

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION  
File No. 90-2908GD-003**

**IN Re: THE GUARDIANSHIP OF  
THERESA MARIE SCHIAVO,  
Incapacitated.**

---

**MICHAEL SCHIAVO,  
Petitioner,**

**v.**

**ROBERT SCHINDLER and  
MARY SCHINDLER,  
Respondents.**

---

//

**MOTION FOR RELIEF FROM JUDGMENT and  
MOTION TO RE-CONSIDER**

ROBERT and MARY SCHINDLER, as interested persons in the welfare of their daughter Theresa Marie Schiavo, by and through undersigned counsel pursuant to Fla. R. Civ. P. 1.540, the First Amendment to the United States Constitution, and Art. 1. §§ 2 and 3 of the Florida Constitution, hereby move this Court for its order setting aside the judgment in this adversary proceeding on the following grounds and to re-consider its *ex parte* Order of October 21, 2003

authorizing the Guardian to file suit against Governor Jeb Bush, challenging “Terri’s Law,” in that such judgment and order violate the Ward’s free exercise of her religious beliefs, her right to enjoy and defend her own life, and, in fact, imperil her immortal soul.

### **Introduction**

This Court on February 11, 2000, in ruling on Michael Schiavo’s Petition for Removal of Artificial Life Support, found that the Ward would want to die by means of removal of her only means of sustenance, to wit, her feeding tube. Throughout the subsequent proceedings in this case, great deference has been paid to Terri’s wishes.

On October 21, 2003, this Court issued its *ex parte* Order denying the Guardian’s Petition for Declaratory Judgment and Request for Temporary Injunction (which was not served on the undersigned or the Schindlers). The October 21, 2003 Order dismissed that petition “without prejudice to the Petitioner bringing the matter as an independent civil action filed with the Clerk of the Circuit Court.” The Petitioner immediately filed such an action, challenging the constitutionality of “Terri’s Law,” which is now pending before the Florida Supreme Court on appeal, styled *Bush v. Schiavo*, Case No. SC04-925.

Terri has now changed her mind about dying. As a practicing Catholic at the

time of her collapse who was raised in the Church and who received twelve years of religious schooling and instruction Terri does not want to commit a sin of the gravest proportions by foregoing treatment to effect her own death in defiance of her religious faith's express and recent instruction to the contrary. To find, in the face of this instruction, that she perseveres in a desire to die by dehydration and starvation is to find that she is willing to sin and willing to be disobedient to the word of God.

#### **New Development**

On March 20, 2004, His Holiness Pope John Paul II, Vicar of Christ on Earth according to adherents of the Roman Catholic faith such as Terri, delivered a speech to participants at a Rome conference concerning "Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas" that has the gravest implications for Terri's suffering in the afterlife should this Court's previous judgment be carried out.<sup>1/</sup> A copy of the speech is attached hereto and incorporated herein as Exhibit A (hereinafter "*Life-Sustaining Treatments*").

In this speech, the Pope said:

---

<sup>1/</sup> The Vatican's official English translation of this speech may be accessed on the Internet at:  
[http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/2004/march/documents/hf\\_jp-ii\\_spe\\_20040320\\_congress-fiamc\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/march/documents/hf_jp-ii_spe_20040320_congress-fiamc_en.html)

I feel the duty to reaffirm strongly that the intrinsic value and personal dignity of every human being do no change, no matter what the concrete circumstances of his or her life. *A man, even if seriously ill or disabled in the exercise of his highest functions, is and always will be a man, and he will never become a “vegetable” or an “animal.”*

Even our brothers and sisters who find themselves in the clinical condition of a “vegetative state” retain their human dignity in all its fullness.

*Life-Sustaining Treatments, supra*, at 3 (emphasis in original).

A human being however impaired, is nonetheless entitled to certain basic care:

The sick person in a vegetative state, awaiting recovery or a natural end, still has the right to basic health care (nutrition, hydration, cleanliness, warmth, etc.), and to the prevention of complications related to his confinement to bed. He also has the right to appropriate rehabilitative care and to be monitored for clinical signs of eventual recovery.

I should like particularly to underline how the administration of water and food, even when provided by artificial means, always represents a *natural means* of preserving life, not a *medical act*. Its use, furthermore, should be considered, in principle, *ordinary* and *proportionate*, and as such morally obligatory, insofar as and until it is seen to have attained its proper finality, which in the present case consists in providing nourishment to the patient and alleviation of his suffering.

. . . The evaluation of probabilities, founded on waning

beyond a year, cannot ethically justify the cessation or interruption of *minimal care* for the patient, including nutrition and hydration. Death by starvation or dehydration is, in fact, the only possible outcome as a result of their withdrawal. In this sense it ends up becoming, if done knowingly and willingly, true and proper **euthanasia by omission**.

*Life-Sustaining Treatment, supra*, at 4 (final emphasis added; other emphasis in original).

The Roman Catholic Church is not alone in this position, nor even the first. As early as 1992 at its annual convention, the Southern Baptist Convention adopted a resolution on euthanasia that provided, *inter alia*,

WHEREAS, A growing "quality of life" ethic has led to increasing acceptance of euthanasia and assisted suicide in the United States.

