

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.

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**MOTION TO CORRECT AND SUPPLEMENT RECORD**

COMES NOW the appellee, MICHAEL SCHIAVO, as Guardian of the person of THERESA MARIE SCHIAVO, and pursuant to Florida Rule of Appellate Procedure 9.200(f)(1), states:

1. On December 23, 2003, at the trial court hearing on appellee's Motion for Summary Judgment, appellee hand-delivered to the trial judge for filing the original Notice of Supplemental Authority and Notice Regarding Affidavits Submitted by Governor, (a copy of which is attached hereto). At the same time at said hearing, appellee served a copy of the same on appellant's counsel by hand-delivery.

2. The index to the record on appeal prepared by the clerk of the circuit court does not contain the subject Notice of Supplemental Authority and Notice Regarding Affidavit Submitted by Governor.

3. The index to the record on appeal was executed by the clerk of the circuit court on June 21, 2004 and transmitted to the Second District Court of Appeal on June 22, 2004. As a result, appellee did not have an opportunity to review the index before the record was transmitted, and only learned of the omission in the record after transmission.

4. Upon discovering the said omission in the record, appellee's undersigned counsel contacted the deputy circuit court clerk who prepared the record, and the judicial assistant for the trial judge, and has determined that the Notice of Supplemental Authority and Notice Regarding Affidavit Submitted by Governor was either not transmitted by the trial judge to the court clerk for filing, or if transmitted, was not received by the court clerk for filing, and that neither the trial judge or nor the court clerk are in possession of the original document.

5. The subject rule of appellate procedure is intended to insure that appellate proceedings will be decided on their merits and that no showing of good cause, negligence, or accident is required before the lower tribunal or the court orders the completion of the record. The purpose of the rule is to give the parties

an opportunity to have the appellate proceedings decided on the record developed in the lower tribunal. Committee Notes, 1977 Amendment.

6. The undersigned counsel certifies that he has consulted appellant's counsel, and that the undersigned is authorized to represent that said counsel has no objection to this motion.

WHEREFORE, as the record on appeal has already been transmitted to this Court, appellee respectfully requests this Court to order that the Notice of Supplemental Authority and Notice Regarding Affidavit Submitted by Governor, attached hereto, be included in the record.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished this 30th day of June, 2004 by 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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