and environmentally responsible thing to do.

OUTRAGEOUS SALES TAX

(Mr. SHERMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHERMAN. Mr. Speaker, I rise to address a bill by the gentleman from Georgia (Mr. LINDER). It is co-sponsored by the majority leader, a bill which the President has indicated he looks upon favorably. It is to abolish the income tax and impose a ''23 percent sales tax on all Americans.''

First, I headed the largest sales tax agency in the world for 6 years, and I am going to tell you, you cannot administer a 23 percent sales tax. That is why Europe uses a value added tax.

Second, a 23 percent tax would not replace the revenue. It would leave our troops in the field without the supplies they need.

Third, imagine a billionaire decides to travel to luxury resorts in France for an entire year. His property is protected by the American Army, his person is protected, he enjoys all the joys of being an American citizen and pays absolutely zero in tax.

Now imagine a retired couple. They have paid tax on all the money they have made. They squirreled it away. They have invested in municipal bonds. This thing passes. The muni bonds drop in value. They are receiving this income, and they are paying 23 percent on their food, 23 percent on their health care, 23 percent on their pharmaceuticals. They can no longer afford food, so they are buying dog food, and they are paying 23 percent on that. This is an outrageous bill.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2028.

The SPEAKER pro tempore (Mr. PENCE). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PLEDGE PROTECTION ACT OF 2004

The SPEAKER pro tempore. Pursuant to House Resolution 781 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2028.

□ 1133

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2028) to amend title 28, United States Code, with respect to the jurisdiction of Federal courts inferior to the Supreme Court over certain cases and controversies involving the Pledge of Allegiance, with Mr. SHAW in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from New York (Mr. NADLER) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Pledge of Allegiance reads: ''I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stand, one Nation, under God, indivisible, with liberty and justice for all.''

Two words in the Pledge, ''under God,'' help define our national heritage as beneficiaries of a Constitution sent to the States for ratification, as the Constitution itself states, ''in the Year of our Lord,'' 1787, by a founding generation that saw itself guided by a providential God. Those two words, and their entirely proper presence in the system of government defined by our Constitution, have been repeatedly and overwhelmingly reaffirmed by the House of Representatives, most recently twice in the 107th Congress, by votes of 416 to 3 and 401 to 5, and in this Congress by a vote of 400 to 7.

The first Congress not only acknowledged a proper role for religion in public life, but it did so at the very time it drafted the Establishment Clause of the first amendment. Just three days before Congress sent the text of the first amendment to the States for ratification, it authorized the appointment of legislative chaplains.

And on November 28, 1863, President Abraham Lincoln delivered the Gettysburg Address and declared, in words now inscribed in one of our most beloved national monuments, ''we here highly resolve that these dead shall not have died in vain, that this Nation, under God, shall have a new birth of freedom.''

Although the United States Supreme Court recently reversed and remanded the Ninth Circuit's latest holding striking down the Pledge as unconstitutional, the Supreme Court did so on the questionable grounds that the plaintiff lacked the legal standing to bring the case. The Supreme Court's decision not to reach the merits of the case is apparently an effort to forestall a decision adverse to the Pledge since the dissenting Justices concluded that the Court in its decision, ''erected a novel prudential standing principle in order to avoid reaching the merits of the constitutional claim.'' That does not bode well for the Pledge of Allegiance.

To protect the Pledge from Federal court decisions that would have the effect of invalidating the Pledge across several States, or nationwide, H.R. 2028 will preserve to State courts the authority to decide whether the Pledge is valid within that State's boundaries. It will place final authority or a State's pledge policy in the hands of the States themselves.

H.R. 2028 as reported by the Committee on the Judiciary is identical to H.R. 3313, the Marriage Protection Act, which the House passed just prior to the August recess except that it addresses the Pledge rather than the Defense of Marriage Act. If different States come to different decisions regarding the constitutionality of the Pledge, the effects of such decisions will be felt only within those States. A few Federal judges sitting hundreds of miles away from your State will not be able to rewrite your State's Pledge policy.

A remedy to abuses by Federal judges has long been understood to lie, among other places, in Congress's authority to limit Federal court jurisdiction. The Constitution clearly provides that the lower Federal courts are entirely creatures of Congress as much as appellate jurisdiction of the Supreme Court excluding its only very limited, constitutional, original jurisdiction over cases involving ambassadors and cases in which the States have legal claims against each other.

As a leading treatise on Federal court jurisdiction has pointed out, ''Beginning with the first Judiciary Act in 1789, Congress has never vested the Federal courts with the entire 'judicial Power' that would be permitted under Article III'' of the Constitution.

Justice William Brennan, no conservative by record, writing for the Supreme Court said, ''virtually all matters that might be heard in Article III Federal courts could also be left by Congress to the State courts.''

As the Dean of Stanford Law School wrote recently, ''The Constitution leaves room for countless political responses to an overly assertive Court: Congress can strip it of jurisdiction. The means are available and they have been used to great effect when necessary, used we should note, not by disreputable or failed leaders, but by some of the most admired Presidents and Congresses in American history.''

Far from violating the separation of powers legislation that leaves State courts with jurisdiction to decide certain classes of cases would be an exercise of one of the very checks and balances provided in the Constitution. Integral to the American constitutional system is each branch of government's responsibility to use its powers to prevent overreaching by the other two branches. H.R. 2028, which has 226 cosponsors, does just that, and I urge my colleagues to join me in supporting it.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is not simply about the Pledge of Allegiance. I really

hate to be an I-told-you-so, but the last time we considered legislation to strip the Federal courts of jurisdiction, in that case, to hear cases challenging the Defense of Marriage Act, I warned there would be no end to it.

Our former colleague, Bob Barr, whose legislation Congress was purporting to protect on that occasion said, no thanks. He wrote, ''This bill will needlessly set a dangerous precedent for future Congresses that might want to protect unconstitutional legislation from judicial review. During my time in Congress I saw many bills introduced that would violate the Takings Clause, the second amendment, the tenth amendment and many other constitutional protections. The fundamental protections afforded by the Constitution would be rendered meaningless if others followed the path set by H.R. 3313.''

Bob Barr was right. And it would make the Constitution like the Soviet Constitution which had plenty of guarantee of rights, but they were not worth the paper they were written on because there was no independent court system to enforce them.

Today it is the turn of the religious minorities. Once upon a time a student could be expelled from school for refusing to recite the Pledge of Allegiance. In 1943 in the middle of World War II, the Supreme Court in the Barnette case held that the children had a first amendment right not to be compelled to swear an oath against their beliefs.

Justice Jackson wrote, ''If there is any fixed star in our constitutional constellation, is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act, their faith therein.''

This obviously includes a pledge of faith in God.

The Jehovah Witnesses in the Barnette case felt that it was idolatry to be forced to pledge that even they believe in God.

This legislation would of course strip those families of the right to go to court to defend their religious liberty. Schools could once again expel children for acting according to the dictates of their religious faith, and Congress will have slammed the courthouse door in their faces.

This bill is part of a more general attack on our system of government. You learned about this in school. We have an independent judiciary whose job it is to interpret the Constitution, even if their decisions are really unpopular. And what this bill does, what these bills do is to slam the courthouse door in the face of people who believe that their Constitutional rights are violated so they cannot go to court because we tell them they cannot.

As unfortunate as I find the current Supreme Court on so many issues, I understand that we cannot maintain our system of government, we cannot enforce our Bill of Rights if the independent judiciary cannot enforce those rights even if the majority does not like it.

As to the complaints about unelected judges, remember your high school civics. We have an independent judiciary precisely to rule against the wishes of a trenchant majority, especially when it comes to the rights of unpopular minorities. That is our system of government and it is a good one.

As Alexander Hamilton said in Federalist 78, ''The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all reservations of particular rights or privileges would amount to nothing.''

