IN THE SUPREME COURT OF THE STATE OF FLORIDA

JEB BUSH,
Governor of the State of Florida,

Appellant,

CASE NO.: SC04-925
L.T. No.: 2D04-2045

MICHAEL SCHIAVO, as the guardian of the person of THERESA MARIE SCHIAVO,

Appellee.

APPENDIX TO ANSWER BRIEF OF AMICUS, GORDON WAYNE WATTS

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Pursuant to Fla.R.App.P. 9.220, Amicus, Watts hereby provides This Court with an Appendix in this cause, to wit:

INDEX TO APPENDIX:

Item 1: Conformed copy of the order to be reviewed / opinion of the lower tribunal. (1 page) (This *.PDF file not included on disk provided to court)

Item 2: Conformed copy of the order of This Court accepting jurisdiction to briefing schedule, inclusive of the July 26, 2004 deadline for the Instant Brief. (2 pages) (This *.PDF file not included on disk provided to court)

Item 3: Amicus Curiae - in support of Gov Bush's contention that "Terri's Law" is Constitutional (6 pages)

Item 4: INITIAL BRIEF OF THE APPELLANT: Petition for Writs of Habeas Corpus, Quo Warranto, Prohibition, and Mandamus (73 pages)

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL DISTRICT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL CASE NO. 03-008212-CI-20

MICHAEL SCHIAVO, as the Guardian of
the person of THERESA MARIE SCHIAVO,

Petitioner,

vs.

JEB BUSH, Governor of the State of Florida,
and CHARLIE CRIST, Attorney General
of the State of Florida,

Respondents.
_____/

Amicus Curiae - in support of Gov Bush's contention that "Terri's Law" is Constitutional

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Amicus, Gordon Watts, comes before this court with This Friend of the Court Brief, which is very short, only addressing four (4) of the fourteen **[1]** relevant tests - because they have not been explored properly by any attorney of record.

Note [1], the fourteen tests - 1) Equal Protection 2) Public Records/Open Meetings concerns 3) Rights to Privacy aka "Personal" or "Civil" Liberties 4) Conflict with local restrictions 5) Conflict with case law at the State or Federal level 6) Conflict with State or Federal laws 7) Conflict with State or US Constitution 8) Separation of Powers Issues 9) Proof or Evidence 10) Due Process, notice or opportunity to challenge, be heard, or appeal 11) Warrant 12) Probable Cause 13) Constitutional considerations of repeal 14) Technical flaws or deficiencies (such as language agreement in house vs. senate versions)

In synopsis:
*** Equal Protection**
*** Separation of Powers Issues**
*** Due Process, notice or opportunity to challenge, be heard, or appeal**
*** Rights to Privacy aka "Personal" or "Civil" Liberties**

**** Does Terri's Law give unequal protection under the law?***

When a person attempts to claim an estate of the deceased without a written will or directive, controlling precedent holds that the claim in invalidated. In the case of Michael Schiavo, the complainant, he actually has *more* protection - because he is awarded the functional equivalent of the "whole estate." (Imagine Michael Schiavo saying: "Really - my great uncle Ralph really *did* award me the entire estate. He just forgot to write up the will - tough luck.")

Clearly, in the case of Michael Schiavo, he has more protection, so Equal Protection is not violated: He was awarded the "whole estate."

**** Does Terri's Law give rise to a violation of separation of powers?***

When hospice workers disconnected Terri Schiavo's feeding tube - under a disputed court order - they went beyond the court order and illegally withheld "regular" food and water, as lethal as injection with deadly chemicals - and therefore

a violation of /s/765.309, Fla. Stat. “Life prolonging” procedures, as defined in /s/765.101(10), Fla. Stat., only permits withdrawal of such procedures as drugs, treatments, and feeding tubes - not “regular” food and water.

Thus, when Governor Bush had an opportunity to order state police to enforce these mercy killing laws - as he would for such notables as Dr. Jack Kevorkian - or the band “Hell on Earth” (which attempted to stage an assisted suicide mercy killing) - Governor Bush actually backed off and allowed other members of the executive branch (Pinellas Park City Police) to encroach upon his powers. Also, the Legislative Branch did not pass a resolution condemning the local police for failing to uphold current law - law which has not been declared unconstitutional.

Thus, the Legislative Branch actually backed off and allowed the local police to encroach upon their powers.

Lastly, the Legislative Branch has the Constitutional right to pass law - period.

**** Does Terri's Law fail to give Due Process, notice or opportunity to challenge, be heard, or appeal?***

The Governor has the Constitutional right to pardon - without appeal, without any due process beyond his executive decision. The new "Terri's Law" is the functional equivalent of a pardon, and yet it gives quite a bit of Due Process - more than the pardon, thus is even *more* Constitutional. (E.g., including certain requirements to be met before the now-expired law could be invoked. Also, the right to rescind is additional "Due Process.") Terri's Law gives *more* Due Process than a pardon, thus is *more* Constitutional on these grounds.

**** Does Terri's Law deprive the subject of Rights to Privacy aka "Personal" or "Civil" Liberties?***

***Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 279-280 (1990),** s. 23, art. I of the **FFlorida Constitution**, and applicable state law, primarily in **Chapter 765**, given force by the State Constitution, all protect the right to privacy of an incapacitated individual to make decisions regarding life-prolonging

procedures, when their intent is not in doubt. Terri's Law does not contradict this - it only provides a mechanism for addressing cases in which doubt is present, namely when a family member questions the decision to end a life, a very serious matter. In fact, the recent court rulings, mandating either a "mercy killing" or a "felony murder" by starvation (depending on Terri's actual wishes), were in violation of current law and gave rise to unequal protection of Terri Schiavo. As the courts have generally found, the right to privacy for "living" is at least as great as the supposed "right to die," and, when there is doubt, as there is with Schiavo, the right to life must be assumed as the default.

IN CONCLUSION

Facially, "Terri's Law" is very unusual in the circumstances under which it arose - and facially, it is also unable to be in violation of any known Constitutional Issue.

Thus, affixed my hand, in whereof I support the Governor's attestation that the "Terri's Law" is indeed Constitutional.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent to the following parties by FIRST CLASS US POSTAL MAIL - and follow-up by FAX, if time permits, this __19th__ day of ___November___, 2003:

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Respectfully submitted,

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IN THE DISTRICT COURT OF APPEAL
OF THE SECOND JUDICIAL DISTRICT
IN AND FOR THE STATE OF FLORIDA

GORDON WAYNE WATTS,
Petitioner/Appellant

v.

CASE NO.: 2D04-414
Lower Tribunal Case(s): 03-5071 AP 88 A
Lower Tribunal UCN No.:
UCN522003AP005071XXXXCV

In *Emergency Relief*
Fashion; RULE 9.300(c)

Drew Gardens Retirement Community; Woodside Hospice House;
City of Pinellas Police Department, Chief, Dorene Thomas, City Attorneys, Ed Foreman and Chris Hammond, in their official capacities;
Michael Schiavo, in his official capacity as guardian of the person of Theresa Marie Schiavo;
Florida Department of Children and Families-APS;
State's Attorney Office for Pinellas County, Florida; State Attorney, Bernie McCabe, in his official capacity; Agency for Health Care Administration,
Appellees/Respondents.

_____//

ON APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, IN AND FOR PINELLAS COUNTY, FLORIDA

==========

INITIAL BRIEF OF THE APPELLANT:
Petition for Writs of Habeas Corpus, Quo Warranto, Prohibition, and Mandamus

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PREFACE AND INTRODUCTION

This cause comes before The Court as an appeal of the final decision of a trial court, dated Dec 31, 2003, under the automatic appellate authority of RULE 9.030(b)(1)(A),Fla.R.App.P., the notice of appeal being given on 30 Jan 2004, in a timely fashion. (Accord: Art.V,§4(b)(1),Fla.Const.)

This Court may also invoke original jurisdiction, as proscribed by RULE 9.100(a), Fla.R.App.P., in that RULE 9.100(a) applies to "those proceedings that invoke the jurisdiction of the courts described in rule[] 9.030...(b)(3)...for the issuance of writs of mandamus, prohibition, certiorari, and habeas corpus, and all writs necessary to the complete exercise of the courts' jurisdiction..."

Insofar as Petitioner, on 30 Jan 2004, concurrently invoked RULE 9.100, on page 1 of the petition, time-stamped by This Court on that day, that jurisdiction applies too.

This petition sought in the lower tribunal and was styled "Petition for Writs of Habeas Corpus, Quo Warranto, Prohibition, and Mandamus," and now seeks review of the same, notwithstanding the style of the "original jurisdiction" petition, which sought only writs of *mandamus*, concurrent with *prohibition*, before This Court. New grounds and new respondents are sought in the instant appeal, in that new respondents are being added, which were not included in the lower tribunal's decision, and the new grounds would result in different state laws being invoked, under the guidelines set by *Southerland v. Sandlin*, 44 Fla. 332, 32 So. 786 (Fla. 1902), and argued on page 48 of the instant brief.

This brief is being submitted with formal request to be put on "fast track" under the authority of RULE 9.300(c),Fla.R.App.P., "Emergency Relief." This is justified by new information on the standard of medical care currently being given Theresa Schiavo, as supported by the short appendix in this cause. Reports from many sources, too graphic to put within the "four corners" of the petition, include the following quote: "Terri Schiavo Being Abused, Neglected: Bedsore, Unwashed, Tooth Lost!" and reports of unexplained bouts of vomiting.

While Petitioner is not allowed to personally verify these claims, by a refusal to grant visitation rights, sources are cited, with permission, to avoid even the

appearance of libel or improper defamation of character (causes to strike a brief), and would appear to constitute "probable cause" to grant "emergency relief" in the instant cause. RULE 9.300(c) exists for situations such as these -and is so invoked.

In compliance with court rules (and in accord with the controlling precedent of most or all other similar petitions of this nature), jurisdictional arguments shall be contained within this brief, and not in a separate jurisdictional brief, reserved solely for some cases of discretionary jurisdiction. (RULE 9.120(d),Fla.R.App.P.)

For this case, most, if not all, matters of fact are not in dispute, so this briefing shall focus on matters of law, with limited citations when findings of fact are cited and in need of verification.

Every effort will be made to comport with, as closely as reasonably possible, the 50 page maximum for Initial Briefs in this cause -and to place all relevant facts and arguments, with citations, within the "four corners of this brief," with the appendix and related supplements kept to a minimum, for the convenience of This Court and other litigants. To the extent, however, that this brief may exceed 50 pages, Appellant states for the record that the unchecked violations in the case at bar have piled up over time and may not fit in one standard-sized brief.

For the purposes of this appeal, the following reference words and symbols will be used throughout this brief:
"Petitioner" and "Appellant" will refer to Petitioner, Gordon Wayne Watts.
"§" and "Fla.Stats." will refer to section and citation of Florida Statutes.
"RULE" and "Fla.R.App.P." will refer to Florida Rules of Appellate Procedure.
"RULE" and "Fla.R.Civ.P." will refer to Florida Rules of Civil Procedure.
"C.F.R." shall refer to "Code of Federal Regulations."
"U.S.C." shall refer to "United States Code."
"Art...§" and "Fla.Const." will refer to "Article...section" and "Florida Constitution."
"Art...§" and "U.S.Const." will refer to "Article...§" and "United States Constitution."
"Terri Schiavo" and "Theresa Schiavo" shall refer to Theresa Marie Schindler-Schiavo of Pinellas County, Florida.
"This Court" shall refer to The District Court of Appeals, Second Judicial District, Florida.

STATEMENT OF THE CASE AND FACTS

Roughly thirteen years ago, Terri Schiavo fell into a coma, thought to be induced by temporary deprivation of oxygen to her brain, possibly the result of heart attack, thought by some to be brought on by a lack of potassium. Schiavo's husband, Michael Schiavo, sued his wife's doctors, alleging negligence, with stated promises of funding her care and rehabilitation. A jury awarded roughly $300,000 for losses suffered by the husband and roughly $750,000 to be used exclusively for approved medical treatment and rehabilitative therapy. Monies from the lawsuit, however, have only minimally been directed towards Terri Schiavo's care, being primarily appropriated for lawyer fees for husband Michael, in apparent violation of the trial court ruling and its jury award.

Schiavo has recently made claims that his wife would not want to be supported by life-extending measures, and has concomitantly attempted to have her feeding tubes removed. She had no living will, thus the matter went before the Courts, which have consistently found, as finding of fact, that Terri would not want to be supported by feeding tubes, which are routinely used to support a very great number of people who cannot, for a number of reasons, eat in a standard manner.

