

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,)

vs.)

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

Defendants.)

Civ. A. No. 8:05-cv-530-T-27TBM

STATEMENT OF INTEREST OF THE UNITED STATES

Plaintiffs have filed a motion for a temporary restraining order or preliminary injunction requiring that Theresa Schiavo be provided hydration and nutrition necessary to keep her alive in order to maintain the status quo during the pendency of this suit. Pursuant to 28 U.S.C. § 517, the United States files this Statement of Interest in support of Plaintiffs' motion, and urges the Court to grant that motion in order to prevent irreparable harm and preserve its jurisdiction over this case.

1. On February 25, 2005, the Circuit Court for Pinellas County, Florida, Probate Division, ordered that "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." Probate Court Feb. 25 Order at 3. According to news reports, Theresa Schiavo's feeding tube was removed and she stopped

receiving the nutrition and hydration necessary to sustain her life on Friday, March 18, 2005 at around 1:45 p.m.

2. On March 21, 2005, the Congress of the United States passed bipartisan legislation that the President signed into law that confers jurisdiction upon this Court to hear the instant dispute over whether Theresa Schiavo will continue to receive the nutrition and hydration necessary to sustain her life.

The statute, attached hereto as Exhibit 1, is entitled "An Act for the relief of the parents of Theresa Maric Schiavo." S. 686, 109th Cong. 1st Sess. (enacted Mar. 21, 2005). The law 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 her life." *Id.*, § 1.

The statute provides that Theresa Schiavo's parents have standing to bring this suit. *Id.*, § 2. It specifies that this 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." *Id.* The statute provides that this Court "shall entertain and determine the suit without any delay or abstention" and regardless of whether state court remedies have been exhausted. *Id.* This Court is authorized to 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." *Id.*, § 3.

3. As a general matter, preliminary injunctive relief is appropriate when the moving party (1) "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); see also *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 829 (5th Cir. 1976) ("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").

This is plainly a case where without a temporary restraining order or preliminary injunction there will be significant and irreversible injury: Theresa Schiavo will die. By contrast, no countervailing harm will be caused by letting Theresa Schiavo live during the pendency of this suit – she has been provided nutrition and hydration for nearly fifteen years, and an additional period in which she is provided nutrition and hydration while this case is adjudicated will not cause harm to anyone. Such an order would simply ensure the maintenance of the status quo while this suit is resolved. Further, by enacting S. 686, Congress and the President have manifested a strong interest that this dispute be resolved in this Court to protect Theresa Schiavo's "right[s] . . . under the Constitution or laws of the United States relating to withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life." S. 686, § 1. That expressed public interest in federal court resolution will be irreparably defeated if Theresa Schiavo is not provided nutrition and hydration during the pendency of this suit.

4. The All Writs Act, 28 U.S.C. § 1651(a), also authorizes this Court to issue injunctions "necessary or appropriate in aid of [its] . . . jurisdiction[]." This statute codifies the "federal courts' traditional, inherent power to protect the jurisdiction they already have." *Klay*, 376 F.3d at 1099.

In order to "safeguard . . . ongoing proceedings," *id.*, a court "may . . . compel acts 'necessary to promote the resolution of issues in a case properly before it . . . [or] facilitat[e] . . . the court's effort to manage the case to judgment.'" *Id.* at 1102 (quoting *ITT Comm. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978)) (alterations in *Klay*). "A court may grant a writ under this act whenever it is 'calculated in [the court's] sound judgment to achieve the ends of justice entrusted to it,' and not only when it is "' necessary' in the sense that the court could not otherwise physically discharge its . . . duties.'" *Klay*, 376 F.3d at 1100 (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)) (alterations in *Klay*). The "requirements for a traditional injunction do not apply to injunctions under the All Writs Act because a court's traditional power to protect its jurisdiction, codified by the Act, is grounded in entirely separate concerns." *Klay*, 376 F.3d at 1100; *see also id.* ("while a party must 'state a claim' to obtain a 'traditional' injunction, there is no such requirement to obtain an All Writs Act injunction – it must simply point to some ongoing proceeding . . . the integrity of which is being threatened").

