THE LAW AND TERRI SCHIAVO
[by James Kilpatrick]

In the sad case of Terri Schiavo, there are no good answers. Florida’s highest court has authorized the best of the bad ones: Pull the tubes and let the young woman die. The relief act that President Bush signed on Monday is an affront to the rule of law.

By this time, every sentient American is familiar with the facts. Theresa “Terri” Schiavo was born in Pennsylvania on Dec. 3, 1963. In November 1984 she married Michael Schiavo. In 1986 the couple moved to Florida. On Feb. 5, 1990, their lives irrevocably changed. She suffered a form of cardiac arrest and lapsed into unconsciousness. For the next three years her parents and her husband enjoyed an amiable relationship, but eventually that collapsed into bitter recriminations. Terri’s fate has been in litigation ever since, as her parents have sought to keep her technically alive, and Michael has asked the courts to let her die.

Florida judges so far have sided with the husband. In 1996, a guardianship court explained:

“The evidence is overwhelming that Theresa is in a permanent or persistent vegetative state. She has cycles of apparent wakefulness and apparent sleep without any cognition or awareness. ... CAT scans of her brain show a severely abnormal structure. Much of her cerebral cortex is simply gone and has been replaced by cerebral spinal fluid.

“Medicine cannot cure this condition. Unless an act of God, a true miracle, were to re-create her brain, Theresa will always remain in an unconscious, reflexive state, totally dependent upon others to feed her and care for her most private needs. She could remain in this state for many years.”

The parents appealed. More litigation ensued. In October 2003, Gov. Jeb Bush and the state legislature intervened with orders effectively commanding a hospice to continue providing Theresa with food and vital fluids. Six months later, a trial court ruled that the lawmakers and the governor had overstepped their powers. Last September, Florida’s Supreme Court unanimously affirmed that decision. Speaking through Chief Justice Barbara Pariente, the court found clear and convincing evidence that Theresa is in a persistent vegetative state. If she were competent to make her own decisions, “she would elect to cease life-prolonging procedures.” Neither the governor nor the legislature could set aside the court’s decree.

Said the chief justice: “The continuing vitality of our system of separation of powers precludes the other two branches from nullifying the judicial branch’s final order. If the legislature, with the assent of the governor, can do what was attempted here, the judicial branch would be subordinated to the final directives of the other branches ...”

“Also subordinated would be the rights of individuals, including the well-established right to self-determination, No court judgment could ever be considered final and no constitutional right secure, because the precedent of this case would hold to the contrary. Vested rights could be stripped away based on popular clamor.”

With Monday’s emergency legislation in Congress, this sad chronicle presumably will enter its final chapter. The act just signed by the president, titled, “An Act for the Relief of the Parents of Theresa Marie Schiavo,” is a legislative abomination. The bill was cobbled together without hearings. It is a throwback to the bad old days of legislative privilege. It gives standing to the parents to bring suit on her behalf in the U.S. District Court in Tampa. On what meat does this our Congress feed?

This jerry-built act gives the U.S. District Court power to rule “without delay,” regardless of state proceedings, on the merits of the case as a whole. However, “Nothing in this act shall be construed to create substantive rights not otherwise secured by the Constitution and laws of the United States.” This is hokum. Neither may the act be construed “to confer additional jurisdiction on any claim related to assisting suicide.” Finally, “Nothing in this act shall constitute a precedent with respect to future legislation, including the provisions of private relief bills.” This is worse than hokum. Of course a precedent has been created, and a bad one it is.

To some of us old states’-righters, the life or death of Terri Schiavo is simply no proper business of Congress or the federal courts. Congress doubtless has power to regulate the appellate jurisdiction of the Supreme Court, but it has no power to overrule the orders of a state supreme court. Florida’s judges have listened compassionately to the parents’ dramatic appeal, and they have found in the husband’s favor. No substantive federal question remains. Let the curtain fall.

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