And here we are saying that when someone believes that an Act of Congress violates their rights, they may not go to court to try to see if those rights are supreme if the legislation is unconstitutional.

We are playing with fire here. We are playing with the national unity of this country. The gentleman from Wisconsin (Mr. SENSENBRENNER) says the 50 State courts would reserve to themselves the right to declare Federal law unconstitutional. So what would be constitutional in one State would be unconstitutional in another. We would be back to the Articles of Confederation. We would be undoing 200 years of American history because we would have 50 different interpretations of the Constitution and of our State laws.

The gentleman from Wisconsin (Mr. SENSENBRENNER) says that the Judiciary Act of 1789 restricted the jurisdiction of the courts. That is true. But he fails to note that the Judiciary Act of 1789 predates the Bill of Rights, the first ten amendments to the Constitution. The fifth amendment says that no person may be deprived of life, liberty or property without due process of law.

□ 1145

All claims, all claims essentially come down to a claim that someone is being deprived of life or liberty or property without due process of law; and if you cannot go to a court to adjudicate that claim by definition, you are being denied due process of law. So this is clearly unconstitutional.

I ask my colleagues, is demagoging a case that they have won in court so far really worth destroying the enforceability of the Bill of Rights? I urge my conservative colleagues to shape up and act like conservatives for once. We live in a free society that protects unpopular minorities even if the majority hates that minority. Feel free to hate if my colleagues must, but please leave our Constitution, leave our liberties, leave our civil liberties that define this Nation and makes it what it is, leave it alone.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 4 minutes to the gentleman from Indiana (Mr. PENCE), a member of the Committee on the Judiciary.

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Chairman, I rise in strong support of the Pledge Protection Act with a particular sense of gratitude to the gentleman from Wisconsin (Chairman SENSENBRENNER), as well as the capable gentleman from Missouri (Mr. AKIN), who authored the legislation today.

The Pledge of Allegiance which we perform every day on the floor of this Congress reads: ''I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God.'' Two words in the pledge ''under God'' help in a very real way, Mr. Chairman, to define our national heritage as the beneficiaries of a Constitution that, as the gentleman from Wisconsin (Chairman SENSENBRENNER) said, was sent to the States for ratification ''in the Year of our Lord'' 1787.

Our Nation was established by a generation that saw itself in so many ways and by overwhelming numbers guided by a providential God who was not indifferent to the establishment of a free Nation on this continent, a Nation that would be, in John Winthrop's terms, a shining city on a hill, a Nation that both went to war and continues to fire the imagination of the world, as we heard today in the eloquent words of Iraqi Prime Minister Allawi.

Even in our own Declaration of Independence there is clear reference to the belief of our Founders that we are endowed by our creator with certain unalienable rights.

In November of 1863, President Abraham Lincoln traveled not far from here, delivering the Gettysburg Address, the dedication of a cemetery at the site of that extraordinary battle, saying that ''we here highly resolve that these dead shall not have died in vain, that this Nation, under God, shall have a new birth of freedom.''

What Lincoln resolved that day under God, unfortunately, today, the Federal courts have put in jeopardy in one case after another, most notably the Newdow case. There have been Federal courts that have either struck the term ''under God'' from our Pledge or, in the case of the Supreme Court of the United States, simply deferred the decision altogether.

This, despite the fact that the American people overwhelmingly, in survey after survey, and more importantly, through votes here on the floor of the House of Representatives, have expressed their will on this matter in deafening terms.

The Congress itself, as the gentleman from Wisconsin (Chairman SENSENBRENNER) referred, has voted not once

but twice in recent days in overwhelming numbers, more than 400 of the 435 Members of Congress, reaffirming the inclusion of the words ''under God'' in our Pledge of Allegiance.

Today, I expect in the course of this debate we will continue to hear a great deal about constitutional theory, which as a member of the Committee on the Judiciary, as a man trained in the law, I have great and passionate interest in; but those who will come to this floor today and suggest that the Congress does not in effect possess the ability to limit the jurisdiction of the Federal courts do so in a way that virtually ignores the express language of the Constitution itself, which gives to the Congress the establishment of the jurisdiction of the courts.

Even the dean of the Stanford Law School wrote recently, ''the Constitution leaves room for countless political responses to an overly assertive court. Congress can strip it of its jurisdiction. The means are available, and they have been used to great effect when necessary, used, we should note, not by disreputable or failed leaders, but by some of the most admired Presidents and Congresses in American history.''

Far from violating separation of powers, legislation that leaves State courts the jurisdiction on issues of great and deep meaning to the American people is in keeping with our best tradition.

Let us say the American people will be heard, not lifetime-appointed judges, on the recognition that this is one Nation under God.

Mr. NADLER. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Chairman, I appreciate the gentleman yielding me time.

If this debate were really about whether ''under God'' was going to be in the Constitution, and that was all it was about, I would be right there. I have been reciting the Pledge of Allegiance ever since, even before I knew what it meant, and ''under God'' has been in it. I have had no real objection to it, even when I did not understand what it meant.

But this debate is about much, much more than that. It is really about whether there is going to be a constitutional framework in which we operate and who is going to decide ultimately what is constitutional, the United States Supreme Court and the Federal courts of our Nation or the arrogance of my colleagues here in this body. There are actually some people here who believe that they should be the ultimate arbiter of what is constitutional; and if they do not get the result that they want in any given case, they want to take jurisdiction away from whoever gave them a different result.

So that is what this is about, how do we protect a constitutional framework which historically has had the legislative body doing its job and the courts determining what is constitutional and ultimately the United States Supreme Court determining what is constitutional.

Now, the fear that they might get a result that is different than the one they want has these people here in our body saying to us that we should give that ultimate authority not to the United States Supreme Court but to State courts. So this really is not even about whether ''under God'' is going to be in the pledge or not, even at that level, because if a State court determines that ''under God'' is unconstitutional, then what are we going to do in that case?

In North Carolina, it might be constitutional. In California it may be unconstitutional. We may have 50 different standards about when we can recite ''under God'' in the Pledge of Allegiance under the standards that this bill would allow us to set up.

This is not about whether we retain ''under God'' in the Pledge of Allegiance. The court has already decided that. This is a great vehicle for the majority to be able to come out here and tell us they believe in God. I believe in God, too, but there are some citizens in this country who do not necessarily believe in a god or who believe that having to profess it publicly is idolatry. We have an obligation to protect their rights, also. They are citizens, also, in this country.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. FORBES), a member of the Committee on the Judiciary.

Mr. FORBES. Mr. Chairman, right above the Chair's head today are four words, ''In God We Trust''; and time after time in this country, we have seen in times of storm or war or illness the American people have embraced those words and believed in them very strongly.

That is why 2 years ago, shortly after the release of the Ninth Circuit Court's decision that ''under God'' was to be struck from the Pledge of Allegiance, Newsweek published a poll finding 87 percent of Americans supported the inclusion of the phrase ''under God'' in the pledge.

Nevertheless, the few, but articulate, supporters of the court, waving U.S. flags and calling themselves one of the last groups in America facing unrestrained bigotry, marched on the Mall to protest what they said was increasing infringement of religion in government affairs.

Staging their first Godless Americans March on Washington, the demonstrators cheered and waved signs that expressed disapproval of religion. Their signs read: ''God Is a Fairy Tale,'' ''Keep Your Gods Out of Our Schools,'' and ''Al Qaeda is a Faith-Based Initiative.'' According to the New York Times, Dr. Michael Newdow touted that he planned to ''ferret out all insidious uses of religion in daily life. Why should I be made to feel like an outsider?'' he asked.

Mr. Chairman, Dr. Newdow and the two judges in California were right on one thing: atheists are outsiders in America. But they are not outsiders because, as they claim, the beliefs of others are being forced upon them, but instead, because they, unlike the vast majority of Americans, are attempting to create an environment where their beliefs are paramount over the beliefs of others.

