

05-11556-D

IN THE  
United States Court of Appeals  
FOR THE ELEVENTH CIRCUIT

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAR 22 2005

THOMAS K. KAHN  
CLERK

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

*Petitioner-Appellant*

---v.---

MICHAEL SCHIAVO, as Guardian of the  
Person of Theresa Marie Schindler  
Schiavo, Incapacitated,

and

THE HONORABLE GEORGE W. GREER

and

THE HOSPICE OF THE FLORIDA SUNCOAST, INC.,

*Respondents-Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

**APPELLANT'S ALL WRITS PETITION FOR EMERGENCY  
INJUNCTIVE RELIEF TO PRESERVE MEANINGFUL APPEAL**

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## **ALL WRITS PETITION**

Pursuant to 28 U.S.C.A. §2283, the "All Writs Act" 28 U.S.C.A. §1651, and P.L. 109-3, Appellant Theresa Marie Schindler Schiavo, Incapacitated, by and through her parents and next friends, Bob and Mary Schindler respectfully requests emergency injunctive relief to preserve her right to a meaningful appeal, in particular, of an order (i) directing Appellee Michael Schiavo, as guardian, to immediately cause nutrition and hydration to be restored to Theresa Marie Schindler Schiavo until further notice of this Court.

### **PROCEDURAL BACKGROUND**

As this Court is well familiar with the underlying facts of the case, and the fact that Terri Schiavo's feeding tube was removed at 1:45 p.m. on Friday, March 18, 2005, Petitioners will not belabor the Court with a lengthy recitation of the factual history. Of particular note to the Motion herein, shortly after midnight, early Monday morning, Congress passed P.L. 109-3 which was signed into law by President Bush within minutes thereafter. (Exhibit 1). In the early morning hours on Monday, Petitioners herein, met two hours later (approximately one hour after this Court's Order with respect to *habeas*) with the clerks of the District Court for the Middle District of Florida, Tampa Division, to file the underlying action as urgently and

immediately as possible to preserve the life of Terri Schiavo and give meaning to the actions of Congress. (Exhibit 2). The case was randomly assigned to Judge Whittemore who was immediately notified of the filing and received electronic copies of Petitioner's filings. Among the filings were Petitioner's emergency request for a Temporary Restraining Order to preserve the court's newly established jurisdiction. (Exhibit 3).

Later Monday morning, Judge Whittemore set Petitioner's TRO request for a hearing to be held at 3:00 p.m. (Exhibit 8). Following a one and one-half hour hearing, Judge Whittemore announced from the bench that he was taking the matter under advisement and that he would notify the parties of his decision, but would not be giving any indication as to when, how, or how long that might take. A transcription of the hearing was recorded, and Petitioners are pressing for an expedited preparation of the transcript for this Court's review and consideration. (Exhibit 4). At 6:00 a.m. today, March 22, 2005, Judge Whittemore issued an Order denying Petitioner's request for a TRO based on his judgment that Petitioners did not demonstrate a likelihood of success on the merits based on his review of the limited record before him. (Exhibit 5). Petitioners filed a Notice of Appeal with the District Court at 9:00 a.m. this morning. (Exhibit 6).

Very shortly later today, Petitioners will file their Initial Brief with this Court seeking review of the District Court's Denial of their TRO. In that time is of the essence and given Judge Whittemore's stated reason for denying the TRO in the first instance (no likelihood of success on the merits), it is entirely impracticable for Petitioners to request relief in the District Court before making this request of the Circuit Court with respect to the time constraints imposed by Terri's impending death. See Rule 8, Federal Rules of Appellate Procedure.

In addition, Petitioners are expressly entitled under P.L. 109-3 to thirty days in which to file and/or amend their Complaint under the new law.

#### **DISCUSSION**

The purpose underlying Congress' passage of P.L. 109-3 was to preserve the life of Terri Schiavo pending the District Court's *de novo* review of her federal rights. Judge Whittemore's Order denies Petitioners the rights accorded to them by P.L. 109-3 in that he has given them no opportunity to meaningfully develop their case prior to making what will be a final adjudication of the merits in light of Terri's imminent death. (Exhibit 7).

The Petitioners are absolutely entitled to a meaningful review of their appeal, and this Court has the constitutional and statutory authority to grant

injunctive relief to maintain the status quo pending review on the merits. (*Williams v. Rhodes*, 89 S.Ct. 1 (1968), “[D]ifficult if not insurmountable practical problems” caused by not issuing stay grounds for issuance pending appeal of ballot dispute; *Wisconsin Right to Life v. Federal Election Commission*, 125 S.Ct. 2 (2004), “The All Writs Act is the only source of this Court’s authority to issue such an injunction” and that it should be used only in the “most critical and exigent circumstances” but only where “the legal rights at issue are indisputably clear.”” Where, as here, death is imminent, it is hard to imagine more “critical and exigent circumstances.” Terri is fading quickly and her parents reasonably fear that her death is imminent. (Exhibit 9, Affidavit of Robert Schindler).

P.L. 109-3 makes it indisputably clear that Petitioners are entitled to obtain a stay pending the review by this Court. Upon issuance of the writ, Petitioners will be enabled to the relief clearly contemplated under the new Act—a *de novo* review of their daughter’s federal rights, complete with the time and resources necessary for that process to have any meaning.

As matters now stand, this Court will be absolutely unable to effect a meaningful review of Petitioner’s appeal unless it grants emergency injunctive relief requiring that nutrition and hydration be immediately

restored to Terri Schiavo for the very stark and simple reason that Terri may die at any time. If that happens, the appeal will become moot.

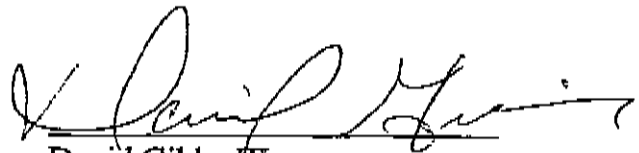
### CONCLUSION

Accordingly, and for all the reasons given above, Petitioner's Petition should be granted forthwith.

Dated: March 21, 2005

Respectfully submitted,

GIBBS LAW FIRM, P.A.,



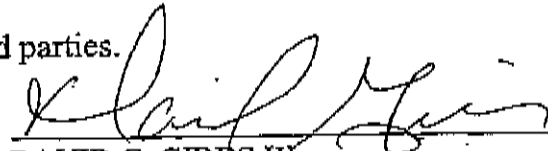
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing All Writs Petition has been furnished by facsimile transmission and electronic mail to George J. Felos, (727) 736-5050; to Jeffrey W. Gibson, (727) 442-8470; and to Barry Cohen (813) 2251921, and to Judge Whittmore on this 21st day of March 2005. Delivered by U.S. Mail to all other attorneys of record for interested parties.

  
DAVID C. GIBBS III