

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

THERESA MARIE SCHIAVO, )  
Incapacitated ex rel. )  
ROBERT SCHINDLER )  
and MARY SCHINDLER )  
her Parents and Next Friends, )  
Plaintiffs-Appellants )  
v. ) Case No. \_\_\_\_\_  
MICHAEL SCHIAVO, )  
JUDGE GEORGE W. GREER AND )  
THE HOSPICE OF THE FLORIDA )  
SUNCOAST, INC., )  
Defendants-Appellees. )  
\_\_\_\_\_ )

**STATEMENT OF INTEREST OF THE UNITED STATES**

Plaintiffs-Appellants, the parents of Theresa Schiavo, have appealed an order of the United States District Court declining to grant a temporary restraining order that would require Theresa Schiavo to be provided hydration and nutrition necessary to keep her alive in order to restore the status quo while the merits of her case are considered. Pursuant to 28 U.S.C. § 517, the United States files this Statement of Interest urging this Court to issue an injunction, or to direct the district court to enter an injunction, to prevent Theresa Schiavo's death before this Court resolves the

instant appeal and the district court is able to resolve the merits of the claims Appellants seek to raise.

Such an order by this Court is within its traditional equitable authority, as well as its power under the All Writs Act, 28 U.S.C. § 1651, to preserve the jurisdiction of this Court and the district court over this case. An order that the appropriate medical steps be taken immediately merely in order to preserve Theresa Schiavo's life will allow this Court to resolve this appeal and the district court to resolve the case in an orderly manner, as contemplated by the new legislation enacted by Congress. Pub. L. No. 109-3, § 2. Further, we urge this Court to issue an immediate administrative injunction so that it has time, before Theresa Schiavo dies, to fully consider Appellants' motion for an injunction pending appeal.

1. On February 25, 2005, the Circuit Court for Pinellas County, Florida, Probate Division, ordered that "Michael Schiavo[] shall cause the removal of nutrition and hydration from the ward, Theresa Schiavo, at 1:00 p.m. on Friday, March 18, 2005." Probate Court Feb. 25 Order at 3. Theresa Schiavo's feeding tube was removed and she stopped receiving the nutrition and hydration necessary to sustain her life on Friday, March 18, 2005 at around 2:45 p.m. Complaint ¶ 44.

2. On March 21, 2005, the Congress of the United States passed bipartisan legislation, which the President signed into law, conferring jurisdiction upon the United

States District Court for the Middle District of Florida to hear the instant dispute over whether Theresa Schiavo will continue to receive the nutrition and hydration necessary to sustain her life.

The statute is entitled “An Act for the relief of the parents of Theresa Marie Schiavo.” Pub. L. No. 109-3, 109th Cong. 1st Sess. (enacted Mar. 21, 2005). The law provides that the “United States District Court for the Middle District of Florida shall have jurisdiction to hear, determine, and render judgment on a suit or claim by or on behalf of Theresa Marie Schiavo for the alleged violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.” *Id.*, § 1.

The statute provides that Theresa Schiavo’s parents have standing to bring this suit. *Id.*, § 2. It specifies that the district court “shall determine de novo any claim of a violation of any right of Theresa Marie Schiavo within the scope of this Act, notwithstanding any prior State court determination and regardless of whether such a claim has previously been raised, considered, or decided in State court proceedings.” *Id.* The statute provides that the district court “shall entertain and determine the suit without any delay or abstention,” and regardless of whether state court remedies have been exhausted. *Id.* The district court is authorized to issue “such declaratory and

injunctive relief as may be necessary to protect the rights of Theresa Marie Schiavo under the Constitution and laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.” *Id.*, § 3.

3. On March 22, 2005, the district court denied a temporary restraining order sought by Appellants, Theresa Schiavo’s parents. The court ruled that Appellants had “satisfie[d] the requirement of irreparable injury” because “Theresa Schiavo will die unless temporary injunctive relief is granted.” Order at 3. It also held that this “threatened injury outweighs any harm the proposed injunction would cause” because “death outweighs any such harm.” *Id.* at 3-4. The court further found that an injunction “would not be adverse to the public interest.” *Id.* at 4. Nonetheless, it declined to grant temporary relief, concluding that Appellants “have not established a substantial likelihood of success on the merits” of their underlying claims. *Id.* at 13.