After court orders to remove only her feeding tubes, husband Michael Schiavo, her guardian, also ordered the removal and withholding of "regular" food and water, and denial of other necessary medical services, including but not limited to pap smears and basic antibiotics, which appeared to Petitioner and others contemporary to constitute felony crimes under Florida Law. After noting these acts, which appeared illegal, many of which occurred around mid October 2003, Petitioner initially attempted to report this to the local law enforcement agency, the City of Pinellas Police Department. After they refused to take a report or investigate, claiming "the matter was in court," Petitioner, attempted to report

these abuses to Adult Protective Services' Abuse line (1-800-96-ABUSE), of the Florida Department of Children and Families, another agency with jurisdiction, eventually speaking to at least two representatives ("Risa," operator number 5253, "Chuck," operator number 5238, and Chuck's supervisor) circa 10-30-2003 to 11-02-2003. Further attempts to convince the local police authorities to comply with their obligation to uphold the law and investigate allegations of abuse and violations of law met with the claims that their attorneys had advised them to not discuss the matter (phone conversations with Chief, Dorene Thomas, City of Pinellas Park Police Department). After they refused to investigate or act, Petitioner attempted to contact attorneys for the police department to act, in an "out of court settlement attempt" phone call. After several requests by their secretaries for Petitioner to call back and speak with Attorney Chris Hammond, Petitioner finally was able to speak with Attorney Hammond and was told by this attorney that the matter was in court and refused to advise its client, local police, to enforce/investigate the state felony abuse laws that Michael Schiavo was alleged to have violated. Hammond also accused Petitioner of making harassing phone calls and practicing law without a license, promised to notify the Florida Bar of this allegation, and advised him to not call back. Ed Foreman, the managing partner and Hammond's supervisor eventually sent Petitioner Watts a certified postal letter to this effect. (See appendix) Petitioner spoke to investigator "Yerbe" (spelling uncertain) of the State Attorney's Office of Pinellas County, but he refused to investigate concerns of abuse, claiming that since Petitioner was suing his office, no investigation could occur. On 09 April 2004, Petitioner spoke with Lealand McCharen of AHCA, seeking enforcement of chapter 400 of state law and was unsuccessful in this attempt. While there is a whole host of ongoing litigation, no relief has yet been obtained, as this is the first petition to This Court by anybody for either Habeas or Quo Warranto relief. In addition, this is the

first attempt by anybody to bring the local police department before This Court, seeking a Writ of Mandamus to compel enforcement of the State's laws regarding this matter.

After attempts to obtain an out of court settlement from any respondent (simple compliance with state/federal laws, not monetary settlement or preemptive attorneys' fees under RULE 9.400,Fla.R.App.P.) failed, Petitioner now comes to This Court for relief.

SUMMARY OF ARGUMENT

The facts find, on the face, that at least four distinct illegal acts have taken place:

(1) an attempted mercy killing, AKA euthanasia, directly illegal (§765.309, Fla.Stats., as defined by §765.101(10), Fla.Stats.);

(2) The daily and consistent deprivation of rehabilitation (§744.3215(1)(i), Fla.Stats.) of Terri Schiavo, is also illegal, as a deprivation of Equal Protection;

(3) Various state felonies and other violations regarding abuse of elderly and disabled were committed by guardian -and sanctioned by the local police; and,

(4) Other state and federal issues (too numerous as to no mention here), detailed in argument; one needing to be mentioned here: The police department's attorneys refused to advise their client to enforce -or even investigate the alleged felonies outlined in the case at bar -and possibly actively discouraged them. This makes the attorneys complicit. [1] These illegal acts invite the extraordinary writs and "all writs necessary to the

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[1] This is a violation of the **First Amendment** of the U.S. Constitution, which generally protects the rights of Redress, including to local police authorities, an extension of the Executive Branch of Government. The attorneys for the city are complicit, whether they actively advised against -or merely passively allowed - such (continued to next page)

complete exercise of its jurisdiction," (9.030 (b)(3), Fla.R.App.P.), including, of course, the "Great Writ" of habeas corpus, which shall be grantable "freely and without cost…[and]…returnable without delay…" (Art. I, §13, Fla. Const.).

Even assuming, *arguendo*, some portion of state law is in violation to the constitutional principles outlined in the State and Federal constitutions, nonetheless, This Court is not bound by any act of Congress that is "repugnant to the constitution." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137; 2 L. Ed. 60 (1803) In spite of the fact that This Court has not, in the past, enforced the felony abuse laws described *herein* or laws mandating rehabilitative therapy, This Court must not let *stare decis* dictate that This Court "stands by" prior inaction.

As well, the Supremacy Clause mandates that any state statutes or holdings which conflict must, of necessity, yield: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." Art. VI, Paragraph 2, U.S.Const.

It is well settled law that "a state statute is void to the extent that it actually

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[1] (continued from previous page) behavior. The attorneys cannot plead ignorance, and place full blame on their client, who abridged or eliminated these clear and obvious redress rights, because the Schiavo case has received considerable publicity locally, and even Nationwide/Worldwide. Thus, the Attorneys, as Officers of the Court (per *Petition of FLORIDA STATE BAR ASSOCIATION, et al.*, 40 So.2d 902, at 903, note 8, "Attorney and client")(Fla. 1949)) are complicit in felony violation of chapter 825 of State Law -and suppression of Federal Constitutional **First Amendment** rights. This is without excuse. See pp. 38 and 45 of the instant brief for a more thorough discussion of the Attorney's responsibilities under *Petition of FLORIDA STATE BAR ASSOCIATION.*

conflicts with a valid federal statute" and that a conflict will be found either where compliance with both federal and state law is impossible or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Edgar v. Mite* Corp., 457 U.S. 624, 631 (1982). Accord: *Stone v. City and County of San Francisco*, 968 F.2d 850, 862 (9th Cir. 1992), cert. denied, 113 S.Ct. 1050 (1993), which held that "otherwise valid state laws or court orders cannot stand in the way of a federal court's remedial scheme if the action is essential to enforce the scheme."

The lower tribunal, violated numerous RULES, as outlined in the record on appeal, including, but not limited to ruling prematurely: "The tenth day fell on...it was timely that day...However, This Court ruled on this motion in error prematurely...before time had expired to file a response by petitioner, and that portion of the ruling which states dismissal should temporarily be a nullity and void *ab initio*, until such time is allowed for petitioner to respond..." (MOTION TO REVERSE THE ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS...) However, the instant petition shall not dwell on errors by the trial court, instead focusing on what legal grounds authorize and grant relief.

At least four previously untried remedies (writs) exist to solve this logjam.

While Theresa Schiavo's treatment is at issue, there is an even more important useable and valuable gift in jeopardy: "The Protection of Law," AKA "The Rule of Law." These laws are not merely contracts; they are promises to the Florida State citizens. The more important concept is that the guardians of justice have made promises regarding standards, whether they are to allow euthanasia (in Oregon and the Netherlands) -or to prohibit euthanasia and elderly/disabled abuse (felonies) in Florida (and 48 of the other 49 States).

Argument I
Habeas Corpus lies to compel justification for the deprivation of potentially any liberty

A. Jurisdiction

"District courts of appeal may issue...all writs necessary...or any [individual] judge therof may issue writs of habeas corpus returnable before the court or any judge therof, or before any circuit judge within the territorial jurisdiction of the court." RULE 9.030(b)(3),Fla.R.App.P. Accord: Art.V,§4(b)(3),Fla.Const.

Habeas is, then, the most powerful of all writs. **This Court has jurisdiction.**

As state in the PREFACE AND INTRODUCTION of this cause, This Court has appeal jurisdiction, but also may exercise original jurisdiction. If one jurisdiction is obtained, then the other is moot, except to the extent that standards may be more accurately defined regarding procuring jurisdiction in unresolved case law.

In the instant case, a life is in jeopardy, as indicated by the items in the appendix, which document an illegal detention, concurrent with illegal deprivation of needed medical services, a second or third degree felony, depending how much harm is done, therefore, Petitioner urges This Court to not be swayed by any "issues" with regards to allegations concerning standing or the like -until the matter is thoroughly reviewed. If this charge is allowed to die in custody, there being no statute of limitations on murder, this case will tie up the Florida judiciary for years; and, further, great disgrace will come upon Florida Courts, who will be forever described as having "dirty hands" or "blood on their hands" for not acting.

The Writ of Habeas Corpus, sometimes called the "Great Writ," may be filed

"by a person who objects to his own ***or another's*** detention or imprisonment," and is issued by the court when there are legal or factual bases to demand justification for the detention or imprisonment in question. (From: http://www.LectLaw.com/def/h001.htm -- emphasis added).

This petition is in objection to another's treatment. "Potentially, **any** deprivation of personally liberty can be tested by habeas corpus, and for that reason it is often called the Great Writ." (*The Operation and Jurisdiction of the Florida Supreme Court*, Gerald Kogan and Robert Craig Waters, 18 Nova L. Rev. 1151, at 608. (Fla. 1994); Accord: *State ex rel. Deeb v. Fabisinski*, 111 Fla. 454, 461, 152 So. 207, 209 (Fla. 1933) Emphasis added).

The courts, in *Deeb*, find that a friendly person in the interest of the person illegally detained may file a petition for writ of habeas corpus; and, that to be a "next friend," one "must provide an adequate explanation--such as inaccessibility, mental incompetence, or other disability--why the real party in interest cannot appear on his own behalf." *Whitmore v. Arkansas*, 495 U.S. 149, at 163 ; 110 S.Ct. 1717 ; 109 L. Ed. 2d 135 (1990); and that "The alleged harm must be actual or imminent, not 'conjectural' or 'hypothetical.'" *Whitmore*, 495 U.S. at 155, 110 S.Ct. at 1723.

"Even detention imposed on someone by a private individual potentially can be tested by habeas corpus. The most common use is where one parent alleges that the other parent has taken custody of a child wrongfully." (*Jurisdiction*, Kogan and Waters, 18 Nova L. Rev. 1151, at 624. (Fla. 1994), citing *Crane v. Hayes*, 253 So.2d 435 (Fla. 1971); *Porter v. Porter*, 53 So. 546 (Fla. 1910))

Habeas corpus is supposed to be a "speedy method of affording judicial inquiry into the cause of any alleged unlawful custody." *Porter v. Porter*, 53 So. 546, 547 (Fla. 1910).

B. Identity of respondents and relief sought

This Court is aware of the dispute over whether a feeding tube should be used as a "life-prolonging" measure for Theresa Marie Schindler-Schiavo (hereinafter "Terri Schiavo" or "Theresa Schiavo"). However, This Court is also aware that there was withholding of food and water - a life-threatening act, which was neither lawful [2], nor ordered by any court, but ordered by Michael Schiavo, estranged husband and guardian of Terri Schiavo.

Additionally, Class II Felonies were apparently committed by estranged

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[2] The 2003 Florida Statutes explicitly prohibit any lethal or fatal act that would constitute assisted suicide: §782.08,Fla.Stats. "Assisting self-murder.--Every person deliberately assisting another in the commission of self-murder shall be guilty of manslaughter, a felony of the second degree, punishable as provided in §775.082, §775.083, or §775.084." (Accord: §§782.051 "Attempted felony murder"; 782.07, Fla.Stats. "Manslaughter; aggravated manslaughter of an elderly person or disabled adult...") "Mercy killing or euthanasia **not authorized**; suicide distinguished.-- (1) Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act [be it lethal injection or lethal starvation, dehydration] or omission [of food and water] to end life other than to permit the natural process of dying. (2) The withholding or withdrawal of life-prolonging procedures [defined below] from a patient in accordance with any provision of this chapter does not, for any purpose, constitute a suicide." §765.309 (1) and (2), Fla.Stats. (Emphasis supplied; comments in brackets)

"Definitions--As used in this chapter: … 'Life-prolonging procedure' means any medical procedure, treatment, or intervention, including **artificially** provided sustenance and hydration…" §765.101(10), Fla.Stats. (Emphasis added)

Accord: §458.326(4), Fla.Stats. "Intractable pain; authorized treatment.--**Nothing** in this chapter shall be construed to condone, authorize, or approve mercy killing or euthanasia, and no treatment authorized by this section may be used for such purpose." (Emphasis supplied)

husband and guardian, Michael Schiavo, this past October 2003: His refusal to supply both food and needed medical services, including, but not limited to antibiotics, constitutes a breach of state and federal law, the former a felony. [3]

Controlling precedent: (1.) It is illegal to kill a prisoner with starvation. (Generally the courts have not permitted such: Accord: Art.I,§17,Fla.Const.: "Excessive punishments--Excessive fines, cruel and unusual punishment...Any method of execution shall be allowed, unless prohibited by the United States Constitution. Methods of execution may be designated by the legislature..."

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[3] §825.102(3),Fla.Stats. "(a) "Neglect of an elderly person or disabled adult" means: 1. A caregiver's failure or omission to provide an elderly person or disabled adult with the care, supervision, and services necessary to maintain the elderly person's or disabled adult's **physical and mental health**, including, but not limited to, **food**, **nutrition**, clothing, shelter, supervision, **medicine, and medical services** that a prudent person would consider essential for the well-being of the elderly person or disabled adult; or
(b) A person who willfully or by culpable negligence neglects an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult **commits a felony of the second degree**, punishable as provided in §775.082, §775.083, or §775.084." (Emphasis added)

§744.102(10)(b), Fla.Stats., discussed *infra*, defines: "To "meet essential requirements for health or safety" means to take those actions necessary to provide the health care, **food**, shelter, clothing, **personal hygiene**, or other care without which serious and imminent physical injury or illness is more likely than not to occur." (Emphasis supplied) While this definition does not technically apply to chapter 825 supra, it nonetheless comports to and is in accord with said chapter.

OASAM Code of Federal Regulations, Part 35: NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES provides that necessary and appropriate rehabilitation services and physical motor skill therapy may not be denied a substantially disabled patient in the United States of America, §35.130(e)(2) states, "Nothing 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." (Emphasis in bold face)

Accord: §951.03,Fla.Stats. “Boards of county commissioners, when working county prisoners on the public works of the counties shall provide, or cause to be provided, substantial **food**, clothes, shoes, medical attention, etc., for said prisoners as are required for state prisoners in the state.” (Emphasis added) *We must not apply a double standard to Theresa Schiavo. This is not legally consistent.*

(2.) It is illegal to kill a prisoner by denial of proper medical treatment. (§951.03,Fla.Stats. “Boards of county commissioners, when working county prisoners on the public works of the counties shall provide, or cause to be provided, substantial food, clothes, shoes, **medical attention**, etc., for said prisoners as are required for state prisoners in the state.” (Emphasis added)

(3.) It is illegal to kill a pet dog with starvation: §828.13(2)(a),Fla.Stats. “Whoever: Impounds or confines any animal in any place and fails to supply the animal during such confinement with a sufficient quantity of **good and wholesome food and water**, is guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or by a fine of not more than $5,000, or by both imprisonment and a fine.” Emphasis added (Accord: §828.12,Fla.Stats., Cruelty to animals--) (Double standards are used and in effect here.)