Like every other American, atheists have the right not to recite the Pledge, not to attend church, and not to engage in any other practice of which they disapprove. They do not, however, have the right to impose their atheism on the vast majority of Americans whose beliefs now and historically have defined America as a religious Nation. Indeed, the concept of the separation of church and State was not born to establish freedom from religion, but to establish freedom for religion.

Repeatedly and overwhelmingly, our legislative bodies, our civic leaders, our historical heritage and, most importantly, the people of the United States of America have affirmed the two words ''under God'' and their entirely proper presence in our system of government. This week, over 2 years after two judges in California imposed their will upon a Nation, I urge my colleagues to reclaim this court's abuse of power and, in passing the Pledge Protection Act, reaffirm that we are, indeed, one Nation under God, indivisible, with liberty and justice for all.

Mr. NADLER. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK OF Massachusetts. Mr. Chairman, even by the standards that have sadly governed this House recently, the bill before us is bizarre. It makes a big hole in the Constitution for the first time in American history, if it were to pass and become law, to counteract a decision which has already been overruled. We should be very clear. There is no pending case even at the Federal level that deals with this.

But what I have heard people say is, well, do not worry, because there is an individual liberty here. The Supreme Court of the United States, after all, did say in 1943 in the Barnette case that no child could be forced to say the Pledge of Allegiance if it violated his own family's religious views. The Jehovah's Witnesses said saying the Pledge of Allegiance violated their views. The Supreme Court said they did not have to say it.

I have heard people say, well, do not worry because children will be protected if they find this objectionable by the Supreme Court decision. Now the bizarre aspect is that this is a bill that would prevent a Supreme Court decision, the very thing on which they are relying to justify it, but it is also the case that under this bill, if a State court should decide to disregard that Supreme Court opinion and say that saying the pledge was mandatory, even for Jehovah's Witnesses or others who

might have a principled religious objection to it, that that could be overruled.

The other thing that ought to be noted is this. Once my colleagues start down this road, this is the second time the majority has done this, telling us that the Supreme Court cannot decide, they are going to create a precedent, if this ever succeeds, that will be followed in other issues.

The business community ought to follow this very closely because it will now become demanded of Members of Congress that when they pass a law they show that they really mean it by taking away Supreme Court jurisdiction. So the important desire of the business community for Federal uniformity, all of the efforts they have been making recently to try and get national laws that govern commercial transactions, will be at risk; and we will see laws in area after area, if this precedent is followed, which will mean that there is no uniform national interpretation of them.

□ 1200

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT), chairman of the Subcommittee on the Constitution.

Mr. CHABOT. Mr. Chairman, I thank the gentleman for yielding me this time, and I thank him for his leadership on this. I also want to thank and recognize the leadership of the gentleman from Missouri (Mr. AKIN) for his determination in protecting the Pledge of Allegiance in this country. I wish to also express my support, as chairman of the Subcommittee on the Constitution, for H.R. 2028, the Pledge Protection Act.

When the issue of limiting Federal Court jurisdiction was raised during the discussions of the Marriage Protection Act, the Subcommittee on the Constitution held a hearing examining Congress' authority to do this. During the hearing, testimony was heard by a number of constitutional experts. While there was mixed opinion on whether Congress should exercise its authority, there was a consensus that Congress did in fact have the authority under Article III of the Constitution to determine what issues were heard by the Supreme Court under its appellate jurisdiction and by the lower Federal courts.

This point was highlighted most recently by the Dean of Stanford Law School who wrote, ''The Constitution leaves room for countless political responses to an overly assertive court. Congress can strip it of jurisdiction. The means are available, and they have been used to great effect when necessary; used, we should note, not by disreputable or failed leaders, but by some of the most admired presidents and Congresses in American history.''

As we continue the debate today, I would urge each Member of Congress to recite to himself or herself the Pledge of Allegiance that we are talking about and ask yourself what it means to you. It deserves protection. It defines not only our national heritage, but unites our society each time it is recited. We cannot let rogue Federal judges redefine our country's history and the basis from which our Founding Fathers found guidance and strength when constructing our great country.

Mr. Chairman, I urge my colleagues to support H.R. 2028.

Mr. NADLER. Mr. Chairman, I yield 5 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I come from a State with a long tradition of supporting religious freedom. The Virginia Statute For Religious Freedom, written by Thomas Jefferson preceded the first amendment to the Constitution. This bill does not protect religious freedom, and it also undermines fundamental rights of American citizens.

Mr. Chairman, most experts believe that the bill is meaningless, because whether or not the recitation of the Pledge is constitutional or not constitutional is a matter for the courts to decide. And if it is unconstitutional, that ruling cannot be changed by a statute enacted by this body.

Now, I happen to believe that the present Pledge of Allegiance is constitutional, and I agree with the dissent in the Newdow versus U.S. Congress case, the recent Ninth Circuit case involving the Pledge of Allegiance. In my judgment, the dissent accurately surmised, and I quote ''Legal world abstractions and ruminations aside, when all is said and done the danger that 'under God' in our Pledge of Allegiance will tend to bring about a theocracy or suppress someone's belief is so minuscule as to be de minimis. The danger that phrase represents to our first amendment's freedoms is picayune at best.''

Now, to the extent that ''under God'' is worthy of this excessive attention, every hearing we have and every bill we pass on this issue only serves to chip away at the de minimis argument and we have to deal with the issue as it is explained in the Christian Century, a non-denominational Protestant weekly, which stated, and I quote, ''To the extent 'under God' has real religious meaning, then it is unconstitutional. The phrase is constitutional to the extent that it is religiously innocuous. Given that choice, I side with the Ninth Circuit, the government should not link religion and patriotism.'' Now, that is an editorial position expressed by the Christian Century.

The simple fact is we need to protect the Constitution and the rights of the court to decide whether the Pledge is constitutional or not, but the majority will not do that. H.R. 2028 is a court-stripping bill, plain and simple.

We had the same debate on the floor just 2 months ago when we debated the Marriage Protection Act of 2003. Mr. Chairman, I ask that that debate be incorporated by reference here just to save time. Because at that time many of us expressed concern about the detrimental precedent that we would be setting by passing a court-stripping bill. Today, our concerns have been validated.

This bill would strip the courts of their ability to hear cases that are clearly within Federal jurisdiction because they address fundamental constitutional rights and individual liberties guaranteed to us in the bill of rights. Furthermore, this bill is not limited to cases addressing the words ''under God.'' The recitation of the Pledge may, in some circumstances, implicate the right to free speech, the right of free association, the right to the free exercise of religion, and the establishment clause protections, all guaranteed under the first amendment to the Constitution.

We need Federal courts to protect our rights, and this bill prohibits the courts from doing just that. This bill violates over 200 years of constitutional principle established in Marbury versus Madison that the Supreme Court can rule on the constitutionality of legislative actions.

Now, if this kind of court-stripping legislation had been passed in 1954, Congress could have prohibited the Supreme Court from hearing cases involving segregation in public schools and the courts could not have ruled in Brown v. Board of Education. Or if it had passed such language in the 1960s, we might not have had the decision issued by what some are now calling rogue, unelected, lifetime-appointed, activist judges when they ruled to overrule the will of the people of Virginia and require Virginia to recognize marriages between blacks and whites. That could not have happened unless those so-called rogue, unelected, lifetime-appointed, activist judges made the decision they made.

The truth is we rely on Federal courts to determine and enforce our civil rights. In our system of democracy, which we are touting around the world, courts are where citizens can vindicate their rights. Our government works on a system of checks and balances. That is why many organizations, legal associations, civil rights groups, and religious organizations, have written to oppose us overturning 200 years of judicial precedence.

In closing, Mr. Chairman, we should, instead, adhere to the wisdom of the Supreme Court in the Barnette case, which said ''The very purpose of the bill of rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to

vote; they depend on the outcome of no elections.''