4. The district court’s order denying the temporary restraining order is appealable, whether treated as the denial of a preliminary injunction or the denial of a temporary restraining order. Denial of a preliminary injunction is appealable under 28 U.S.C. § 1292(a)(1). Denial of a temporary restraining order is appealable in these circumstances because the denial “determin[ed] substantial rights of the parties which will be irreparably lost if review is delayed.” *Woods v. Wright*, 334 F.2d 369, 374 (5th

Cir. 1964) (quoting *United States v. Wood*, 295 F.2d 772, 778 (5th Cir. 1961)); see *Ingram v. Ault*, 50 F.3d 898, 899-900 (11th Cir. 1995) (“when a grant or denial of a TRO ‘might have a “serious, perhaps irreparable, consequence,” and . . . can be “effectually challenged” only by immediate appeal,’ we may exercise appellate jurisdiction”) (quoting *Romer v. Green Point Sav. Bank*, 27 F.3d 12, 15 (2d Cir. 1994)) (alteration in *Ingram*). Here, Theresa Schiavo will not survive long enough to allow the resolution of the merits without the immediate issuance of injunctive relief.

5. Under this Court’s traditional equitable powers, an injunction pending appeal based on Federal Rule of Appellate Procedure 8 is appropriate when the moving party shows “(1) a substantial likelihood that [it] will prevail on the merits of the appeal; (2) a substantial risk of irreparable injury . . . unless the injunction is granted; (3) no substantial harm to other interested persons; and (4) no harm to the public interest.” *Touchston v. McDermott*, 234 F.3d 1130, 1132 (11th Cir. 2000).

In addition, the All Writs Act, 28 U.S.C. § 1651(a), independently authorizes this Court to issue injunctions “necessary or appropriate in aid of [its] . . . jurisdiction[.]” This statute codifies the “federal courts’ traditional, inherent power to protect the jurisdiction they already have.” *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1099 (11th Cir. 2004). In order to “safeguard . . . ongoing proceedings,” *id.*, a court “may . . . compel acts ‘necessary to promote the resolution of issues in

a case properly before it . . . [or] facilitat[e] . . . the court's effort to manage the case to judgment.” *Id.* at 1102 (quoting *ITT Comm. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978)) (alterations in *Klay*). “A court may grant a writ under this act whenever it is ‘calculated in [the court’s] sound judgment to achieve the ends of justice entrusted to it,’ and not only when it is “necessary” in the sense that the court could not otherwise physically discharge its . . . duties.” *Klay*, 376 F.3d at 1100 (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)) (alterations in *Klay*).

The authority to issue an injunction under the All Writs Act to preserve jurisdiction lies not only in the district court, but also in the courts of appeals. This Court’s authority “‘is in the nature of appellate jurisdiction’ where directed to an inferior court, and extends to the potential jurisdiction of the appellate court where an appeal is not then pending but may be later perfected.” *FTC v. Dean Foods Co.*, 384 U.S. 597, 603 (1966) (quoting *Ex parte Crane*, 5 Pet. 190, 193 (1832)); see *McClellan v. Carland*, 217 U.S. 268, 280 (1910) (“where a case is within the appellate jurisdiction of the higher court a writ . . . may issue in aid of the appellate jurisdiction which might otherwise be defeated”).

Significantly, the “requirements for a traditional injunction do not apply to injunctions under the All Writs Act because a court’s traditional power to protect its jurisdiction, codified by the Act, is grounded in entirely separate concerns.” *Klay*, 376

F.3d at 1100; *see also id.* (“while a party must ‘state a claim’ to obtain a ‘traditional’ injunction, there is no such requirement to obtain an All Writs Act injunction – it must simply point to some ongoing proceeding . . . the integrity of which is being threatened”).

6. Under these standards, an injunction by this Court is plainly warranted here in order to effectuate Congress’ purpose in passing the legislation providing federal court jurisdiction over claims for Theresa Schiavo. Congress plainly intended that Appellants’ claims be raised, evaluated, and adjudicated in an orderly manner – claims already filed and any that may be raised in an amended complaint. But without immediate relief, this case will not be resolved in an orderly manner. The district court was compelled to resolve claims on a highly expedited basis and could only do so in a preliminary manner. This Court, unless preliminary relief is granted, will be required to do the same. It is also plain that Theresa Schiavo may die before this Court resolves the pending appeal and will almost certainly die before the district court can address the merits of all her claims.

