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Senate

The Senate met at 2 p.m. and was called to order by the Honorable MEL MARTINEZ, a Senator from the State of Florida.

The PRESIDING OFFICER. Today's prayer will be led by the guest Chaplain, the Reverend John Boyles, National Capital Presbytery, and former pastor of Capitol Hill Presbyterian Church.

PRAYER

The guest Chaplain offered the following prayer:

O God of all that is, or is to be: take, we pray, Your power and reign, in majesty and wisdom, here in this Chamber, on this day which You have made, reigning in this body assembled here, that all here today would follow in their own faith a path of righteousness and justice, finding in conscience a concord and peace which passes our human understanding but rests in Your glory, laud and honor, O great Creator and Lord of all generations; may Your work and will be done on Earth today, we pray Amen.

PLEDGE OF ALLEGIANCE

The Honorable MEL MARTINEZ led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 20, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MEL MARTINEZ, a Senator from the State of Florida, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. MARTINEZ thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

TERRI SCHIAVO

Mr. FRIST. Mr. President, the Congress is continuing to work to pass legislation to give Terri Schiavo another chance at life. Let me update all of our colleagues on where we are right now.

On Saturday, yesterday, we reached a bipartisan, bicameral agreement on a legislative solution. At that point, we initiated a procedural process to act on the bill, a process which brought both the House of Representatives and the Senate back today to complete action on this critically important matter.

Shortly, we will stand in recess subject to the call of the Chair. This action will allow the Senate to come back into session at a moment's notice to consider the legislation. The Senate will remain here throughout the afternoon and, if necessary, late into the evening in order to act immediately on this bill once it is ready.

Because Terri Schiavo is being denied lifesaving nutrition this very moment, time is of the essence.

Let me summarize again for everyone what the agreed-upon legislation does. Under this bill, Terri Schiavo will have another chance. She will have another opportunity to live. The bill allows Terri's case to be heard in Federal court. More specifically, it allows a Federal district judge to consider a claim on behalf of Terri Schiavo for alleged violations of constitutional rights or Federal laws relating to the withholding of food, water, or medical treatment necessary to sustain her life.

I am heartened by the way Congress is uniting in a bipartisan, bicameral way in this unique situation. Now is the time for us to act. Terri deserves it. I remain committed as leader to pass legislation to give Terri Schiavo one more chance at life.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 2:05 p.m., recessed subject to the call of the Chair and reassembled at 4:30 p.m. when called to order by the Acting President pro tempore.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

THERESA MARIE SCHIAVO

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 686 introduced earlier today.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 686) for the relief of the parents of Theresa Marie Schiavo.

There being no objection, the Senate proceeded to consider the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUDICIAL DISCRETION UNDER THE SCHIAVO RELIEF BILL

Mr. LEVIN. Mr. President, I rise to seek clarification from the majority leader about one aspect of this bill, the issue of whether Congress has mandated that a Federal court issue a stay pending determination of the case.

Mr. FRIST. I would be pleased to help clarify this issue.

Mr. LEVIN. Section 5 of the original version of the Martinez bill conferred jurisdiction on a Federal court to hear a case like this, and then stated that the Federal court ''shall'' issue a stay of State court proceedings pending determination of the Federal case. I was opposed to that provision because I believe Congress should not mandate that a Federal judge issue a stay. Under longstanding law and practice, the decision to issue a stay is a matter of discretion for the Federal judge based on the facts of the case. The majority leader and the other bill sponsors accepted my suggestion that the word ''shall'' in section 5 be changed to ''may.''

The version of the bill we are now considering strikes section 5 altogether. Although nothing in the text of the new bill mandates a stay, the omission of this section, which in the earlier Senate-passed bill made a stay permissive, might be read to mean that Congress intends to mandate a stay. I believe that reading is incorrect. The absence of any state provision in the new bill simply means that Congress relies on current law. Under current law, a judge may decide whether or not a stay is appropriate.

Does the majority leader share my understanding of the bill?

Mr. FRIST. I share the understanding of the Senator from Michigan, as does the junior Senator from Florida who is the chief sponsor of this bill. Nothing in the current bill or its legislative history mandates a stay. I would assume, however, the Federal court would grant a stay based on the facts of this case because Mrs. Schiavo would need to be alive in order for the court to make its determination. Nevertheless, this bill does not change current law under which a stay is discretionary.

