

No.

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

v.

MICHAEL SCHIAVO, as Guardian of the Person of  
Theresa Marie Schindler Schiavo, Incapacitated,  
THE HONORABLE GEORGE W. GREER, and  
THE HOSPICE OF THE FLORIDA SUNCOAST, INC.,  
*Respondents.*

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**MOTION FOR LEAVE TO FILE AS *AMICI CURIAE*  
AND BRIEF *AMICUS CURIAE* OF FIVE MEMBERS  
OF THE U.S. HOUSE OF REPRESENTATIVES IN  
SUPPORT OF PETITION FOR EMERGENCY  
INJUNCTIVE RELIEF**

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Honorable J. Dennis Hastert  
Honorable Tom DeLay  
Honorable Roy Blunt  
Honorable F. James Sensenbrenner, Jr.  
Honorable Dave Weldon, M.D.

March 23, 2005

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**MOTION FOR LEAVE TO FILE AS *AMICI CURIAE* OF  
FIVE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES**

Pursuant to Rule 37 of the Rules of this Court, the Honorable J. Dennis Hastert, Speaker of the U.S. House of Representatives, the Honorable Tom DeLay, Majority Leader of the House, the Honorable Roy Blunt, Majority Whip of the House, the Honorable F. James Sensenbrenner, Jr., Chairman of the House Judiciary Committee, and the Honorable Dave Weldon, U.S. Representative for the 15<sup>th</sup> congressional district of Florida, respectfully move for leave to file the attached brief as *amici curiae* in support of the petition for emergency injunctive relief filed by petitioners Theresa Marie Schindler Schiavo, Incapacitated ex rel. Robert and Mary Schindler, Her Parents and Next Friends.

**BRIEF OF FIVE MEMBERS OF THE U.S. HOUSE OF  
REPRESENTATIVES IN SUPPORT OF PETITION  
FOR EMERGENCY INJUNCTIVE RELIEF**

***INTEREST OF AMICI***

The five representatives were instrumental in the passage in the House of P.L. 109-003, which was passed by the Senate on Sunday, March 20, 2005, passed by the House on Monday,

March 21, 2005, and signed into law by President Bush on March 21, 2005. That law vests the U.S. District Court for the Middle District of Florida with jurisdiction to hear, determine, and render judgment on claims brought by petitioners Robert and Mary Schindler on behalf of their daughter Theresa Marie Schindler Schiavo for alleged violations of any right of Ms. Schiavo under the Constitution or laws of the United States, and *amici* have an interest in ensuring that the law they were instrumental in passing is properly construed.

### ARGUMENT

Chairman Sensenbrenner was the Floor Manager of S. 686, and the author of identical legislation, H.R. 1452. In the proceedings below, the Eleventh Circuit failed to adhere to the plain meaning of the statute. In addition, that Court failed to properly assess the legislative history of S. 686 by failing to consider its full legislative history, including the record in the House of Representatives, a co-equal branch of the Congress.

In Chairman Sensenbrenner's opening statement supporting S. 686, he stated clearly that "Also, and of critical importance, S. 686 does *not* contain a provision that might have authorized the Federal court to deny desperately needed nutritional support to Terri Schiavo during the pendency of her claim ... [W]hat this bill does is it *requires the reinsertion of the feeding tube* for so long as it takes for a Federal Court to determine whether or not her Federal constitutional or statutory rights are violated. And that is reasonable, because she should not be allowed to die while the courts are determining what her legal rights are and whether anybody has violated them." 151 Cong. Rec. H1701, H1707 (daily ed. Mar. 20, 2005) (emphasis added). It was the intent of those who shepherded the legislation that became Public Law 109-003 through the House that, by its clear terms, such legislation did *not* allow a federal judge to "deny desperately needed nutritional support to Terri Schiavo during the pendency of her claim." *Id.* at H1701. It

was the intent of those who shepherded the legislation that became Public Law 109-3 through the House that the legislation “*requires the reinsertion of the feeding tube.*” *Id.* at H1707.