(4.) It is illegal to kill a pet dog by a denial of necessary medical treatment: §828.13(2)(c),Fla.Stats. “Whoever: **Abandons to die any animal that is maimed, sick, infirm, or diseased**, is guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or by a fine of not more than $5,000, or by both imprisonment and a fine.” Emphasis added (Accord: §828.12,Fla.Stats., Cruelty to animals--) (Double standard used here: Theresa thought less important than dog.) (5.) **DOUBLE STANDARD:** It is illegal to deny medical services or food to, say, an injured law enforcement officer, or any “important” person in “free” society (for, say, three days and 1 hour), and this would result in a *capias*

being issued for the arrest of any such perpetrator: So much more should denial of needed services to Theresa, who was denied for twice as long (six days and 2 hours without food, water or medical treatment), patently illegal per felony abuse laws cited *herein*. Thus, in courts of fairness, even without the strength of the felony abuse laws (for elderly and disabled), and even without laws on assisted suicide, manslaughter, or euthanasia, one would understand treatment to Theresa Schiavo here to be illegal. (Logic: Humans are more important than animals. ***** Law-abiding citizens more protected than criminals.) HOWEVER, *with* these laws, Theresa Schiavo is "super-protected" by the promises of the laws. **Let us keep our promises.** Since, when Theresa collapsed, "life prolonging procedures" did not include feeding tubes, according to Fla. State Law, at the time, it is certain she could not have even consented to what would then be defined as starvation. Other states, while not legally binding on current Florida law, nonetheless constitute controlling precedent, and have similar laws as were present when Theresa collapsed. [4] (Emphasis added in some cases for clarity)

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[4] *In re Hier*, 18 Mass.App. Ct. 200, 207, 464 N.E.2d 959, 964, review denied, 392 Mass.1102, 465 N.E.2d 261 (1984), **rejecting distinction** between nutrition and treatment.

In re Gardner, 534 A.2d 947, 954 (Me. 1987), holding nutrition and hydration indistinguishable from other life-sustaining procedures.

In re Conroy, 98 N.J. 321, 367-70, 486 A.2d 1209, 1233-34 (1985), in which the court held that **"[W]e reject the distinction** . . . between actively hastening death by terminating treatment and passively allowing a person to die of a disease...[and] also reject any distinction between withholding and withdrawing life-sustaining treatment."

In re Guardianship of Grant, 109 Wash.2d 545, 563, 747 P.2d 445, 454 (1987), which held the right to withhold life-sustaining procedures extends to **all** artificial procedures which serve **only** to prolong the life of a terminally ill patient.

Gray ex rel. Gray v. Romeo, 697 F. Supp. 580, 588 n. 4 338 (Dist. of Rhode Island 1988), which held that there existed **no analytical difference** between withholding and withdrawing medical treatment.

(Actually, Theresa's wishes cannot be known with certainty: See page 51 of this brief for two studies finding it impossible to determine patients' wishes; see also anecdotal cases: "Cases Similar to Schiavo," *following these studies, pp. 52-57.)*

Recent comments by the Pope support these states' holdings: "VATICAN CITY -- Pope John Paul says the removal of feeding tubes from people in vegetative states is immoral...The pope says providing food and water should be considered natural, ordinary care -- not artificial medical intervention." (Published reports: http://www.wesh.com/news/2937625/detail.html ; WESH, CBS, TV-Channel 2, Orlando, Florida; UPDATED: 3:21 p.m. EST March 20, 2004)

In addition, legally binding International Law on this member state (United States) separately prohibits a number of acts that have been and are continually being committed on an ongoing and daily basis: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" ; "Everyone has the right to recognition everywhere as a person before the law" ; "All are equal before the law and are entitled without any discrimination to equal protection..." ; "No one shall be subjected to arbitrary arrest, detention or exile" ; "Everyone has the right to freedom of movement and residence..." ; "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control..." (Articles 5, 6, 7, 9, 13, and 25, respectively: **UNIVERSAL DECLARATION OF HUMAN RIGHTS**, (Adopted by **UN General Assembly Resolution 217A (III) of 10 December 1948**), from: http://fletcher.tufts.edu/multi/texts/UNGARES217A.txt)

Theresa Schiavo has suffered various other deprivations of liberty, which are also testable by *habeas*, namely many retained rights, which are distinguishable from "rights that may be removed." [5] Of note, it is clear that Theresa is due at least as much counsel as a criminal, (see, e.g., *Gideon v. Wainwright*, 372 U.S. 335 (1963)). Of course, these cases are legally distinguishable: In *Gideon*, the individual provided counsel was thought to have committed a crime, and a life was not at stake. How much more is the "right to counsel" preserved when a life **is** at stake, **and** the "indigent" is *not* a criminal, *but* a citizen (whose life is threatened)?

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[5] §744.3215,Fla.Stats. Rights of persons determined incapacitated.--
(3) **Rights that may be removed** from a person by an order determining incapacity and which may be delegated to the guardian include the right:
(f) **To consent to** medical and mental health treatment.
(1) A person who has been determined to be incapacitated **retains the right:**
(a) To have an **annual review of the guardianship report** and plan.
(d) To be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation.
(e) To have a qualified guardian.
(h) To receive **prudent financial management** for his or her property...
(i) **To receive necessary services and rehabilitation.**
(l) **To counsel.**
(m) **To receive visitors and communicate with others. (**Emphasis added)

Accord: §744.1095,Fla.Stats. (emphases added *infra*)
Hearings--**At any hearing** under this chapter, the **alleged** incapacitated person or the adjudicated ward **has the right to:**
(1) Remain silent and refuse to testify at the hearing. The person may not be held in contempt of court or otherwise penalized for refusing to testify. Refusal to testify may not be used as evidence of incapacity;
(2) Testify;
(3) **Present evidence;** [which, in the instant case, would necessitate a GAL and counsel in court, retained rights under §744.3215,Fla.Stats., and quoted *supra*]
(4) Call witnesses;
(5) Confront and cross-examine all witnesses; and
(6) Have the hearing open or closed as she or he may choose.

In the absence of a will, controlling precedent in case law -and as supported by the Florida and U.S. Constitutions' rights to life, and "equal protection" against discriminations, *including those based on disabilities* -as well as Due Process - generally frowns upon the granting of the deceased person's estate based only on the word of a person. How much more, then, the granting of a life-or-death decision should be not taken. This Court has generally found that when there is doubt, the "right to live" is greater than the alleged "right to die." ("We confirm today that a court's default position must favor life." *In re Guardianship of Browning*, 543 So.2d 258 at 273 (Fla. 2d DCA 1989)) However, much more than a simple question of "what would Theresa Schiavo want" is being asked. Questions being asked are "why are felony crimes proceeding unchecked?" and "how could anyone sanction the commission of a crime, simply because 'Theresa Schiavo might want it to be so'?" (One cannot condone a crime, simply because "Terri *might* want it.") Even assuming, *arguendo*, Theresa would desire these acts, most, but not all, are expressly forbidden, prohibited by many laws, as outlined in the instant brief.

"I am concerned that, if there is no judicial involvement [by This Court], these decisions could be made by surrogates [such as Michael Schiavo] who **would benefit financially** from an early termination of the ward's life" (*In re Guardianship of Browning, STATE of Florida v. Doris F. Herbert, etc.*, No. 74,174 (Fla. Sept. 13, 1990)), OVERTON, Justice, concurring in part and dissenting in part.) (Emphasis supplied; comments in brackets)

In addition to (1) Financial conflict, *supra*, there is also (2) Romantic conflict, as guardian has admitted an adulterous relationship, in violation of chapter 798, Fla.Stats. Further, there is (3) possible criminal conflict, as new bone-scan records had revealed evidence of spousal abuse, and, if true, would constitute motive to silence the mouth of the witness, a possible battered wife, Theresa

Schiavo, so that she would *not* be able to testify about alleged spousal abuse, that is, by regaining ability to speak. These acts violate §744.446,Fla.Stats. "Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.--"

In other words, while it is questionable based on the "finding of fact" that Terri Schiavo would want to have a feeding tube withdrawn (in light of the fact that, when she collapsed, "life prolonging procedures" did not include feeding tubes, according to Fla. State Law, at the time) - in light of the absence of a living will - it would be explicitly illegal to remove "regular" food and water, in light of this finding of law. The fact that she *may not* be able to eat or drink **does not** make moot the law, as written. Further, due to interference and prevention of requisite testing by the estranged husband, (See, e.g., *Schindler v. Schiavo*, 800 So.2d 640, at 646 (Fla. 2d DCA 2001) in which This Court held "...the opinions of the remaining doctors may have been limited by their inability to examine Ms. Schiavo or obtain necessary diagnostic information..."), it is not known if Terri Schiavo can indeed swallow food or liquids --or, be given rehabilitation to regain ability which *may* have been lost in the "swallowing reflex," [6] generally the last reflex to diminish in deteriorating health. Therefore, habeas lies to compel justification and test the instant illegal deprivation of the several liberties in the case at bar. TEST

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[6] (Ironically, court orders prohibited swallowing testing, accepted the claim that Terri Schiavo might choke to death, merely one possibly, yet denied both feeding tube (marginally legal) and oral food (explicitly illegal), which would constitute certain lethal treatment. Thus, the claims that attempts were being made to save Terri's life from choking are hollow: "Petition for Immediate Therapy" denied by Order of Probate Court, Fla. 6th Judicial Circuit, File No. 90-2908GD-003, 17 September 2003, done and ordered in chambers at 3:27pm, George W. Greer, Circuit Judge, *Southern Second Reporter reference presently unavailable*; "Michael Schiavo has resisted attempts to see if his wife can swallow food and water, citing medical experts who say she might choke or get pneumonia from inhaling the nourishment." From: WFLA-AM 540, Radio, Orlando, FL: http://www.540wfla.com/1013.html.)

Federal Authorities support the state laws *mandating* necessary medical treatment and rehabilitative therapy, both physical therapy **as well** as mental/verbal speech therapy. **This is not an option:**

42C.F.R.§418.84 (FEDERAL LAW) Condition of participation--Medical social services. "Medical social services [including, of course, antibiotics, pap smears, physical rehabilitation and speech therapy] must be provided by a qualified social worker, under the direction of a physician."

42C.F.R.§418.92 (FEDERAL LAW) Condition of participation--Physical therapy, occupational therapy, and speech-language pathology.

(a) Physical therapy services, occupational therapy services, and speech-language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.

(b)(1) If the hospice engages in laboratory testing outside of the context of assisting an individual in self-administering a test with an appliance that has been cleared for that purpose by the FDA, such testing must be in compliance with all applicable requirements of part 493 of this chapter.

(2) If the hospice chooses to refer specimens for laboratory testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of services in accordance with the applicable requirements of part 493 of this chapter.

Chapter 744, Fla.Stats., deals with retained rights, and as such, §744.102(10)(b),Fla.Stats., defines: "To "meet essential requirements for health or safety" means to take those actions necessary to provide the health care, **food**, shelter, clothing, **personal hygiene**, or other care without which serious and imminent physical injury or illness [such as death, the extreme case] is more likely than not to occur." [Dehydration would likely result in first injury, then death.] (This chapter does not apply to chapter 744.3215(1)(i),Fla.Stats., regarding rehabilitation therapy, unless a chapter is defined as all of 744, in which case it would. **In either case, State Law and Federal Law are in complete accord and agreement**.]

There are two “general” objections to the mandate that Terri should, of certainty and without delay, be afforded protection under Chapter 825 of Florida Law and the congruent Federal authorities:

MYTH 1) “She can't eat regular food anyway,” so MYTH 2) “denial of regular food is moot.”

First **FACT 2)** It is not moot, because State and Federal law make no exceptions for “PVS” or “people who cannot eat.” Thus, she is protected, and the standards must not fall by bad precedent of denial of protection, else no law or construction will be enforceable. She is due both food and needed medical services such as antibiotics and proper healing rehabilitory environment.

Then **FACT 1)** “Can’t eat anyway?” We do not know if Terri can eat or drink, because thorough testing of her ability to swallow food has illegally been denied for well over a decade. (Additionally, besides denial of testing, the denial of rehabilitation, a violation of retained rights under §744.3215(1)(i),Fla.Stats. is contributory, as well as *possible* spousal abuse, as indicated by previously suppressed bone scan evidence. The police, obligated to investigate all these allegations, both those of this past October, and also those a decade ago, have absconded, and now become targets of mandamus, *infra*. Accord: §744.344(5),Fla.Stats. “A plenary guardian shall exercise all delegable rights and powers of the incapacitated person.”)

After having established many violations, it is proper to “test” each one of them by a Writ of Habeas Corpus with an individual question. (It gets confusing, due to the great number of violations, which are similar, in some cases, but not the same, and this necessitates an ordering.)

Thus, there appears no reason why This Court should not be able to seek a justification for each alleged deprivation of liberty, whether it involves a "physical" detention or something else.

THE TEST:

GUARDIANSHIP DEPENDENT ON APPROVED REPORT:

"In light of §744.369(8), Fla.Stats., and the fact (by pending litigation: PETITION TO REMOVE GUARDIAN AND TO APPOINT SUCCESSOR GUARDIAN, File No. 90-2908GD-003, Fla. 6th Circuit, Probate) that This Court is aware that no approved report (or any report for that matter) has been filed recently, by what authority does guardian, Michael Schiavo, retain guardianship at all?"