Mr. LEVIN. In light of that assurance, I do not object to the unanimous consent agreement under which the bill will be considered by the Senate. I do not make the same assumption as the majority leader makes about what a Federal court will do. Because the discretion of the Federal court is left unrestricted in this bill, I will not exercise my right to block its consideration.

Mr. WARNER. Mr. President, the tenth amendment to the U.S. Constitution provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

This is a principle of Federalism which, I believe, is not being followed by Congress in enacting this legislation.

That the misfortunes of life vested upon Theresa Marie Schiavo are a human tragedy, no one can deny. I said my prayers, as did many Americans, as we attended religious services this Palm Sunday.

I believe it unwise for the Congress to take from the State of Florida its constitutional responsibility to resolve the issues in this case.

The Florida State court system has adjudicated the issues to date. This bill, in effect, challenges the integrity and capabilities of the State courts in Florida.

That the Federal system of courts can move properly and fairly ajudicate the equities among the diverse parties in this particular case is a conclusion with which I cannot agree.

Greater wisdom is not always reposed in the branches of the Federal Government.

Apart from constitutional issues, I am concerned for the institution of the Senate, a body in which I have been privileged to serve for over a quarter of a century.

I view service in the Senate as that of a trustee—preserve this venerable body, its traditions and time-tested precedents, for future generations. It is one of a kind in their troubled world.

The drafters of this bill endeavored to write in provisions to prevent this unique law—a private relief bill is the term used in our procedures—from becoming a ''precedent for future legislation'' (section 7).

I do not believe the legislation can, or will, block further petitions from our citizens. Who can say there are not other tragic situations across our land today; who can predict what the future may inflict by way of personal hardship upon our citizens?

I fear the door has opened and Congress, which by constitutional mandate is entrusted to pass laws for the Nation, will again and again be petitioned to deal with personal situations which are the responsibility of the several States.

I respect the views of those who drafted and moved this bill swiftly, with limited debate, through the Senate. I value the sanctity of life no less fervently than they, for I had the great fortune of being the son of a doctor who devoted his entire life to healing and caring for the sick and injured. My father's principles have been my compass for my life.

It is not easy to be in opposition to this legislation, but I have a duty to state my views in keeping with my oath to support the Constitution as I interpret it.

IN DEFENSE OF SENATE TRADITION

Mr. BYRD. Mr. President, opponents of free speech and debate claim that, during my tenure as majority leader in the United States Senate, I established precedents that now justify a proposal for a misguided attempt to end debate on a judicial nomination by a simple majority vote, rather than by a three-fifths vote of all Senators duly chosen and sworn as required by paragraph two of Senate rule XXII. Their claims are false.

Proponents of the so-called nuclear option cite several instances in which they inaccurately allege that I ''blazed a procedural path'' toward an inappropriate change in Senate rules. They are dead wrong. Dead wrong. They draw analogies where none exist and create cock-eyed comparisons that fail to withstand even the slightest intellectual scrutiny.

Simply put, no action of mine ever denied a minority of the Senate a right to full debate on the final disposition of a measure or matter pending before the Senate. Not in 1977, not in 1979, not in 1980, or in 1987—the dates cited by critics as grounds for the nuclear option. The Congressional Research Service confirms that only six amendments have been adopted since the cloture rule was enacted in 1917, and ''each of these changes was made within the framework of the existing or 'entrenched' rules of the Senate, including rule XXII.''

In none of the instances cited by those who threaten to invoke the nuclear option did my participation in any action deny the minority in the Senate, regardless of party, its right to debate the real matter at hand.

Let us examine each of these so-called precedents in greater detail.

October 3, 1977—Enforcing Senate Rule XXII Against Improper Post-Cloture Delay: In 1977, the Senate invoked cloture on S. 2104, described as ''a bill to establish a comprehensive natural gas policy.'' Shortly thereafter, two Senators began a postcloture ''filibuster by amendment,'' after a supermajority of the Senate had already chosen to invoke cloture (under the Senate rules) and had made clear its desire to bring debate on the bill to close. Though the Senate had voted to invoke cloture by an overwhelming vote of 77 to 17, two Senators nonetheless continued to offer amendments, to request quorum calls, and to offer amendments to amendments to preserve and extend time on the bill postcloture. Their efforts, as confirmed by the Chair, ran directly contrary to the purpose of rule XXII, which is to limit debate.