And indeed, the text that survived the legislative process and became Public Law 109-003 clearly states that “The United States District Court for the Middle District of Florida *shall have jurisdiction* to hear, determine, and render judgment” in a suit seeking review of any “claim of a violation of any right of Theresa Marie Schiavo within the scope” of Public Law 109-3. P.L. 109-003, §§ 1, 2 (emphasis added). In addition, the Middle District of Florida must accept such jurisdiction over Theresa Marie Schiavo’s claims long enough to review those claims “*de novo*,” and provide a completely independent review of such claims, including a review of any related factual claims that must necessarily be decided to review those claims. *Id.* at § 3.

Public Law 109-003 also clearly requires that “*After a determination of the merits of a suit brought under this Act*, the District Court *shall* 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.* (emphasis added). Clearly, the Middle District of Florida is required by Public Law 109-3 to keep Theresa Marie Schiavo alive until such time as a *de novo* review of her claims occur.

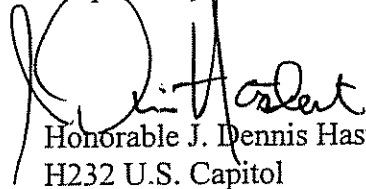
The All Writs Act allows the federal courts to fulfill this constitutional obligation by providing that “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions . . .” 28 U.S.C. § 1651. In *Wisconsin Right to Life v. Federal Election Commission*, 125 S.Ct. 2 (2004), the Supreme Court, Chief Justice Rehnquist, sitting as a single Justice, stated that authority granted to courts under the All Writs Act is appropriately exercised where “[n]ecessary or appropriate in aid of [our]

jurisdiction," and where "the legal rights at issue are indisputably clear" (citations and quotations omitted). Such is the case here, where Public Law 109-3 makes the issuance of a temporary restraining order necessary to preserving the Middle District of Florida Court's jurisdiction, which it is required to assume under Public Law 109-3 pending a *de novo* review of Theresa Marie Schiavo's federal claims, and where Public Law 109-3 clearly defines the legal rights at issue, namely "the alleged violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States." P.L. 109-003, Sec. 1.

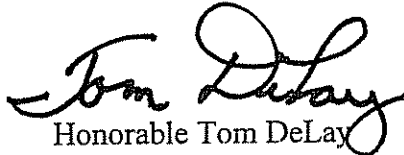
In addition, in *FTC v. Dean Foods Co.*, 384 U.S. 597, 604 (1966) the Supreme Court upheld an injunction issued under the All Writs Act because it was necessary "to preserve the status quo while administrative proceedings are in progress and prevent impairment of the effective exercise of appellate jurisdiction." *See also Maxwell v. Bishop*, 385 U.S. 650 (1967) (Court granted a common-law petition for writ of certiorari where shortness of time available before a scheduled execution made ordinary appeal procedure unavailable).

The plain meaning and legislative history of Public Law 103-9 in the House of Representatives, combined with its mandate of jurisdiction over the federal claims of Theresa Marie Schiavo for a period necessary to review those claims "*de novo*," and the Middle District of Florida's constitutional obligation to protect the jurisdiction it is required to accept under Public Law 109-3, clearly require that a temporary restraining order be issued. This is required to ensure that desperately needed nutritional support is provided to Terri Schiavo to keep her alive during the pendency of her claim.

Respectfully submitted,



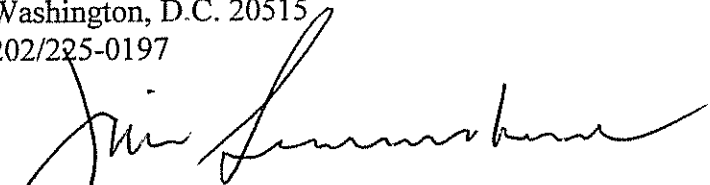
Honorable J. Dennis Hastert  
H232 U.S. Capitol  
Washington, D.C. 20515  
202/225-0600



Honorable Tom DeLay  
H107 U.S. Capitol  
Washington, D.C. 20515  
202/225-4000



Honorable Roy Blunt  
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Washington, D.C. 20515  
202/225-0197



Honorable F. James Sensenbrenner, Jr.  
2138 Rayburn House Office Bldg.  
Washington, D.C. 20515  
202/225-3951