(§744.369(8),Fla.Stats., "The approved report constitutes the [sole] authority for the guardian to act in the forthcoming year. The powers of the guardian are limited by the terms of the report. The annual report may not grant additional authority to the guardian without a hearing, as provided for in §744.331, to determine that the ward is incapacitated to act in that matter.") (Comment in brackets.) ("15. The guardian is required by law to prepare and present an annual plan. Fla. Stat. § 744.3675. Throughout his tenure as guardian, Schiavo has filed the annual plans late or not at all, and has provided incomplete and inaccurate information." *Ibid.*, Brief filed by Atty. Pat F. Anderson, 15 November 2002)

DETENTION AT HOSPICE:

"By what right is Terri detained at the Hospice, when she does not qualify under State guidelines?" (§400.609(4),Fla.Stats.)(Accord: 42C.F.R.§418.22(b), *infra*)

DEPRIVATION OF RIGHTS UNDER THE 5TH AND 14TH AMENDMENTS:

"By what right was ward, Theresa Schiavo, deprived of the "any [RETAINED]

right[s] [on a daily basis and enumerated herein and *infra*] because of race, religion, national origin, or physical disability" and to "enjoy and defend life and liberty?" (Contravening and violating Art.I,§2,Fla.Const.; ***Accord:*** **Fifth and Fourteenth Amendments of U.S. Constitution**)

DEPRIVATION AND DENIAL OF TRIAL BY JURY:

"Whereas ward's right in this "suit[] at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved" (see e.g., **Seventh Amendment, U.S. Constitution**), by what right was this guaranteed right abridged and denied in many of the proceedings, in which the 'value in controversy' consisted of a large monetary award -and the ward's life?"

(***Accord:*** *SPARF v. U.S.*, 156 U.S. 51 at 106 (1895), in which the U.S. Supreme Court held that "No instruction was given that questioned the right of the jury...On the contrary, the court was careful to say that the jury were the exclusive judges of the facts, and that they were to determine-applying to the facts the principles of law announced by the court...In this separation of the functions of court and jury is found the chief value, as well as safety, of the jury system. Those functions cannot be confounded or disregarded without endangering the stability of public justice, as well as the security of private and personal rights.") (***Accord:*** Chapter 86, Fla.Stats: §§86.011 "Jurisdiction of trial court.--The circuit and county courts have jurisdiction..."; 86.071 "Jury trials...the issue may be tried as issues of fact are tried in other civil actions...the issues may be submitted to a jury..."; 86.101 "Construction of law.--This chapter is declared to be substantive and remedial. Its purpose is to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and is to be liberally administered and construed."; 86.111, Fla.Stats. "Existence of another adequate remedy; effect.--The existence of another adequate remedy does not preclude a judgment for declaratory relief...") (***Accord:*** RULE 1.430(a),Fla.R.Civ.P. "Right Preserved. The right of trial by jury as declared by the Constitution or by statute shall be preserved to the parties inviolate.")

(The authorities cited above to justify protection under this right are numerous and varied; perhaps this is the most protected right: Trial by Jury is protected by U.S. Constitution, Federal Case Law, State Statutes, Florida Rules of Civil Procedure, and probably others, but this overview is in no way a complete treatise.)

See also controlling precedent in quotes of the constitutional forefathers:

Thomas Jefferson wrote, “I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.”

As stated by *James Madison*, considered by many to be the “Father of the Constitution,” “In suits at common law, a trial by jury is as essential to secure the liberty of the people as any one of the pre-existing rights of nature.”

America's second President, *John Adams*, said in 1771: “It is not only [the juror's] right, but his duty...to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court.”

RECAP TO PREVIOUS DEPRIVATION OF LIBERTY:
“Considering *supra*, by what right did the lower tribunals deny the guaranteed constitutional and statutory rights to trial by jury?” (Inequity of law.)

THE MANNER OF DENIAL OF TRIAL BY JURY, IN THE INSTANT CASE, IS ALSO A VIOLATION OF EQUAL PROTECTION CLAUSES:

"Considering *supra*, by what rights do lower tribunals grant jury trials to mere nonfatal crimes and charges, but deny same in what is a life or death decision in the courts of inequity?" (Inequity of comparison, a violation of "Equal Protection," as "Unequal Protection" is given to "lesser, nonfatal 'crimes'.")

EVEN AFTER ONE TRIAL BY JURY, DEPRIVATION OF LIBERTY EXISTS:

Considering that "no fact tried by a jury [such as the rehabilitation award of about 750,000 U.S. dollars solely to be sued for physical therapy and care], shall be otherwise examined in any court of the United States [prohibited by *res judicata* and *collateral estpoppel*], than according to the rules of common law," by what right did the lower tribunals in question consistently deny the rights for the great monetary settlement, in which the courts have ordered that Theresa Schiavo's $750,000 be used for other, ***unauthorized***, purposes, such as attorney fees?" (Contravening **Seventh Amendment, U.S. Constitution** and violating §§400.6095(2), (financial needs), 744.3215(1)(h), (retained right for proper financial management) and 733.504, Fla.Stats. "Removal of personal representative; causes for removal.--A personal representative may be removed and the letters revoked for any of the following causes, and the removal shall be in addition to any penalties prescribed by law:

(3) Failure to comply with any order of the court, unless the order has been superseded on appeal.

(5) Wasting or maladministration of the estate.

(9) Holding or acquiring conflicting or adverse interests against the estate that will

or may interfere with the administration of the estate as a whole..." (***Accord:*** §§744.309(3), "DISQUALIFIED PERSONS"; 744.474(18), other "Reasons for removal of a guardian"; 744.474(16), Fla.Stats. "--A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law: (16) The improper management of the ward's assets")

TERRI SCHIAVO IS DEPRIVED OF THE RIGHT TO HAVE A QUALIFIED GUARDIAN - FAILURE TO COMPLY WITH COURT ORDERS:

"Considering guardian Michael Schiavo's refusal to comply with a 1996 Court Order to furnish the annual guardianship reports, by what right does he retain guardianship, in violation of §§733.504(3), and 744.361(3), Fla.Stats. 'The guardian **shall** file a guardianship report annually in accordance with §744.367.'?" (Authority for this removal given under: §744.474(5), Fla.Stats. "A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law: **(5) Failure to comply with any order of the court.**" Emphasis supplied: ***Note:*** It does not say "may" file a guardianship report; It says "*shall"* file same.)

TERRI SCHIAVO IS DEPRIVED OF THE RIGHT TO HAVE A QUALIFIED GUARDIAN - DISSOLUTION OF MARRIAGE:

"In light of §765.104(2),Fla.Stats. 'Unless otherwise provided in the advance directive or in an order of dissolution or annulment of marriage, the dissolution or annulment of marriage of the principal [automatically] revokes the designation of the principal's former spouse as a surrogate,' and the holdings of the Fla. 2nd DCA, regarding **automatic** dissolution of marriage, by what right does Michael Schiavo retain guardianship?" (Schiavo's present living arrangements amount to his

desertion of the marital relationship, a well-settled fact basis for dissolution of a marriage. *Burton v. Burton*, 448 So.2d 1229 (Fla. 2d DCA 1984); *Wilburn v. Wilburn*, 143 So.2d 518 (Fla. 2d DCA 1962); Accord: chapter 798,Fla.Stats.)

TERRI SCHIAVO IS DEPRIVED OF THE RIGHT TO HAVE A QUALIFIED GUARDIAN - BY VIOLATION OF YET OTHER REQUIREMENTS:

"In light of the clear language of §435.03(2)(o),Fla.Stats., by what right does estranged husband retain guardianship?" (Emphasis added for clarity)

(§435.03(2) Fla.Stats. "Any person for whom employment screening is required by statute **must** not have been found guilty of, **regardless of adjudication**, or entered a plea of *nolo contendere* or guilty to, any offense prohibited under **any** of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction: (o) §798.02, relating to lewd and lascivious behavior." Michael Schiavo, as guardian, has admitted in open press, an adulterous relationship, in violation of chapter §§798.01 and 798.02,Fla.Stats.; **Adjudication then becomes moot.**)

TERRI SCHIAVO IS DEPRIVED OF THE RIGHT TO HAVE A QUALIFIED GUARDIAN - BY VIOLATION OF MISMANAGEMENT REQUIREMENTS:

"In light of §744.446,Fla.Stats. 'Conflicts of interest; **prohibited** activities; court approval; breach of fiduciary duty,' by what right does guardian still retain guardianship?"

(Accord §744.474(7),Fla.Stats. "A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law: (7) The **wasting, embezzlement, or other mismanagement** of the ward's property." **Emphasis added** - "*Prohibited,*" in §744.446,Fla.Stats., *supra* does not merely mean "please try not to do it," but, instead, clear and unambiguous language meaning: Mr. Schiavo clearly violated the jury award by misappropriation of funds, set for therapy, care, rehabilitation, *not* legal fees. He got his cut, which was sizable, so he had no excuse to steal his wife's share.)

THERESA IS DEPRIVED OF NUMEROUS RETAINED RIGHTS, SOME OF THEM **FELONIES** AND CITED *IN PASSIM*, IN THE INSTANT BRIEF:

"By what right does the husband exceed both State and Federal Laws -and court orders -regarding removal of feeding tube to impose an environment threatening to deny food and water -as he has done in the past -and now deny rehabilitation, medical services -such as antibiotics and pap smears -necessary to avoid an unnecessary death by infection - current deprivations of liberty in stark violation of STATE and FEDERAL LAWS -and also by what rights does he deny annual review of the guardianship report, plan, prudently manage Theresa's finances, allow visitors and counsel in court, etc.?" (See: Federal holdings regarding counsel on page 13 of this brief: Theresa is due at least as much right -if not more.)

BY WHAT RIGHT IS TERRI DEPRIVED OF TESTING/EXAMINATION, SEPARATE AND <u>DISTINCT FROM</u> REHABILITATORY THERAPY, CITED *SUPRA*?

"Besides denying rehabilitation and <u>therapy</u>, *supra*, by what right does the guardian deny <u>testing</u>, such as swallowing and other mere examinations?" (Cite: *Schindler v. Schiavo,* 800 So.2d 640, at 646 (Fla. 2d DCA 2001)), in which the court held "...the opinions of the remaining doctors may have been **<u>limited</u>** by their inability to examine Ms. Schiavo or obtain necessary diagnostic information...") (Emphasis added)

EUTHANASIA:

"By what right is an attempted euthanasia performed?"

PHYSICAL DETENTION:

Although this deprivation of liberty would alone be sufficient to justify issuance of a habeas writ, it is also true that Terri Schiavo is illegally held at Woodside

Hospice House. (While Terri is physically located at the retirement center shown in the certificate of service, this relocation is temporary due to renovation and repairs being done at the Woodside.)

THE ARGUMENT FOR *SUPRA*:

In order to receive federal payment for hospice care, within Federal Medicare guidelines, the Woodside facility must obtain a certification from the attending physician within two calendar days of initial admission that the patient's "prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course." 42C.F.R.§418.22(b) (FEDERAL LAW) It is clear, after roughly three (3) years of residency at Woodside, that Terri is not "terminal" within the 6 month definition above. Although some people would certainly like to see Terri dead (and have almost killed her), these attempts to abridge or violate her rights under state and federal abuse laws do not constitute a "terminal" condition. Such reasoning, when it has apparently been used in the past, is circular logic: "Since we want to kill her, that must make it right automatically." **Not.**

In addition, any attempts by Woodside to circumvent the law, simply because Terri is not physically located at Woodside, are futile: Woodside cannot move a person out of its facility and then argue, by its own act of moving her, that this person's right to habeas review is somehow limited. The right to habeas corpus relief is a fundamental right central to the protection of liberty.

See, e.g., *Allison v. Baker*, 11 So.2d 578, 578 (Fla. 1943) ("The writ is venerated by all free and liberty loving people and recognized as a fundamental guaranty and protection of their right of liberty."). Woodside cannot diminish, or, in Ms. Schiavo's case, eliminate that right merely by moving someone to a different facility.

Specific Identity of Respondents and Relief sought:

RELIEF: A Writ of Habeas Corpus, which would ask the "test" questions above - of: RESPONDENTS, guardian, Michael Schiavo, and the facility(ies) now holding Theresa Schiavo.

Should relief not be granted, it would set precedent, thereby that if Theresa Schiavo should be illegally starved, deprived of needed medical services, she being "somewhat conscious," yet, were another to be paralyzed, unable to speak (like Dr. Stephen Hawking, alive, but less able to communicate), he/she, upon checking into a hospital/hospice/retirement home, would be even more quickly deprived (of a certainty), the standards of habeas relief having been eliminated or compromised. **This fate could happen to anybody.** This is dangerous and frightening. See e.g.,:

From: http://www.CatholicCulture.org/docs/doc_view.cfm?recnum=5524

"Marjorie Nighbert signed an "advance directive" before she was hospitalized for a stroke in 1996. This document stated that she desired no "heroic measures" Based on this, her family requested that her feeding tube be removed. When Ms. Nighbert begged for food, the courts deemed her 'not medically competent to ask for such a treatment,' and the hospital physically restrained her in bed so that she could not pilfer food from other patients. She died ten days later." [*Note:* This citation from the Catholic Culture website was verified as correct from numerous independent sources, not the least of which is Focus on the Family.]

Therefore, the new ethic in Florida Hospitals necessitates new motto: "FLORIDA HOSPITALS/HOSPICES: You check in, ...but you don't check out."

QUESTION IN SUMMARY: "Are you safe in a hospital/hospice if you are mute, paralyzed, or unconscious?"

ANSWER IN SUMMARY: If Theresa is not afforded ***Habeas*** protection, then this could (and will eventually) happen to anybody with more certainty.

C. Standing: Who has "standing" to represent Theresa Schiavo in <u>this</u> proceeding?

Can Theresa Schiavo represent herself? **No.**

She is <u>both</u> prohibited by state law (cite: §744.3215,Fla.Stats. "Rights of persons determined incapacitated.--(3) Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right: (b) To sue and defend lawsuits"), ***<u>and</u>*** she is physically unable to speak, and possibly unable to think coherently, but the latter is not certain. (Example: Award winning physicist, Dr. Stephen Hawking cannot speak without his personal computer, and otherwise appears "PVS," but he can certainly think. See pp. 52-57 in the instant brief: "Cases Similar to Schiavo.")

