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Rule of Law Damaged by Schiavo Bill **by Sheldon Richman**

The events surrounding the life of Terri Schiavo are tragic enough. Now congressional Republicans and President Bush have made things worse. In one weekend they disabled federalism, the separation of powers, and the rule of law. These principles were embraced by the Founding Fathers because they tend to protect individual liberty. By tearing them down, the Republican leadership jeopardizes our freedom. How ironic that this comes at the hands of the self-proclaimed party of limited government.

It is beyond dispute that the legal issues involved in the Schiavo case are state issues. That has been the rule for more than 200 years. It is what has made the American system a federal system. The point of federalism is to decentralize power, and its rationale is that concentrated power is dangerous — always and everywhere — regardless of which political party rules.

Years ago Terri Schiavo went into what many doctors describe as a persistent vegetative state without hope of recovery. She can breathe, but she cannot take food or water on her own. Her husband has sought to remove the feeding and hydration tubes in order, he says, to comply with her express wish not to live this way. Her parents have tried to block him from having the support terminated. The Florida state courts have consistently sided her husband. The U.S. Supreme Court earlier declined to review the case because no constitutional issues are involved.

Last weekend the Republican-controlled House and Senate hurriedly passed legislation permitting Terri Schiavo's parents to request the federal courts to take a fresh look at the case — *as if the state court had never ruled*. President Bush signed the bill. The case was heard Monday, but the judge refused an emergency order to reinsert the tubes pending a full hearing. The federal court of appeals affirmed the judge's order and the parents are appealing to the U.S. Supreme Court.

Much could be said about this sad case. Terri Schiavo had no living will directing that she not be sustained artificially. We have only her husband's and a couple of other people's testimony, and he may have a conflict of interest involving money earmarked for her care. Others testified that she never expressed such a desire. Yet a trial judge found "clear and convincing"

evidence that she did not wish to live this way. Maybe the Florida law has defects, but that's a subject for another day. My focus here is on Congress's and the president's intervention. It was extraordinary and ominous. The bill singled out one case in an area where federal authorities have no constitutional jurisdiction. This makes no sense. At any given time, many people are in medical conditions similar to Terri Schiavo's. In most of these cases, the family members agree to end artificial respiration, feeding, and hydration. No doubt in some cases there is disagreement, but the matter is settled out of the news headlines.

Will Congress now intervene in all these cases? If not, why not? Aren't those lives precious too? That the Republicans intervened in this case, which has been taken up by the anti-abortion lobby (among others), hints that cynical political calculations were at work. A memo circulated among Senate Republicans called the Schiavo matter "a great political issue," indicating its appeal to the party's religious supporters. Is this payback for 2004?

In the end, the bill probably won't prolong Terri Schiavo's life. But it may well cut short the rule of law. It is no defense of the Republicans to say that a young woman was being starved to death. Congress has no constitutional authority to exercise arbitrary power any time an emergency catches its attention, especially where there are no federal or constitutional issues at stake. That it is legally restrained from doing whatever it wants is part of what we mean by the rule of law. That's why its weekend actions are ominous. We must fear for the precedent it has set.

Both the president and members of Congress take oaths to preserve and protect the Constitution. Any time they pass and sign a law thinking they will leave the matter of its constitutionality to the courts, they violate their oaths. The American system has a division of powers, which was violated in this case, but when it comes to abiding by the Constitution, there is no division of labor.

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