Honorable Dave Weldon, M.D.  
2347 Rayburn House Office Bldg.  
Washington, D.C. 20515  
202/225-3671

Amici Curiae

March 23, 2005


**CERTIFICATE OF SERVICE**

I certify that on March 23, 2005, I served one copy of the foregoing Motion for Leave to File as *Amici Curiae* and Brief *Amicus Curiae* of Five Members of the U.S. House of Representatives in Support of Petition for Emergency Injunctive Relief by facsimile to each of the following:

David C. Gibbs, III  
Facsimile: (727) 398-3907

George Felos  
Facsimile: (727) 736-5050

Deborah A. Bushnell  
Facsimile: (727) 733-0582



David Plotinsky

No.

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THE HOSPICE OF THE FLORIDA SUNCOAST, INC.,  
*Respondents.*

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**MOTION OF FIVE MEMBERS OF THE UNITED  
STATES HOUSE OF REPRESENTATIVES  
TO PROCEED AS *AMICI CURIAE*  
ON 8½- BY 11-INCH PAPER**

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Honorable J. Dennis Hastert  
Honorable Tom DeLay  
Honorable Roy Blunt  
Honorable F. James Sensenbrenner, Jr.  
Honorable Dave Weldon, M.D.

March 23, 2005

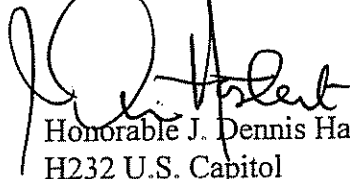
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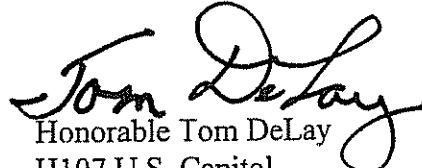
The Honorable J. Dennis Hastert, Speaker of the House, the Honorable Tom DeLay, Majority Leader of the House, the Honorable Roy Blunt, Majority Whip of the House, the Honorable F. James Sensenbrenner, Jr., Chairman of the House Committee on the Judiciary, and the Honorable Dave Weldon respectfully move for leave to proceed as *amici curiae* on 8½- by 11-inch paper.

Rule 33.1 of the Rules of the Supreme Court of the United States require the brief *amici curiae* of the five Members of the House to be printed on 6<sup>1</sup>/<sub>8</sub>- by 9<sup>1</sup>/<sub>4</sub>-inch paper. Due to the exigent nature of the application regarding which the five Members of the House wish to file a brief *amici curiae*, it is not possible to print the brief on 6<sup>1</sup>/<sub>8</sub>- by 9<sup>1</sup>/<sub>4</sub>-inch paper. Accordingly, the five Members request permission to file on 8½- by 11-inch paper, notwithstanding Rule 33.1.


Respectfully submitted,



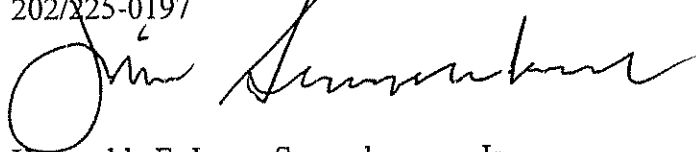
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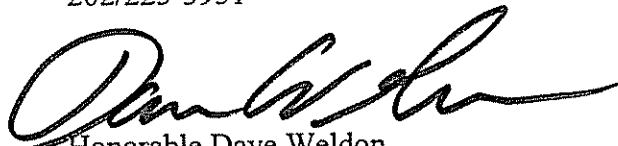
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Amici Curiae

March 23, 2005

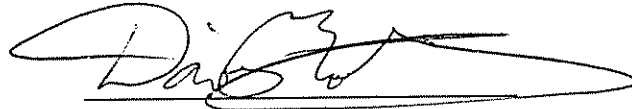
## CERTIFICATE OF SERVICE

I certify that on March 23, 2005, I served one copy of the foregoing Motion by Five Members of the United States House of Representatives to Proceed as *Amici Curiae* on 8½- By 11-Inch Paper by facsimile to each of the following:

David C. Gibbs, III  
Facsimile: (727) 398-3907

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