUNCOAST, INC.**

Defendants.

ORDER

BEFORE THE COURT is Plaintiffs' Motion for Temporary Restraining Order (Dkt. 2). In their motion, Plaintiffs seek an order directing Defendants to Schiavo and Hospice to transport Theresa Schiavo to Morton Plant Hospital for any necessary medical treatment to sustain her life and to reestablish her nutrition and hydration. This action and Plaintiffs' motion were filed in response to an order of Pinellas County Probate Judge George W. Greer directing Defendant Schiavo, Theresa Schiavo's husband and plenary guardian, to discontinue her nutrition and hydration.

The court conducted a hearing on Plaintiffs' motion after notice to Defendants. Upon consideration, Plaintiffs' Motion for Temporary Restraining Order is denied.

Plaintiffs, the parents of Theresa Marie Schindler Schiavo, brought this action pursuant to a Congressional Act signed into law by the President during the early morning hours of March

21, 2005.¹ The Act, entitled "An Act for the relief of the parents of Theresa Marie Schiavo," provides that the:

United States District Court for the Middle District of Florida shall have jurisdiction to hear, determine, and render judgment on a suit or claim by or on behalf of Theresa Marie Schiavo for the alleged violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain life.

Jurisdiction and Standing

The federal district courts are courts of limited jurisdiction, "empowered to hear only those cases . . . which have been entrusted to them by a jurisdictional grant authorized by Congress." *University of S. Ala. v. American Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999) (quoting *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994)). The plain language of the Act establishes jurisdiction in this court to determine *de novo* "any claim of a violation of any right of Theresa Schiavo within the scope of this Act." The Act expressly confers standing to Plaintiffs as her parents to bring any such claims. There can be no substantial question, therefore, that Plaintiffs may bring an action against a party to the state court proceedings in this court for claimed constitutional deprivations or violations of federal law occasioned on their daughter relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life. Whether the Plaintiffs may bring claims in federal court is not the issue confronting the court today, however. The issue confronting the court is whether temporary injunctive relief is warranted.

¹ Pub. L. No. 109-3 (March 21, 2005).

Applicable Standards

While there may be substantial issues concerning the constitutionality of the Act, for purposes of considering temporary injunctive relief, the Act is presumed to be constitutional. *Benning v. Georgia*, 391 F.3d 1299, 1303 (11th Cir. 2004).

The purpose of a temporary restraining order, like a preliminary injunction, is to protect against irreparable injury and preserve the status quo until the district court renders a meaningful decision on the merits. *Canal Auth. of State of Florida v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974). A district court may grant a preliminary injunction only if the moving party shows that:

- (1) it has a substantial likelihood of success on the merits;
- (2) irreparable injury will be suffered unless the injunction issues;
- (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and
- (4) if issued, the injunction would not be adverse to the public interest.

Klay v. United Healthgroup, Inc., 376 F.3d 1092, 1097 (11th Cir. 2004); *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1265 (11th Cir. 2001). A preliminary injunction is "an extraordinary and drastic remedy" and is "not to be granted unless the movant 'clearly established the burden of persuasion' as to the four prerequisites." *United States v. Jefferson County*, 720 F.2d 1511, 1519 (11th Cir. 1983) (quoting *Canal Auth. of State of Florida*, 489 F.2d at 573).²

It is apparent that Theresa Schiavo will die unless temporary injunctive relief is granted. This circumstance satisfies the requirement of irreparable injury. Moreover, that threatened injury outweighs any harm the proposed injunction would cause. To the extent Defendants urge that

²The Act does not address the traditional requirements for temporary injunctive relief. Accordingly, these standards control whether temporary injunctive relief is warranted, notwithstanding Congress' intent that the federal courts determine *de novo* the merits of Theresa Schiavo's claimed constitutional deprivations.

Theresa Schiavo would be harmed by the invasive procedure reinserting the feeding tube, this court finds that death outweighs any such harm. Finally, the court is satisfied that an injunction would not be adverse to the public interest. Notwithstanding these findings, it is essential that Plaintiffs establish a substantial likelihood of success on the merits, which the court finds they have not done.