This case presents a uniquely appropriate circumstance for issuing an injunction under the All Writs Act. Congress conferred jurisdiction upon this Court specifically to consider the "right[s] of Theresa Marie Schiavo" in a suit brought by her parents, and has directed this Court to determine her federal rights *de novo*, "without any delay or abstention," without regard to any prior state court determination, and without regard to whether any federal claim has previously been raised. S. 686, §§ 1, 2. Congress' clear intent that this Court resolve Plaintiffs' claims will be defeated unless an injunction issues requiring that Theresa Schiavo be provided food and nutrition during the pendency of this suit, because otherwise she will not survive long enough for this Court to "physically discharge its . . . duties," *Klay*, 376 F.3d at 1100. Accordingly, this case presents a clear instance in which an injunction is absolutely necessary to preserve this Court's jurisdiction.

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CONCLUSION

For the reasons explained above, the United States respectfully requests that this Court grant Plaintiffs' motion for a temporary restraining order or preliminary injunction requiring that Theresa Schiavo be provided hydration and nutrition necessary to sustain her life in order to maintain the status quo during the pendency of this suit.

Respectfully submitted,

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/s/ Paul I. Perez

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Dated: March 21, 2005

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2005, I caused the foregoing Statement of Interest of the United States to be served by first-class mail, postage-pre-paid, and by facsimile on:

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The Honorable Judge George Greer
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The Hospice of the Florida Suncoast, Inc.
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/s/ Paul I. Perez
United States Attorney

109TH CONGRESS
1ST SESSION

S. 686

AN ACT

For the relief of the parents of Theresa Marie Schiavo.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

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

11 SEC. 2. PROCEDURE.

12 Any parent of Theresa Marie Schiavo shall have
13 standing to bring a suit under this Act. The suit may be
14 brought against any other person who was a party to State
15 court proceedings relating to the withholding or with-
16 drawal of food, fluids, or medical treatment necessary to
17 sustain the life of Theresa Marie Schiavo, or who may act
18 pursuant to a State court order authorizing or directing
19 the withholding or withdrawal of food, fluids, or medical
20 treatment necessary to sustain her life. In such a suit, the
21 District Court shall determine de novo any claim of a vio-
22 lation of any right of Theresa Marie Schiavo within the
23 scope of this Act, notwithstanding any prior State court
24 determination and regardless of whether such a claim has
25 previously been raised, considered, or decided in State
26 court proceedings. The District Court shall entertain and

1 determine the suit without any delay or abstention in favor
2 of State court proceedings, and regardless of whether rem-
3 edies available in the State courts have been exhausted.

4 **SEC. 3. RELIEF.**

5 After a determination of the merits of a suit brought
6 under this Act, the District Court shall issue such declara-
7 tory and injunctive relief as may be necessary to protect
8 the rights of Theresa Marie Schiavo under the Constitu-
9 tion and laws of the United States relating to the with-
10 holding or withdrawal of food, fluids, or medical treatment
11 necessary to sustain her life.

12 **SEC. 4. TIME FOR FILING.**

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

16 **SEC. 5. NO CHANGE OF SUBSTANTIVE RIGHTS.**

17 Nothing in this Act shall be construed to create sub-
18 stantive rights not otherwise secured by the Constitution
19 and laws of the United States or of the several States.

20 **SEC. 6. NO EFFECT ON ASSISTING SUICIDE.**

21 Nothing in this Act shall be construed to confer addi-
22 tional jurisdiction on any court to consider any claim
23 related—

24 (1) to assisting suicide, or

25 (2) a State law regarding assisting suicide.

1 **SEC. 7. NO PRECEDENT FOR FUTURE LEGISLATION.**

2 Nothing in this Act shall constitute a precedent with
3 respect to future legislation, including the provision of pri-
4 vate relief bills.

5 **SEC. 8. NO AFFECT ON THE PATIENT SELF-DETERMINA-**
6 **TION ACT OF 1990.**

7 Nothing in this Act shall affect the rights of any per-
8 son under the Patient Self-Determination Act of 1990.

9 **SEC. 9. SENSE OF THE CONGRESS.**

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

Passed the Senate March 20, 2005.

Attest:

Secretary.

For Immediate Release
Office of the Press Secretary
March 21, 2005

March 21, 2005

STATEMENT BY THE PRESIDENT Today, I signed into law a bill that will allow Federal courts to hear a claim by or on behalf of Terri Schiavo for violation of her rights relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life. In cases like this one, where there are serious questions and substantial doubts, our society, our laws, and our courts should have a presumption in favor of life. This presumption is especially critical for those like Terri Schiavo who live at the mercy of others. I appreciate the bipartisan action by the Members of Congress to pass this bill. I will continue to stand on the side of those defending life for all Americans, including those with disabilities. # # #

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