Mr. Chairman, I submit for the RECORD letters from organizations in opposition to this bill.

THE CONSTITUTION PROJECT,
Washington, DC, September 20, 2004.

House of Representatives, U.S. Capitol, Washington, DC.

DEAR MEMBERS OF HOUSE OF REPRESENTATIVES: I write on behalf of the Constitution Project to urge you to oppose H.R. 2028, the ''Pledge Protection Act of 2003.''

The Constitution Project, based on Georgetown University's Public Policy Institute, specializes in creating bipartisan consensus on a variety of legal and governance issues, and promoting that consensus to policymakers, opinion leaders, the media, and the public. We have initiatives on the death penalty, liberty and national security, war powers, and judicial independence (our Courts Initiative), among others. Each of our initiatives is directed by a bipartisan committee of prominent and influential businesspeople, scholars, and former public officials.

Our Courts Initiative works to promote public education on the importance of our courts as protectors of Americans' essential constitutional freedoms. Its co-chairs are the Honorable Mickey Edwards, John Quincy Adams Lecturer at the John F. Kennedy School of Government at Harvard University and former chair of the House of Representatives Republican Policy Committee (R-OK), and the Honorable Lloyd Cutler, a prominent Washington lawyer and White House counsel to Presidents Carter and Clinton.

In 2000, the Courts Initiative created a bipartisan Task Force to examine and identify basic principles as to when the legislature acts unconstitutionally in setting the powers and jurisdiction of the judiciary. The Task Force was unanimous in its conclusion that some legislative acts restricting courts' powers and jurisdiction are unconstitutional. The Task Force also concluded that some legislative actions, even if constitutional, are undesirable. (The Task Force's findings and recommendations are published in Uncertain Justice: Politics and America's Courts 2000.)

Our Task Force arrived at seven bipartisan consensus recommendations, including the following, which are relevant to the legislation at hand:

1. Congress and state legislatures should heed constitutional limits when considering proposals to restrict the powers and jurisdiction of the courts.

2. Legislatures should refrain from restricting court jurisdiction in an effort to control substantive judicial decisions in a manner that violates separation of powers, due process, or other constitutional principles.

3. Legislatures should not attempt to control substantive judicial decisions by enacting legislation that restricts court jurisdiction over particular types of cases.

4. Legislatures should refrain from restricting access to the courts and should take necessary affirmative steps to ensure adequate access to the courts for all Americans.

Specifically, our Task Force was unanimous in its view that there are some constitutional limits on the authority the legislature to restrict court jurisdiction in an effort to control substantive judicial decisions. In particular, separation of powers, due process, and other constitutional provisions limit such authority. Task Force members had differing views about the scope and source of the constitutional limit on the legislature's power in this area. For instance, some believed that restrictions on jurisdiction become unconstitutional when they undermine the essential role of the Supreme Court. Others relied on a reading of the Vesting Clause of Article III, which places judicial power—the power to decide cases—in the hands of the courts alone. Nonetheless, all believed that constitutional limitations exist.

Apart from the constitutionality of laws restricting federal court jurisdiction, the Task Force was also unanimous in its view that legislative acts stripping courts of jurisdiction to hear particular types of cases in an effort to control substantive judicial decisions are undesirable and inappropriate in a democratic system with co-equal branches of government. Legislative restriction of jurisdiction in response to particular substantive decisions unduly politicizes the judicial process, and attempts by legislatures to affect substantive outcomes by curtailing judicial jurisdiction are inappropriate, even if believed constitutional. (Indeed, it was striking that members reflecting a broad ideological range—from, for example, Leonard Leo of the Federalist Society to Steven Shapiro of the American Civil Liberties Union—agreed that restrictions on jurisdiction to achieve substantive changes in the law are unwise and undesirable policy.)

The Task Force was also unanimous that legislation that restricts access to the courts and precludes individuals from using a judicial forum to enforce rights is undesirable and unconstitutional. Rights are meaningless without a forum in which they can be vindicated. Therefore, access to the courts at both the federal and state levels is essential in order for rights to have effect. Legislatures have the duty to ensure meaningful access to the courts and legislative actions that preclude this are undesirable and unconstitutional.

Our Task Force reached these conclusions and recommendations rightly. From its beginning, our system of constitutional democracy has depended on the independence of the judiciary. Judges are able to protect citizens' basic rights and decide cases fairly only if free to make decisions according to the law, without regard to political or public pressure. Similarly, the judiciary can maintain the checks and balances essential to preserving a healthy separation of powers only if able to resist overreaching by the political branches. Indeed, the cornerstone of American liberty is the power of the courts to protect individual rights from momentary excesses of political and popular majorities.

In recent years, as part of the polarization and posturing that increasingly characterize our national and state politics, threats to judicial independence have become more commonplace. Attacks on judges for unpopular decisions, even those made in good faith, have become more rampant. Politicians are responding to unpopular decisions and litigants by attempting to restrict courts' powers in certain kinds of cases. However, Americans have much to lose if we do not exercise self-restraint and instead choose short-term political gain at the expense of judicial independence. The independence of our judiciary is, as Chief Justice Rehnquist described, ''one of the crown jewels of our system of government.''

In conclusion, while Article III of our Constitution gives Congress the power to regulate federal court jurisdiction, this power is not unlimited, and Congress should not—and in some instances may not—use its power to restrict federal court jurisdiction in ways that infringe upon separation of powers, violate individual rights and equal protection, or offend federalism. H.R. 2028 is poised to do all three by stripping federal courts—including even the U.S. Supreme Court—of the authority to hear cases involving the Pledge of Allegiance, even when such cases involve First Amendment issues of free speech and freedom of religion. It sets the dangerous precedent of transferring questions of federal and constitutional law exclusively to state courts and preventing American citizens from seeking protection of fundamental rights in federal court, and it threatens the critical and unique role that the federal courts play in constitutional balance of powers, interpreting and enforcing constitutional law, and providing legal certainty.

For these reasons, as well as those detailed our Task Force's findings and recommendations, the Constitution Project urges you to oppose H.R. 2028. Thank you for your consideration.

Sincerely,

KATHRYN A. MONROE,
Director, Courts Initiative.

AMERICAN HUMANIST ASSOCIATION,
September 20, 2004.

Oppose H.R. 2028, the ''Pledge Protection Act 2003''

DEAR REPRESENTATIVE, The American Humanist Association (AHA) stands in opposition to H.R. 2080, the ''Pledge Protection Act of 2003,'' which would prevent all federal courts from hearing cases challenging or interpreting rights granted by the First Amendment as they relate to Pledge of Allegiance cases. We urge you to vote against this bill, which would compromise long held American legal principles of due process and separation of powers by shutting the federal courthouse doors to large numbers of Americans.

If passed, the Pledge Protection Act would set a dangerous precedent by stripping federal courts of judicial independence and paving the way to preventing federal judges from ruling on other controversial social issues from abortion and gun control to school vouchers and school prayer. As we warned with the Marriage Protection Act (H.R. 3313), attempts by Congress to strip the judiciary of their power to review the legislation are inequitable and will open the door to more of the same. If the Pledge Protection Act passes it will fuel the fires for similar bills.

Denying access to the federal court system is unacceptable to religious and Humanist minorities who have a due process right to have their cases heard.

The Pledge Protection Act presents a serious separation of powers concern. Federal courts are uniquely prepared to interpret federal constitutional concerns and to serve as a check on the constitutionality of actions of Congress and the Executive branch. That's why constitutional concerns are raised when an attempt is made to block the courts from reviewing and interpreting the constitutionality of a single act.

Congress should not disrupt the balance of power intended by our Founding Fathers. Restricting the federal courts' ability to protect First Amendment rights severely undermines the American judicial system.

