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CBS News

FACE THE NATION

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GUESTS: TONY PERKINS
President, Family Research Council

FL)

Representative **DEBBIE WASSERMAN SCHULTZ, (D-**

JOHN HARWOOD
The Wall Street Journal

KAREN TUMULTY
Time Magazine

ANDREW COHEN
CBS News Legal Analyst

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FACE THE NATION - CBS NEWS
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BILL PLANTE, host:

Today on FACE THE NATION: the Terri Schiavo case. Terri Schiavo has been without food and water for nine days. Have her parents, who want to keep her alive, run out of legal options? We'll ask their lawyer, David Gibbs. What are the implications of this case on the judiciary, on the right-to-die debate, on politics? We'll ask Congresswoman Debbie Wasserman Schultz, Democrat of Florida, and Tony Perkins, head of the Family Research Council. Karen Tumulty of Time magazine will join in the questions, and we'll have a roundtable on this and other stories of the week with CBS legal analyst Andrew Cohen and John Harwood of The Wall Street Journal.

But first, the case of Terri Schiavo on FACE THE NATION.

Announcer: FACE THE NATION, with chief Washington correspondent Bob Schieffer. And now, from Washington, substituting for Bob Schieffer, CBS News White House correspondent Bill Plante.

PLANTE: And good morning. With us now in Washington, Democratic Congresswoman Debbie Wasserman Schultz of Florida, and from Baton Rouge, Louisiana, Tony Perkins, president of the Family Research Council. First, though, let's go to Florida and David Gibbs, the lead attorney for the Schindler family.

Good morning, Mr. Gibbs.

Mr. DAVID GIBBS (Schindler Family Attorney): Good morning. Happy Easter.

PLANTE: Thank you so much. And what is Terri Schiavo's condition today?

Mr. GIBBS: Terri is declining rapidly. We believe she has at this point passed where physically she would be able to recover. They've begun to give her morphine drip for the pain. And at this point, we would say Terri has passed the point of no return.

PLANTE: So the governor's office says there's nothing more they can do?

Mr. GIBBS: That's what we're hearing from Tallahassee. We had hoped and prayed, and the governor had attempted, through the Department of Children and Families, to intervene, but he was legally blocked. Governor Bush has been a real friend to the Schindler family, and we believe he's done everything he can to be of help.

PLANTE: As you know, there's been some criticism that he hasn't done enough.

Mr. GIBBS: Well, there would be always the hope that somehow the governor could step in and save Terri, but we do know that he has reviewed all his legal options and I believe his office has decided there's nothing more they can do.

PLANTE: Mr. Gibbs, we very much appreciate your update this morning. Thank you so much.

Mr. GIBBS: Thank you.

PLANTE: Now here in the studio, let's bring it back. And joining in the questioning this morning is Karen Tumulty of Time magazine.

Good morning, Karen.

Ms. KAREN TUMULTY (Time Magazine): Morning.

PLANTE: Let me ask you the first question, Mr. Perkins. Do you think that the Congress and the president went far enough in trying to save Terri Schiavo?

Mr. TONY PERKINS (President, Family Research Council): Well, I think the courts--or I think, rather, the Congress and the president acted in a very reasonable and restrained fashion. They've specifically addressed this case of Terri Schiavo. But, unfortunately, I think the courts did not heed their request to look into the evidence here and hold a hearing and look at the facts of the case. And it appears that the court is suffering from a persistent case of arrogance by refusing the two other branches of government that asked them to simply review the case.

PLANTE: Well, Congresswoman Debbie Wasserman Schultz, let's talk about the courts in just a second. But let me ask you first: What's the problem with transferring the guardianship of a person like Terri Schiavo when there are people, her parents, who want to take care of her, or even to the state of Florida?