The first of the four prerequisites to temporary injunctive relief is generally the most important. *Gonzalez v. Reno*, No. 00-11424-D, 2000 WL 381901 at *1 (11th Cir. April 19, 2000). The necessary level or degree of possibility of success on the merits will vary according to the court's assessment of the other factors. *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981) (citing with auth. *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)).

A substantial likelihood of success on the merits requires a showing of only *likely* or *probable*, rather than *certain*, success. *Home Oil Company, Inc. v. Sam's East, Inc.*, 199 F. Supp. 2d 1236, 1249 (M.D. Ala. 2002) (emphasis in original); see also *Ruiz*, 650 F.2d at 565. "[W]here the 'balance of the equities weighs heavily in favor of granting the [injunction],' the movant need only show a 'substantial case on the merits.'" *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986) (citing *Ruiz*, 650 F.2d at 565).

This court has carefully considered the Act and is mindful of Congress' intent that Plaintiffs have an opportunity to litigate any deprivation of Theresa Schiavo's federal rights. The Court is likewise mindful of Congress' directive that a *de novo* determination be made "notwithstanding any prior State court determination." In resolving Plaintiffs' Motion for Temporary Restraining Order, however, the court is limited to a consideration of the constitutional and statutory deprivations alleged by Plaintiffs in their Complaint and motion. Because Plaintiffs urge due

process violations are premised primarily on the procedures followed and orders entered by Judge Greer in his official capacity as the presiding judge in the dispute between Michael Schiavo and Plaintiffs, their Complaint necessarily requires a consideration of the procedural history of the state court case to determine whether there is a showing of any due process violations. On the face of these pleadings, Plaintiffs have asserted five constitutional and statutory claims. To obtain temporary injunctive relief, they must show a substantial likelihood of success on at least one claim.³

A. Count I – Violation of Fourteenth Amendment Due Process Right to a Fair and Impartial Trial

Plaintiffs allege in Count I that Theresa Schiavo's Fourteenth Amendment right to a fair and impartial trial was violated, contending that the presiding judge "became Terri's health care surrogate" and "also purported to act as an impartial trial judge in the same proceeding." (Dkt. 1, ¶¶ 47-48). They allege that once he "became an advocate for Terri's death, it became impossible for Judge Greer to maintain his role as an impartial judge in order to review his own decision that Terri would want to die." (Dkt. 1, ¶ 49). Finally, they allege that "Judge Greer's dual and simultaneous role as judge and health-care surrogate denied Terri a fair and impartial trial." (Dkt 1, ¶ 50). These contentions are without merit.

Florida's statutory scheme, set forth in Chapter 765, contemplates a process for designation of a proxy in the absence of an executed advance directive and provides for judicial resolution of disputes arising concerning decisions made by the proxy. *See Fla. Stat. § 765.401(1)*. Where a

³ Plaintiffs have submitted affidavits of health care professionals regarding Theresa's medical status, treatment techniques and therapies which are available and their opinions regarding how and whether these treatments might improve Theresa's condition. Plaintiffs have not, however, discussed these affidavits in their papers and how they relate to the claimed constitutional deprivations.

decision by the proxy is challenged by the patient's other family members, it is appropriate for the parties to seek "expedited judicial intervention." *Fla. Stat.* § 765.105. Applying this statutory scheme, the state court appointed Michael Schiavo, Theresa Schiavo's husband, as plenary guardian and proxy for Theresa. Thereafter, a dispute arose between Michael Schiavo and Plaintiffs concerning whether to continue Theresa on artificial life support, and Judge Greer, the presiding judge, was called upon to resolve that dispute.

Florida's statutory scheme contemplates a judicial resolution of these competing contentions. See *In re Guardianship of Browning*, 568 So. 2d 4, 16 (Fla. 1990). As the Florida Second District Court of Appeal explained, where two "suitable surrogate decision-maker[s] . . . could not agree on the proper decision, ..." the guardian may invoke "the trial court's jurisdiction to allow the trial court to serve as the surrogate decision-maker." *In re Guardianship of Schiavo*, 780 So. 2d 176, 178 (Fla. Dist. Ct. App. 2001) ("Schiavo I"). Pursuant to Florida law, therefore, Judge Greer, as the presiding judge, had a statutory obligation to resolve the competing contentions between Michael Schiavo and Plaintiffs. *Fla. Stat.* § 765.105.