Can estranged husband and guardian (Michael Schiavo) represent her? (See e.g., §744.309(1)(a),Fla.Stats. "Any resident of this state who is *sui juris* and is 18 years of age or older is qualified to act as guardian of a ward.") **No.** He is the very person inflicting the bulk of the deprivation of liberties, many of them life threatening and quite illegal. He cannot represent her in these proceedings, due to prohibitive conflict of interest. He **<u>must</u>** recuse himself and petition for appointment of a GAL (Guardian ad litem).

(Cite: §744.391,Fla.Stats. "If an action is brought by the guardian against the ward, or vice versa, or if the interest of the guardian is adverse to that of his or her ward, a guardian ad litem **<u>SHALL</u>** be appointed to represent the ward in that particular litigation. In any litigation between the guardian and the ward, a guardian ad litem ***<u>SHALL</u>*** be appointed to represent the ward. If there is a conflict of interest between the guardian and the ward, the guardian ad litem **<u>SHALL</u>** petition the court for removal of the guardian..." (Emphasis Added) Accord: §744.102(9),Fla.Stats. "'Guardian ad litem' means a person [any person can be

GAL, not necessarily a lawyer] who is appointed by the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding." Husband Schiavo cannot be either guardian or GAL for Theresa here.

(Guardian, Michael Schiavo, without first obtaining authority of §744.3725,Fla.Stats., illegally exercised rights described under §744.3215(4),Fla.Stats., specifically by ordering experimental "electrode" therapy for his ward and wife, Theresa.) Guardian did not comply with the zealous advocacy standard regarding financial and fiduciary management, as he is required to do. Accord: *Rodriguez v. Levin*, 524 So.2d 1107 (Fla. 3d DCA 1988).

Can a lawyer represent Theresa?

In theory, "yes." (cite: §744.3215(1)(l),Fla.Stats. "A person who has been determined to be incapacitated retains the right: To counsel.") In practice, **"no."** The Fla. 6th Circuit Court has deprived Theresa of counsel in court (the judge acting as both neutral arbiter or the law -and counsel or guardian, inviting all writs of prohibition).

See e.g., §744.309(1)(b),Fla.Stats. "**No judge shall act as guardian** after this law becomes effective, except when he or she is related to the ward by blood, marriage, or adoption, or has maintained a close relationship with the ward or the ward's family, and serves without compensation." (Emphasis supplied) (This denial of appointment of GAL constitutes a violation of both State Law cited above and Due Process under State and Federal definitions: Art.I§9,Fla.Const., "**Due process.--**No person shall be deprived of life, liberty or property without due process of law..." Accord: **Amendment V, U.S.Const.**; and possible Equal Protection: **Amendment XIV, U.S.Const.**)

Can a GAL (Guardian ad litem) represent Theresa? In theory, "yes." (cite: §§744.391; 744.102(9),Fla.Stats., quoted supra) In practice, **"no."** The Fla. 6th Circuit Court's chief judge appointed GAL, Dr. Jay Wolfson, in accordance with the disputed Public Law 03-418 (colloquially known as "Terri's Law"). However, Chief Judge Demers felt that the lawmakers were just joking when they passed these other state statutes, *supra*, (not in dispute or being otherwise challenged as "unconstitutional") regarding appointment of a GAL, which are laws not being challenged in court as is Public Law 03-418. Judge Demers showed the **highest** disrespect for the laws, by refusing to appoint a GAL:

(*Schindler v. Schiavo*, slip No.: 90-002908-GD-03, "CHIEF JUDGE'S ORDER DENYING RE-APPOINTMENT OF GUARDIAN AD LITEM" ; Fla. 6th Judicial Circuit, 08 January 2004, David A. Demers, Chief Judge, 6th Judicial Circuit, Southern Second Reporter reference presently unavailable; Likewise, the Probate Court in this cause has refused to appoint a GAL, in the face of these statutes and laws, thus inviting prohibition writs from the higher courts. This denial of appointment of GAL -*like the parallel denial of appointment of counsel in court* -constitutes a violation of both State Law cited above and Due Process under State and Federal definitions: Art.I§9,Fla.Const., "**Due process.--**No person shall be deprived of life, liberty or property without due process of law..." *Accord:* **Amendment V, U.S.Const.**; and possible Equal Protection: **Amendment XIV, U.S.Const.**)

(*Clarification:* So far, writs of prohibition are justified by (a) the various judges acting illegally refusing to appoint a GAL / counsel in court; and (b) at least one judge acting as guardian, but this section deals with *Habeas,* so these arguments shall be reserved for arguments *infra*.)

Can the immediate family intervene, with the representation of family attorney, Pat F. Anderson, Esq.? **No.**

The courts have illegally denied interveners' rights, in direct violation of the "Morgareidge intervention rule." (See e.g., *Morgareidge v. Howey*, 78 So. 14 (Fla. 1914)), which allows intervention by **all** parties who have interest in the outcome of a case.) The District Court of Appeal (*Schindler et ux. v. Schiavo*, No. 2D03-5200 (Fla. 2d DCA Feb. 13, 2004)), did not enforce this rule, only reversing and remanding for "further proceedings consistent with this opinion," in which the trial court was chastised for not addressing, explaining, or justifying its actions. While the "intervention" in question was with regard to the "Terri's Law," nonetheless, the Schindler family has gotten the general picture that it may not intervene in any civil, appellate, or probate matter at all, with regards to its daughter and sister, Theresa. (Alternatively, if it does intervene, then the outcome is predetermined to uphold the law -only if it helps the estranged husband -but a predetermined decision to refuse to uphold any laws if they accord any rights to Theresa Schiavo - as observations in this brief indicate.) Further, even if the pending litigation is resolved in favor of Terri Schiavo regarding the guardianship reports, this will only force guardian Michael Schiavo to provide annual medical and guardianship reports -all the while as he continues commissions of class II and III felonies, one of them eventually killing Theresa Schiavo.

So, who can intervene?

AFFIRMATIVE ANSWER:

In theory, the immediate family should have more standing to be “next friend,” than Petitioner Watts, but they have ceded and defaulted, possibly due to the overwhelming case load of family attorney, Pat Anderson, and certainly due to financial inability to hire a second attorney (Attorney Anderson is said to be working *pro bono* for the Schindlers) -and due to the fact that the Schindler family are not able to file legal papers as is the Petitioner, Gordon Wayne Watts, in the instant case at bar. In addition, one more factor in inaction by the Schindler family may be frustration with obtaining justice as described *supra*, specifically illegal acts by the trial courts, which would be a proper subject to the writs of prohibition, should they be issued.

While it would be much preferable for several family members, with Theresa's interests at heart, to be appointed as “next friends” interveners in these habeas proceedings (and probably in the probate issues, but that is not being litigated here), nonetheless, even after much prodding, they do not.

****** With regards to standing, if the immediate family does not affirmatively object to Petitioner Watts' standing --<u>and</u> offer, by their own petitions, to stand in his place, then Petitioner's standing is established by default as the “next friend,” even if not the “'closest' friend.”

Should Theresa's rights under law be abridged due to human limitations of the immediate family?

While Petitioner, Watts, can not intervene in the ongoing probate issues (he is not an attorney, and has not been admitted *pro hac vice*, as a special circumstance, and, in fact, is trained in Biology and Chemistry, Bachelor of Science with honors and Electronics, Associate in Science, formally, -not law), nonetheless a review of the broken law, with respect to "standing," is in order here:

The Writ of Habeas Corpus, sometimes called the "Great Writ," may be filed "by a person [**any** person, not limited to a family member, neighbor, or friend] who objects to his own or another's detention or imprisonment," and is issued by the court when there are legal or factual bases to demand justification for the detention or imprisonment in question. (From: http://www.LectLaw.com/def/h001.htm -- comments added in brackets).

If these standards are not followed, then the result for Ms. Schiavo -and for the "Rule of Law" -will be fatal. I.e., it will be OK to violate *any* state law, federal law, case law, and the various constitutions -again, a dangerous prospect.

This petition is in objection to another's treatment. "Potentially, **ANY** deprivation of personally liberty can be tested by habeas corpus, and for that reason it is often called the Great Writ." (*The Operation and Jurisdiction of the Florida Supreme Court*, Gerald Kogan and Robert Craig Waters, 18 Nova L. Rev. 1151, at 608. (Fla. 1994); Accord: *State ex rel. Deeb v. Fabisinski*, 111 Fla. 454, 461, 152 So. 207, 209 (Fla. 1933) Emphasis added).

The courts, in *Deeb*, find that a friendly person [**any** person, not limited to a family member, neighbor, or friend] in the interest of person illegally detained may file a

petition for writ of habeas corpus; and, that to be a "next friend," one "must provide an adequate explanation [see *supra* for such explanation] --such as inaccessibility, mental incompetence, or other disability--why the real party in interest **cannot** appear on his own behalf." *Whitmore v. Arkansas*, 495 U.§149, at 163 ; 110 S.Ct. 1717 ; 109 L. Ed. 2d 135 (1990); and that "The alleged harm must be actual or imminent, not 'conjectural' or 'hypothetical.'" *Whitmore*, 495 U.S. at 155, 110 S.Ct. at 1723. (Emphasis supplied)

"Even detention imposed on someone by a private individual [**such as estranged husband and guardian**] potentially can be tested by habeas corpus. The most common use is where one parent alleges that the other parent has taken custody of a child wrongfully." (*Jurisdiction*, Gerald Kogan and Robert Craig Waters, 18 Nova L. Rev. 1151, at 624. (Fla. 1994), citing *Crane v. Hayes*, 253 So.2d 435 (Fla. 1971); *Porter v. Porter*, 53 So. 546 (Fla. 1910)) See also: *Doroucher v. Singletary*, 623 So.2d 482, 485 (Fla. 1993), in which The Court found that the target of the Habeas petition needed to voluntarily reject said offer himself. (No requirement in holding to reject offer for habeas relief via, say, a proxy with a conflict of interest, such as guardian, Michael Schiavo) ; *Whitmore v. Arkansas*, 110 S.Ct. 1717, 1727(1990), in which the United States Supreme Court has held that in order to appear before the Court as "next friend," an individual [**any** individual, not limited to this or that] "must provide an adequate explanation-such as inaccessibility, mental incompetence, or other disability-why the real party in interest cannot appear on his own behalf."

These courts are all saying the same thing; it must be true: Any individual may assert next friend rights and declare standing - if the guidelines are met.

CONCLUSION: HABEAS PETITION

Schiavo is under constant threat or is in jeopardy in her surroundings. Up until this point, the illegal deprivation of liberties have not been properly challenged or tested by *Habeas* or *Quo Warranto* - and the only attempt to issue a writ of Mandamus was to compel the State's Governor to uphold the law, when a more appropriate use of this writ would have been to direct it to the local police. The *Writ of Prohibition* has not ever been directed to the courts for their overstep in authority in regards to prohibiting therapy or rehab prior discussed, as well as counsel in court, and the deprivation of liberties from Theresa have proceeded by default. Woodside Hospice and other respondents would no doubt have This Court believe that Petitioner lacks standing to proceed in this action. **I disagree.** The United States Supreme Court has held that in order to appear before the Court as "next friend," an individual "must provide an adequate explanation-such as inaccessibility, mental incompetence, or other disability-why the real party in interest cannot appear on his own behalf." *Whitmore v. Arkansas,* 110 S.Ct. 1717, 1727(1990). I do not read *Durocher v. Singletary,* 623 So.2d 482 (Fla. 1993), as holding otherwise. Petitioner Watts now raises in This Court the allegation that the trial courts' previous holdings preventing representation in court (by either "zealous advocate" GAL and/or by counsel) are based on a faulty premise -e.g., that Theresa Schiavo had the ability to speak for herself - or be objectively represented. Neither the State nor the respondents contest Watts' present assertions undermining that premise: that Ms. Schiavo in fact was diagnosed as incapacitated, hence unable to speak for herself. Habeas corpus is supposed to be a "speedy method of affording judicial inquiry into the cause of ***ANY*** alleged unlawful custody." *Porter v. Porter,* 53 So. 546,547 (Fla. 1910). (Emphasis supplied)

May it indeed be speedy.

Argument II

Quo Warranto lies to ask by what right or authority an act is done.

A. Jurisdiction

Although Quo Warranto proceedings, in practice, usually involve "state officers and state agencies" (Art.V,§3(b)(8),Fla.Const.), "The Florida Supreme Court has held that ANY citizen may bring suit for quo warranto if the case involves 'enforcement of a public right'." (*Jurisdiction*, Kogan and Waters, at note 37, citing *Martinez v. Martinez*, 545 So.2d 1338 at 1339 (Fla. 1989), *State ex rel. Pooser v. Wester*, 170 So. 736, 737 (Fla. 1936)). (Emphasis supplied.) (Accord: RULE 9.030(b)(3),Fla.R.App.P.)

B. Identity of respondents and relief sought

There are four targets of this Quo Warranto: (1) Woodside Hospice; (2) Drew Gardens Retirement Community; and, (3) The Pinellas Park City Police.

(A) By what right did/do the hospice/retirement center workers illegally deprive incapacitated Terri Schiavo of food and water - above and beyond the removal of feeding tube? (By what right do they deny visitors, therapy, etc.?)

(B) By what right do the City of Pinellas Park Police Department refuse to uphold the mercy killing laws - and by what right do said Police use force to enforce this illegal act?