Humanists are particularly concerned about this bill because it would violate judicial independence in order to undermine American citizens, in this case those of a minority faith or no religion, the right to access federal courts to challenge a piece of legislation.

In the past Congress has rejected attempts to withdraw controversial issues from the scope of federal courts and the AHA encourages you to do so again at this important juncture. We urge you to defend due process and separation of powers and vote no on the Pledge Protection Act.

Sincerely,

MEL LIPMAN,
AHA President.

UNITARIAN UNIVERSALIST ASSOCIATION OF CONGREGATIONS, WASHINGTON OFFICE FOR ADVOCACY, WASHINGTON, DC, SEPTEMBER 20, 2004.

DEAR REPRESENTATIVE: On behalf of more than 1,050 congregations that make up the Unitarian Universalist Association, I urge you to oppose H.R. 2028, the ''Pledge Protection Act of 2004.'' As a tradition with a deep commitment to religious pluralism, we believe that this legislation would seriously undermine the First Amendment protections of the Constitution, and particularly the rights of religious minorities, by stripping federal courts, including the Supreme Court, of jurisdiction over cases concerning the Pledge of Allegiance.

In resolutions dating back to 1961, the highest policy-making body of the Unitarian Universalist Association has repeatedly affirmed the right of all Americans to religious freedom, including the right of religious minorities in public schools to not recite the Pledge of Allegiance. The Supreme Court has agreed in the case of *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) that the Pledge cannot be mandatory for public school students.

Despite the *Barnette* ruling, we know from experience that the practice of mandatory recitation continues. By eliminating the mechanism for religious minorities to seek relief from this practice through appeals to a federal court, H.R. 2028 would have the practical effect of all but eliminating the right itself. As a result, we believe that this legislation will seriously harm religious minorities and the constitutional free speech rights of countless parents and children, many of whom are members of Unitarian Universalist congregations and are involved in our religious education programs.

By undermining the power of federal courts to protect constitutional rights affirmed by the U.S. Supreme Court, we believe that H.R. 2028 would weaken the separation of powers in a way that we find deeply troubling.

The congregations of the Unitarian Universalist Association collectively affirm and promote the right of conscience and the use of the democratic process in society at large. We are committed to the ideals of the founders of this nation, including religious liberty and religious pluralism, as well as the balance of powers that protects such rights.

I urge you to preserve the rights of religious minorities, as well as the constitutional separation of powers, by opposing the ''Pledge Protection Act of 2004.''

In Faith,

ROBERT C. KEITHAN,
Director.

SEPTEMBER 20, 2004.

PROTECT SEPARATION OF POWERS AND RELIGIOUS MINORITIES' LONGSTANDING CONSTITUTIONAL RIGHTS; OPPOSE FINAL PASSAGE OF H.R. 2028

DEAR REPRESENTATIVE: We, the undersigned religious, civil rights, and civil liberties organizations, urge you to oppose H.R. 2028, the ''Pledge Protection Act,'' misguided legislation that would strip all federal courts, including the Supreme Court, from hearing First Amendment challenges to the Pledge of Allegiance and from enforcing longstanding constitutional rights in federal court.

The signatories to this letter include organizations that supported the recent court challenge to the constitutionality of including ''under God'' in the Pledge of Allegiance, organizations that opposed that challenge, and organizations that took no position on the matter. We are united, however, in believing that H.R. 2028 threatens the separation of powers that is a fundamental aspect of our constitutional structure. Beyond this, while the legislation ostensibly responds to the controversy surrounding ''under God'' in the Pledge of Allegiance, this legislation sweeps far more broadly, with potentially severe constitutional implications for religious minorities who are adversely affected by government-mandated recitation of the Pledge.

First and foremost, we are opposed to H.R. 2028 because this legislation, by entirely stripping all federal courts, including the Supreme Court, of jurisdiction over a particular class of cases, threatens the separation of powers established by the Constitution, and undermines the unique function of the federal courts to interpret constitutional law. This legislation deprives the federal courts of the ability to hear cases involving religious and free speech rights of students, parents, and other individuals. The denial of a federal forum to plaintiffs to vindicate their constitutional rights would force plaintiffs out of federal courts, which are specifically suited for the vindication of federal interests, and into state courts, which may be hostile or unsympathetic to these federal claims, and which may lack expertise and independent safeguards provided to federal judges under Article III of the Constitution. It is in apparent recognition of this concern that no federal bill withdrawing federal jurisdiction in cases involving fundamental constitutional rights has become law since the Reconstruction period.

In addition, as drafted, the bill would deny access to the federal courts in cases to enforce existing constitutional rights for religious minorities. Over sixty years ago, the Supreme Court decided the case of *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943). In *Barnette*, the Supreme Court struck down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance. Under the West Virginia law, religious minorities faced expulsion from school and could be subject to prosecution and fined, if convicted of violating the statute's provisions. In striking down that statute, the Court reasoned: ''To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . If there is any fixed star in our constitutional constellation, it is that no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'' 319 U.S. at 639–40.

Moreover, just recently, a panel of the U.S. Court of Appeals for the Third Circuit held that a Pennsylvania law mandating recitation of the Pledge, even when it provided a religious exception, violated the Constitution because it violated the free speech of the students. *Circle School* v. *Pappert*, No. 03–3285 (3rd Cir. Aug. 19, 2004). In *Pappert*, the court found that: ''It may be useful to note our belief that most citizens of the United States willingly recite the Pledge of Allegiance and proudly sing the national anthem. But the rights embodied in the Constitution, particularly the First Amendment, protect the minority—those persons who march to their own drummers. It is they who need the protection afforded by the Constitution and it is the responsibility of federal judges to ensure that protection.'' Pappert, Slip Op. at 14.

H.R. 2028 would undermine the longstanding constitutional rights of religious minorities to seek redress in the federal courts in cases involving mandatory recitation of the Pledge. As a result, this legislation will seriously harm religious minorities and the constitutional free speech rights of countless individuals.

H.R. 2028 also raises serious legal concerns about the violation of the principles of separation of powers, equal protection and due process. The bill undermines public confidence in the federal courts by expressing outright hostility toward them, threatens the legitimacy of future congressional action by removing the federal courts as a neutral arbiter, and rejects the unifying function of the federal judiciary by denying federal courts the opportunity to interpret the law. We strongly believe that this legislation as drafted will have broad, negative implications on the ability of individuals to seek enforcement of previously constitutionally protected rights concerning mandatory recitation of the Pledge. We therefore urge, in the strongest terms, your rejection of this misguided and unwise legislation.

Sincerely,

American Civil Liberties Union
American Federation of State, County and Municipal Employees (AFL–CIO)
American Humanist Association
American Jewish Committee
Americans for Democratic Action
Americans for Religious Liberty
Americans United for Separation of Church and State
Anti-Defamation League
Baptist Joint Committee
Central Conference of American Rabbis
Committee for Judicial Independence
General Board of Church and Society of the United Methodist Church
Human Rights Campaign
Jewish Reconstructionist Federation
Leadership Conference on Civil Rights
Legal Momentum (the new name of NOW Legal Defense and Education Fund)
National Council of Jewish Women
National Senior Citizen Law Center
Northwest Religious Liberty Association
People for the American Way
Sikh Mediawatch and Resource Task Force (SMART)
The Interfaith Alliance
U.S. Action
Union for Reform Judaism
Unitarian Universalist Association of Congregations

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Tennessee (Mr. DUNCAN).

Mr. DUNCAN. Mr. Chairman, I thank the very distinguished chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for yielding me this time, and for his work on this legislation and his work on so many other important bills before this body.

I also want to commend the gentleman from Missouri (Mr. AKIN) for his outstanding leadership on this issue.

