

IN THE SUPREME COURT OF THE STATE OF FLORIDA

JEB BUSH,  
Governor of the State of Florida,

Appellant,

CASE NO.: SC04-925

v.

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

Appellee.

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**APPELLANT'S NOTICE OF CONFLICT AND MOTION FOR  
CONTINUANCE OF ORAL ARGUMENT**

Appellant, Jeb Bush, Governor of the State of Florida, pursuant to Rule 9.300(a), Florida Rules of Appellate Procedure, hereby files this Notice of Conflict and moves this Court for a brief continuance of the oral argument currently scheduled in this matter. In support of this motion, Appellant states as follows:

1. In this Court's June 16, 2004 Order accepting jurisdiction of this cause, the Court set forth a briefing schedule and scheduled oral argument to commence at 9:30am on Tuesday, August 31, 2004. Although this briefing schedule is expedited, the Governor does not seek additional time to comply with such schedule.

2. Unfortunately, lead counsel for the Appellant, Kenneth L. Connor, is currently scheduled to appear as lead trial counsel for the plaintiff in a jury trial scheduled to begin on August 30, 2004 in the matter of *Earline Groves v. Beverly Health and Rehabilitation Services, Inc., et al*, cause number 251-0200-111CIV, pending in the Circuit Court of Hinds County, Mississippi, First Circuit. This trial is anticipated to last for two to three weeks and thus, Mr. Connor will be unavailable to participate in the oral argument in the instant matter as it is currently scheduled.

3. The likelihood of the *Groves* matter proceeding to trial as scheduled is extremely high. The trial in that case had previously been scheduled to commence on May 19, 2004. On the first day of trial, over the strenuous objections of the Plaintiff, the Mississippi court continued the case to the August 30, 2004 trial docket and expressly stated that no further continuances would be granted. (See Appendix 1).

4. The plaintiff in the *Groves* case is a seventy-year old woman and as such, the importance of having her case tried as expeditiously as possible is manifest. Further, as the Court may deduce from the continuance order, the *Groves* litigation is contentious and complex. As lead counsel in that case, Mr. Connor has been intimately involved in the details of the litigation and

trial strategy. Further, he has extensive experience in litigating claims against the defendants in that case in other venues dating back to the mid 1990's.

These factors explain the desire of the *Groves* client to have the benefit of his expertise at this trial.

5. Of course, Mr. Connor is also lead counsel in the matter presently pending before this Court and, pursuant to the desires of his client here, the Governor, he will be the attorney participating in the oral arguments on behalf of the Appellant.

6. The only way that the legitimate desires of both clients may be met is to alter the scheduling of one matter or the other. Although pending in another jurisdiction, the *Groves* matter is anticipated to be a complex and lengthy trial and was on Mr. Connor's schedule for a month prior to the instant date for the oral argument. Also, the client's advanced age in that matter is of paramount importance.

7. The Governor merely seeks a brief continuance of the oral argument date only, and he does not seek any alteration to the briefing schedule already set by this Court.

8. Mr. Connor was specially selected by the Governor as lead counsel in this matter for several important reasons which demonstrate the

importance of his presence at the oral argument. Mr. Connor is a trial lawyer with over thirty years of experience in litigation. He has been recognized as a pre-eminent litigator and advocate in this state and on a national level. His special qualifications in terms of litigation experience, advocacy skills, and familiarity with the complex procedural and constitutional issues presented by the instant case simply cannot be duplicated by any other single attorney involved in this matter on behalf of the Governor.

9. If the oral argument remains as scheduled, the Governor will be unfairly prejudiced by being deprived of the expertise of his lead counsel to represent his interests at this most critical oral argument.

10. Although oral argument itself is discretionary, the comment to Rule 9.320 certainly indicates that when an appellate court grants oral argument the court likely believes that such argument will assist the court in resolving the issues presented. No doubt, the Court understands, as do the parties, that the issues in the instant matter are important and complex – all the more reason to ensure the Court receives the benefit of the best advocacy and legal acumen the parties can provide at an oral argument.

11. This Court's Order of June 16, 2004 expressly states that continuances will only be granted in matters of extreme hardship, and counsel

for the Governor respectfully requests this Court to consider this conflict between Mr. Connor's prior commitment to another client in a trial capacity and the Governor's desire for the benefits of Mr. Connor's special expertise and experience in this matter as just such a hardship justifying a brief continuance.

12. The Governor makes this request for continuance in good faith and does not believe the grant of a brief continuance will unduly prejudice any of the parties.


13. The undersigned counsel hereby certifies that she has consulted with George Felos, counsel for Appellee, and hereby advises the Court that Appellee opposes the motion and will file his opposition with the Court.

WHEREFORE, Appellant respectfully requests this Court grant a brief continuance of the oral argument for a period of at least thirty (30) days to allow for the participation of his lead counsel at the oral argument.

  
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Counsel for Appellant

**AFFIRMATION OF MOVANT**

I, Jeb Bush, Governor of the State of Florida, hereby affirm the contents of the above Notice of Conflict and Motion for Continuance of Oral Argument and respectfully ask this Court to grant the Motion as described above.

  
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JEB BUSH, Governor of the State of Florida

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to **George J. Felos**, Felos & Felos, P.A., 595 Main Street, Dunedin, Florida 34698; to **Thomas J. Perrelli, Robert M. Portman, Nicole G. Berner**, Jenner & Block, LLC, 601 13<sup>th</sup> Street, NW, Suite 1200, Washington, DC; to **Randall C. Marshall**, Legal Director, American Civil Liberties Union of Florida, 4500 Biscayne Blvd., Suite 340, Miami, Florida, 33137; to **Jay Vail**, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399; and to **David Cortman**, ACLJ, 1000 Hurricane Shoals Road, Suite D-600, Lawrenceville, GA 30043; on this 17th day of June 2004.

  
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CAMILLE GODWIN

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing complies with the Florida Rules of Appellate Procedure 9.210 requiring the font size of the type herein to be at least fourteen points if in Times New Roman format.

  
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CAMILLE GODWIN