The tactics employed were sufficiently egregious that the Senate spent 13 days and 1 night debating the bill, which included 121 rollcalls and 34 live quorums. Cloture having been invoked by an overwhelming vote, I then made the point of order that:

> when the Senate is operating under cloture, the Chair is required to take the initiative under rule XXII to rule out of order all amendments which are dilatory or which on their face are out of order.

Critics have alleged that my actions in this instance ''cut off debate'' and somehow constitute a precedent for ending a filibuster of a judicial nominee by 51 votes before cloture has been invoked. But that argument is erroneous.

The Senate was operating postcloture. The Senate had voted 77 to 17 to end debate. I didn't do that; the Senate took that action.

If anything, my actions clarified that rule XXII means what it says. The text of rule XXII provides explicitly that, once cloture is invoked, ''no dilatory motion, or dilatory amendment, or amendment not germane shall be in order.'' Therefore, once Members have voted to invoke cloture, dilatory amendments or actions are simply out of order. Senators still retain their hour of postcloture debate. Senators still have the right of appeal.

Some have falsely alleged that I even acted to impede debate on that appeal,

but they are mistaken yet again: Under the provisions of rule XXII, appeals from rulings of the Chair were not and are not debatable postcloture.

Nothing that was done in 1977 changed rule XXII or sent a shock wave through the Senate. Nothing that was done restricted the right of Senators to wage a filibuster against a nominee or legislation before cloture is invoked. No action taken affected the fundamental right of Senators to debate the natural gas deregulation bill; they had already debated the bill and, of their own volition, had decided to end their debate by an overwhelming vote. Instead, I sought to end dilatory tactics postcloture, when such tactics were, and remain today, prohibited by the plain text of paragraph two of rule XXII. I simply sought a ruling from the Chair to enforce Senate rule XXII.

In fact, when, in 1977, my point of order was sustained, the Chair in so doing noted that the point of order was consistent with the purpose of rule XXII, which ''is to require action by the Senate on a pending measure following cloture within a period of reasonable dispatch.'' When the Chair's ruling in support of my point of order was thereafter appealed, that appeal was tabled in the Senate by another overwhelming vote of 79 to 14.

No Member of the minority in the Senate lost his right to debate the natural gas deregulation bill. Their ability to debate the bill was not tampered with or impeded in any way. Each Senator retained the right to debate, under the Senate rules, the bill both precloture and in the hour that was provided to each Senator under rule XXII postcloture.

Thus, contrary to current assertions, in 1977, a strong, bipartisan, supermajority of the Senate, supported by, among others, Minority Leader Howard Baker and myself, endorsed this necessary effort to halt postcloture dilatory tactics consistent with Rule XXII of the Standing Rules of the Senate. That is completely unlike the so-called nuclear option that is currently being discussed by some in the Senate. I sought to enforce rule XXII; not to destroy it.

January 15, 1979—Enforcing Rule XXII Against Improper Post-Cloture Delay: At the beginning of the new Congress in 1979, I, as Senate majority leader, introduced a resolution to make various changes to Senate rule XXII, the bulk of which addressed circumstances postcloture. Recently, on March 10, 2005, a Senator spoke on the Senate floor and stated that this resolution serves as a precedent for the nuclear option. However, my resolution served to enforce rule XXII, not to destroy it. My introduction of S. Res. 9 was influenced by the postcloture dilatory tactics that were suffered by the Senate during its consideration of the natural gas deregulation bill during the preceding Congress.

My efforts in that regard were supported, on a bipartisan basis, by Minority Leader Howard Baker who stated in response to my introduction of S. Res. 9:

> I point out, as I am sure most of our colleagues are aware and will recall, that in the case of the most recent post-cloture filibuster, it was the majority leader and the minority leader, with the distinguished occupant of the chair, the Vice President, in the chair at the time, who managed to establish a line and series of precedents that created the possibility to at least accelerate the disposition of the controversy and conflict.
>
> The point of the matter is that this is not, nor has it been, a matter that is purely partisan in its character. . . .