Mr. Chairman, in a 1952 Supreme Court case, Zorach versus Clawson, in an opinion written, I think, by Justice Douglas, it said, there is ''No constitutional requirement which makes it necessary for government to be hostile to religion and throw its weight against efforts to widen the effective scope of religious influence.''

Similar to that, a few years ago the great columnist for the Washington Post, William Raspberry, who I am sure most people would describe as being fairly liberal on most issues, when he was writing about an issue similar to this, he said ''Is it not just

possible that anti-religious bias, masquerading as religious neutrality, has cost this Nation far more than we have been willing to acknowledge?''

Mr. Chairman, I spent 7½ years as a circuit court judge or State trial judge in the State of Tennessee. For years, I have heard and read Federal judges complaining about how Congress is putting too much into the Federal courts, expanding their jurisdiction too much, and how overworked they are, and how there should be more limits on the jurisdiction of these courts and that we should stop taking so many cases away from State courts. This is a very minimal limitation on the jurisdiction of the Federal courts. Very minimal. A very reasonable limitation.

As the gentleman from Indiana (Mr. PENCE) pointed out a few moments ago, there is almost no question that it is within the scope of congressional jurisdiction, or Congressional power to limit the jurisdiction of the Federal courts.

Alexander Hamilton, writing many years ago in Federalist paper number 81 said, ''To avoid all inconveniences, it will be safest to declare generally that the Supreme Court shall possess appellate jurisdiction that shall be subject to such exceptions and regulations as the national legislature may prescribe. This will enable the government to modify it in such a manner as will best answer the ends of public justice and security.''

And Thomas Jefferson, in a letter written in September of 1820, said this, responding to the argument that Federal judges should be the final interpreters of the Constitution. Thomas Jefferson wrote this: ''You seem to consider the Federal judges as the ultimate arbiters of all constitutional questions, a very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men and not more so. They have with others the same passions for party, for power, and the privilege of their corps. Their power is the more dangerous, as they are in office for life and not responsible as the other functionaries are to the elective control. The Constitution has erected no such single tribunal.''

Mr. Chairman, I am sorry my time has run out. I urge support for this very reasonable, very minimal limitation on the Federal Courts' jurisdiction.

Mr. NADLER. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. CONYERS), the very distinguished ranking member of the Committee on the Judiciary.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding me this time.

My colleagues, we have before us a measure that is unconstitutional, that undermines the Federal Judiciary, and is totally unnecessary. The bill, of course, violates Marbury versus Madison, which has stated and been the law of the land since 1803. Never in these 201 years has any Congress ever brought a measure like this to the floor of the House.

In Marbury, Justice Harlan said, ''it is emphatically the role of the court to determine what the law is.'' And so we violate the very basic fundamental part of the role of the Judiciary in the Constitution. It violates the separation of powers principle because it denies the Supreme Court its historical role of final authority on the constitutionality of our laws.

Who wants 50 different decisions coming from the several courts of the States? It violates freedom of speech and religion. And we have Supreme Court cases, West Virginia State Board of Education versus Barnett, and just this year the Third Circuit held in Pennsylvania that the mandated recitation of the Pledge of Allegiance was unconstitutional.

Now, I know what you are trying to accomplish by this gross distortion of constitutional history, but ultimately someone has to decide, and we have been deciding for 201 years. To make sure it is constitutional, some minds reason, we should strip the jurisdiction of the subject from the court. What is next: guns, freedom of choice, terrorism?

We cannot proceed as a democratic nation without very emphatically joining with Senator Barry Goldwater, and Robert Bork, and our former Judiciary colleague, Bob Barr.

I rise in strong opposition to H.R. 2028, the so-called ''Pledge Protection Act''. This bill is not only unconstitutional, it undermines our federal judiciary and is totally unnecessary.

H.R. 2028 is Unconstitutional: This bill violates just about every principle in our constitution and bill of rights. First, it violates separation of powers principles because it denies the Supreme Court its historical role as the final authority on the constitutionality of our laws. This is a doctrine that was established more than 200 years ago in the landmark Marbury v. Madison decision, and which has served as the cornerstone of our system of checks and balances.

Second, it violates Freedom of Speech and Religion. This is because it makes it far more difficult for persons who feel they are being coerced into reciting the pledge to have access to the courts. These cases are not hypothetical. Sixty years ago, the Supreme Court issued the West Virginia State Board of Education v. Barnett decision, which held that it was unlawful to expel religious minorities from school if they refused to recite the pledge of allegiance. Just this year the Third Circuit held a Pennsylvania law which mandated recitation of the Pledge of Allegiance was unconstitutional.

Third, it violates the equal protection clause. This is because it imposes an undue burden on a specific class of individuals—religious minorities—without a rational basis, other than fear of independent judges. Just read the 1996 Roemer decision, which held it unlawful to pass a law excluding gay and lesbians from legal protections.

H.R 2028 Undermines the Federal Judiciary: If H.R. 2028 is enacted, it would constitute the first and only time Congress has ever enacted legislation totally eliminating any federal court from considering the constitutionality of federal legislation—in this case, the Pledge of Allegiance.

Adoption of the bill will result in the balkanization of our judiciary and would eliminate any possibility of operating under a single uniform Supreme Court. This is inconsistent with the very words of the Pledge of Allegiance, namely that we are ''one Nation under God, indivisible, with liberty and justice for all.'' Dividing our nation into 50 different legal regimes, where the Pledge is permitted in some jurisdictions and not in others, is the very antithesis of this sacred principle.

It is no wonder that principled conservatives like former Senator Barry Goldwater found court stripping legislation to be so repugnant. When court stripping legislation was proposed in the 1970's concerning school prayer, abortion, and busing, Senator Goldwater opposed them, warning that the ''frontal assault on the independence of the Federal courts is a dangerous blow to the foundations of a free society.''

Robert Bork, a former Yale Law professor and Reagan appointee for the D.C. Circuit Court of Appeals, also is strongly opposed to court-stripping measures, arguing, ''[y]ou'd have 50 different constitutions running around out there, and I'm not sure even the conservatives would like the results.''

Our former colleague Bob Barr has written, the principal problem with court stripping bills is ''that it sets a harmful precedent for the future. Our healthy democracy depends on having three separate and independent branches of government . . . I am concerned about having a Congress or President unchecked by the independent judiciary established by the Constitution.''

If we allow H.R. 2028 to pass into law, it truly could be open season on our precious rights and liberties. This was our prediction when the Majority was contemplating the Marriage Protection Act, and here we are again. Today I ask, where will this all end? Why in the world would we exempt these laws from federal judicial review and not laws concerning terrorism, or child pornography?

H.R. 2028 is unnecessary: What is most amazing to me is that we are taking up this bill at a time when the Supreme Court—which is dominated by Republican appointees—has not issued a single opinion in any way undermining the Pledge of Allegiance.

Why do we have to take up this bill now when the death toll of our men and women fighting for our right to be free from terror has reached record limits and continues to rise every single day. A recent report from the Center for American Progress shows an alarming number of suicides this year among U.S. troops serving in Iraq. Yet, at a time when our troops are working hard to answer the Nation's call, their own needs remain unmet—put at the bottom of the list of priorities.

Conclusion: Just as I opposed the ill-considered Marriage Protection Act two months ago, I must oppose this court stripping bill. These efforts to deny our citizens access to the federal courts constitute nothing less than a modern day version of ''court packing.'' Just as President Roosevelt's efforts to control the

outcome of Supreme Court decisions by packing it with loyalists was rejected by Congress in the 1930's, thereby preserving the independence of the federal judiciary, so too must this modern day effort to show the courts "who is boss" fail as well.

Mr. Chairman, I insert for the RECORD letters from organizations opposing this bill:

SEPTEMBER 20, 2004.

