

LEGISLATIVE RESOLVE NO. 25

EC-4520. A communication from the Chairman, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled "Party Committee Coordinated Expenditures; Costs of Media Travel with Publicly Financed Presidential Candidates", received August 2, 1999; to the Committee on Rules and Administration.

EC-4521. A communication from the Employee Benefits Manager, AgFirst Farm Credit Bank, transmitting, pursuant to law, three reports relative to federal pension plans for calendar year 1998; to the Committee on Governmental Affairs.

EC-4522. A communication from the General Counsel, Office of Management and Budget, transmitting, pursuant to law, a report relative to a vacancy in the position of Deputy Director for Management, the designation of an Acting Deputy Director, and the nomination of a Deputy Director; to the Committee on Governmental Affairs.

EC-4523. A communication from the General Counsel, Office of Management and Budget, transmitting, pursuant to law, a report relative to a vacancy in the position of Controller, Office of Federal Financial Management, the designation of an Acting Controller, and the nomination of a Controller; to the Committee on Governmental Affairs.

EC-4524. A communication from the Executive Director, Committee for Purchase from People who are Blind or Severely Disabled, transmitting, pursuant to law, the report of a rule relative to additions to the Procurement List, received August 2, 1999; to the Committee on Governmental Affairs.

EC-4525. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the annual report of the Civil Service Retirement and Disability Fund for fiscal year 1998; to the Committee on Governmental Affairs.

EC-4526. A communication from the Chairman, U.S. Merit Systems Protection Board, transmitting, pursuant to law, a report entitled "Federal Supervisors and Poor Performers", dated July 1999; to the Committee on Governmental Affairs.

EC-4527. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report relative to General Accounting Office employees detailed to congressional committees as of July 19, 1999; to the Committee on Governmental Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-287. A concurrent resolution adopted by the Legislature of the State of Louisiana relative to the appellate jurisdiction of federal courts regarding partial-birth abortions; to the Committee on the Judiciary.

HOUSE CONCURRENT RESOLUTION NO. 257

Whereas, Louisiana is one of twenty-five states which has recently prohibited the specific medical procedure termed "partial-birth abortions"; and

Whereas, numerous other states are working this legislative session to enact the same ban; and

Whereas, federal district courts have thus far struck down laws in seventeen different states, effectively declaring that partial-birth abortions cannot be banned; and

Whereas, this intrusion of the Federal courts in these state decisions concerning this medical procedure can be remedied only by federal congressional action to limit the jurisdiction of these federal courts; and

Whereas, the United States Constitution does not create or regulate these inferior fed-

eral courts, but instead explicitly gives congress the power to do so; and

Whereas, the U.S. Constitution makes the jurisdiction of the federal courts subject to congressional proscription through Article III, Section 2, Para. 2, by declaring that federal courts "shall have appellate jurisdiction both as to law and fact with such exceptions and under such regulations as congress shall make"; and

Whereas, the intent of the framers of our documents was clear on this power of congress, such as when Samuel Chase (a signer of the Declaration of Independence and a U.S. Supreme Court Justice appointed by President George Washington) declared, "The notion has frequently been entertained that the federal courts derive their judicial power immediately from the constitution; but the political truth is that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this court, we possess it, not otherwise"; and

Whereas, Justice Joseph Story, in his authoritative Commentaries on the Constitution, similarly declares, "In all cases where the judicial power of the United States is to be exercised, it is for Congress along to furnish the rules of proceeding, to direct the process, to declare the nature and effect of the process, and the mode, in which the judgment, consequent thereon, shall be executed . . . And if Congress may confer power, they may repeal it . . . [The power of Congress [is] complete to make exceptions"; and

Whereas, this position is confirmed not only by the signers of the Constitution themselves, such as George Washington and James Madison, but also by other leading constitutional experts and jurists of the day, including Chief Justice John Rutledge, Chief Justice Oliver Ellsworth, Chief Justice John Marshall, Richard Henry Lee, Robert Yates, George Mason, and John Randolph; and

Whereas, the United States Supreme Court has long recognized and affirmed this power of congress to limit the appellate jurisdiction of the federal courts, as in 1847 when the court declared that the "court possesses no appellate power in any case unless conferred upon it by act of Congress" and in 1865 when it declared "it is for Congress to determine how far . . . appellate jurisdiction shall be given; and when conferred, it can be exercised only to the extent and in the manner prescribed by law"; and

Whereas, congress has on numerous occasions exercised this power to limit the jurisdiction of federal courts, and the Supreme Court has consistently upheld this power of congress in rulings over the last two centuries, including cases in 1847, 1866, 1868, 1876, 1878, 1882, 1893, 1898, 1901, 1904, 1906, 1908, 1910, 1922, 1948, 1966, 1973, 1977, etc; and

Whereas, it is congress alone which can remedy this current crisis and return to the states the power to make their own decisions on partial-birth abortions by excepting this issue from the appellate jurisdiction of the federal courts.

Therefore, be it *Resolved*, That the Legislature of Louisiana respectfully appeals to the Congress of these United States to limit the appellate jurisdiction of the federal courts regarding the specific medical practice of partial-birth abortions.