Plaintiffs offer no authority for their contention that Judge Greer compromised the fairness of the proceeding or the impartiality of the court by following Florida law and fulfilling his statutory responsibilities under Chapter 765 as presiding judge and decision-maker.⁴ Plaintiffs' argument is that Judge Greer could not fulfill his judicial duties impartially while at the same time fulfilling his statutory duty to resolve the competing contentions of the parties as surrogate or proxy "to make decisions about life-prolonging procedures." *In re Guardianship of Schiavo*, No. 2D05-

⁴ During argument, Plaintiffs' counsel explained their criticism of Judge Greer's official actions as Judge Greer having exceeded his lawful authority by acting as a guardian contrary to *Fla. Stat.* § 744.309(1)(b). Contrary to Plaintiffs' argument, §744.309 merely prohibits a judge from acting as a guardian except under certain specified familial circumstances.

968, 2005 WL 600377 at *4 (Fl. Ct. App. March 16, 2005) (“*Schiavo VT*”).

Plaintiffs’ argument effectively ignores the role of the presiding judge as judicial fact-finder and decision-maker under the Florida statutory scheme. By fulfilling his statutory judicial responsibilities, the judge was not transformed into an advocate merely because his rulings are unfavorable to a litigant. Plaintiffs’ contention that the statutory scheme followed by Judge Greer deprived Theresa Schiavo of an impartial trial is accordingly without merit. Defendant is correct that no federal constitutional right is implicated when a judge merely grants relief to a litigant in accordance with the law he is sworn to uphold and follow. This Court concludes that Plaintiffs cannot establish a substantial likelihood of success on the merits of Count I.

B. Count II – Violation of Fourteenth Amendment Procedural Due Process Rights

In Count II, Plaintiffs contend that Theresa Schiavo’s Fourteenth Amendment procedural due process rights were violated by Judge Greer’s (1) failure to appoint a guardian *ad litem* (Dkt. 1, ¶ 53), (2) failure to appoint an independent attorney to represent Theresa Schiavo’s legal rights (Dkt. 1, ¶ 54) and (3) denial of what Plaintiffs describe as “access to court” by his “fail[ure] to ever meet Terri personally” and failure to “personally assess Terri’s level of cognition and her responsiveness” (Dkt. 1, ¶ 55).

Initially, the Court finds no authority recognizing as a matter of federal constitutional or statutory right that a state trial judge is required to “personally assess” a ward’s “level of cognition and ...responsiveness.” *Fla. Stat.* § 744.3725, on which Plaintiffs rely, is applicable to an action seeking to commit the ward to a facility and other circumstances not relevant to this case. Plaintiffs’ conclusory allegation that Judge Greer denied Theresa Schiavo access to court by not requiring her presence is without merit.

With respect to Plaintiffs' contention that Judge Greer violated Theresa Schiavo's procedural due process rights by failing to appoint a guardian *ad litem*, the record belies this contention. In June, 1998, Judge Rives *sua sponte* appointed Richard L. Pearse, Jr., Esq. as guardian *ad litem* "for the purpose of reviewing the request for termination of life support on behalf of the wards [sic]." *In re Guardianship of Schiavo*, No. 90-2908-GD-003 (Pinellas Cty. Circ. Ct., June 11, 1998). The record reflects that attorney Pearse "fully complied with his June 11, 1998 Court Order of appointment" and was accordingly discharged on June 16, 1999 by Judge Boyer of the Pinellas County Circuit Court. Pearse served as guardian *ad litem* for one year and ultimately testified as a witness in the trial before Judge Greer. *In re Guardianship of Schiavo*, No. 90-2908-GD-003 (Pinellas Cty. Circ. Ct., Feb. 28, 2000).⁵ Accordingly, assuming Fourteenth Amendment procedural due process requires the appointment of a guardian *ad litem*, there would be no constitutional deprivation here because three guardians *ad litem* were appointed to represent Theresa Schiavo's interests over the course of the litigation.