Oppose the "Pledge Protection Act," H.R. 2028

U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE: We, the undersigned organizations dedicated to protecting women's reproductive health and rights, write to urge you to oppose H.R. 2028, the so-called "Pledge Protection Act." The implications of this bill go far beyond the context of the Pledge of Allegiance. This bill would set a dangerous precedent that would disrupt the traditional separation of powers and undermine the longstanding role of the federal judiciary in safeguarding constitutional rights, including the right of reproductive choice.

H.R. 2028 would deny all federal courts—including the U.S. Supreme Court—the jurisdiction to hear any cases concerning the interpretation or constitutionality of the Pledge of Allegiance. The bill would irreparably alter the relationship between the judicial branch and the two other branches of the federal government by depriving the federal courts of their traditional role as interpreters of the U.S. Constitution. Even more disturbing, unlike other previous versions of court-stripping legislation, H.R. 2028 deprives even the U.S. Supreme Court of jurisdiction, divesting the Court of its historical role as the final authority on the U.S. Constitution.

We are deeply concerned about legislation like H.R. 2028 that strips federal courts of their important role in safeguarding constitutional rights and freedoms. While the target today is a controversial view of the Pledge of Allegiance and the separation of church and state (a view that the Supreme Court has not endorsed), there can be no doubt that anti-choice lawmakers and their allies in Congress intend to use this strategy to achieve other policy goals that they are unable to accomplish without toppling the delicate constitutional balance of powers that has served this country for more than 200 years. Recently, House Majority Leader Tom DeLay told reporters that he plans to use "jurisdiction stripping" measures to achieve other social policy goals. While he claimed that the time is "not quite ripe" to apply this legislative tactic to the issue of abortion, in fact, anti-choice lawmakers have already made the attempt—in 2002, when considering the Federal Abortion Ban. Although that particular effort failed, passage of H.R. 2028 would set a dangerous precedent for future attempts to strip federal courts of jurisdiction to hear cases regarding reproductive choice. The federal courthouse doors should not be closed to women seeking to vindicate their right to obtain critical reproductive health services.

For these reasons, we urge you to oppose H.R. 2028.

Sincerely,

American Association of University Women
Center for Reproductive Rights
Choice USA
Feminist Majority
Legal Momentum (the new name of NOW Legal Defense and Education Fund)
NARAL Pro-Choice America
National Abortion Federation
National Council of Jewish Organizations
National Council of Women's Organizations
National Family Planning and Reproductive Health Association
Planned Parenthood Federation of America
Unitarian Universalist Association of Congregations.

HUMAN RIGHTS CAMPAIGN,
September 22, 2004.

DEAR REPRESENTATIVE: On behalf of the Human Rights Campaign, the nation's largest lesbian, gay, bisexual and transgender (LGBT) civil rights organization, and its 600,000 members nationwide, I write to express our opposition to H.R. 2028, the "Pledge Protection Act." The Human Rights Campaign (HRC) opposes this dangerous piece of legislation, as well as any other piece of legislation that would undermine the critical separation of powers that supports the elegant system of government that the framers of the United States Constitution envisioned.

H.R. 2028 would strip all federal courts, including the Supreme Court, of jurisdiction over cases involving the Pledge of Allegiance. This would preclude religious minorities from being able to have their "day in court", if their claims happen to involve the Pledge. This blocking of access to the courts is offensive to principles of both equal protection and due process. While HRC does not have an official position on the Pledge, we do have a position against hampering the ability of any branch of government to protect the rights of political minorities. The framers of the United States Constitution laid out a tripartite system of government and involved co-equal branches and a delicate system of checks and balances. This system necessarily includes the ability of the federal courts to invalidate any piece of congressional legislation that violates basic constitutional protections. H.R. 2028 does violence to this system of government and its associated guarantees of liberty and justice. Disturbingly, H.R. 2028, when seen in conjunction with H.R. 3313 (The Marriage Protection Act), appears to be a part of a larger attack on the independence of the Judiciary.

HRC urges you to vote "NO" on H.R. 2028 when it is considered by the floor of the House of Representatives. Quite simply, we believe that the very patriotism that inspired the Pledge of Allegiance would demand a defense of the ideals of equity and justice that inspired it. This patriotism is incompatible with the Pledge Protection Act.

Thank you for the opportunity to comment and for your consideration of our concerns. If you have any questions, please do not hesitate to contact Praveen Fernandes, on my staff, at 202.216.1559.

Sincerely,

WINNIE STACHELBERG,
Political Director.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, DC, September 21, 2004.

OPPOSE THE "PLEDGE PROTECTION ACT OF 2003" (H.R. 2028): IT THREATENS CONSTITUTIONAL PROTECTIONS AND CIVIL RIGHTS

DEAR REPRESENTATIVE: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil rights coalition representing people of color, women, children, older Americans, persons with disabilities, gays and lesbians, major religious organizations, labor unions, and civil and human rights groups, we urge you to vote against H.R. 2028, the "Pledge Protection Act of 2003." LCCR firmly believes that access to the courts must not be slammed shut—especially by laws that will block the federal courthouse doors. H.R. 2028, the so-called "Pledge Protection Act," will do exactly that—deny Constitutional rights to religious minorities by stripping the courts of jurisdiction.

LCCR strongly opposes any proposal that would eliminate access to the federal judiciary for any group of Americans. For over 50 years, the federal courts have played an indispensable role in the interpretation and enforcement of civil rights laws. When Congress has sought to prevent the courts from exercising this role, such efforts ultimately tend to do little more than enshrine discrimination in the law. Fortunately, in most instances, cooler heads prevail. In the 1970s, for example, some members of Congress unsuccessfully sought to strip the courts of jurisdiction to hear cases involving desegregation efforts such as busing—legislation that would have done nothing but preserve racial inequality. More recently, however, at the height of anti-immigrant sentiment in 1996, Congress succeeded in enacting immigration laws that stripped courts of the ability to hear appeals by legal immigrants who were challenging harsh new deportation laws—laws that were so extreme that the Supreme Court ultimately had no choice but to step in and scale them back.

The judicial branch has often been the sole protector of the rights of minority groups against the will of the popular majority. Any proposal to interfere with this role through "court-stripping" proposals would set a dangerous precedent that would harm all Americans. Allowing the courthouse doors to be closed to one minority group, as H.R. 2028 would do to religious minorities, is not only unjustified in itself, but will also set a dangerous precedent that will ultimately weaken the rights of any other groups that may be forced to turn to the courts for justice. Further, H.R. 2028 threatens the separation of powers established by the Constitution, and undermines the unique function of the federal courts to interpret Constitutional law. This legislation deprives the federal courts of the ability to hear cases involving religious and free speech rights of students, parents, and other individuals. The denial of a federal forum to plaintiffs to vindicate their Constitutional rights would force plaintiffs out of federal courts, which are specifically suited for the vindication of federal interests, and into state courts, which may be hostile or unsympathetic to these federal claims, and which may lack expertise and independent safeguards provided to federal judges under Article III of the Constitution. It is in apparent recognition of this concern that no federal bill withdrawing federal jurisdiction in cases involving fundamental Constitutional rights has become law since the Reconstruction period.

H.R. 2028 would deny access to the federal courts in cases to enforce existing constitutional rights for religious minorities. Over sixty years ago, the Supreme Court decided the case of *West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). In Barnette*, the Supreme Court struck down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance. Under the West Virginia law, religious minorities faced expulsion from school, and could be subject to prosecution and fined, if convicted of violating the statute's provisions. In striking down that statute, the Court reasoned: "To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . If there is any fixed star in our Constitutional constellation, it is that

no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion.'' (319 U.S. at 639–40)

LCCR urges you to vote against H.R. 2028 because of the dangers to Constitutional protections and civil rights laws and enforcement posed by its enactment. If you have any questions, please feel free to contact Rob Randhava, LCCR policy analyst, at (202) 466–6058, or Nancy Zirkin, LCCR deputy director, at (202) 263–2880. Thank you for your consideration.

