



## Legislative Bulletin.....March 16, 2005

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H.R. 1332—Protection of Incapacitated Persons Act of 2005

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### H.R. 1332—Protection of Incapacitated Persons Act of 2005 (Sensenbrenner & Weldon of Florida)

**Order of Business:** The bill is scheduled for consideration on March 16, 2005, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 1332 creates a federal right of certain incapacitated persons to have their cases removed from state court to the United States district court, in specific circumstances.

In the bill, the term *incapacitated person* means a born individual who is presently incapable of making relevant decisions concerning the provision, withholding, or withdrawal of food, fluids or medical treatment under applicable law.

Specifically the bill requires that 30 days after all state remedies have been exhausted, an incapacitated person, or an individual who has some significant relationship with the person, including a parent, may remove the case to the federal district court. This can only occur if the case relates to a state court that has authorized or directed “the withholding or withdrawal of food or fluids or medical treatment necessary to sustain the incapacitated person’s life.” The federal court option would not be available if all the parties in the case agree, and the court agrees, that the person had executed a legal written advance directive that clearly authorized the withholding or withdrawal of food or fluids or medical treatment in the applicable circumstances (i.e. a living will).

H.R. 1332 directs the federal court that it “shall only consider whether authorizing or directing the withholding or withdrawal of food or fluids or medical treatment necessary to sustain the incapacitated person’s life constitutes a deprivation of any right, privilege, or immunity secured by the Constitution or laws of the United States. The bill further states that, “The United States district court shall determine de novo any claim or cause of action considered under [the above circumstance], and no bar or limitation based on abstention, res judicata, collateral estoppel, procedural default, or any other doctrine of issue or claim preclusion shall apply.”

**Additional Background:** Though the bill does not name any one person, and may apply to other individuals, it is first and foremost an effort to prevent a state court judge’s order to stop Terri Schiavo, a resident of Florida, from receiving food and water as of 1pm EST Friday, March 18, 2005.

Additional Information is available on a website maintained by the parents and friends of Terri Schiavo <http://www.terrisfight.org/>

Terri Schiavo suffered a brain injury 15 years ago. Although Terri is profoundly disabled, she is not in a coma, she responds to the people around her, and she is very much alive. However, because her husband, who is her legally appointed guardian, has denied her the therapy she should have, she relies on a feeding tube for nourishment. Terri's parents have fought for years to prevent her husband, who is now living with his girlfriend with whom he has two children, from having her feeding tube removed so that she will starve to death. Even though Terri's parents are willing to take care of her for the rest of her life, the courts have rejected their pleas and at this point, it appears that all legal efforts to save her life have been exhausted. (Source: <http://www.rnclife.org/faxnotes/2005/mar05/05-03-09.html>)

### **Death By Starvation:**

Because the state court has issued an order prohibiting Terri from even being given food or water by her mouth, once her tube is pulled she will die not from any disease but from starvation. According to various news reports, Florida law prohibits the starvation of dogs, though is silent on the starvation of human patients.

"A conscious person would feel it [dehydration] just as you or I would. They will go into seizures. Their skin cracks, their tongue cracks, their lips crack. They may have nosebleeds because of the drying of the mucous membranes, and heaving and vomiting might ensue because of the drying out of the stomach lining. They feel the pangs of hunger and thirst. Imagine going one day without a glass of water! Death by dehydration takes ten to fourteen days. It is an extremely agonizing death."

Source: St. Louis neurologist William Burke as quoted in *Forced Exit* by Wesley J. Smith

For a very detailed Myth vs. Reality, question and answer format on Terri's case, go to: <http://www.nrlc.org/euthanasia/Terri/mythsvsreality.htm>

**Outside Organizations:** Numerous outside pro-family and pro-life organizations have supported federal legislation on behalf of Terri Schiavo. One entity of note is the Catholic Church, which spoke out in defense of Terri Schiavo, who herself is Catholic:

Sidestepping its general rule to not intervene in specific cases, the Pontifical Academy for Life has appealed for American Terri Schiavo's life. ...

"Silence in this case might be interpreted as approval, with consequences that would go well beyond the specific case," he said.

...

"From all worthy accounts, Schiavo may be considered a living human person, deprived of full consciousness, whose juridical rights must be recognized, respected, and defended," the president of the pontifical academy said.

"The removal of the gastric feeding tube from this person, in these conditions, may be considered direct euthanasia," said the bishop.

"If such a decision was confirmed and leads to Terri Schiavo's death," he warned, "it would create a juridical precedent and would present euthanasia in reality as a right before the courts of the United States, with the serious consequences that can be easily imagined for the lives of many other more or less autonomous persons, in this country and elsewhere.

Source: "Vatican Appeals for Terri Schiavo's Life;" Vatican City, March 13, 2005 Zenit.org

**Committee Action:** The bill was introduced today and no official committee action was taken.

**Cost to Taxpayers:** A CBO cost estimate is unavailable, but any cost would likely be minimal due to a slightly expanded caseload in the federal district court.

**Does the Bill Expand the Size and Scope of the Federal Government?:** The bill creates a new federal right of incapacitated persons to remove their cases to federal court in very specific circumstances.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** A committee report citing authority is unavailable. The bill itself references the Constitution where it directs a federal court to "only consider whether authorizing or directing the withholding or withdrawal of food or fluids or medical treatment necessary to sustain the incapacitated person's life constitutes a deprivation of any right, privilege, or immunity secured by the Constitution or laws of the United States."

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