

[DISCUSSION DRAFT]

109TH CONGRESS
1ST SESSION

H. R. _____

To amend title 28, United States Code, to provide the protections of habeas corpus for certain individuals whose life support may be withdrawn pursuant to court order, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. WELDON of Florida introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 28, United States Code, to provide the protections of habeas corpus for certain individuals whose life support may be withdrawn pursuant to court order, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “_____ Act
5 of 2005”.



1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Under the Fourteenth Amendment to the
4 Constitution of the United States, “No State ... shall
5 deprive any person of life ... without due process of
6 law...nor deny to any person within its jurisdiction
7 the equal protection of the laws.”

8 (2) Section 5 of the Fourteenth Amendment
9 empowers Congress “to enforce, by appropriate leg-
10 islation, the provisions” of the Amendment. The
11 United States Supreme Court has held that under
12 this section, while Congress may not work a “sub-
13 stantive change in the governing law” under the
14 other sections of the Fourteenth Amendment, it may
15 adopt remedial measures exhibiting “a congruence
16 and proportionality between the injury to be pre-
17 vented or remedied and the means adopted to that
18 end.” *Tennessee v. Lane*, 541 U.S. 509, 21 (2004);
19 *City of Boerne v. Flores*, 521 U.S. 507, 519–20
20 (1997).

21 (b) PURPOSES.—It is the purpose of this Act—

22 (1) to facilitate balancing the acknowledged
23 right of persons to refuse consent to medical treat-
24 ment and unwanted bodily intrusions with the right
25 to consent to treatment, food, and fluids so as to
26 preserve their lives; and



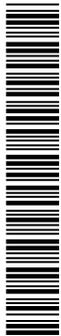
1 (2) in circumstances in which there is a con-
2 tested judicial proceeding because of dispute about
3 the expressed previous wishes or best interests of a
4 person presently incapable of making known a choice
5 concerning treatment, food, and fluids the denial of
6 which will result in death, to provide that the funda-
7 mental due process and equal protection rights of in-
8 capacitated persons are protected by ensuring the
9 availability of collateral review through habeas cor-
10 pus proceedings.

11 **SEC. 3. EXTENSION OF HABEAS PROTECTIONS.**

12 (a) IN GENERAL.—Chapter 153 of title 28, United
13 States Code, is amended by striking section 2256 and in-
14 serting the following:

15 **“§ 2256. Extension of habeas protections to certain**
16 **persons subject to court orders**

17 “(a) For the purposes of this chapter, an incapaci-
18 tated person shall be deemed to be in custody under sen-
19 tence of a court established by Congress, or deemed to
20 be in custody pursuant to the judgment of a State Court,
21 as the case may be, when an order of such a court author-
22 izes or directs the withholding or withdrawal of food [or]
23 fluids [or medical treatment] necessary to sustain the per-
24 son’s life. In a habeas corpus proceeding under this section
25 the person having custody shall be deemed to encompass



1 those parties authorized or directed by the court order to
2 withdraw or withhold food, fluids, or medical treatment,
3 and there shall be no requirement to produce at the hear-
4 ing the body of the incapacitated person.

5 “(b) Subsection (a) does not apply in the case of a
6 judicial proceeding in which no party disputes, and the
7 court finds, that the incapacitated person, while having
8 capacity, had executed a written advance directive valid
9 under applicable law that clearly authorized the with-
10 holding or withdrawal of food or fluids or medical treat-
11 ment in the applicable circumstances.

12 “(c) As used in this section, the term “incapacitated
13 person” means an individual who is presently incapable
14 of making relevant decisions concerning the provision,
15 withholding, or withdrawal of food, fluids or medical treat-
16 ment under applicable state law.

17 “(d) Nothing in this section shall be construed to cre-
18 ate substantive rights not otherwise secured by the Con-
19 stitution and laws of the United States or of the several
20 States.”.

21 (b) CLERICAL AMENDMENT.—The item relating to
22 section 2256 in the table of sections at the beginning of
23 chapter 153 of title 28, United States Code, is amended
24 to read as follows:

“2256. Extension of habeas protections to certain persons subject to court or-
ders.”.



1 (c) PROSPECTIVE EFFECT.—The remedies specified
2 by this Act shall be available on behalf of any incapaci-
3 tated person deemed to be in custody by its terms who
4 is alive on or after the effective date of this Act.