Be it *further Resolved*, That a copy of this Resolution be sent to the Speaker of the United States House of Representatives, the President of the United States Senate, and the Chief Clerical Officers of the United States House of Representatives and the United States Senate.

POM-288. A resolution adopted by the Legislature of the State of Alaska relative to the division of the Ninth Circuit Court of Appeals; to the Committee on the Judiciary.

Be it resolved by the legislature of the State of Alaska:

Whereas the State of Alaska is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit; and

Whereas the Court of Appeals for the Ninth Circuit consists of the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, and Guam, and the Commonwealth of the Northern Marianas Islands; and

Whereas United States Senators Murkowski of Alaska and Gorton of Washington have introduced S. 253, a bill that would amend Title 28 of the United States Code to divide the Court of Appeals for the Ninth Circuit into three regional divisions and a fourth circuit division, and that has the short title of the "Federal Ninth Circuit Reorganization Act of 1999"; and

Whereas S. 253 proposes to place the states of Alaska, Idaho, Montana, Oregon, and Washington within one regional division of the Court of Appeals for the Ninth Circuit and to place the other states and territories, possessions, and protectorates into two other regional divisions; and

Whereas S. 253 proposes to adopt the recommendations of a Congressionally mandated commission, chaired by retired Supreme Court Justice Byron R. White, that studied the realignment of the federal courts of appeal; the recommendations were made in a report issued in December 1998; and

Whereas the membership of the Court of Appeals for the Ninth Circuit is heavily weighted toward the State of California and the court seems to concern itself predominately with issues arising out of California and the Southwestern United States; and

Whereas the Court of Appeals for the Ninth Circuit's case filings are consistently either greater than any other federal circuit or among the greatest; and

Whereas the Court of Appeals for the Ninth Circuit is the largest of the 13 circuit courts of appeal, spanning 1,400,000 square miles, and is larger than the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eleventh Circuits combined; and

Whereas the Court of Appeals for the Ninth Circuit serves a population of more than 49,000,000 people, almost 60 percent more than any other federal circuit; and

Whereas members of the Court of Appeals for the Ninth Circuit have shown a surprising lack of understanding of Alaska's people and geography; and

Whereas, in the so-called "Katie John" subsistence case, which is of tremendous importance to the people of the State of Alaska, even though the Court of Appeals for the Ninth Circuit granted expedited consideration of that case, the court did not issue its decision for over 13 months; and

Whereas the Court of Appeals for the Ninth Circuit consistently ranks at or near the bottom of the circuits in time from the filing of a case in the district court to final disposition in the court appeals; and

Whereas Attorney General Bruce Botelho has estimated that there are more than 200 Alaska cases currently pending before the Court of Appeals for the Ninth Circuit; and

Whereas, previously, the Attorneys General of the States of Idaho, Montana, Oregon, and Washington have also found that similar issues of unnecessary delay concerning, lack of understanding of, and lack of consideration for cases and issues by the Court of Appeals for the Ninth Circuit exist in regard to those states; and

Whereas the division of the Court of Appeals for the Ninth Circuit into regions would benefit the States of Alaska, Idaho, Montana, Oregon, and Washington by providing speedier and more consistent rulings

by jurists who have a greater familiarity with the social, geographical, political, and economic life of the region, especially if those jurists were required to be residents of that region;

Be it, *Resolved* That the Alaska State Legislature strongly supports S. 253 and the division of the Court of Appeals for the Ninth Circuit into three regional divisions with one region consisting of the States of Alaska, Idaho, Montana, Oregon, and Washington headquartered in the Pacific Northwest; and be it

Further Resolved, That the Alaska State Legislature questions the need for a fourth circuit division and urges the sponsors of S. 253 and the United States Congress to inquire into the need for a fourth circuit division; and be it

Further Resolved, That the Alaska State Legislature urges the sponsors of S. 253 to consider including a requirement that judges assigned to one of the three regional divisions must reside in that regional division and urges the United States Congress to amend S. 253 to address this concern; and be it

Further Resolved, That the Alaska State Legislature believes that a reorganization of the Court of Appeals for the Ninth Circuit is long overdue and urges the United States Congress to expeditiously consider and enact S. 253.

Copies of this resolution shall be sent to the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Strom Thurmond, President Pro Tempore of the U.S. Senate; the Honorable J. Dennis Hastert, Speaker of the U.S. House of Representatives; the Honorable Trent Lott, Majority Leader of the U.S. Senate; the Honorable Dick Army, Majority Leader of the U.S. House of Representatives; the Honorable Thomas Daschle, Minority Leader of the U.S. Senate; the Honorable Richard A. Gephardt, Minority Leader of the U.S. House of Representatives; the Honorable Orrin G. Hatch, Chair of the U.S. Senate Committee on the Judiciary; the Honorable Henry J. Hyde, Chair of the U.S. House Committee on the Judiciary; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

POM-289. A resolution adopted by the Legislature of the State of Alaska relative to the year 2000 census; to the Committee on Governmental Affairs.

