

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 LEAVE TO FILE
SECOND AMENDED MOTION FOR REHEARING**

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

1. The Governor's latest motion is procedurally improper and
substantively without merit. Like the Governor's original motion for rehearing, the
Governor's second amended motion yet again rehashes arguments previously
considered and rejected by this Court.

2. The Governor completely misrepresents *Martin v. State* (Fla. Leon Cnty. Cir. Ct. Case No. 04CA2400), the decision which he claims warrants rehearing of this Court’s carefully considered opinion. First, *Martin* did not overturn a Florida statute, as the Governor’s Second Amended Motion for Rehearing deceptively suggests (at 13-14). To the contrary, the court rejected the Florida Department of State’s overly broad interpretation of the agency’s statutory authority in order to preserve its constitutionality. Second, *Martin* did not rely on nondelegation principles for its principal or sole grounds for overturning the agency’s action. Instead, before even turning to the nondelegation doctrine, *Martin* held that other constitutional principles (i.e., the constitutional right of qualified voters to cast their votes effectively), and principles of statutory construction, required the court to reject the defendant Department of State’s argument that it has “absolute discretion” to deny the request of a candidate for elected office to withdraw from the race. *Martin*, No. 04CA2400, slip op. at 4; *see id.* at 4-9. (Ironically the Governor cites *Martin* in support of his amended request for rehearing even though that court applied the very principles of statutory construction that the Governor argued should have been used in this case.) Finally, *Martin* cited this Court’s opinion merely for the long-established proposition that statutes ““must clearly announce adequate standards to guide . . . in the execution

of the powers delegated. The state must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion.” *Martin*, No. 04CA2400, slip op. at 10 (quoting *Bush v. Schiavo*, 2004 WL 2109983, at *9 (Fla. 2004)). This uncontroversial principle of Florida law was not first announced in *Bush v. Schiavo*: the precise language quoted is drawn from a decision of this Court rendered almost thirty years ago. *See Bush v. Schiavo*, 2004 WL 2109983, at *9 (Fla. 2004) (quoting *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla. 1976)). Moreover, *Bush v. Schiavo* is not even the principal authority cited by the *Martin* court. *Martin*, No. 04CA2400, slip op. at 9 (citing *Sims v. State*, 754 So.2d 657, 658 (Fla. 2000), as primary authority for nondelegation principle). Thus, the Governor’s hyperbolic contentions regarding the impact of this Court’s nondelegation analysis have no basis in law or fact.

3. The Governor’s continued attempts to deny Mrs. Schiavo her constitutional rights should be promptly rejected by this Court.

WHEREFORE, Appellee requests this Court to deny the Governor’s motion to amend, or in the alternative, should this Court grant the motion, Appellee

requests this Court to accept the foregoing as Appellee's response to the additional argument raised by the Governor in his second amended motion for rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished this 14th day of October, 2004 by U.S. mail to Kenneth L. Connor, One North Dale Mabry, Suite 650, Tampa, Florida 33606, Counsel for the Governor; 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; William L. Saunders, Jr., 801 G Street, NW, Washington, D. C. 20001, and Jan G. Halisky, 507 S. Prospect Avenue, Clearwater, Florida 33756, attorneys for amicus Center for Human Life and Bioethics at the Family Research Council; Max Lapertosa and Kenneth M. Walden, 614 West Roosevelt Road, Chicago, Illinois 60607, and George K. Rahdert, 535 Central Avenue, St. Petersburg, Florida 33701, attorneys for amici Not Dead Yet, *et al.*; and, Jay Alan Sekulow, James M. Henderson, Sr., Walter M. Weber, and David A. Cortman, 201 Maryland Avenue, NE, Washington, D. C. 20002, and Patricia Anderson, 447 3rd Avenue North, Ste. 405, St. Petersburg, Florida 33701, attorneys for amici Robert and Mary Schindler.

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