

(Rept. No. 109-21) on the resolution (H. Res. 163) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken tomorrow.

PROTECTION OF INCAPACITATED PERSONS ACT OF 2005

Mr. SENSENBRENNER. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 1332) to amend title 28, United States Code, to provide for the removal to Federal court of certain State court cases involving the rights of incapacitated persons, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1332

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protection of Incapacitated Persons Act of 2005".

SEC. 2. REMOVAL OF CERTAIN CASES TO FEDERAL COURT TO PROTECT THE RIGHTS OF INCAPACITATED PERSONS.

(a) RIGHT OF REMOVAL.—Chapter 89 of title 28, United States Code, is amended by adding at the end the following:

"§ 1453. Protection of rights of incapacitated persons

"(a) Notwithstanding any other provision of this chapter, not later than 30 days after available State remedies have been exhausted, an incapacitated person, or the next friend of an incapacitated person, may remove any claim or cause of action described in subsection (b) to the United States district court for the district in which the claim or cause of action arose, or was heard.

"(b) The claim or cause of action referred to in subsection (a) is one in which the State court authorizes or directs the withholding or withdrawal of food or fluids or medical treatment necessary to sustain the incapacitated person's life, but does not include a claim or cause of action in which no party disputes, and the court finds, that the incapacitated person, while having capacity, had executed a written advance directive valid under applicable law that clearly authorized the withholding or withdrawal of food or fluids or medical treatment in the applicable circumstances.

"(c) In hearing and determining a claim or cause of action removed under this section, the court 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.

"(d) The United States district court shall determine de novo any claim or cause of action considered under subsection (c), 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.

"(e) As used in this section—

"(1) 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; and

"(2) the term 'next friend' means an individual who has some significant relationship with the real party in interest, and includes a parent."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 89 of title 28, United States Code, is amended by adding at the end the following new item:

"1453. Protection of rights of incapacitated persons."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from New York (Mr. NADLER) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1332, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise today in support of H.R. 1332, the Protection of Incapacitated Persons Act of 2005, which I introduced today with the gentleman from Florida (Mr. WELDON).

Madam Speaker, the Florida courts are poised to determine that Terri Schiavo will have her feeding tube removed on Friday. This legislation will protect Ms. Schiavo from starving to death by allowing her to have a Federal court consider her case anew, unrestricted by the findings of the State court.

H.R. 1332 authorizes the removal of cases in State court to U.S. Federal court to vindicate the Federal rights of incapacitated persons under the United States Constitution or any Federal law. Such proceedings would be authorized after an incapacitated person has exhausted available State remedies and the relevant papers must be filed in Federal court within 30 days after the exhaustion of available State remedies.

What is going on in Florida regarding Terri Schiavo is nothing short of inhumane. She is facing what amounts to a death sentence, ensuring that she will slowly starve to death over a matter of weeks. Terri Schiavo, a woman who smiles and cries and who is not on a respirator or any other 24-hour-a-day medical equipment, has committed no

crime; and she has done nothing wrong. Yet the Florida courts seem bent on setting an extremely dangerous precedent by saying that we must stop feeding someone who cannot feed herself. Who is next? The disabled or those late in life? This legislation is humane and the right thing, not only to protect Terri Schiavo, but also to reinforce the law's commitment to justice and compassion for all, even the most vulnerable.

The bill applies to anyone who might find themselves in Terri Schiavo's situation, namely, those who are in an incapacitated state and facing a court order authorizing "the withdrawal or withholding of food or fluids or medical treatment necessary to sustain the incapacitated person's life." The bill applies only to incapacitated persons, not to convicted criminals or those facing the death penalty, for example.

Furthermore, it applies only to those who have not executed in advance a written directive, commonly known as a living will, that clearly authorizes the withholding or withdrawal of food, water, and medical treatment in the event the person becomes incapacitated.

What Terri Schiavo and all disabled people deserve in contested cases is for justice to tilt toward life. When a person's intentions regarding whether to receive lifesaving treatment are unclear, the clear choice is to provide an innocent person with the opportunity to have a Federal court provide a "double-check" for life under Federal law, unencumbered by the decisions of a State court. A measure of a Nation's commitment to innocent life is measured in its laws by the extent to which the laws go to save it. This bill takes that extra step, not just for Terri Schiavo but for all of us. And I urge every Member of this House to take that step with me and overwhelmingly pass this bill.

Madam Speaker, I reserve the balance of my time.

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Mr. NADLER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise to oppose this bill because it is a dangerously reckless way to deal with some very serious issues.

The Committee on the Judiciary was supposed to have a hearing to examine this legislation, or rather another piece of legislation on this subject. This bill was introduced only a few hours ago. That hearing today was canceled and then we were told that this bill would be brought up.

We are dealing with some of the most difficult issues likely to come before this Congress, end of life issues, discerning the wishes of those unable to speak for themselves, ensuring due process and a fair and careful fact finding process.

Does this legislation do the job, or does it make matters worse? Has anyone looked closely at this bill? Have we