

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

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

Petitioner,

**Case No. 03-8212 CI-20
UCN522003CA008212XXCICI**

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

Respondents.

ORDER GRANTING PETITIONER'S MOTION FOR PROTECTIVE ORDER

THIS MATTER is before the court on the petitioner's motion for protective order.

The petitioner is seeking a protective order to prevent the respondents from conducting any depositions in this case.

The petitioner's first attempt to gain a protective order was quashed by the Second District Court of Appeal in its decision of Bush v. State, 866 So.2d 136 (Fla. 2d DCA 2004). As the Second District noted in its decision, to grant a protective order the movant must make a showing of good cause. A court may issue a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires." Fla. R. Civ. P. 1.280(c). A "strong showing is required before a party will be denied entirely the right to take a deposition." City of Oldsmar v. Kimmins Contracting Corp., 805 So.2d 1091, 1093, (Fla. 2d DCA 2002). Good cause includes

limiting discovery to the range of permissible issues to be litigated. See Pescod v. Wells Road Veterinary Medical Center, Inc., 748 So.2d 1095 (Fla. 1st DCA 2000).

The Second District in Bush specifically asked this court to “make a determination of the propriety of inquiry into the statute’s impact on Mrs. Schiavo, and other factually based aspects of the constitutional challenge to chapter 2003-418.” Bush, 866 So.2d at 139. Additionally, this court was to “make a determination of the propriety of any further inquiry into facts adjudicated in the guardianship proceeding.” Id. For reasons set forth below, this court finds that it is improper at this time for there to be any further inquiry into the facts of this case.

This court, in its Order Granting Petitioner’s Motion For Summary Judgment in favor of the petitioner, has determined that Ch. 2003-418, Laws of Fla. is unconstitutional both on its face and “as applied” to Mrs.Schiavo. The material facts necessary to decide this matter are not at issue. Generally, no facts need to be judicially determined when deciding the facial constitutionality of a statute under these circumstances. See State v. Globe Communications, Corp., 622 So.2d 1066 (Fla. 4th DCA 1993). It is a question of law.

The only material facts relevant to the “as applied” analysis of the constitutionality of chapter 2003-418 on the grounds of violation of separation-of-powers and unconstitutionally retroactive legislation are the following:

1. “Petitioner is the duly appointed guardian of the person of Theresa Marie Schiavo.” (*Respondent’s Statement for Case Management Conference, paragraph 2.a.; case management conference, transcript at page 16, line 1.*)

2. “Theresa Marie Schiavo had no written advance directive.” (*Respondent’s Statement for Case Management Conference, paragraph 2.f.; case management conference, transcript at page 18, line 3.*)

3. The parties stipulated that the court was authorized to take judicial notice of the identified February 11, 2000, November 22, 2002, and September 17, 2003 orders of the guardianship court. (*Case management conference, transcript at page 11, line 16, through page 15, line 14.*)

4. “A court has found Theresa Marie Schiavo to be in a persistent vegetative state.” (*Respondent’s Statement for Case Management Conference, paragraph 2.g.; case management conference, transcript at page 16, line 8.*)

5. “Prior to the enactment of [public law] 03[-]418 that the feeding and hydration tubes had been removed from Theresa Schiavo.” (*Case management conference, transcript at page 10, line 25.*)

6. The parties’ counsel stipulated to correct copies of the subject statute and executive order, which were submitted to the court. (*Case management conference, transcript at page 9, line 12, through page 10, line 22.*)

7. “The parents of Theresa Marie Schiavo have challenged the withholding of nutrition and hydration,” in the context of the executive order. (*Respondent’s Statement for Case Management Conference, paragraph 2.i.; case management conference, transcript at page 19, line 2.*)

8. On October 21, 2003, pursuant to HB 35-E, the Governor issued Executive Order No. 03-201, issuing a one-time stay for Mrs. Schiavo and resuming the provision

of nutrition and hydration to her. (*Case Management Conference, page 9, line 5 through page 11, line 15.*)

9. On October 21, 2003, “pursuant to the Governor’s Executive Order, Theresa Schiavo was removed from her residence at a local hospice,” and brought to a hospital, all “without the consent of her husband and duly appointed guardian,” to effectuate “the reinsertion of an artificial means for nutrition and hydration.” (*Admission of respondents’ counsel as reflected in paragraph 2 of this Court’s November 14, 2003 order vacating automatic stay; transcript of hearing on request for temporary injunction, page 26, line 21.*)

10. “Pursuant to the executive order of the Governor[,] that subsequently the feeding and hydration tubes were reinserted.” (*Case management conference, transcript at page 11, line 9.*)

Each of the above facts is uncontroverted by the parties. And those facts form a sufficient factual basis to support a determination that Ch. 2003-418, Laws of Fla. is unconstitutional “as applied” to Mrs. Schiavo, as set forth in this court’s Order Granting Petitioner’s Motion For Summary Judgment.

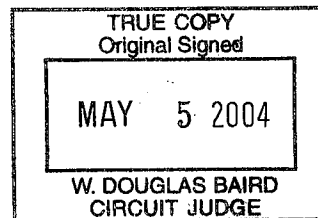
For the reasons set forth in this court’s Order Granting Petitioner’s Motion For Summary Judgment, this court has also refrained from considering the petitioner’s other challenges to the constitutionality of the statute at this time. Therefore, any other facts that may be elicited would be immaterial and irrelevant.

As it stands right now, the undisputed facts in the record establish that the statute is unconstitutional on its face and as applied to Mrs. Schiavo. Any further inquiry into the statute’s impact on Mrs. Schiavo, other factually based aspects of the constitutional

challenge, or the facts adjudicated in the guardianship proceedings would be improper at this time. Therefore, the depositions proposed by the respondents are burdensome, oppressive, unreasonable, and not calculated to lead to any admissible evidence on any material factual issue to be resolved at this time. As the petitioner has made a strong showing of good cause to issue the protective order, this court shall grant the petitioner's motion for protective order.

IT IS THEREFORE ORDERED that the petitioner's motion for protective order is **GRANTED**.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this _____ day of May, 2004.



W. DOUGLAS BAIRD, CIRCUIT JUDGE

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