Plaintiffs' last contention is that Theresa Schiavo's procedural due process rights were violated by Judge Greer's refusal to appoint an independent attorney to represent her interests. The due process clause is implicated when there is a "deprivation of life, liberty or property at the hands of the government." *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003). If one or more of these constitutionally protected interests is at stake, as they undoubtedly are in this case, the due process clause requires notice and the opportunity to be heard. *Id.* "It is . . . fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a

⁵The record also reveals that attorney John H. Pecarek was appointed as guardian *ad litem* early in the proceedings. *In re Guardianship of Schiavo*, No. 90-2908-GD-003 (Pinellas Cty. Circ. Ct., Feb. 17, 1994). Late in the litigation, at the request of Florida Governor Jeb Bush, Pinellas County Chief Judge David Demers also appointed attorney Jay Wolfson, M.D. as guardian *ad litem*. *Schiavo VI*, 2005 WL 600377 at *1, n. 2.

meaningful manner." *Fuentes v. Cortes*, 407 U.S. 67, 80 (1972). Unquestionably, in some circumstances, a meaningful opportunity to be heard includes the right to be represented by counsel. However, "due process is a flexible concept that varies with the particular circumstances of each case, and to determine the requirements of due process in a particular situation we must apply the balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Grayden*, 345 F.3d at 1232-33.

The *Mathews* balancing test requires consideration of three distinct factors: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

The first factor weighs the interest at stake. Plaintiffs urge that Theresa Schiavo's life is at stake, while Defendant argues that her liberty to exercise her right to refuse medical treatment is the interest being adjudicated. In either case, a fundamental and important interest is implicated in the court proceedings determining the removal of artificial life support.

The second *Mathews* factor requires consideration of the risk of erroneous deprivation under the procedures used and the probable value of the additional protections urged by the Plaintiffs. Theresa Schiavo's case has been exhaustively litigated, including an extensive trial, followed by another "extensive hearing at which many highly qualified physicians testified" to reconfirm that no meaningful treatment was available, and six appeals. As the Florida Second District Court of Appeal stated, "few, if any, similar cases have ever been afforded this heightened level of process." *Schiavo VI*, 2005 WL 600377 at *3.

Throughout the proceedings, the parties, represented by able counsel, advanced what they believed to be Theresa Schiavo's intentions concerning artificial life support. In Florida, counsel for Michael Schiavo as Theresa Schiavo's guardian owed a duty of care to Theresa Schiavo in his representation. *Op. Atty. Gen.* 96-94 (November 20, 1996). Finally, with respect to presenting the opposing perspective on Theresa Schiavo's wishes, the Court cannot envision more effective advocates than her parents and their able counsel. Plaintiffs have not shown how an additional lawyer appointed by the court could have reduced the risk of erroneous rulings.

With regard to the third factor, without question the state of Florida has an interest in the welfare of its citizens and in the legal process for adjudicating disputed claims such as were presented to Judge Greer in this case, as evidenced by Florida's well defined statutory scheme. The court's inherent authority to appoint a guardian *ad litem*, consult independent experts or appoint an attorney if warranted protects the state's interest.

Balancing the three factors, this court concludes that Theresa Schiavo's life and liberty interests were adequately protected by the extensive process provided in the state courts. Defendant Michael Schiavo and Plaintiffs, assisted by counsel, thoroughly advocated their competing perspectives on Theresa Schiavo's wishes. Another lawyer appointed by the court could not have offered more protection of Theresa Schiavo's interests. Accordingly, Plaintiffs have not established a substantial likelihood of success on the merits on Count II.

C. Count Three – Violation of Fourteenth Amendment Right to Equal Protection of the Law

For the same reasons relief under Count I was not appropriate, the relief sought in Count III via the equal protection clause is without merit. Plaintiff has not established a substantial likelihood of success on the merits of the claims set forth in Count III. *See Cruzan v. Missouri Dept. of Health*, 497 U.S. 261, 287 n.12 (1990) (“The differences between the choice made by a competent person to refuse medical treatment, and the choice made for an incompetent person by someone else to refuse medical treatment, are so obviously different that the State is warranted in establishing rigorous procedures for the latter class of cases which do not apply to the former class.”) (emphasis in original).