Representative DEBBIE WASSERMAN SCHULTZ (Democrat, Florida): Well, we have a situation here where, last Sunday, the Congress inserted itself into a deeply personal family tragedy. And we have a process set up in each state; in Florida, specifically, we have an end-of-life statute that governs how these decisions at the end stages of life are going to be made. And the guardian, in this case Mr. Schiavo, is the one who has the primary responsibility for helping to make those decisions, and that is as it should be. Each state arrives, in the unique environment that exists in that state, at the most appropriate way to deal with end-of-life decisions, and that's as it should be.

PLANTE: I think a lot of people just wonder, though, why couldn't somebody help keep this woman alive if there are people who want to do that?

Rep. SCHULTZ: Because as the courts reviewed, Terri Schiavo expressed when she was conscious with clear and convincing evidence, according to the court reviews--more than 20 court reviews, that she would not have wished to be sustained on artificial life support in a persistent vegetative state. That was not her wish, and her husband has been trying to honor that wish.

Ms. TUMULTY: Mr. Perkins, if we could step back for a moment. You described the action of the Congress and the president as very restrained in this case, although the polls would indicate three-quarters of the American public thinks that the Congress in particular really went too far.

What do you think happens from here on out? At this point, there are something like 35,000 people in this country who are in a persistent vegetative state. It's hard to imagine that maybe the exact same case won't arise again but something like it surely will.

Mr. PERKINS: Well, first, I think that leadership is not about reading the polls and plotting your political position. Leadership is about doing the right thing for the right reasons, and I think Congress and the president did exactly that. And I think that those 30,000-plus Americans who, for reasons of disability, cannot feed themselves, cannot drink a glass of water or any type of hydration without assistance, are a little bit--and I emphasize a little bit--better off in terms of being safer today than they were a week ago.

And I think, if you step back as you said, and look at this, those that are in that position where they rely upon others for their protection, for their provision, that, you know, we have a right to protect them and to provide for them, and I think that's what Congress did. They simply stepped in, they didn't dictate anything, they just asked the courts to look at the facts in this case because Terri is not on--there's no plug being pulled here. There is no ventilator being removed. It's simply denying her food and water. This is a unique situation.

Ms. TUMULTY: And so the next time we have a dispute within a family in a situation like this, do you think Congress should once again step in with a law?

Mr. PERKINS: No, I think what we have here is we have a very unique situation where the husband's--the estranged husband's motives are in question, and Congress had to step in to ask the courts to look at the facts. The courts did not. The courts refused to just acknowledge the request of two other branches of government. I don't think Congress is going to be getting into these cases case by case, but I do think this raises a fundamental question in our country. That is, who is going to set policy? Is it the elected representatives of the people? Or is it unelected, and in many ways unaccountable, judges who are going to set public policy? Our form of government would say it's the elected people.

PLANTE: Mr. Perkins, the courts did look into this repeatedly. As you know, there were decisions that went against the family repeatedly, five times in the Florida state Supreme Court.

Mr. PERKINS: And more information became available. Thirty-three different affidavits were filed by those who provided care or attempted to provide treatment to Terri that questioned the motives of her husband. And then there were conflicts about her diagnosis. Is she in fact in a persistent vegetative state? And, what--I mean, when we're talking about life and death, what harm does it have for the courts to look at this case once again? I mean, I think most people would agree this is a tragic situation.

PLANTE: Right. Let me go to the congresswoman.

Congresswoman, let me ask you, is there any justification for saying all right we have some new evidence here, some new information. Let's take another look.

Rep. SCHULTZ: But see, the problem here is that this is not a unique situation. This kind of situation, for example, even in my own family just a few weeks ago, this kind of end-of-life care decision is made every single day, hundreds of times a day in this country. The facts to which Mr. Perkins is referring are just not true. You have special interest groups and activists and politicians who have been grossly exaggerating the details of this case. The affidavits to which he's referring are from people and doctors who have never examined Terri Schiavo, who have never looked at her, who don't have any understanding or specific details about her own case. The board-certified neurologists that examined her that were appointed by the courts all said that she is in a persistent vegetative state. And what we've got to make sure in this country is that we not have Congress reach all the way into our personal family tragedies.