He added:

> I share with the majority leader the belief that the post-cloture filibuster, a creature of fairly young age and recent development, is one that the Senate has not focused on adequately. I am prepared to do that and I want to do that.

As the minority leader in the Senate recognized at the time, the text of rule XXII provides explicitly that, once cloture is invoked, ''no dilatory motion, or dilatory amendment, or amendment not germane shall be in order.'' Therefore, once Members vote to invoke cloture, dilatory amendments or actions are impermissible. No proposal of mine in 1979 restricted the right of Senators to filibuster a nominee or a piece of legislation prior to the invocation of cloture, consistent with Rule XXII of the Standing Rules of the Senate. And the position I took at the time enjoyed support on both sides of the aisle.

November 9, 1979—Strengthening Rule XVI Against Legislation on Appropriations Bills: Opponents of free speech and debate in the Senate cite a third event as a supposed basis for their proposed ''nuclear option.'' In November 1979, during consideration of a Department of Defense Appropriations bill, Senator Stennis raised a point of order that an amendment to change the rate of pay for military personnel, which had been offered by Senator Armstrong, constituted legislation on an appropriations bill and was therefore out of order under the express terms of Senate rule XVI. Legislative amendments to appropriations bills violate Senate rule XVI. However, by precedent, the ''defense of germaneness'' arose. According to this practice, which evolved outside the text of rule XVI, if the House has acted first to ''open the door'' to legislate on an appropriations measure, a Senator could respond with a legislative amendment, provided that it is germane to some House legislative language. If a point of order were made that an amendment constituted legislation, a ruling by the Chair on that question would be preempted by a vote on the germaneness of the amendment to the House language. This practice was justified only if the House had included legislative language in its bill. But this practice made a mockery of the rule if the House had not included any legislative language.

When Senator Stennis raised the point of order that the Armstrong amendment constituted legislation on an appropriations bill, Senator Armstrong asserted the defense of germaneness, meaning that his amendment was germane because it was relevant to the House bill. At that point, I made the following point of order:

> I make the point of order that this is a misuse of the precedents of the Senate, since there is no House language to which this amendment could be germane and that, therefore, the Chair is required to rule on the point of order as to its being legislation on an appropriation bill and cannot submit this question of germaneness to the Senate.

I was concerned that, as a threshold matter, the amendment should not be considered because there was no House language to which the proposed amendment could possibly be germane. The Chair noted that while this was a case of first impression, my point was ''well taken,'' and he sustained my point of order. Senator Armstrong then appealed the ruling of the Chair, and I moved to table that appeal. My motion was adopted by the Senate.

Critics claim that my actions in this instance were contrary to the plain language of rule XVI, because rule XVI at paragraph four states, ''all questions of relevancy of amendments under this rule, when raised, shall be submitted to the Senate and be decided without debate.'' But their assertion that I acted in a manner contrary to rule XVI is false.

My point of order went not to the issue of legislating on an appropriations bill, but to a different issue: The concept of ''defense of germaneness.'' Nowhere in rule XVI is there a reference to the concept of ''defense of germaneness.'' The source and subsequent application of defense of germaneness and its threshold test is not rooted in any Senate rule. Instead, it dates back to a precedent, which is identified by Riddick's Senate Procedure as a ''theory,'' which was ''enunciated'' by Vice President Marshall in 1916, that, ''Notwithstanding the rule of the Senate . . . when the House of Representatives opens the door and proceeds to enter upon a field of general legislation . . . the Chair is going to rule, but of course the Senate can reverse the ruling of the Chair, that the House having opened the door the Senate of the United States can walk through the door and pursue the field.''

Second, my efforts were to avoid the misuse of precedent and thereby enforce the express provisions of Senate rule XVI, which prohibits legislation on an appropriations bill. It is only by precedent that germaneness justified a legislative amendment on an appropriations bill, and only if the House opened the door. My goal was to preserve proper precedent and strengthen rule XVI; not to weaken it, as the nuclear option would do to rule XXII. My actions did not establish any precedent to destroy the right of extended debate in the Senate. In fact, the Senate's action affected only the ability to offer certain amendments to particular legislation, and, even then, the Senate minority's rights to appeal a ruling of the Chair were fully preserved.