Therefore, Be it RESOLVED, That we the messengers to the Southern Baptist Convention, meeting in Indianapolis, Indiana, June 9-11, 1992, affirm the biblical prohibition against the taking of innocent human life by another person, or oneself, through euthanasia or assisted suicide; and

....

Be it further RESOLVED, That we oppose efforts to designate food and water as "extraordinary treatment," and urge that nutrition and hydration continue to be viewed as compassionate and ordinary medical care and humane treatment; and

Be it further RESOLVED, That we reject as appropriate any action which, of itself or by intention, causes a person's death; . . . .

*Resolution on Euthanasia and Assisted Suicide*, adopted June, 1992, at <http://www.sbc.net/resolutions/amResolution.asp?ID=493> (attached and incorporated as Exhibit B).<sup>2/</sup>

According to Richard M. Doerflinger, who is Adjunct Fellow, National Catholic Bioethics Center and Deputy Director, Secretariat for Pro-Life Activities of the U.S. Conference of Catholic Bishops, the March 20 Vatican speech is “the first clear and explicit papal statement on the obligation to provide food and water for patients in a ‘persistent vegetative state’ (PVS).”<sup>3/</sup> Acknowledging the papal speech does not answer all questions for all conditions, Doreflinger nevertheless says the speech “could not be clearer on the main point at issue: When it comes to

---

<sup>2/</sup> Since 1992, the Southern Baptist Convention has not softened its stance. Three years ago the Convention adopted a further resolution on euthanasia reaffirming its 1992 position. See *On Euthanasia in the Netherlands*, adopted June, 2001, at <http://www.sbc.net/resolutions/amResolution.asp?ID=494> (RESOLVED, That the messengers to the Southern Baptist Convention meeting in New Orleans, Louisiana, June 12-13, 2001, affirm our belief that every human life, including the life of the terminally ill, disabled, or clinically depressed patient, is sacred and ought to be protected against unnecessary harm; and be it further RESOLVED, That we find legalized euthanasia immoral ethically, unnecessary medically, and unconscionable socially; . . .”).

<sup>3/</sup> R. M. Doerflinger, “Pope John Paul II Affirms Obligation to Feed Patients in the ‘Vegetative State’”, at <http://www.nrlc.org/euthanasia/Pope032004.html>. A copy of this paper is attached and incorporated as Exhibit C.

providing basic means to nourish the most helpless of patients--including those who cannot visibly respond to our care--the Catholic Church is on the side of life.”<sup>4</sup>

*Ibid.*

Elsewhere, in a statement published by the U.S. Conference of Catholic Bishops, Doerflinger notes that some bioethicists have developed arguments for withdrawal of assisted feeding: “Ethicist Daniel Callahan warned in the Hastings Center Report in October 1983 that many of his colleagues favored such policies not because of special burdens involved in such feeding, but because ‘a denial of nutrition may in the long run become the only effective way to make certain that a large number of biologically tenacious patients actually die.’” R. M. Doerflinger, “Human Dignity in the ‘Vegetative’ State,” at <http://www.usccb.org/prolife/programs/rlp/04doerflinger.htm>. A copy of this statement is attached and incorporated as Exhibit D. Doerflinger makes clear that, after March 20, such positions are in conflict with the Catholic Church’s teaching.

### **Terri’s Religious Beliefs**

---

<sup>4/</sup> See also R. M. Doerflinger, “John Paul II on the ‘Vegetative State,’” *Ethics & Medics*, June 2004 Vol. 29, No. 6, at <http://www.ethicsandmedics.com/0406-2.html> ( published by the National Catholic Bioethics Center in Boston).

Attached and incorporated to this Motion are affidavits from Terri's family members.<sup>5/</sup> These affidavits attest that Terri had twelve years of Catholic schooling, including four years at an all-girls Catholic high school, where every semester she took a course in religious training. Even after she and her husband moved to Florida from Pennsylvania to be close to her parents, Terri attended church services on a regular basis. Typically, she went to a late Saturday afternoon service with her parents and then went to dinner with them afterward, at a time when her husband was at his work as a night restaurant manager.<sup>6/</sup> Her practices included taking Holy Communion, and her parents have no doubt of her adherence to her church's teachings.

In fact, Terri last attended church the afternoon before her collapse in the early-morning hours of Sunday, February 25, 1990, true to her habit described by her mother and independently corroborated by the woman at whose home Mr. and

---

<sup>5/</sup> The affidavits are attached and incorporated as Exhibit E and F, Robert Schindler and Mary Schindler, respectively.

<sup>6/</sup> Her husband apparently was unaware of Terri's regular attendance at church in his absence when he testified in January, 2000 that he and Terri went to church only every two or three months, a fact corroborated by Mary Schindler in Exhibit F.