That is a really good question: Where do we draw the line? We've already stepped into the Schiavo and Schindler family tragedy, and if we continue down this path, you're going to really lead people to believe that it's OK for the Congress to overstep and go around state court decisions, to get in between families, husbands and wives and their decisions. And now you even have Governor Jeb Bush actually send state troopers, according to the Miami Herald the other day, down to try to actually take custody of Terri and there could have been a

constitutional crisis between the local police and the state troopers. And fortunately that didn't happen. But you know, I'm really concerned about the direction that we're going in this country.

Ms. TUMULTY: And, Mr. Perkins, in a speech to your organization about a week ago, House Majority Leader Tom DeLay compared his own struggles right now with a series of ethical controversies with the Terri Schiavo case and said that it was all part of an attack on conservatism that he said was coming by essentially a liberal--the word he used was 'syndicate.' Do you, in fact, see Mr. DeLay's circumstances and Terri Schiavo's as being linked?

Mr. PERKINS: No. There was a mischaracterization of what Mr. DeLay said. He came, spoke to our group at the last minute, giving them an update on Terri's situation and while he was there, I asked him to talk to the members about the political attack that he was under. And so there was--this was portrayed by this recording that was secretly taken of our event to show that he was trying to connect these two, which he is not. I think--let me...

Ms. TUMULTY: What he actually said was 'This is exactly the kind of issue that's going on in America, that attacks against the conservative movement, against me and against many others,' is how he described the Terri Schiavo case.

Mr. PERKINS: I think he was pointing to the fact that we have a crisis, as the congresswoman said, that we had almost last week in Florida, I think we had this pending crisis, constitutional crisis, about who's going to provide direction for this country. Is it the courts or is it the elected representatives? Remember, this was a measure passed by a bipartisan majority of Congress. There's only a few Democrats on the other side that are calling into question the motives of those who stepped in to help someone who was defenseless, who needed to be protected, and that's part of the Congress' responsibility under the 14th Amendment, to ensure the states do not deprive people of their right to life, property or other measures and they're treated equally under the law. And that's what Congress did.

PLANTE: Congresswoman, what about the 47 Democrats who voted for that bill last weekend?

Rep. SCHULTZ: There are people of conscience on both sides of this issue, on both sides the aisle in the United States Congress. But people all across this country this week have questioned whether or not they would want Congress to step in between the two sides in their own family on a tragic personal decision that they had to make. And resoundingly, they've all said that they would not think it was appropriate for Congress to make that decision. They want that decision left between family members with court reviews who have the facts, and Congress does not have the facts. We are not an objective body. We're a partisan body that makes political decisions and we're not an appropriate venue for end-of-life decisions or any personal family decisions.

PLANTE: Thank you both very much, Congresswoman Debbie Wasserman Schultz of Florida and Tony Perkins of the Family Research Council.

We'll be back in a moment with the roundtable.

(Announcements)

PLANTE: Joining us now from Denver, CBS News legal analyst Andrew Cohen. And here in the studio, John Harwood, of The Wall Street Journal and Karen Tumulty. Welcome to all of you.

Andrew Cohen, let me ask you first, what about this final filing that the Schindler family made in the courts on Friday claiming that Terri Schiavo had tried to say, 'I want to live.'

ANDREW COHEN (Legal Analyst): Too little too late. The judge who was involved in this case, the probate judge in Florida, Judge Greer, who has literally lived with this case for years, who knows the record cold, said that the allegations that were made at the last minute came in too late. They should have been raised a week ago when they actually occurred, if they occurred, and that even if they were true, they didn't overcome the compelling medical evidence that he had seen from court-appointed doctors who had examined Terri Schiavo and who said that she was in this state, that these utterances were involuntary, that she wasn't aware of any sound or anything, and that she's literally incapable of expressing or communicating any belief at this point. That's why the Schindlers lost that last round.