March 5, 1980—Enhancing the Right of Debate of Nominations on the Executive Calendar: Critics of extended debate also reference a motion I made in 1980 to proceed directly to a nomination on the Executive Calendar. They claim that this created a precedent making a motion to proceed to any nomination on the Executive Calendar nondebatable. It did no such thing.

At the time, a nondebatable motion to go into executive session automatically put the Senate on the first treaty on the Executive Calendar. This meant that moving to the Executive Calendar required consideration of treaties before nominations, simply because the Senate's Executive Calendar prints both treaties and nominations in the order in which they are reported out of their respective committees of jurisdiction, and treaties are then printed in the first section of the Calendar.

But the placement of treaties and nominations on the Senate Calendar was not and is not based on any great precedent or legal requirement that would elevate treaties to a position of prominence greater than nominations. Instead, the placement of treaties and nominations on the Senate Executive Calendar is simply the result of a clerical printing convention. There has never been a logical reason for the Senate to distinguish between a motion to proceed to a nomination and a motion to proceed to the first treaty. Because there is no substantive reason that the Senate should have to go to treaties before being able to consider a nomination, it seemed logical that the Senate should be able to proceed directly to a nomination on the Executive Calendar.

My motion to proceed directly to the first nomination, rather than a treaty, did not inhibit or frustrate Senate debate in any way. The Chair explicitly confirmed that it did not contravene any precedent or Standing Rule of the Senate. Moreover, it also did not restrict the ability of the Senate to filibuster the nomination itself. In fact, disposition of the nomination remained, as it is today, fully debatable in several respects. A nomination remains fully debatable when it comes before the Senate, and motions to proceed from one nomination to another are also fully debatable when the Senate is in executive session.

May 13, 1987—Enforcing Rule IV Against Improper Debate of a Motion To Approve the Journal: In 1987, a Republican minority led a filibuster seeking to prevent the Senate from considering a defense authorization bill. Prior to moving to the bill, I sought unanimous consent that the Journal of the preceding day ''be approved to date,'' a routine request in the course of Senate business. The Journal is the official record of the proceedings of the Senate, and under Senate rule IV, the Journal of the preceding day must be read following the prayer by the Chaplain unless, by nondebatable motion, the reading of the Journal is waived.

In this instance, Senator Dole objected to my request that the Journal be approved by unanimous consent, and the question of whether the Journal should be approved was put to a vote. Under Senate rule XII, if a Senator declines to vote during a rollcall, he or she must, at the time his or her name is called, give a reason for not voting. In an unusual occurrence, Senator Warner advised the Chair that he ''decline[d] to vote for the reason that I have not read the Journal.'' Rule XII requires that if a Senator declines to vote, the Presiding Officer must put a nondebatable question to the Senate on whether it is ''permissible for the Senator to decline his right to vote on the issue.''

The Chair called for the vote to determine whether Senator Warner should be excused from voting on the Journal. However, before that vote was completed, Senator Dan Quayle stated that he, too, declined to vote, because he said, ''I do not believe a Senator should be compelled to vote.'' The Chair asked the clerk to call the roll on whether to excuse Senator Quayle from voting, when Senator Symms stated that he, too, declined to vote for the same reason. At this point, there were four Senate votes pending. if additional Senators in the Chamber similarly chose to decline to vote, seriatim, the process could have continued forever.

Recognizing that, just a bit over a year previously, the Senate had deliberately amended rule IV to make the motion to approve the Journal a nondebatable motion, I made a point of order that the requests of the Senators to decline to vote were not in order. I stated:

> that in amending rule IV, the Senate intended that a majority of the Senate could resolve the question of the reading of the Journal. I make my point of order that a request of a Senator to be excused from voting on a motion to approve the Journal is, therefore, out of order and that the Chair proceed immediately, without further delay, to announce the vote on the motion to approve the Journal.

Through a series of subsequent motions and votes, I prevailed in rectifying what I observed at the time was an extraordinary situation illustrated by a series of, in essence, ''votes within a vote.''

Contrary to erroneous allegations by some, my actions in this regard did not set a precedent that ''changed Senate procedure to run contrary to the plain text of a Standing Senate Rule.'' In fact, the action I took achieved exactly the opposite result: It ensured that Senate procedure would conform more closely to both the intent and the plain text of Senate rule IV.

