

Legislative Bulletin.....September 23, 2004

Contents:

H.R. 2028—Pledge Protection Act

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$0

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 2028—Pledge Protection Act (Akin)

Order of Business: The bill is scheduled to be considered on Thursday, September 23rd, subject to a structured rule (H.Res. 781) that makes three amendments in order (summarized below). The rule will be debated and voted on today, Wednesday, September 22nd.

Summary: H.R. 2028 would prohibit any federal court (and the Supreme Court in an appellate situation) from hearing or deciding any question pertaining to the interpretation of, or the validity under the Constitution of, the Pledge of Allegiance (4 U.S.C. 4).

This bill would NOT affect any state court's ability to hear a state case regarding the Pledge (though any decision from such a case would affect only that one state).

Additional Background: Article III, Section 1 of the U.S. Constitution states that:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Article III, Section 2, Clause 2 of the U.S. Constitution states that:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, **with such Exceptions, and under such Regulations as the Congress shall make.** *[emphasis added]*

The U.S. Supreme Court recently reversed and remanded the Ninth's Circuit's *Newdow vs. U.S. Congress* et al. decision that the Pledge is unconstitutional (because of the "under God" phrase)—but did so on the grounds that Mr. Newdow (the plaintiff) lacked the legal standing to bring the case. Thus, the Supreme Court left the door open for other people to file similar cases.

The Pledge of Allegiance, as set in current law (4 U.S.C. 4), is: "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."

Amendments Made in Order under the Rule (H.Res. 781):

Sensenbrenner (Manager's Amendment): Clarifies that District of Columbia (city) courts would still be able to hear and decide challenges to the Pledge.

Watt: Allows the U.S. Supreme Court to hear and decide Pledge-constitutionality cases.

Jackson-Lee: Allows federal courts to hear cases in which the claim involved alleges coerced or mandatory recitation of the Pledge, including coercion in violation of the protection of the free exercise of religion. In short, this amendment would negate the underlying legislation.

Committee Action: On May 8, 2003, the bill was referred to the Judiciary Committee, which then marked up the bill on September 15, 2004. The Committee ordered the bill favorably reported to the full House by a party-line vote of 17-10.

Administration Position: The Administration has not taken a position on this bill.

Cost to Taxpayers: The bill would not have any cost to taxpayers.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: The Judiciary Committee, in House Report 108-691, cites constitutional authority in Article I, Section 8 (but does not cite a specific clause), Article III,

Section 1, Clause 1 (the congressional power to establish lower federal courts), and Article III, Section 2, Clause 2 (the power of Congress to determine the jurisdiction of federal courts). House Rule XIII, Section d(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

Outside Organizations: According to the bill sponsor’s office, the following organizations are publicly supporting H.R. 2028: Family Research Council, American Center for Law and Justice, Religious Freedom Coalition, Eagle Forum, and Concerned Women for America.

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