PLANTE: You know, if people look at this from a legal point of view, I think the overwhelming question is, did this have to become such a terrible legal wrangle?

COHEN: Yeah, it's extraordinary. It really is. But when you look at it just legally speaking, it is not that complicated. If the federal courts were to tell the president, as commander in chief, how many troops to send into Iraq, there would be no debate. It wouldn't fly. If the federal courts told Congress how much to spend on domestic programs, there'd be no debate. It would fly. But that's essentially what the White House and Congress did to the judiciary, interjecting itself in a case and saying, 'Courts, here's how we want you guys to interpret the federal Constitution.' The Constitution isn't set up for that. It doesn't permit that, and it probably never will, and that's a good thing. That's why the Schindlers continue to lose. That's why Michael Schiavo, Terri Schiavo's husband, won all the way down the line, and that's why court after court on the state and federal level all came to the same conclusion, that all of Terri Schiavo's rights, that all of the Schindlers' rights and all of Michael Schiavo's rights were observed under state and federal law. But the two other branches, which essentially tried to bully the judicial branch into coming to a particular decision in a particular case is what makes the week, I think, so fascinating.

PLANTE: And that's what we want to get to. John Harwood, did Congress make a mistake, the Republican leadership specifically?

Mr. JOHN HARWOOD (The Wall Street Journal): Well, I think politically the polls suggest they did make a mistake. This is a Republican Party, remember, that has been knitted together for a while. In the mid-1990s, they used to call it the 'Leave Us Alone' coalition, and here you have the Republican Party plainly at odds, as the polls suggest, with the majority of the American people and at odds with some libertarian-minded members of the Republican Party intervening in this case. It certainly has not helped them. Whether it hurts them in the long term at election time in 2006, I'm not sure. We've got an awful lot of time to pass between now and November '06, but it is not helping them in the short term and certainly not helping them on the rest of the agenda, which has been languishing while this case has been dominating the headlines.

PLANTE: But some people think that this will help in the debate over the judicial nomination process.

Ms. TUMULTY: That, I think, is really going to be the thing to watch. And that is, by the way, the first thing the Senate is going to deal with when it comes back into session after this recess. On the one hand, you have one side seeing the judiciary as the problem here, a judiciary that they say is making laws and running out of control. But the other side, the people who supported Michael Schiavo, believe that this really underscored the importance of an independent judiciary. It will be very interesting then to watch how this debate plays out in the Senate.

Mr. HARWOOD: It certainly, Bill, is going to cause both sides to dig in. But I think if you look at a high-profile demonstration of an important part of the Republican coalition being at odds with the majority of the American people and at odds with the judiciary, that helps Democrats dig in, in effect, and say, 'Look, we're the ones who are for an independent judiciary. We're the ones who are not for pressuring these judges for a particular outcome.'

Ms. TUMULTY: Oh, and by the way, it's probably worth pointing out that the only judge to side with Terri Schiavo's parents in this whole dispute was a Clinton appointee judge--that, in fact, a number of judges who were appointed by Republicans going right up to the United States Supreme Court--Justice Kennedy--were actually Republican appointees.

PLANTE: Andrew Cohen?

COHEN: Yeah, and if I can just interject here--yeah. If I can just interject, you hear all this tumult lately, and it's a political issue, about activist judges. And clearly we're going to hear that debate when the Senate evaluates what it wants to do with these nominations. If the judges in Florida and in Washington and in Atlanta at the Federal Appeals Court had done what Congress and the White House wanted them to do last week, they would be doing activism as it's defined by the conservatives. They would essentially have been changing state law and federal law and a state constitution and a federal Constitution for one family in one case. That's the definition of legal activism. So I think the conservatives who make that argument and who will be making that argument in the Senate have a conundrum. They're sort of caught in a bind. They've now come on the record very forcefully as wanting the kind of activism that they usually decry.