Furthermore, (4) There are potentially other "state officers and state agencies" who could be targeted for the "enforcement of a public right," and they are listed in the instant brief as targets of mandamus, infra, so they will not be repeated here, but formal petition is being made to This Court for Quo Warranto relief for **all** of them. "By what right do these entities refuse to act -or actively block investigation and enforcement of the laws of the state and nation?"

For the purposes of this petition, the city police are certainly an agency of the state, even if under city municipality authority. The hospice and retirement center workers, while private citizens, operate under the auspices of the state licensing agencies for doctors, nurses, and staff employees.

Thus, Quo Warranto may issue to test the validity of their actions, pursuant to the statement of law, which prohibits their actions.

C. Standing: "Standing to seek quo warranto can be inclusive...ANY citizen may bring suit for quo warranto..." *(Jurisdiction,* cited *supra)*

Argument III

The Writ of Prohibition lies to prohibit the lower courts from entering any unlawful orders

A. Jurisdiction

This Court has jurisdiction. "A district court of appeal may issue writs of...prohibition..." (See e.g., Art.V,§4(b)(3),Fla.Const.; Accord: RULE 9.030(b)(3),Fla.R.App.P.)

B. Identity of respondents and relief sought

Potentially, the deprivation of liberty [e.g., the withholding of "regular" food -and-water], while not ordered by the lower courts, are as a result of their orders. However, the withholding of physical therapy and other rehabilitations were ordered by the lower courts. (See note [6], page 15 of this brief.) This constitutes a deprivation of Equal Protection, as defined by State and Federal Constitutions, therefore this is an unlawful order, subject to the rare Writ of Prohibition. Additionally, it was this deprivation of liberty [lack of therapy] that placed Terri Schiavo into the condition whereby she could *allegedly* not tolerate "regular" food

and water. Thus, the hospice and the lower courts are civilly liable (cf.: 42U.S.C.§1983, discussed *infra*) for Ms. Schiavo's inability to eat or drink, and thus, the removal of feeding tubes would, colloquially, be known as "rubbing salt into the wound," or "kicking her when she is down," because she was deprived of rehab treatment - and then - subsequently, denied both feeding tube [marginally legal] and "regular" food and water [explicitly illegal].

(Note: These "finding of facts," such as the allegation Terri would not want to live in this condition are normally untouchable by review in appeal, but this is not always so. See page 43 of the instant brief for a discussion. Still, the "finding" that Terri would want to have no feeding tubes has no legal bearing on the petitions in the case at bar: The laws are a standard to be followed, not broken.)

The hospice workers or City Police did not let the law get into the way of their desire to execute an illegal act, namely carry out an unauthorized and illegal mercy killing. (Or, assuming she was consenting - this contention is in dispute -it would constitute assisted suicide. If it were found that Theresa were unwilling, this attempt would raise the specter of an attempted felony murder, a violation of §782.051, Florida Statutes; Cf.: §782.07,Fla.Stats. Manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.--). The local police, generally, and the attorneys for the police department, *specifically*, aided and abetted in the commission of class 2 and class 3 felonies, not permissible by the bar in Florida.

It is well known that both prosecution and defense must be zealous but fair in their presentations.

Thus, even the most heinous criminal is due a defense, and the City Police Department is no exception: They must be given a defense for their crimes, but no attorney is ever permitted to encourage or sanction a commission of crime. Attorneys are generally required to reveal any plans by clients who give admission of intention to commit any crimes --even when revealed confidentially, as in "attorney client" privilege.

This basis arises out of the fact that "[a]ttorneys are not state or county officers but they are officers of the Court." (*Petition of FLORIDA STATE BAR ASSOCIATION, et al.*, 40 So.2d 902, at 903, note 8, "Attorney and client")(Fla. 1949)

Prohibition in Florida, however, only lies to prohibit future act of lower courts, not agencies of the state, such as the local police department or their attorneys. Thus, detailed discussion of this shall be reserved for discussion of mandamus enforcement of their duties, *infra*.

Authorities:
§765.101(12)(a),Fla.Stats.: "'Persistent vegetative state' means a permanent and irreversible condition of unconsciousness in which there is: The absence of voluntary action or cognitive behavior of **ANY** kind." (Emphasis added)

§744.3215,Fla.Stats.:
(1) A person who has been determined to be incapacitated **retains the right**:
(a) To have an annual review of the guardianship report and plan.
(i) To receive necessary services and rehabilitation.
(l) To counsel. (Emphasis added)

Previous arguments have argued that denial of counsel in court or appointment of GAL constitute possible violations of Due Process and Equal Protection:

"When facts are to be considered and determined in the administration of statutes, there must be provisions prescribed for due notice to interested parties as to time and place of hearings with appropriate opportunity to be heard in orderly procedure sufficient to afford due process and equal protection of the laws…" Declaration of Rights, §§ 1,12. *McRae v. Robbins*, 9 So.2d 284, 151 Fla. 109. (Fla. 1942)

The trial court's failure to prosecute and/or the local law enforcement's failure to bring charges and investigate in a timely manner may not be generally held against the person seeking relief or the victim:

"Delay in the prosecution of a suit is sufficiently excused, where occasioned solely by the official negligence of the referee, without contributory negligence of the plaintiff, especially where no steps were taken by defendant to expedite the case." *Robertson v. Wilson*, 51 So. 849, 59 Fla. 400, 138 Am.St.Rep. 128. (Fla. 1910)

Since the Writ of Prohibition is not a "corrective" writ - and only lies to "prohibit" a lower court from alleged improper acts that would occur in the future - it falls to note that (based on previous behavior, it is obvious) the lower court <u>likely would prohibit</u> *both* rehabilitative physical *and* mental therapy -and appointment of a GAL <u>and</u> counsel in court -and also encourage the illegal withholding of "regular" food and water - an illegal act. The court indicates a likelihood to overstep its authority. (See *Jurisdiction*, Kogan and Waters, 18 Nova L. Rev. 1151 at 589, for a discussion (1994)).

The Writ of Prohibition may issue to <u>prohibit</u> the trial courts from:

A. From denying regular food and water. (While it is arguable that attempting to give food and water to Theresa is liable to cause "choking," this is not nearly as likely to cause death as denial of oral food and water; FURTHER, denial of food and water is prohibited under §825.102(3), as a felony.)

B. From denying rehabilitation or counsel in court for Theresa, -or an annual review of her condition, which are prohibited under Florida Law, §744.3215(1),Fla.Stats., subsections (i), (l), and (a), respectively.

C. From denying use of previously awarded funds to be disbursed for the **<u>previously litigated and decided</u>** purposes of therapy and other rehabilitation. (See discussion *infra*. Previously decided fact -or a previously litigated matter - may not be relitigated.)

D. From denying other "retained rights" protected by chapter 744.3215, and elucidated *in passim*, in other sections of this brief.

E. *(Even if Theresa gave indication of the "absence of voluntary action or cognitive behavior of **<u>ANY</u>** kind," as required by* §765.102(12)(a), *it would <u>still</u> be unclear if she were "PVS." See page 51 of this brief for a study showing that PVS is misdiagnosed roughly 42.5% of the time. See also "Cases Similar to Schiavo," in this brief, pp. 52-57.)* Notwithstanding, a Writ of Prohibition <u>will</u> issue, prohibiting the trial court from entering decisions consistent with the finding that Theresa is "Persistent vegetative state," an act *prohibited* by the <u>clear language</u> of state law: She clearly has <u>some</u> "cognitive behavior," obvious to even a child. -The law expresses its meaning in its enforcement by the varied writs.

F. From entering decisions, in which the trial courts refuse to appoint a GAL for Theresa.

G. From entering decisions, in which the trial courts refuse to appoint counsel -or allow counsel -for Theresa.

H. Lastly, This Court should enter a writ of prohibition, prohibiting the trial court judges from illegally acting as either counsel in court **or** as guardian, both of which they are likely to do if not checked -and balanced.

I. In the "Terri's Law" case, *it is possible* the Clearwater courts are illegally taking jurisdiction, when The Governor should, under his home venue privileges, be allowed to take venue to the Circuit Court of the Florida Second Circuit. If this should be the case, let it be noted, the Writ of Prohibition should issue to prohibit this *possible* overstep in authority, where there may be clearly no jurisdiction to entertain the matter in trial court. Petitioner, Gordon Watts, is a state citizen, potentially affected by the illegal administration involving this State Law's outcome, thus we find Petitioner has standing. (While Public Law 03-418, commonly known as "Terri's Law" is "expired," the precedent set in this public law's handling affects state citizens, Petitioner included. The silence of less qualified fellow-citizens who would otherwise assert their redress rights in This Court should not otherwise affect Petitioner's rights *herein*.)

NOTES ON WHY PROHIBITION MAY ISSUE ON ACTIONS OF TRIAL COURT IN REGARD TO ACTIONS, RULINGS DENYING PROPER USE OF MONETARY SETTLEMENT:

The trial courts named in this petition have violated the doctrines of *res judicata* and *collateral estoppel* in attempting to prohibit rehab -which was ordered by prior court rulings, in the civil trial, known to This Court, in which guardian, Michael Schiavo, won a large monetary settlement for use mainly for rehabilitation of

Theresa. Since, outside review by way of appeal, the courts are not allowed to reconsider or relitigate previously litigated matters, findings of facts, or judgments, especially since the trial courts are likely to attempt to illegally prohibit the previously decided use of what remains of the settlement (for rehabilitation), they thus become targets of the writs of prohibition for this action as well. (Note: A "small" portion of said settlement, roughly 300,000 U.S. Dollars was set aside for bereavement/consortium purposes for Michael Schiavo, but the rest was earmarked *only* for rehabilitation, and the attempts of the trial courts to prevent this are improper *res judicata* and also prohibited by *collateral estoppel*.)

These findings of fact and law would suggest that state law §876.02,Fla.Stats. be invoked, concurrent with 42 C.F.R. § 1983 (FEDERAL LAW). [7] (Such largess actions demanding prohibition *might* be caused by conspiracy; Any illegal action, whether or not motivated by conspiracy, should be remediable under the civil penalties cited *infra*, and regulated by §932.50,Fla.Stats.)

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[7] §876.02,Fla.Stats. "Criminal anarchy, Communism, and other specified doctrines; prohibitions--Any person who:
(1) By word of mouth or writing advocates, advises, or teaches the duty, necessity, or propriety...of disobeying or sabotaging or hindering the carrying out of the [felony] laws [including those outlined in the instant brief]...shall be guilty of a felony of the second degree, punishable as provided in §775.082, §775.083, or §775.084."

42C.F.R.§1983 (FEDERAL LAW) "Civil action for deprivation of rights --Every person who, under color of any statute, ordinance, regulation...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities (continued to next page)

The “courts” as guardians have further deprived Theresa of protection under the “color of law” by contravening (violating) §765.3215(1)(i),Fla.Stats.; And by purposely allowing a felony attempted mercy killing (AKA euthanasia) and/or assisted suicide -or, if Theresa was unwilling, then the trump rises to felony attempted murder, prohibited by §782.051,Fla.Stats. The questionable “findings of fact,” by the trial court, normally unassailable, are vulnerable to §876.02,Fla.Stats. For *extreme* example, if the trial court “found” the earth to be flat, would that make it so? **No,** but this “finding” would be irreversible on appeal, except, perhaps by §876.02,Fla.Stats. -and by a proper use of the writ of prohibition.

The courts have generally held that “constitutional rights are personal in nature and generally may not be asserted vicariously.” (*Sieniarecki v. State*, 724 So.2d 626 (Fla. 4th DCA 1998), and affirmed by This Court in slip number 94,800, L.T.: 4D98-0997, affirming a defendant's conviction for neglect of a disabled person, rejecting constitutional challenges to the underlying statute.) If the courts have held that this woman might not vicariously assert an alleged “right to privacy” to refuse medical treatment, then why do these courts allow Michael Schiavo to vicariously assert “rights,” which violate known statutes and other federal and state holdings?

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[7] (continued from previous page) secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable...” ***Accord:*** §932.50,Fla.Stats. “Evidence necessary in treason.--No person shall be convicted of treason except by the testimony of two lawful witnesses to the same overt act of treason for which the person is prosecuted, unless he or she confess the same in open court.” (It is common knowledge that many have admitted to actions that would constitute denial of retained rights and felony abuse laws -as well as violations of Federal authorities, so sufficient witnesses exist to prosecute/convict.)

Finally, the lower courts have illegally refused to enforce Florida euthanasia and felony abuse laws, e.g., chapters 765 and 825, Florida Law, discussed *in passim*. While the lower courts actually had jurisdiction, the use of prohibition has some merit: Courts have been the targets of prohibition where they had merely engaged in conduct best described as clear error. See *State v. Donner*, 500 So.2d 532 (Fla. 1987) and *State v. Bloom*, 497 So.2d 2 (Fla. 1986), citing *Cleveland v. State* 417 So.2d 653 (Fla. 1982). OF NOTE: Prohibition may be used to disqualify biased judges, even though they may clearly have jurisdiction. E.g., *Bundy v. Rudd*, 366 So.2d 440 (Fla. 1978); *State ex rel. Bank of Am. v. Rowe*, 118 So. 5 (Fla. 1928). "Judicial disqualification comes much closer to being a question of abuse of discretion than abuse of jurisdiction." (*Jurisdiction*, 18 Nova L. Rev. 1151, at note 588. (Fla. 1994)). It can be said that a number of judges are biased, based on published comments and refusal to issue writs/decisions and properly find facts to enforce the Florida euthanasia laws, felony abuse laws, and other state statutes outlined in the instant brief -as well as refusal to recuse themselves, a violative act. (Federal statutes are mentioned thoroughly and supportively throughout, *in passim*, but this brief shall focus solely on state statutes, simply because too many laws were broken to allow for proper exploration of all the federal issues.)