As noted above, Congress provided expressly that the district court “shall determine de novo any claim of a violation of any right of Theresa Marie Schiavo within the scope of this Act.” Pub. L. No. 109-3, § 2. It directed that the district court “shall entertain and determine the suit.” *Id.* Until the district court has made a

determination as to the merits of Appellants' claims, Congress' direction for de novo consideration of those claims would not be met – especially to the extent factual determinations may be necessary. This is true without regard to any interlocutory determinations about the likelihood of eventual success – Congress intended that the district court take a complete and fresh look at federal constitutional and statutory claims before Theresa Schiavo is allowed to die, and denying immediate injunctive relief would preclude an orderly consideration of those claims. Without an immediate injunction now, neither the district court nor this Court will have “discharge[d] its . . . duties” prescribed by the statute. *Klay*, 376 F.3d at 1100. The courts should be given an opportunity to fully consider all the claims Appellants seek to raise with the care, dignity, and orderly procedure that are required by a proper respect for the interests at stake and for Congress, which enacted new legislation specifically to afford a full opportunity to address those interests.

Moreover, this is not a case where an All Writs Act injunction would serve to “evade the traditional requirements of a[] [preliminary] injunction.” *Klay*, 376 F.3d at 1101 n.13. Instead, it would serve Congress' expressed interest that this specific dispute be given a fresh look in federal court and that the district court have an opportunity to resolve Appellants' claims on the merits in a complete and orderly manner. This interest is “grounded in entirely separate concerns” than those that



underlie a preliminary injunction; accordingly, the “requirements for a traditional injunction do not apply.” *Klay*, 376 F.3d at 1100.

We note finally that, as the district court determined, the last three factors for traditional injunctive relief strongly militate here in favor of restoring the status quo. Unless preliminary relief is immediately issued, there will be significant and irreversible injury: Theresa Schiavo will die. By contrast, no comparable harm will be caused by letting Theresa Schiavo live during the pendency of this suit – she has been provided nutrition and hydration for nearly fifteen years, and an additional period in which she is provided nutrition and hydration while this case is adjudicated to a determination on the merits will not cause substantial harm to anyone. An injunction would simply allow the district court to resolve the merits of Appellants’ claims without them becoming moot through Theresa Schiavo’s death.<sup>1</sup>

---

<sup>1</sup> At this stage, where only preliminary relief is being considered, the presumption that the statute is constitutional should control, as the district court reasoned. Order at 3 (citing *Benning v. Georgia*, 391 F.3d 1299, 1303 (11th Cir. 2004)). If the Court requests it, the United States will submit a brief addressing the constitutionality of the statute. *See* 28 U.S.C. § 2403(a).


## CONCLUSION

For the reasons explained above, the United States respectfully requests that this Court issue an injunction pending appeal or an injunction under the All Writs Act requiring that Theresa Schiavo be provided hydration and nutrition necessary to sustain her life in order to restore the status quo while the merits of her case are being considered. In the meantime, this Court should issue an immediate administrative injunction while it considers the broader relief.

Respectfully submitted,

PETER D. KEISLER  
Assistant Attorney General

  
\_\_\_\_\_  
DOUGLAS N. LETTER  
202-514-3602

  
\_\_\_\_\_  
AUGUST E. FLENTJE  
202-514-1278  
Attorneys, Appellate Staff  
Civil Division, Room 7242  
Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Dated: March 22nd, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by facsimile and U.S. Mail, this 22nd day of March, 2005 to:


David Gibbs III  
Gibbs Law Firm, P.A.  
5666 Seminole Blvd. Suite 2  
Seminole, FL 33772  
Fax: (727) 398-3907

Michael Schiavo  
c/o Attorney George J. Felos  
Felos & Felos  
595 Main Street  
Dunedin, Florida 34698  
Fax (727)-736-5050

The Honorable Judge George Greer  
Circuit Court, Pinellas County, Probate Division  
315 Court Street  
Room 484  
Clearwater, FL 33756  
Fax: (727)-464-5471

James Martin and Jeffrey Gibson  
McFarlane, Ferguson, & McMullen  
Morton Plant Hospital Assn  
Fax (727)-442-8470

The Hospice of the Florida Suncoast, Inc.  
Mary Labyak, Registered Agent  
300 East Bay Drive  
Largo, FL 33770  
Fax (727) 547-1947

  
\_\_\_\_\_  
Attorney for the United States