

IN THE FLORIDA SUPREME COURT
CASE NO.: SC04-925

JEB BUSH, Governor of the
State of Florida,

Appellant,

On certification from the Second
District Court of Appeal
Case No. 2D04-2045

vs.

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

Appellee.

**OPPOSITION TO APPELLANT’S MOTION FOR CONTINUANCE OF
ORAL ARGUMENT**

COMES NOW the Appellee, MICHAEL SCHIAVO, as Guardian of the
person of THERESA MARIE SCHIAVO, and states:

1. This Court in accepting jurisdiction ordered that no continuances will be granted “EXCEPT UPON A SHOWING OF EXTREME HARDSHIP.” No such hardship exists here, nor has appellant made any showing of good cause to delay the scheduled oral argument in this cause. To the contrary, a continuance here would work a hardship upon Mrs. Schiavo whose adjudicated constitutional rights of privacy were “effectively overrul[ed]” by the subject statute, *Bush v. Schiavo*, 861 So. 2d 506, 507 (Fla. 2d DCA 2003), and whose ongoing and immediate

deprivation of her rights compels “the urgency of a final determination of the constitutionality of the legislature’s and Governor’s actions... .” November 14, 2003 trial court order vacating the automatic stay in Case No. 2D03-5123.

2. Appellant’s motion unfairly and improperly frames this Court’s decision on the subject motion as a choice between granting the continuance or harming one of attorney Connor’s clients. Neither client will be harmed if the motion is denied. What the motion actually reveals is that appellant’s lead counsel has made no request or motion in the Mississippi trial court for any accommodation (continuance or otherwise) to attend this Court’s oral argument.

3. As stated in appellant’s motion (paragraph 3), the Mississippi trial is on the “August 30, 2004 trial docket,” and therefore is not even certain to start on that date. It is very difficult to believe that a trial judge in an adjoining state, if informed that the supreme court of its sister state has just certified a case as requiring immediate resolution, would not accommodate the attorney before it to participate in the supreme court oral argument. For instance, the trial judge could delay the start of the trial by two days or commence the trial on August 30th and provide a recess for the following day. Such minor adjustments are routine in the course of a lengthy trial for less important reasons, yet appellant’s motion discloses no effort whatsoever by appellant’s counsel to seek such

accommodation.

4. Even assuming the trial judge declined such a request, (if one were actually made), it is unreasonable to conclude that attorney Connor's morning or full day absence from a three-week trial would prejudice the client. As admitted in appellant's motion (paragraph 2), said attorney is "lead counsel" in the Mississippi case, which presumes that the client has the benefit of co-counsel. Lead counsel certainly do not handle every aspect of a lengthy trial, and said counsel's brief absence from that trial, (assuming that absence were even necessary), does not constitute the extreme hardship this Court has ordered is necessary in order to obtain a continuance.

5. Further, this Court's denial of the motion would not prejudice appellant nor work an extreme hardship upon him, even in the unlikely event it resulted in lead counsel's absence from oral argument. No one is indispensable. That is why this Court has held that motions for continuance are properly denied "where co-counsel was available," *Scott v. State*, 717 So. 2d 908, 911 (Fla. 1998). *See also*, *Vitiello v. State*, 167 So. 2d 629, 632 (Fla. 3rd DCA 1964) and *Maistrosky v. Harvey*, 133 So. 2d 103, 105-106 (Fla. 2d DCA 1961). Not only does appellant command a legion of attorneys, the co-counsel filing the motion for continuance has attended most of the hearings in this case and has orally argued important

motions when lead counsel has been absent. Again, it is very difficult to believe that “other professional advice is unavailable” to appellant, which is the required showing to obtain a continuance. *Maistrosky v. Harvey, supra*, 133 So. 2d at 106, quoting 17 C.J.S. Continuances §38, page 219.

6. Appellant’s motion is the latest in a long series of efforts to delay proceedings in this case in order to avoid a final decision invalidating the statute at issue. Such an effort is evidenced here by the fact that appellant has only requested delay of the scheduled oral argument, but has not indicated his willingness to advance the date of the same in order to avoid the purported conflict. A rescheduled oral argument for August 27 or August 28 would presumably meet the needs of both of opposing counsel’s clients, yet no such suggestion or request was made.

WHEREFORE, given the serious constitutional rights at stake which are being violated every day that the statute is in place, and given the continuing public harm caused by the statute, appellee requests that this Court deny appellant’s motion, or in the alternative, advance the date for oral argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished this 20th day of June, 2004 by Fax and U.S. mail to Kenneth L. Conner, One North Dale Mabry, Suite 650, Tampa, FL 33606, Counsel for the Governor, and by U.S. mail to Jason Vail, Deputy Attorney General of the State of Florida, Office of the Attorney General – PI 01, 400 S. Monroe Street, Tallahassee, Florida 32399-6536.

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