For all these reasons, *and many probably not elucidated in this brief overview*, the writs of prohibition lie to prohibit future illegal acts of the various trial courts enumerated in this petition. (In fact, so many laws were broken, and in so many areas, that Petitioner, normally able to handle the workload, is being strained "to the Max" to make this brief both correct and complete.)

However, when considering prohibition against the lower tribunals, it should

be noted that Petitioner is authorized to represent to This Court that the City of Pinellas Police Department and its attorneys have admitted in telephone conversations and otherwise that said attorneys advised its client, the police department, to not execute its mandatory duties to investigate the allegations of felony violations by guardian Michael Schiavo this past October and as outlined *herein*. No report was taken. No investigation was done. These crimes go unchecked. (The police officials and city attorneys are not expected to deny Petitioner's allegations that counsel advised their client, city police officials, should refrain from complying with state laws that **require** them to investigate suspected crime, as **required** by §§112.19 and 943.10(1),Fla.Stats., **and** cited *infra*. Further, it would seem obvious that the city officials did not act on their own. Thus, the attorneys seem complicit in felony violations of chapter 825, State Law, and denial of Federally Protected Redress rights - see pages 3-4, note [1] of the instant brief for discussion of latter.)

This is relevant because the department's attorneys are, technically, officers of the court, and thus possibly subject to the writ of prohibition. A lawyer's responsibility to the public rises above his responsibility to his client, and he must uphold democratic concepts regardless of how they affect the case at hand. *Petition of Florida State Bar Association, et al.*, 40 So.2d 902 (Fla. 1949), in which This Court specifically found that the attorneys are "officers of the court and as such constitute an important part of the judicial system." (*Petition* at 903, note 8)

C. Standing

Generally, in the courts of equity and appeal, common law and controlling precedent hold that the application for a writ of prohibition is grounded with the same requirement for standing to proceed as in the writs of mandamus and Quo Warranto (even if the actual writs are different in nature), and generally require the

Petitioner to show damage done. To the extent that Petitioner has standing to proceed in the enforcement of a public right (see Quo Warranto standing arguments *supra*) and standing for enforcement of state laws, a clear legal right of a Florida citizen, so affected by dangerous and illegal precedents set (see Mandamus standing arguments *infra*), likewise a similar standard is present here:

Petitioner, Gordon Watts' legal standing for this extraordinary writ arises out of the fact that either (A) a lower court is without jurisdiction or (B) is attempting to act in excess of jurisdiction in a future matter, and that (C) the Petitioner has no other **adequate** legal remedy available to prevent an injury that is likely to result. (The mere fact that another remedy is available, such as those described *herein*, does not preclude or foreclose a writ of prohibition. See: *Sparkman v. McClure*, 498 So.2d 892 (Fla. 1986); *Curtis v. Albritton*, 132 So. 677 (Fla. 1931). Also, *Waldrup v. Dugger*, 562 So.2d 687 (Fla. 1990) found that the courts might still review a case by treating the petition as if the proper remedy had been sought. Accord: RULE 9.040(c),Fla.R.App.P.: "If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought; provided that it shall not be the responsibility of the courts to seek the proper remedy.")

In answer to the concerns above, Petitioner Gordon Watts has no other **adequate** remedies available at this time, although that may change, based on the actions and rulings of This Court. Also, it is quite obvious that "injury is likely to result," as Schiavo was almost starved to death, and almost died from a simple infection, which was easily preventable by basic antibiotic medical care, specifically in violation of §§744.3215(1)(i), 825.102(3),Fla.Stats., and possibly other state and federal authorities and constitutional provisions. The Writs of Prohibition lie to prohibit illegal acts of the lower courts, and Petitioner thus makes application thereof.

Argument IV

The Extraordinary Writ of Mandamus lies to compel officers of the state in ministerial duties

A. Jurisdiction: Art. V, §4(b)(3), Fla. Const., holds that A District Court of Appeal may issues "writs of mandamus...to state officers and state agencies" (Accord: RULE 9.030(b)(3),Fla.R.App.P.)

B. Identity of respondents and relief sought:

It is the ministerial duty [8] of the City Police to uphold the legal and constitutional mercy killing laws enumerated in chapter 765.309,Fla.Stats., as defined by chapter 765.101(10),Fla.Stats. -as well as the felony elderly and disabled abuse laws enumerated earlier in §825.102, Fla.Stats. There is no "option" here; It is mandatory, required, ministerial, obligatory, and a clear duty **and** responsibility. The act of the local law enforcement authorities is not discretionary, but they have not performed their clear duties, and are become a target of mandamus. Also, the local law enforcement have a duty to enforce §782.08,Fla.Stats., Assisting self-murder.--Every person deliberately assisting another in the commission of self-murder shall be guilty of manslaughter, a felony of the second degree..." (Emphasis added, *infra* citations)

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[8]
§112.19, Fla.Stats. Law enforcement, correctional, and correctional probation officers; death benefits- "(1) Whenever used in this section, the term: (b) "Law enforcement, correctional, or correctional probation officer" means any officer as defined in §943.10(14) or employee of the state or any political subdivision of the state, including any law enforcement officer, correctional officer, correctional probation officer, state attorney investigator, or public defender investigator, **whose duties require** such officer or employee to **investigate, pursue, apprehend, arrest**, transport, or maintain custody of persons who are charged with, **suspected of committing, or convicted of a crime**..."

§943.10(1),Fla.Stats. "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; **and whose primary responsibility is the prevention and detection of crime**..." (Emphasis added)

Ministerial Duty: Citations, *not* argument; double-spacing not used:

State ex rel. Peacock v. Latham, 125 Fla. 69, 169 So. 597 (Fla. 1936), which clearly holds that the mere availability of another remedy does not constitute a bar to mandamus.

Wuesthoff Memorial Hospital, Inc. v. Florida Elections Commission, 795 So.2d 179 (Fla. 1st DCA 2001; Case No.: 1D01-2917), "[a]s Wuesthoff acknowledges, it entitlement to mandamus relief is dependent upon a showing of the existence of a clear legal right on its part, an indisputable and ministerial duty on the part of the respondent, and the absence of any other **adequate** legal remedy. See *Pino v. District of Court of Appeal*, Third District, 604 So.2d 1232 (Fla. 1992); *Holcomb v. Department of Corrections*, 609 So.2d 751 (Fla. 1st DCA 1992). (Emphasis added)

Southerland v. Sandlin, 44 Fla. 332, 32 So. 786 (Fla. 1902), which hold that, **any** motion (including, of course, the court's own motion *sua sponte*) to strike an entire petition solely because a new grounds to contest is incorporated, should be denied, because the petition was not limited definitely to the new ground of contest. (New grounds or respondents are sought in that new respondents are being added, which were not included in the lower tribunal's decision, and the new grounds would result in different state laws being invoked, namely AHCA, *page 49, infra*.)

Smith v. State, 696 So.2d 814, 815 (Fla. 2d DCA 1997), which held that a legal duty sought to be compelled by mandamus must be ministerial, not discretionary.

Turner v. Singletary, 623 So.2d 537, 538 (Fla.1st DCA 1993), which held that the respondent must have "indisputable duty to perform the requested act."

The Florida Department of Children and Families - Adult Protective Services is also responsible: Citations, *not* argument; double-spacing not used:

§415.104,Fla.Stats. Protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults; transmittal of records to state attorney.-- (1) The department **SHALL**, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, begin within 24 hours a protective investigation of the facts alleged therein. If a caregiver refuses to allow the department to begin a protective investigation or interferes with the conduct of such an investigation, the appropriate law enforcement agency **SHALL** be contacted for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney **SHALL** be orally notified. (Emphasis added)

The State Attorney's Office has ministerial duty: Citations, *not* argument:

§27.251,Fla.Stats. "The state attorney of each judicial circuit is authorized to employ any municipal or county police officer or sheriff's deputy on a full-time basis as an investigator for the state attorney's office **with full powers of arrest** throughout the judicial circuit provided such investigator serves on a special task force to investigate matters involving organized crime..." (Emphasis added)

§27.255,Fla.Stats. "(1) **Each investigator employed** on a full-time basis by a state attorney and each special investigator appointed by the state attorney pursuant to the provisions of § 27.251, **is hereby declared to be a law enforcement officer** of the state and a conservator of the peace, under the direction and control of the state attorney who employs him or her, **with full powers of arrest**... [required to investigate these recent allegations of crime, mandated by §§112.19; 943.10(1),Fla.Stats.]" (Emphasis supplied by boldface; Comments added in brackets for clarity) (Sworn law enforcement officers in the district in question, they are required to investigate these newly committed felony crimes which have not been "litigated and decided for thirteen years," as the estranged husband had just this past October both committed these crimes and admitted in open news media that he did the same.)

Agency for Health Care Administration's (AHCA) responsibilities - citations:

§400.6095(2), Fla.Stats. Admission to hospice limited to "terminal illness by a physician licensed pursuant to chapter 458 or chapter 459..." (Accord §400.609(4),Fla.Stats.)

§400.6095(4),Fla.Stats. Hospice must consider "physical, social, psychological, spiritual, and financial needs of the patient."

§400.607(2)(b),Fla.Stats. "Any of the following actions by a licensed hospice or any of its employees **SHALL** be grounds for action by the agency [AHCA] against a hospice: An intentional or negligent act materially affecting the health or safety of a patient." (Boldface, underline, capitalization added for emphasis)

The targets of mandamus; Relief sought is enforcement of ministerial duties:

City of Pinellas Park Police Department; State's Attorney's Office of the 6th Judicial Circuit; Dept of Children and Families; The Agency for Health Care Administration; and, arguably, the Hospice and Retirement centers, which employ nurses, who, being licensed by the state, thus become "officers of the state." Police Dept. attorneys may be included as targets of mandamus, as they are considered officers of the Court.

Pinellas Park attorneys aren't expected to deny allegations they advised their client, city police, to refrain from complying with state laws that require them to investigate/enforce suspected crime, as required by §§112.19 and 943.10(1),Fla.Stats. Further, it is obvious that police did not act on their own. Thus, the attorneys seem complicit.

C. Standing: The Petitioner here is Gordon Watts, a Florida citizen. His standing arises out of the fact that likelihood of injury will occur if the writ is not issued, as the court has generally found in *Florida League of Cities v. Smith*, 607 So.2d 397, 399 (Fla. 1992). However, does Watts have standing to compel officers of the state in another matter, not directly involving him, such as the local police department's duty to enforce euthanasia and felony abuse laws? (Injury does not exist if the Petitioner can perform the ministerial act in question himself. E.g., *Galilee v. Wainwright*, 362 So.2d 936 (Fla. 1978). However, this is not the case: Watts cannot force police to enforce a law against their wishes.) Nonetheless, injury can include some generalized harm to the public as a whole, such as the disruption of a governmental function (see: *Dickenson v. Stone*, 251 So.2d 268 (Fla. 1971)), or the holding of an illegal election. (See: *Fla. League of Cities* at 397, 398, 400-01.) In the case at bar, Florida Laws, dealing with attempted felony murder, abuse, and euthanasia are not being enforced. (The "euthanasia" trump card rises to felony murder if it is found out that Schiavo did not want feeding tubes withdrawn - e.g., "life-prolonging" procedures, in accordance with §765.309,Fla.Stats., nor that she wanted "regular" food and water withdrawn. The act in question would constitute an assisted suicide, if she consented -*or felony murder if she did not.* Otherwise, <u>simple euthanasia</u> would be the act or attempt.) Thus, generalized harm to the public likely would occur by <u>lack</u> of enforcement of State laws – to both Ms. Schiavo *and others* who may visit a hospice/hospital.

Additional Authorities from the Scientific Literature: 3 Studies of PVS

"In no vignette--even for patients with unremitting pain--did a majority of oncologists find euthanasia or physician-assisted suicide ethically acceptable. **Patients actually experiencing pain were more likely to find euthanasia or physician-assisted suicide unacceptable**." (*Euthanasia and physician-assisted suicide: attitudes and experiences of oncology patients, oncologists, and the public*. Emanuel EJ, Fairclough DL, Daniels ER, Clarridge BR. Lancet. 1996 Jun 29;347(9018):1805-10.) (Emphasis added)

Researchers at Duke University recently surveyed hundreds of frail elderly patients receiving outpatient treatment and their families. The elderly patients themselves strongly opposed physician-assisted suicide: only 34% favored legalization, with support even lower among female and black patients. But 56% of their younger relatives favored it, *and they were usually wrong in predicting the elderly patients' views.* [Dr. Harold Koenig et al., "*Attitudes of Elderly Patients and their Families Toward Physician-Assisted Suicide*," 156 Archives of Internal Medicine 2240 (Oct. 28, 1996).] (Emphasis added)

Catholic World News — News Brief — 07/18/2000
Study Says Some Comatose Patients May Be Aware
LONDON (CWNews.com) - A new study carried out in London showed that many comatose patients diagnosed as being in a persistent vegetative state (PVS) may actually be aware of their surroundings and able to communicate.

The Daily Mail newspaper reported on Tuesday on a study carried out by the Royal Hospital of Neurodisability on 40 presumed PVS patients that 17 [roughly 42.5%] of them were misdiagnosed. Two-thirds of the misdiagnosed patients were thought to be in a PVS because their eyes failed to follow movement, when they were actually blind. All of them had limited movement and thus had difficulty communicating.

Dr. Keith Andrews, director of medical and research services at the hospital, warned that PVS patients "may spend a lifetime trapped in a damaged body, with poor quality of life." Lorraine Lane, one such patient, was thought to be in a PVS and her husband was applying to the courts for an order to end her life until she squeezed his hand to prove some degree of awareness.

Doctors in Britain have been allowed to withdraw food and fluids from PVS patients since the landmark case of Tony Bland in 1993.