LEGISLATIVE RESOLVE NO. 22

Be it resolved by the legislature of the State of Alaska:

Whereas the Constitution of the United States requires an enumeration of the population every 10 years and entrusts the Congress with overseeing each decennial enumeration; and

Whereas the sole constitutional purpose of the decennial census is to apportion the seats in the United States House of Representatives among the several states; and

Whereas an accurate and legal decennial census is necessary to properly apportion the seats in the United States House of Representatives among the states and to create legislative districts within the states; and

Whereas 13 U.S.C. 141(c) mandates that the Bureau of the Census provide each state with basic tabulations of population (P.L. 94-171 data) within one year after the decennial census date; and

Whereas the Alaska State Legislature believes that Article I, Section 2, Constitution of the United States, in order to ensure an accurate count and to minimize the poten-

tial for political manipulation, mandates an "actual enumeration," meaning a physical headcount of the population, and prohibits reliance on estimates of the population for purposes of apportioning seats in the United States House of Representatives among the several states; and

Whereas legislative redistricting conducted by the states is a critical subfunction of the constitutional requirement to apportion representatives among the states; and

Whereas the United States Supreme Court, in *Department of Commerce v. United States House*, slip. op. no. 98-404, 1999 WL 24616, 67 U.S.L.W. 4090, ruled on January 25, 1999, that 13 U.S.C. 195 prohibits the proposed use by the Bureau of Census of statistical sampling in the determination of population for purposes of apportioning seats in the United States House of Representatives among the several states; and

Whereas the appellees in *Department of Commerce v. United States House* established standing partly on the basis of a claim of expected intrastate vote dilution due to the proposed use by the Bureau of the Census of statistical sampling; and

Whereas the use of census data adjusted by means of sampling or other statistical methodologies in redistricting by the State of Alaska could raise serious issues of vote dilution and violate "one-person, one-vote" legal protections, expose the state to protracted and costly litigation over redistricting, and ultimately result in a court ruling invalidating the redistricting plan; and

Whereas the Alaska State Legislature believes that a person, once enumerated, should not be counted by sampling or other statistical methodologies for purposes of redistricting; and

Whereas every reasonable and practical effort should be made to obtain the fullest and most accurate count of the population possible, including appropriate funding for state and local census outreach and education programs and post-census local review;

Be it *Resolved* That the Alaska State Legislature calls on the Bureau of the Census to conduct the 2000 decennial census consistent with the ruling in *Department of Commerce v. United States House* and with the Constitution of the United States; and be it

Further Resolved That the Alaska State Legislature calls on the Bureau of the Census to conduct a physical headcount of the population and not to use random sampling techniques or other statistical methodologies that add persons to or subtract persons from the census count in developing redistricting data under P.L. 94-171 for use by the states in intrastate redistricting; and be it

Further Resolved That the Alaska State Legislature opposes the use of P.L. 94-171 data for state legislative redistricting based on census numbers that have been determined in whole or in part by the use of statistical inferences derived by means of random sampling techniques or other statistical methodologies that add or subtract persons; and be it

Further Resolved That the Alaska State Legislature requests that Alaska be given P.L. 94-171 data for legislative redistricting identical to the census tabulation date used to apportion seats in the United States House of Representatives, derived from a physical headcount of the population, and not adjusted using random sampling techniques or other statistical methodologies that add persons to or subtract persons from the census count; and be it

Further Resolved That the Alaska State Legislature urges the Congress, as the branch of government assigned the responsibility of overseeing the decennial enumeration of the population, to take whatever steps are necessary to ensure that the 2000

decennial census is conducted fairly and legally.

Copies of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable William M. Daley, Secretary of the U.S. Department of Commerce; the Honorable J. Dennis Hastert, Speaker of the U.S. House of Representatives; the Honorable Trent Lott, Majority Leader of the U.S. Senate; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 832: A bill to extend the commercial space launch damage indemnification provisions of section 70113 of title 49, United States Code (Rept. No. 106-135).

By Mr. BOND, from the Committee on Small Business, with an amendment in the nature of a substitute:

H.R. 1568: A bill to provide technical, financial, and procurement assistance to veteran owned small businesses, and for other purposes (Rept. No. 106-136).

By Mr. ROTH, from the Committee on Finance:

Report to accompany the bill (S. 1388) to extend the Generalized System of Preferences (Rept. No. 106-137).

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 800: A bill to promote and enhance public safety through the use of 9-1-1 as the universal emergency assistance number, further deployment of wireless 9-1-1 service, support of States in upgrading 9-1-1 capabilities and related functions, encouragement of construction and operation of seamless, ubiquitous, and reliable networks for personal wireless services, and for other purposes (Rept. No. 106-138).

By Mr. JEFFORDS, from the Committee on Health, Education, Labor and Pensions, with an amendment in the nature of a substitute:

S. 632: A bill to provide assistance for poison prevention and to stabilize the funding of regional poison control centers.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committees were submitted:

By Mr. WARNER, from the Committee on Armed Services:

Charles A. Blanchard, of Arizona, to be General Counsel of the Department of the Army.

Carol DiBattiste, of Florida, to be Under Secretary of the Air Force.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601: