



## The Schiavo Tragedy and the Politics of “Court-Stripping”

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For Immediate Release

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### **The Schiavo Tragedy and the Politics of “Court-Stripping”**

*A Justice at Stake Backgrounder on Congress vs. the Courts*

The For the Relief of the Parents of Theresa Marie Schiavo Act was signed into law on Monday, March 21st. This new law transfers jurisdiction over Mrs. Schiavo’s case from the state courts of Florida – where the case has been reviewed by 19 judges in six courts over 15 years – for a new review by a federal court.

### **What is Court-Stripping?**

Court-stripping is a political act designed to take jurisdiction or discretion away from a court or a particular judge, or to deny access to the courts to a particular group, sometimes by shuffling jurisdiction between state and federal courts. Politicians increasingly use court-stripping to reverse decisions, punish judges, or even avoid future rulings they may not like.

### **The Rising Tide of Congressional Court-Stripping**

Mrs. Schiavo’s case is the most visible and emotionally charged example of Congressional court-stripping in recent memory, but it is far from the only one. In fact, recent years have seen an explosion in Congressional efforts to undermine the role of the courts:

- The Pledge Protection Act adopted by the U.S. House in 2004 would have outlawed the ability of courts to hear challenges to the Pledge of Allegiance.
- The Constitution Restoration Act of 2004 would have denied federal courts the power to hear suits involving the government’s promotion of religion by removing court jurisdiction over challenges of a governmental official’s “acknowledgment of God as the sovereign source of law, liberty, or government.”
- Recent proposals to amend the U.S. Constitution to define marriage in a narrow fashion would deny state courts the ability to interpret their own state constitutions; the Defense of Marriage Amendment of 2005 would actually write court-stripping into the Constitution.
- The Real ID Act of 2005 – a sweeping piece of immigration reform - would bar courts from reviewing the Secretary of Homeland Security’s unilateral waiver of any law that may interfere with the building of border fences, and deny many victims of overseas persecution a day in an American court to plead for asylum.
- The 2003 “Feeney Amendment” sharply limited the ability of federal judges to issue sentences below federal guidelines in many criminal cases. The U.S. Supreme Court effectively nullified this provision with its decision in January 2005 in *U.S. v. Booker* and *U.S. v. Fanfan*.
- The USA Patriot Act of 2001 reduced judicial discretion to review law enforcement efforts to detain suspects, monitor private Internet communications, obtain certain personal

records and share wiretaps with intelligence agencies.

- The Class Action Reform Act of 2005 stripped state courts of their historic right to settle class action suits, and moved the suits into federal courts.

### **Americans Oppose Court-Stripping in Mrs. Schiavo's Case**

According to an ABC News poll of 501 voters, 70 percent of Americans feel that it is "inappropriate for Congress to get involved" in the case, including 58 percent who say they feel "strongly" opposed.

### **Quoted**

"The bill itself does not create any new substantive rights. What they gain is delay and publicity, and a terrible, disgraceful interference in what is a personal tragedy."

- Charles Fried, Reagan Administration Solicitor General and Harvard University Law Professor

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