PLANTE: Well, and it's very interesting, too, because from the White House perspective, what we see covering there, is that it makes them uncomfortable, too. The president rushed back from his trip to sign this bill, but then on Wednesday, when it was quite clear that things weren't going anywhere, he politely but firmly closed the door on any further action by the White House. And I know there are people there who are questioning whether he should ever have gotten involved.

Mr. HARWOOD: Well, there's only so much the president could have done in any event, whatever judgment he wanted to take. He--they clearly did want this to recede. The president didn't talk about this case in his radio address this weekend. But, look, I think we also have to point out that there are some things that a political party, when they have a coalition that is composed in certain ways, has to do. I talked to a Republican strategist yesterday who said, 'Our members didn't have a whole lot of choice.' Social conservatives are a vital part of what the Republican Party is today, and when they're putting a lot of pressure on to get involved at a time when so many of the other things that the president and the Congress are pursuing are not of particular importance to social conservatives, they've got to respond.

Ms. TUMULTY: Also, it's a--the intensity level on the social conservative side is so much greater. I know I was talking to Newt Gingrich last week, and he said for people who believe

that this was government-sponsored murder in a brutal and an inhumane way, this is something that is going to stick with them for the rest of their lives and deepen and harden their activism. For the other side--and I think there's a lot of evidence in past situations like this--they're likely to be thinking about something else two, three weeks from now.

PLANTE: Well, it's quite clear from the polling that the public believes Congress and the president should not have gotten involved; 82 percent. And the public is very skeptical of the reasons for involvement. Seventy-four percent in our poll said that it was for political reasons only.

Mr. HARWOOD: And I think that's potentially--if there is a political fallout to this--and some Republicans don't think there is. They think this is going to vanish like the O.J. trial and other things that we cover--become sensations in the media. But if there is a problem for them, it may be this perception that Republicans were acting out of a political motivation rather than sincere belief. And I should say I think a lot of that public sentiment is misplaced. I believe a lot of the Republican members of Congress who were voting on that--Jeb Bush in Florida and the president--were sincerely trying to--they did believe in what they were doing. There is a political dimension to decisions that they make, certainly, just as there is on both sides. But that's a potential problem if Americans think they were playing politics here.

PLANTE: Andrew Cohen, very briefly, let's talk about what this has done to raise the visibility of the need for things like living wills.

COHEN: Absolutely. Look, if there is a positive legacy to this tragic story, it is the education of people around the country that you need a living will, that you need a medical, durable power of attorney with specific instructions about what to do in this horrible situation, so that the doctors and the family can get together and make decisions without getting any government involved, without getting local courts involved. It's not that expensive. It doesn't take a lot of time. There are usually forms that the lawyers can find out and fill out for you. It is absolutely a necessity in this day and age, with technology and medical science being what it is.

PLANTE: Right.

COHEN: That would be a wonderful legacy for Terri Schiavo and all of the people involved who have had such a horrible time over the past couple of weeks.

PLANTE: Karen, will this go away?

Ms. TUMULTY: I think actually that there is a fairly good chance that when Congress gets back, this will soon seem like a--you know, a memory for most people.

PLANTE: John?

Mr. HARWOOD: Oh, I think it'll go away, sure. We have passing sensations in our media that are forgotten three weeks after they're done. The president's got a lot to do. And he's got--there are a lot of problems out there on the public opinion landscape for him: oil prices rising, inflation is back, the Fed's raising interest rates. So there are certainly other things that are going to dominate the headlines, and the president's got a drive left to try to get over the finish line on Social Security. Not going all that well so far.

PLANTE: Right. Well, we remember today that this is a tragedy for one woman and for her family, and that's all the time that we have. We'll be back in a moment with a final word.

(Announcements)

PLANTE: We thank you for watching this morning. Old Bob Schieffer will be right back here next week on FACE THE NATION.