

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

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

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

**PLAINTIFF’S SECOND AMENDED VERIFIED 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, 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, Plaintiff incorporates by reference as if fully set out herein the exhibits contained in the Appendix filed with Plaintiffs’ First Amended Complaint and further shows 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staff, and Schiavo continue to deny Terri food and water for the fourth day after her feeding tube was initially withdrawn.

4. This is a civil action whereby Plaintiff prays 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 Plaintiff is 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 Plaintiff seeks 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, Eighth, and Fourteenth Amendments to the United States Constitution, the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc et seq., the Americans with Disabilities Act (42 U.S.C. §12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. §794), and Title 42 U.S.C. § 1983. Plaintiff seeks 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. Plaintiff further seeks 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 Plaintiff also requests 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 Plaintiff's claims relating to the withdrawal of Terri's food, fluids, and medical treatment necessary to sustain her life pursuant to P.L. # 109-3, enacted by the Congress and signed into law by President George W. Bush at 1:15 a.m. on March 21, 2005;

- b. Over Plaintiff's civil claims arising under the United States Constitution and federal law pursuant to 28 U.S.C. § 1331, 29 U.S.C. §794, 42 U.S.C. § 1983, and 42 U.S.C. §12101 *et seq.*;
- c. Over Plaintiff's prayer for preliminary and permanent injunctive relief and damages under F.R.C.P. 65(a);
- d. Over Plaintiff's 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 Sun Coast, 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 located at 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. Schiavo has repeatedly denied Terri adequate dental treatment and refused to repair or replace Terri's wheelchair. His abominable neglect has caused Terri discomfort and pain as well as deprive her of ordinary care.

24. 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.

25. 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.

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 and Schiavo 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 and Schiavo 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 and Schiavo 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 and Schiavo denied the Schindlers' request to allow them to bring their daughter home to die.

42. On March 7, 2005, Judge Greer and Schiavo 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 Hbspice, 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 18th 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.

46. On February 23, 2005, Plaintiffs filed a motion to void the order of February 11, 2000, on the basis of new medical advancements. On March 8, 2005, the Plaintiffs provided the court with thirty-three medical declarations, which are provided as a part of this complaint, which questioned and denied the court's holding that Mrs. Schiavo was in a persistent vegetative state. The court denied Plaintiffs motion.

47. Plaintiff asserts Mrs. Schiavo is not in a persistent vegetative state. Terri interacts with her parents at a cognitive level.

48. In its investigation of the abuse and neglect of Plaintiff, the Florida Department of Children and Families has "credible evidence through the analysis of our Board Certified Neurologist on our APT that seriously challenges the diagnosis that Ms. Schiavo is in a PVS. . . . The significance of not being PVS would shatter the legal basis for the removal of life support."

49. Plaintiff wants to live; she never said she wanted to die by starvation and dehydration.

50. Plaintiff's medical and mental condition at the time immediately preceding the start of her state-compelled starvation and hydration was such that through therapy and rehabilitation she could have significant improvement in her condition.

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

51. Plaintiffs incorporate by reference paragraphs 1 through 47 as if fully restated here and further state the following.

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

53. 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.

54. 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.

55. 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

56. Plaintiffs incorporate by reference paragraphs 1 through 52 as if fully restated here and further state the following.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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

62. Plaintiffs incorporate by reference paragraphs 1 through 58 as if fully restated here and further state the following.

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

64. 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.

65. 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.

66. 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)

67. Plaintiffs incorporate by reference paragraphs 1 through 63 as if fully restated here and further state the following.

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

69. 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).

70. 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.*

71. Terri is a person residing in or confined to 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).

72. 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.

73. 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.

74. 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.

75. 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

76. Plaintiffs incorporate by reference paragraphs 1 through 72 as if fully restated here and further state the following.

77. 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.

78. 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.

79. 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.

COUNT SIX
THE AMERICANS WITH DISABILITIES ACT

80. Plaintiffs incorporate by reference paragraphs 1 through 76 as if fully restated here and further state the following.

81. The Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., provides that necessary and appropriate rehabilitation services and physical/motor skill therapy may not be denied a substantially disabled patient in the United States.

82. Moreover, the pertinent federal regulations for implementation of the ADA specifically provide that “[n]othing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.” (cf. 28 C.F.R. Ch. 1, Subpart B, § 35.130.)

83. The failure and refusal of defendant Michael Schiavo, acting under the color of state law, to furnish Theresa Marie Schiavo with necessary and appropriate speech and motor skills therapy, rehabilitation service, and the basic essential medical services, and his demand that she be deprived of foods and water, violate her rights under the ADA and constitute unlawful discrimination against her because of her disability.

COUNT SEVEN
THE REHABILITATION ACT OF 1973

84. Plaintiffs incorporate by reference paragraphs 1 through 80 as if fully restated here and further state the following.

85. Section 504 of the Rehabilitation act of 1973, 29 U.S.C. § 794, prohibits discrimination against an “otherwise qualified” handicapped individual, solely by reason of his or her handicap, under any program or activity receiving federal financial assistance. Hospitals and hospices that accept Medicare and Medicaid funding are subject to the Act.