At the time, one Senator mistakenly stated that the Chair could not entertain a unanimous consent request to suspend the application of rule XII in this instance. But that is an incorrect understanding by a Senator who was referring to rule XII, paragraph 1—where Senators cannot seek to be added to a vote that they missed, and the Chair may not do it or entertain a request to do so, a rule that was not in question and has always been strictly enforced by the Chair—not rule XII, paragraph 2, which was in dispute at the time.

Again, the actions I took were to enforce both rules IV and XII. Should I, instead, have endorsed a procedure whereby one Senator after another could simply decline to vote and put each Senator's reasons for declining to vote to another vote? Should Senators have been permitted, one after another, to decline to vote, then force a vote on each one's reason for not voting, on what is a nondebatable question in a nondebatable posture? Had I not raised a point of order against this abusive practice, it could have been used in innumerable future circumstances, and the Senate would not be able to complete a vote on any measure or matter, ever. It would, again, have made a mockery of the Senate's rules. Keep in mind that, if the tactic were ever legitimized, it could be employed to prevent a judicial nominee from ever receiving a vote.

It should be further noted that the point of order I made applies only to proceedings on motions to approve the Journal. Both the Presiding Officer and I confirmed this specifically in response to a question from Senator Alan Simpson. As I then stated:

> where Senators decline to vote on other rollcall votes in other situations—this point of order does not go to those. This point of order only goes to the unusual situation, the extraordinary circumstances, in which the Senate found itself today, when it was trying to act on a motion to approve the Journal to date, and when three Senators in succession stood to say, ''Mr. President, I decline to vote on this rollcall for the following reasons.''

Elsewhere, I also expressly stated that, ''for the legislative history,'' the precedential value of my point of order was ''confined only to that situation in which the Senate is trying to complete a vote on a motion to approve the Journal to date . . . It is confined to that very narrow purpose.''

The Senate's decision on that day was fully consistent with the text of rules IV and XII, which provides expressly that the question of whether a Senator could decline to vote, ''shall be decided without debate.'' The decision, once again, further enforced the existing rules of the Senate. This stands in stark contrast to the proposed nuclear option, which would contravene, by a simple majority vote, the express text of rule XXII, which applies to ''any measure, motion, or other matter pending before the Senate,'' and which requires an affirmative vote of three-fifths of the Senators duly chosen and sworn.

Let me state, once again, that no action of mine cited by the proponents of the nuclear options has ever denied a minority in the Senate its right to full debate on the final disposition of a measure or matter pending before the Senate.

The steps discussed here have all gone toward strengthening or enforcing

Senate rules, or clarifying the application of Senate precedents—not undermining them. The Senate has been the last fortress of minority rights and freedom of speech in this Republic for more than two centuries. I pray that Senators will pause and reflect before ignoring that history and tradition in favor of the political priority of the movement.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and the Senate proceed to a vote on passage.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 686) was passed, as follows:

S. 686

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

SECTION 1. RELIEF OF THE PARENTS OF THERESA MARIE SCHIAVO.

The United States District Court for the Middle District of Florida shall have jurisdiction to hear, determine, and render judgment on a suit or claim by or on behalf of Theresa Marie Schiavo for the alleged violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.

SEC. 2. PROCEDURE.

Any parent of Theresa Marie Schiavo shall have standing to bring a suit under this Act. The suit may be brought against any other person who was a party to State court proceedings relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain the life of Theresa Marie Schiavo, or who may act pursuant to a State court order authorizing or directing the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life. In such a suit, the District Court shall determine de novo any claim of a violation of any right of Theresa Marie Schiavo within the scope of this Act, notwithstanding any prior State court determination and regardless of whether such a claim has previously been raised, considered, or decided in State court proceedings. The District Court shall entertain and determine the suit without any delay or abstention in favor of State court proceedings, and regardless of whether remedies available in the State courts have been exhausted.

SEC. 3. RELIEF.

After a determination of the merits of a suit brought under this Act, the District Court shall issue such declaratory and injunctive relief as may be necessary to protect the rights of Theresa Marie Schiavo under the Constitution and laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.

SEC. 4. TIME FOR FILING.

Notwithstanding any other time limitation, any suit or claim under this Act shall be timely if filed within 30 days after the date of enactment of this Act.