Cases similar to Schiavo, from "The Register," online:

From: http://hometown.aol.com/qww1210/myhomepage/schiavo.html

* "Thirty years ago a stroke left me in a coma. When I awoke I found myself completely paralyzed and unable to speak. For six years I was considered brain dead. I was not." Julie Tavalaro, "Look Up for Yes," (1997), as quoted in Schindler v Schiavo, (2D02-5394, Fla. 2nd Dist. App. Ct.), Brief of the Amici Curiae, "Not Dead Yet," et al.

* Dr. Stephen Hawking, world-renowned physicist, is thought to be the most intelligent scientist in his field since Dr. Albert Einstein, who developed the theory of relativity. Dr. Hawking, current Isaac Newton chair and Lucasian Professor of Mathematics at Cambridge University, also has Lou Gehrig's disease, aka amyotrophic lateral sclerosis (ALS).

A medical miracle, he is one of few people in his condition who are still alive, but he cannot communicate verbally, and he barely has control over his limbs and motor skills. He communicates by use of a laptop computer, which he uses to select phrases, and when he appears on TV occasionally, his "voice" sounds like a computer. Of course, he cannot feed himself, but would we starve Dr. Hawking in his little wheelchair?

* Pope John Paul II, famous head of the worldwide Catholic Church, has almost no ability to speak or move around now days, due to his advanced age and declining physical condition, not unlike many of our elderly family or friends. Yet, why is he treated any different than Terri Schiavo?

See what happened to these two (2) women: It will scare you!

* (.1.) Reverend Rus Cooper-Dowda'e experience will scare you if you are even half-alive: "There is … the time I was considered as good as dead. There was only one nurse who believed I was still 'in there' and able to communicate. With ink on my finger and paper on a clipboard, together she and I proved that indeed I did hold an opinion about whether I should live or die. There was controversy as to whether my recognizable writing was communication or seizure activity. The

controversy lasted until the BIG conference. The doctors and my husband, all of whom were spending less and less time with me, granted a meeting, as a courtesy to my mother and the nurses who felt I should not be written off. At the end of the meeting my (then) husband held up a message board to prove I couldn't use it. When he asked me to communicate something, I laboriously answered the man who was not allowing me the most basic of care, 'D-I-V-O-R-C-E Y-O-U.' The doctors all laughed an attributed my phrase to more seizure activity. Then the nurse took the board and asked me to repeat what I had just said. I did so with, 'D-I-V-O-R-C-E H-I-M.' There was never a question after that as to whether I could think or respond to my environment. The nurse had saved my life. The subsequent divorce paved the way for the rehabilitative care which brought me to the writing of this very sentence." (From the essay, "When I woke up… a personal journey with Terri Schindler-Schiavo," published by The Edmonds Institute, 20319-92nd Avenue West, Edmonds, Washington 98020 USA, ISBN 1-930169-18-3. The publisher says that, "[t]he reader is invited to correspond directly with the author at ." By Rus Cooper-Dowda, minister a freelance writer, living in St. Petersburg, Florida USA)

* (.2.) Kate Adamson, a New Zealand-native and 33-year-old mother of two, was also quite conscious, but unable to speak, after a stroke. However, Adamson (sometimes misspelled in news reports as "Anderson") had someone fighting for her. She could hear doctors giving up on her and trying to her to death, but she was luckier than some - her husband fought for her right to avoid murder - by threating to sue everyone in sight.

In order to find information about her - and there is a lot out there - put Kate Adamson Terri Schiavo into any search engine, and be prepared for a lot of hits. She, like Cooper-Dowda, was given up for dead - but was in fact well able to recover - and did so.

* "Cancer patient Yolanda Blake was hospitalized last November 30 after experiencing severe bleeding. Despite the insistence of her sister and of the friend who held her power of attorney, the hospital refused to leave in a feeding tube or a catheter, and on December 14 the county judge ruled in the hospital's favor that Blake should be allowed to 'die with dignity.' On December 15 Blake woke up. When asked if she wanted to live, she responded, 'Of course I do!'" (FreeRepublic.com "A Conservative News Forum," "The Euthanasia/Abortion Connection" Feminists for Life of America, 2000, By Frederica Mathews Green)

Cases similar to Schiavo, from "The Register," online (continued)

* "Dr. Ronald Cranford, the euthanasia advocate who hopes to help Pete Busalacci take care of Christine when she is brought to Minnesota, had a similar case in 1979. Sgt. David Mack was shot in the line of duty as a policeman, and Cranford diagnosed him as 'definitely … in a persistent vegetative state … never [to] regain cognitive, sapient functioning … never [to] be aware of his condition.' Twenty months after the shooting Mack woke up, and eventually regained nearly all of his mental ability. When asked by a reporter how he felt, he spelled out on his letter board, 'Speechless!'" (Ibid)

* We are prohibited from starving dogs and cats, which cannot always feed themselves but must be fed by humans. Would we let them starve to death? Would it even be legal? Moral? Practical? Possible?

* There are plenty of physically handicapped and mentally retarded people who, like Terri Schiavo, cannot feed themselves. Would we let them starve to death? Would it even be legal? Moral? Practical? Possible?

* We all have many elderly family and friends, like Pope John Paul II, above. Would we let them starve to death? Would it even be legal? Moral? Practical? Possible?

* "After a car accident in 1984, he [Terry Wallis] was in a coma for three months. He had brain stem injuries, was semiconscious and paralyzed below the neck. In June 2003, after 18 years, he woke up. His first words were 'Mom. Pepsi. Milk.' As of August, he was in rehab and was being evaluated to see how much cognitive ability he can recover." (USA Today, "Cases through the years," Source: News reports, USA TODAY research, Thursday, October 23, 2003, Page 6D, "Health &behavior," Life, SECTION D)

* In 1983, a car accident left Nancy Cruzan unconscious but able to breath on her own. In 1990, the U.S. Supreme Court ruled that Nancy Cruzan had a right to die, and, after a Missouri court ruled that this was Cruzan's wish, only her feeding tube, not regular food and water removed, which hints again that the Florida Courts overstepped their legal boundaries - in contrast to the Terri Schiavo being deprived regular food and water, beyond the court-ordered removal of her feeding tube: Lack of food and water, since it would prove fatal, constituted euthanasia aka mercy killing, thus would be illegal according to Florida Law. (Info for Cruzan taken USA Today article cited above)

Cases similar to Schiavo, from "The Register," online (continued)

Here are some more people who can not feed themselves and, in some cases, appear to be in a persistent vegetative state (PVS), yet are not starved to death:

* Ronald Reagan, former President of the United States of America

* Christopher Reeves, actor, most noted for his role lead role in the Superman movies

* Patients of "Dr. Death," Dr. Jack Kevorkian, who though are willing, are protected by law

* Friends of the rock band, "Hell on Earth," who are not unlike Dr. Kevorkian's patients

…and then there is

* Terri Schindler-Schiavo, who is discriminated against because there is no enforcement of laws preventing discrimination based on physical disability - like is done with race, gender, and religious discrimination. Where is the NAACP (race), NOW (gender), and ACLU (religious and civil rights)? Either we are united we stand, or divided we fall - we must stick together.

Cases similar to Schiavo, from "Catholic Culture," online:

From: http://www.catholicculture.org/docs/doc_view.cfm?recnum=5524

Think of the times when doctors (or the courts) have been proven wrong:

Patricia White Bull awoke from an "irreversible" coma after sixteen years.

Terry Wallis awakened from another "irreversible" coma after nineteen years.

Rus Cooper-Dowda could hear her husband and doctors discuss when to remove her ventilator and feeding tube, since she would "never" regain any meaningful function. Unbeknownst to these doctors, Rus was pregnant at the very moment they wanted to kill her. With the surreptitious help of a nurse, she was able to recover; her son will soon turn twenty.

Evan J. Kemp, Jr., former chairman of the EEOC, was told that his neurological disease would kill him by the age of 18. He's now 59 years old, and describes himself as having "an extraordinarily high quality of life."

Kate Adamson was given the diagnosis of Persistent Vegetative State and had her feeding tube removed for eight days. Though she was "locked in" and could not communicate, she was completely conscious, completely aware, and in agony from the starvation she suffered. Her husband threatened legal action until her feeding tube was restored, and Ms. Adamson is today a motivational speaker.

A wheelchair-bound young man, Joe Ehman was pressured by hospital staff to sign a Do Not Resuscitate order while just waking up from anesthesia. To stop the pressure, he had to muster the strength to scream, "I'm 30 years old. I don't want to die!"

Rick Hoyt suffered from a lack of oxygen when he was born and doctors said he would live his life as a "vegetable." His parents, however, never gave up on him, and taught him to communicate with the help of a computer. Today, he's working for Boston College to develop mobility aids that can be controlled by a paralyzed person's eye movements.

In 1993, Maria Matzik, a woman who continues to live with the help of a

Cases similar to Schiavo, from "Catholic Culture," online (continued)

ventilator, fought against nurses who wanted her to sign a Do Not Resuscitate order. When she refused, they informed her that because she is on a ventilator, nothing would be done if she suffered a cardiac arrest. Today she feels fortunate to have survived that hospital stay.

Marjorie Nighbert signed an "advance directive" before she was hospitalized for a stroke in 1996. This document stated that she desired no "heroic measures." Based on this, her family requested that her feeding tube be removed. When Ms. Nighbert begged for food, the courts deemed her "not medically competent to ask for such a treatment," and the hospital physically restrained her in bed so that she could not pilfer food from other patients. She died ten days later.

Within my own circle of intimates, two have survived over three decades each past their doctors' declarations that they were "terminal."

David Mack, a police sergeant, was shot in the line of duty. A neurologist diagnosed him as "definitely . . . in a persistent vegetative state . . . never [to] regain cognitive, sapient functioning . . . never [to] be aware of his condition." Less than two years later, Sgt. Mack woke up and went on to make a good recovery. The physician? Dr. Ronald Cranford, the same doctor who has declared Terri Schiavo to be in a Persistent Vegetative State.In recent years, medical ethics and the law have been twisted in frightening ways. Food and water have been reclassified as "medical treatments" if they're administered "artificially." Dr. Ronald Cranford has even testified in court that spoon-feeding may be classed as "artificial," presumably because helping people to eat is somehow unnatural. This is a fundamental shift in patient care; we all need food and water. Food and water are not "medical treatments," they're basic necessities of life. Without them, everyone is "terminal." As the Pope has said, "the presumption should be in favor of providing medically assisted nutrition and hydration to all patients who need them."

Let's look at how this redefinition is playing out in Terri Schiavo's case. Terri collapsed in 1990, when Florida considered "artificial sustenance and hydration" to be nothing more than basic food and water. It was not until 1999 that Florida laws changed to redefine tube feeding as "life-prolonging" treatment which could be discontinued. So even if Terri had expressed that which her husband alleges, "no tubes," she could not possibly have imagined that "tubes" would one day be redefined to include "food."

CONCLUSION

Habeas may issue if involuntary restraint on liberty is imposed without authority of law but is improper if restraint has ended [see *Rice v. Wainwright,* 154 So.2d 693 (Fla. 1963)]. Restraint on complete access to food, water, rehabilitation (Equal Protection) constitutes restraint on liberty. Even limited restraints can be sufficiently coercive to justify *habeas* relief, including unlawfully imposed parole [see *Carnley v. Cochran*, 123 So.2d 249 (Fla. 1963), reversed on other grounds, 369 U.S. 506 (1962)]." (*Jurisdiction*, 18 Nova L. Rev. 1151, at notes 611 - 615. (Fla. 1994)).

Theresa Schiavo's deprivation of liberty is more restrictive than *unlawfully imposed parole*: It is potentially fatal. (Since the hospice knew it to be **illegal** to kill her by lethal injection, how much *more* illegal by starvation/dehydration, equally lethal but more protracted.) The validity of action by the trial courts and other respondents in the present case has never been subjected to *habeas* review, and local law enforcement, the "enforcers" of the law have never been subjected to review per *mandamus*. Petitioner is aware of no case where "next friend" holding has not been subjected to appellate review.

Because of the critical nature of this issue, I would issue a writ of show cause to demand justification for these actions. In light of the finality of the -and sometimes fatal -deprivation of protection of law and the fact that, up until now, this case has proceeded without the safety mechanism of either a complete *habeas* review or enforcement by the other writs, such as *mandamus* or *prohibition*, I believe This Court has a duty to ensure that Watts has standing to proceed without delay and try to effect a cure by **exercise of jurisdiction and grant relief sought herein.** A lack of enforcement of laws could set a dangerous precedent, jeopardizing any Floridian in these health care environs. For these reasons, such the petitions *herein* should be granted.

CERTIFICATE OF FONT SIZE, FONT TYPE, AND MARGINS

Pursuant to Fla.R.App.P.9.210(a), Plaintiff hereby certifies that standards were met (not counting cover page title) by using the following in typeset: Font Size = 14 ; Font Type = "Times New Roman" ; Margins = 1 inch in top, bottom, left, and right.

SUPPLEMENTAL CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this brief and most other briefs in this cause shall be made available online as soon as is reasonably possible at the following URL's:

http://HomeTown.AOL.com/Gww1210

http://www.GeoCities.com/Gordon_Watts32313

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following parties by FIRST CLASS US POSTAL MAIL, this _____ day of _April_, 2004, unless denoted differently:

* FLORIDA SECOND DISTRICT COURT OF APPEAL (By hand delivery)
1005 East Memorial Blvd., Lakeland, Florida 33801-2019
P.O. Box 327, Lakeland Florida 33802-0327

* Drew Gardens Retirement Community 2750 Drew Street, Clearwater, FL 33759
Phone: (727) 799-2177 Fax: (727) 726-4145
(Current dwelling place of Ms. Theresa M. "Terri" Schiavo, who was transferred from Woodside due to renovations, repair)

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