86. Defendant The Hospice of Florida Sun Coast, Inc. is subject to the Act because it receives federal funding.

87. The aforesaid acts and omissions of the defendants have violated Terri's right to rehabilitations under the Act.

COUNT EIGHT

VIOLATION OF FOURTEENTH AMENDMENT DUE PROCESS RIGHT TO SUBSTITUTED JUDGMENT DECISION BASED ON CLEAR AND CONVINCING EVIDENCE STANDARD

88 Plaintiffs incorporate by reference paragraphs 1 through 84 as if fully restated here and further state the following.

89. The United States Supreme Court, in *Cruzan v. Missouri Department of Health*, 497 U.S. 261 (1990), determined that the Due Process Clause of the Fourteenth Amendment requires that decisions to remove hydration and nutrition from an incapacitated person must be supported by clear and convincing evidence that the incapacitated person would have made the same decision.

90. The February 11, 2000, Order (to discontinue the hydration and nutrition of Terri by feeding tube) was not supported by clear and convincing evidence that Terri would have made the same decision.

91. The State trial court relied on the testimony of five individuals (Mary Schindler, Diane Christine Meyer, Michael Schiavo, Scott Schiavo, and Joan Schiavo) regarding comments made by Terri about artificial life support for incapacitated persons.

91. Mary Schindler, Terri's mother, testified that Terri, commenting about the Karen Ann Quinlan case (Woman in pvs on a respirator), stated that the father should just leave her alone and not attempt to remove the life support.

93. Diane Christine Meyer, a friend of the family, testified about a similar "end-of-life" conversation with Terri in 1982 in which Terri stated that she did not approve of the parents' attempts to remove life support from Quinlan.

94. Judge Greer discounted the Quinlan reference testimony of Mrs. Schindler and Ms. Meyer based on his erroneous personal belief that Karen Ann Quinlan had died in 1976, rather than June 11, 1985 when Quinlan actually died, stating in his February 11, 2000 Order that Ms. Meyer “appeared believable at the offset” [sic] but then became “mystified” when Ms. Meyer insisted on the fact that Quinlan was still alive in 1982.

95. Judge Greer’s personal error tainted the credibility of Mrs. Schindler’s and Ms. Meyer’s testimony even though it was his plain error and therefore, his lack of credibility (as surrogate) that was the “evidence” underlying his February 11, 2000, Order.

96. The testimony of Michael Schiavo was considered even though Terri’s guardian ad litem (until dismissed by the court), Richard Pearse, Jr., stated that Mr. Schiavo’s testimony was compromised by his conflict of interest.

97. The testimony of Scott Schiavo and Joan Schiavo, Mr. Schiavo’s brother and sister-in-law, respectively, only related to the artificial life support of a respirator. Their testimony said nothing about Terri’s views on the removal of a feeding tube.

98. Judge Greer impermissibly “bootstrapped” the testimony of Scott and Joan Schiavo with the irrelevant testimony of Ms. Beverly Tyler who testified as to the public opinion (improper under *In re Browning*, 568 So.2d 4, 13 (1990)) concerning being “hooked to a machine” for life support.

99. By discounting the otherwise creditable testimony of Mrs. Schindler and Ms. Meyer due to plainly erroneous personal information, and accepting the testimony of Scott and Joan Schiavo which did not relate directly to the issue and the irrelevant public opinion testimony of Ms. Beverly Tyler, the state trial court did not have the clear and

convincing evidence necessary to remove Terri's feeding tube under the *Cruzan* Fourteenth Amendment standard.

COUNT NINE
VIOLATION OF EIGHT AMENDMENT PROHIBITION AGAINST
CRUEL AND UNUSUAL PUNISHMENT.

100. Plaintiffs incorporate by reference paragraphs 1 through 96 as if fully restated here and further state the following.

101. The Eighth Amendment to the United States Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Judge Greer and Michael Schiavo, as state actors, have violated Terri Schiavo's Eighth Amendment rights by demonstrating a deliberate indifference to a known, substantial risk of serious harm in violation of clearly established Eighth Amendment rights of which a reasonable person would have known, given the Supreme Court's decisions proscribing the deprivation of food, water, and medical care as well as other basic human needs to those in custody by a judicial decree of the state.

COUNT TEN
VIOLATION OF FOURTEENTH AMENDMENT
RIGHT TO LIFE

102. Plaintiffs incorporate by reference paragraphs 1 through 102 as if fully restated herein and further state the following.

103. The Fourteenth Amendment to the United States shall any denies the state from depriving "any person of life, liberty, or property, without due process of law."

104. Depriving Plaintiff of nutrition and hydration contrary to her wish to live is a violation of her Fourteenth Amendment right to life.

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. Hold a **jury trial** to determine the nature and extent of the deprivation of constitutional and statutory rights to Terri.

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

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

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

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

Dated: March 24, 2005

Respectfully submitted,

GIBBS LAW FIRM, P.A.,

/s/

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2005, I electronically filed PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER 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

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 24, 2005



ROBERT SCHINDLER, SR.