SEC. 5. NO CHANGE OF SUBSTANTIVE RIGHTS.

Nothing in this Act shall be construed to create substantive rights not otherwise secured by the Constitution and laws of the United States or of the several States.

SEC. 6. NO EFFECT ON ASSISTING SUICIDE.

Nothing in this act shall be construed to confer additional jurisdiction on any court to consider any claim related—

(1) to assisting suicide, or

(2) a State law regarding assisting suicide.

SEC. 7. NO PRECEDENT FOR FUTURE LEGISLATION.

Nothing in this Act shall constitute a precedent with respect to future legislation, including the provision of private relief bills.

SEC. 8. NO EFFECT ON THE PATIENT SELF-DETERMINATION ACT OF 1990.

Nothing in this Act shall affect the rights of any person under the Patient Self-Determination Act of 1990.

SEC. 9. SENSE OF THE CONGRESS.

It is the Sense of the Congress that the 109th Congress should consider policies regarding the status and legal rights of incapacitated individuals who are incapable of making decisions concerning the provision, withholding, or withdrawal of foods, fluid, or medical care.

Mr. FRIST. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FRIST. Mr. President, I rise today to speak about the bill we just passed that will give Terri Schiavo another chance. The bill we passed this afternoon centers on the sanctity of human life. It is bipartisan; it is bicameral. The House of Representatives is considering the exact same bill today. After the Senate and House pass this legislation, the President will immediately sign it into law.

There has been a lot of discussion about what this bill actually does. Let me point out several things.

Simply put, it allows Terri's case to be held in Federal court. The legislation permits a Federal district judge to consider a claim on behalf of Terri for alleged violations of constitutional rights or Federal laws relating to the withholding of food, water, or medical treatment necessary to sustain life.

The bill guarantees a process to help Terri but does not guarantee a particular outcome. Once a new case is filed, a Federal district judge can issue a stay at any time 24 hours a day. A stay would allow Terri to be fed once again. The judge has discretion on that particular decision. However, I would expect that a Federal judge would grant the stay under these circumstances because Terri would need to live in order for the court to consider the case. If a new suit goes forward, the Federal judge must conduct what is called de novo review of the case. De novo review means the judge must look at the case anew. The judge need not rely on or defer to the decision of previous judges.

The judge also may make new findings of fact, and from a practical standpoint this means that in a new case the judge can reevaluate and reassess Terri's medical condition.

I would like to make a few other points about the bill.

First, it is a unique bill passed under unique circumstances that should not serve as a precedent for future legislation.

Second, this bill would not impede any State's existing laws regarding assisted suicide.

Finally, in this bill Congress acknowledges that we should take a closer look in the future at the legal rights of incapacitated individuals.

While this bill will create a new Federal cause of action, I still encourage the Florida Legislature to act on Terri's behalf. This new Federal law will help Terri, but it should not be her only remaining option.

Remember, Terri is alive. Terri is not in a coma. Although there is a range of opinions, neurologists who have examined her insist today that she is not in a persistent vegetative state. She breathes on her own just like you and me. She is not on a respirator. She is not on life support of any type. She does not have a terminal condition.

Moreover, she has a mom and a dad and siblings, her closest blood relatives, who love her, who say she is responsive to them, who want her to live, and who will financially support her. These are the facts.

We in the Senate recognize that it is extraordinary that we, as a body, act. But these are extraordinary circumstances that center on the most fundamental of human values and virtues—the sanctity of human life.

The level of cooperation and thoughtful consideration surrounding this legislative effort on behalf of my colleagues has truly been remarkable. I thank Senate minority leader HARRY REID for his leadership on this issue. He and I have been in close contact throughout this process. I also thank my Democratic colleagues who expressed their concerns but have allowed us to move forward. In particular, I thank Senators MEL MARTINEZ, RICK SANTORUM, TOM HARKIN, and KENT CONRAD for their dedication in shepherding this legislation. This is bipartisan, bicameral legislation.

CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE AND HOUSE OF REPRESENTATIVES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Con. Res. 23, the adjournment resolution, which is at the desk. I further ask that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 23) was agreed to, as follows:

S. CON. RES. 23

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns on any day from Sunday, March 20, 2005, through Sunday, April 3, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, April 4, 2005, or until such other time as may be specified by the Majority Leader or his designee