D. Counts IV and V – Violation of Religious Land Use and Institutionalized Persons Act (RLUIPA) and Violation of First Amendment Free Exercise of Religion Clause

Plaintiffs bring Counts IV and V alleging that Theresa Schiavo’s right to exercise her religion has been burdened by the state court’s order to remove the feeding tube. With respect to Count IV of the Complaint, Plaintiffs allege a claim under the Religious Land Use and Institutionalized Persons Act (42 U.S.C. § 2000cc-1), claiming that her rights to free exercise of her religion have been burdened by the state court’s order authorizing removal of her feeding tube in that removal of the feeding tube “imposes a substantial burden on Terry’s religious free exercise.” That statute expressly requires, however, that “[n]o government shall impose a substantial burden on the religious exercise of a person . . .” 42 U.S.C. § 2000cc(a) (emphasis added).

In Count V, Plaintiffs make a similar contention under the 42 U.S.C. § 1983 and the free exercise clause, alleging that “Terry’s religious beliefs are burdened” by execution of order “in that

Terry is being forced to engage in an activity contrary to the tenets of her Roman Catholic faith . . .
." Plaintiffs allege that Defendants have a constitutional duty to accommodate "Terry's sincerely-held religious beliefs."


Undoubtedly, Terry Schiavo enjoys, by virtue of 42 U.S.C. § 2000-cc(a), a statutorily protected right not to have substantial burdens placed on her religious exercise by the government. The plain language of the statute prohibits government from imposing a substantial burden on the religious exercise of an individual such as Theresa Schiavo. Similarly, the Free Exercise Clause contained in the First Amendment of the Constitution expressly protects the exercise of religion. In their Complaint, Plaintiffs allege that the state court's order imposes a substantial burden on Theresa Schiavo's free exercise of religion. (Complaint, ¶ 67).

In order to succeed on either claim, however, Plaintiffs must establish that the Defendants were state actors. Plaintiffs' claims fail because neither Defendant Schiavo nor Defendant Hospice are state actors. Moreover, the fact that the claims were adjudicated by a state court judge does not provide the requisite state action for purposes of the statute or the Fourteenth Amendment. See *Harvey v. Harvey*, 949 F.2d 1127, 1133-34 (11th Cir. 1992) ("Use of the courts by private parties does not constitute an act under color of state law."); *Torres v. First State Bank of Sierra County*, 588 F.2d 1322, 1326-27 (10th Cir. 1978) ("We do not think that the 'color of law' reference in § 1983 was intended to encompass a case such as this one, where the only infirmities are the excesses of the court order itself, . . . subject to the normal processes of appeal."); see also *Dahl v. Akin*, 630 F.2d 277, 281 (5th Cir. 1980).

This court appreciates the gravity of the consequences of denying injunctive relief. Even under these difficult and time strained circumstances, however, and notwithstanding Congress' expressed interest in the welfare of Theresa Schiavo, this court is constrained to apply the law to

the issues before it. As Plaintiffs have not established a substantial likelihood of success on the merits, Plaintiffs' Motion for Temporary Restraining Order (Dkt. 2) must be DENIED.

DONE AND ORDERED in chambers this 22nd day of March, 2005.


JAMES D. WHITTEMORE
United States District Judge

Copies to:
Counsel of Record

EXHIBIT 6

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

No. 8:05-CV-530-T-27-TBM

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

Plaintiffs,)

vs.)

MICHAEL SCHIAVO, as Guardian of the)
Person of Theresa Marie Schindler Schiavo,)
Incapacitated; JUDGE GEORGE W. GREER)
and THE HOSPICE OF THE FLORIDA)
SUNCOAST, INC.,)

Defendant.)

NOTICE OF APPEAL

Notice is hereby given that Plaintiff, Theresa Marie Schiavo, Incapacitated, by and through her parents and next friends Robert and Mary Schindler, in the above-named case hereby appeal to the United States Court of Appeals for the Eleventh Circuit from the order entered denying Plaintiffs' Motion for Temporary Restraining Order in this action on the twenty-first day of March, 2005.