Mrs. Schindler and Terri dined that last Saturday evening.<sup>7/</sup>

### **Argument**

The importance of Terri's religious faith in determining her desire to live or die has been acknowledged already by Petitioner. After all, it was Petitioner who introduced the issue of Terri's faith by offering the testimony of Father Gerard Murphy as part of his case-in-chief in January, 2000 as to the Catholic Church's teachings.<sup>8/</sup> The condemnation by Terri's chosen faith of the very procedure contemplated for her in this case is tantamount to a divine command, amounting to a spiritual covenant with God. To inflict a slow death by dehydration and starvation upon one whose religious beliefs make that procedure sinful and abhorrent violates her right to exercise her religious beliefs freely and without undue burden.

In addition, from a theological standpoint, to inflict such a death upon her on the finding and conclusion that she desires that death, even in the face of her faith's condemnation of it, is a finding that she is disobedient to the will of God

---

<sup>7/</sup> The affidavit of Frances L. Casler is attached and incorporated as Exhibit G.

<sup>8/</sup> Father Murphy testified the Church's teachings were not clear on the permissibility of withdrawing Terri's feeding tube to effect her death. Any lack of clarity he perceived, however, has been removed by the papal speech of March 20.

and wants to sin. Regardless of what the Court may have found before March 20, 2004 as to Terri's wish to die, that finding becomes insupportable after that date, given the clear dictates of Terri's chosen religious faith.

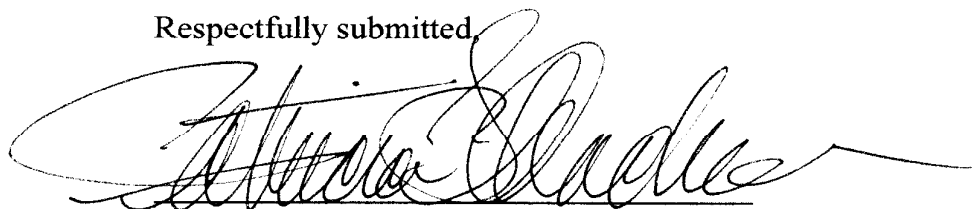
Certainly, if a patient's **right to refuse** medical treatment is upheld based on the patient's religious convictions, *Matter of Dubreuil*, 629 So.2d 819 (Fla. 1993)(blood transfusions), Terri's **right to receive** food and water based on the same type of religious interest must be honored just as forcefully. *See also Public Health Trust v. Wons*, 541 So.2d 96 (Fla. 1989)(same). If a local school board can be enjoined from distributing the King James Bible to school children because of religion-based objections, *Brown v. Orange County Bd. of Pub. Instr'n*, 128 So.2d 181 (Fla. 2d DCA 1960), Terri's Guardian can be required to continue sustaining her based on her religious beliefs. If a Muslim prisoner can demand a pork-free diet based on his religion's dietary restrictions, *Saleem v. Evans*, 866 F.2d 1313 (11<sup>th</sup> Cir. 1989), surely the innocent Terri Schiavo can expect to receive continued sustenance based on her religious belief that to deliberately forego such sustenance is sinful.

Requiring Terri to suffer the withdrawal of her feeding tube is requiring her to violate her religious beliefs. "The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations

imposed by the Establishment Clause. It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which ‘establishes a [state] religion or religious faith, or tends to do so.’” *Lee v. Weisman*, 505 U.S. 577, 587 (1992)(citation omitted). On the other hand, “It is clear that state power is no more to be used so as to handicap religions than it is to be used to favor them.” *Brown, supra*, at 182. Terri’s religious beliefs should neither be coerced nor handicapped nor disregarded by this Court.

WHEREFORE for the foregoing reasons Movants respectfully request an evidentiary hearing for the matters raised in these motions, the Court’s Order revoking the Guardian’s authority to maintain his action challenging Terri’s Law, and its Order vacating its judgment that Terri Schiavo wants to die.

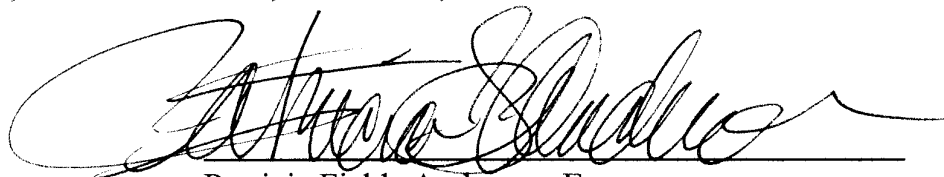
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patricia Fields Anderson', with a long horizontal flourish extending to the right.

Patricia Fields Anderson, Esq.  
Fla. Bar No. 352871; SPN 00239201  
PATRICIA FIELDS ANDERSON, P.A.  
447 Third Avenue North; Suite 405  
St. Petersburg, FL 33701  
727 / 895-6505; 727 / 898-4903 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing with attachments has been furnished by U.S. Mail this 20<sup>th</sup> day of July, 2004 to **GEORGE J. FELOS, ESQ.**, Felos & Felos, 595 Main Street, Dunedin, FL 34698; and **GYNETH S. STANLEY, ESQ.**, 209 Turner Street, Clearwater, FL 33756.

A handwritten signature in black ink, appearing to read "Patricia Fields Anderson", written over a horizontal line.

Patricia Fields Anderson, Esq.