S/

David Gibbs III
Florida Bar # 0992062
Gibbs Law Firm, P.A.
5666 Seminole Blvd, Suite 2
Seminole, FL. 33772
(727) 399-8300

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2005, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

s/ David C. Gibbs III

EXHIBIT 7

STATE OF FLORIDA)
COUNTY OF PINELLAS)

DECLARATION OF ROBERT SCHINDLER

I, ROBERT SCHINDLER, Respondent in the above-styled case,
hereby declare under penalty of perjury:

1. My name is Robert Schindler. I am a respondent in the above-styled action.
2. I reside in Gulfport Pinellas County, Florida.
3. I am the father of the ward, Theresa Marie Schindler Schiavo.
4. I have been visiting my daughter regularly since her feeding tube was removed by court order on March 18, 2005 about 1:45 p.m.
5. For the first few days after the feeding tube was removed, Terri continued to interact and respond to me with verbalizations and smiles. She continued to look well.
6. In the early morning hours of March 21, 2005, immediately after Congress passed a bill permitting Terri to protect her rights in federal court, Terri was still looking relatively well. When I told Terri she would be soon taken out of the hospice to have breakfast, she appeared to comprehend what I said and responded to me with a smile.
7. Later last night, when I returned to visit Terri, I noticed that she had begun a significant decline. Her eye sockets

were sunken in and dark. Her lips were dry and her facial skin was dry and beginning to peel off. While she still made eye contact with me when I spoke to her, she was becoming increasingly lethargic. Terri no longer attempted to verbalize back to me when I spoke to her.

FURTHER YOUR DECLARANT SAYETH NOT.

I hereby declare, under penalty of perjury, that the foregoing is true and accurate to the best of my knowledge and belief. Executed this 22nd day of March, 2005, at Pinellas Park, Florida.


ROBERT SCHINDLER

EXHIBIT 8

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

Plaintiffs,

vs.

Case No. 8:05-CV-530-T-27TBM

MICHAEL SCHIAVO, JUDGE GEORGE
W. GREER and THE HOSPICE OF THE
FLORIDA SUNCOAST, INC.,

Defendants.

ORDER

BEFORE THE COURT is Plaintiffs' Motion for Temporary Restraining Order (Dkt. 2)¹. TAKE NOTICE that a HEARING on Plaintiffs' Motion for Temporary Restraining Order (Dkt. 2) will be conducted on Monday, March 21, 2005 at 3:00 P.M., before the Honorable James D. Whittemore, in Courtroom 13B at the Sam M. Gibbons United States Courthouse, 801 N. Avenue, Tampa, Florida. Counsel for Plaintiffs shall serve a copy of the Complaint, Motion for Temporary Restraining Order, Statement of Interest of the United States and a copy of this Notice on Defendants or their counsel by 10:00 A.M., March 21, 2005.

DONE AND ORDERED in chambers this 21st day of March, 2005.


JAMES D. WHITTEMORE
United States District Judge

Copies to:
Counsel of Record

¹ The motion does not contain and is not accompanied by a supporting legal memorandum or brief, as required by Local Rule 4.05(b)(3). See also Local Rule 3.01(a) and (c). Plaintiffs shall file with the Court, on or before 12:00 P.M. on March 21, 2005, a supporting brief or legal memorandum, not exceeding 20 pages, failing which the motion will be summarily denied. A copy shall be served on Defendants or their counsel and a courtesy copy furnished to chambers upon filing.

EXHIBIT 9

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Tuesday, March 22, 2005

www.house.gov/hastert

Joint Statement of Speaker of the House J. Dennis Hastert and Senate Majority Leader Bill Frist

**Announce Legislative Agreement to Save Mrs. Schiavo's Life
March 19, 2005**

(Washington, D.C.) Speaker of the House J. Dennis Hastert and Senate Majority Leader Bill Frist released the following statement today:

"We're pleased to announce that we have reached an agreement on legislation which provides an opportunity to save Mrs. Schiavo's life. This legislation will allow a federal district judge to consider a claim by or on behalf of Mrs. Schiavo for alleged violations of Constitutional rights or federal laws relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life. We want to thank Senate Minority Leader Harry Reid for working with us towards a legislative solution. The House and Senate will act as quickly as possible to send this legislation to the President for his signature.

"The Senate will meet today at 5:00 p.m. to pass an adjournment. Passing an adjournment resolution will enable the Speaker and I to bring both the House and Senate back into session under our emergency powers. The House will meet at 1:00pm on Sunday, March 20th in the hope of receiving unanimous consent to take up the measure. If unanimous consent cannot be attained, the measure will be considered on the House Suspension Calendar as early as 12:01 a.m. Monday, March 21. The Senate will continue to work through the weekend to ensure the bill can be passed shortly after the House has acted."