Sincerely,

WADE HENDERSON,
Executive Director,
NANCY ZIRKIN,
Deputy Director.

AMERICAN BAR ASSOCIATION,
Chicago, IL, September 20, 2004.

DEAR REPRESENTATIVE: We understand that efforts are underway to bring H.J. Res. 56, the Federal Marriage Amendment, to the House floor for a vote during the next few weeks. While we have taken no position either favoring or opposing laws that would allow same-sex couples to enter into civil marriages, the American Bar Association is staunchly opposed to this proposed amendment. Regardless of your personal views on same-sex marriage, we urge you to reject this attempt to use the constitutional amendment process to impose on the states a particular moral viewpoint about a controversial issue and to vote against the proposed amendment, which tramples on the traditional authority of each state to establish its own laws governing civil marriage.

The authority to regulate marriage and other family-related matters has resided with the states since the founding of our country and is rooted in principles of federalism. This has enabled states to enact diverse marriage laws that respect and reflect the unique needs and views of their residents. Our federal system also gives states the authority to adopt their own state constitutions and to interpret its provisions to accord greater protection to individual rights than are granted under similar provisions of the U.S. Constitution. Over the years, we not only have successfully tolerated the fact that state laws and judicial interpretations governing marriage are not uniform, we have benefited from it. As the late Justice Louis Brandeis famously explained many years ago:

To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may . . . serve as a laboratory; and try novel social experiments without risk to the rest of the country.

Variations among the state laws governing same-sex unions have provided the opportunity to examine the effect different laws have on society, increased each state's exposure to new ideas, and served as guidance to those states that seek to modify their laws. Adoption of H.J. Res. 56 would deprive the nation of these benefits.

While the proposed amendment is far too vague to ascertain its full meaning with certainty, its adoption would have sweeping consequences for the states that extend well beyond invalidating or prohibiting same-sex civil marriages. For instance, it would forever prohibit a state from adopting its own constitutional amendment to establish civil unions or extending to unmarried couples—heterosexual or gay—legal protections, such as health insurance, that the state provides to married spouses if the state constitutions so require, as in Vermont. And, despite the claims of the resolution's authors, it is unclear whether a state would be prohibited from passing laws permitting civil unions or domestic partnerships and providing state-conferred benefits to the couples involved. There is little doubt, however, that the joint resolution's lack of clarity will result in extensive litigation and that its passage and adoption will limit the future ability of states to fashion their own responses to meet the changing needs of their residents.

H.J. Res. 56 also should be opposed because a constitutional amendment is neither a necessary nor appropriate vehicle for changing our civil marriage laws. The Constitution should not be amended absent urgent and compelling circumstances, and it certainly should not be amended to call a halt to democratic debate within the states or to promote a particular ideology. As Bob Barr, former U.S. Representative from Georgia, succinctly stated in testimony before the Senate Judiciary Committee this past spring, ''We meddle with the Constitution to our own peril. If we begin to treat the Constitution as our personal sandbox, in which to build and destroy castles as we please, we risk diluting the grandeur of having a Constitution in the first place.''

It particularly does not make sense for the House to pursue the Family Marriage Amendment during these busy, final weeks of the 108th Congress since there is no urgent need for immediate action and, clearly, no national consensus has emerged over the legal ramifications of same-sex unions. Indeed, Congress, through enactment of the Defense of Marriage Act in 1996, has already denied same-sex couples the more than 1,000 federal benefits that extend to heterosexual married couples and relieved states of their obligation to accord full faith and credit to same-sex marriages sanctioned by other jurisdictions. Therefore, this proposed amendment would only affect state laws governing marriage and same-sex unions and attending judicial interpretations. During your deliberations over the next week, we hope you will not loose sight of the fact that, at present, 49 states grant civil marriage licenses *exclusively* to heterosexual couples. Clearly, this nation is not facing a crisis of constitutional proportions that requires a drastic and immediate solution.

The ABA Section of Family Law recently released a white paper titled An Analysis Of The Law Regarding Same-Sex Marriage, Civil Unions And Domestic Partnership, which is available on our website at: *http://www.abanet.org/family/whitepaper/fullreport.pdf*. (Printed copies may be obtained by emailing Denise Cardman, Senior Legislative Counsel in our Governmental Affairs Office, at *cardmand@staff.abanet.org*.) This thorough compilation of activity within the 50 states amply demonstrates that courts and legislatures already have enacted or issued hundreds of statutes, local ordinances and court opinions to address the myriad complex issues and ramifications arising from this relatively new public policy debate and are continuing to address the issues vigorously. We hope that the report will help you in your review of this proposed amendment.

Allowing the states to craft their own solutions in this area requires both confidence and humility: confidence in the wisdom of the people and their representatives, and humility to understand, in the words of the late Judge Learned Hand, that ''[t]he spirit of liberty is the spirit that is not too sure that it is right.'' If the Constitution is to continue to embody the spirit of liberty for future generations, we must not seek to use it to enshrine still-evolving societal views.

Despite the fact that more than 11,000 proposed constitutional amendments have been introduced in Congress since 1789, the Constitution has been amended only 27 times in 215 years—a testament to its vitality and to Congressional restraint. We urge you to exercise the same restraint today and oppose H.J. Res. 56.

Sincerely,

ROBERT J. GREY, *Jr*.

PEOPLE FOR THE AMERICAN WAY,
Washington, DC, September 20, 2004.

House of Representatives,
Washington, DC.

DEAR MEMBER OF CONGRESS; On behalf of the more than 675,000 members and activists of People For the American Way, we write to urge you to oppose H.R. 2028, the ''Pledge Protection Act of 2003.'' This legislation would violate the First Amendment, and would set a terrible precedent against the separation of powers embodied in our Constitution that protects the fundamental rights of all Americans.

As amended, H.R. 2028 would eliminate any role for the federal courts, including the U.S. Supreme Court, in challenges concerning the constitutionality of the Pledge of Allegiance. This would have an immediate and dramatic impact on the ability of individual Americans to be free from government-coerced speech or religious expression. For example, this legislation would bar the federal courts from enforcing the U.S. Supreme Court's 1943 decision in West Virginia State Board of Education v. Barnette which barred a local school district from forcing children to recite the Pledge of Allegiance over their religious objections.

Apart from being unwise as a matter of policy, H.R. 2028 appears to be an unconstitutional overreach of Congress' power under article III regarding the federal judiciary, particularly in light of the Fifth Amendment's due process clause and the Fourteenth Amendment's equal protection clause. Further, it would contradict common sense, and more than 200 years of constitutional history, to allow Congress to circumvent the words ''Congress shall make no law'' by eliminating effective enforcement of the First Amendment by the courts and the U.S. Supreme Court. We agree with U.S. Senator Barry Goldwater who stated about a similar attempt to strip federal courts of jurisdiction over fundamental rights more than twenty two years ago: ''If there is on independent tribunal to check legislative or executive action all the written guarantees or rights in the world would amount to nothing.''

Nor are state courts the appropriate sole and final venue for enforcement of federal constitutional rights. Indeed, H.R. 2028 raises the prospect of 50 different interpretations of the First Amendment. Guarantees of such fundamental rights as freedom of religion, freedom of speech and freedom from governmental religious coercion should not and cannot properly be relegated to such jurisprudential uncertainty. We note that the Reagan Administration, hardly an opponent of federalism, rejected historical and textual arguments for removing jurisdiction over federal constitutional questions to state courts:

''Nor does it seem likely that the [Constitutional] Convention would have developed the Exceptions Clause as a check on the Supreme Court in such a manner that an exercise of power under the Clause to remove Supreme Court appellate jurisdiction would . . . vest [the power] in the state courts. Hamilton regarded even the possibility of multiple courts of final jurisdiction as unacceptable.''

In addition, H.R. 2028 expressly sets the precedent for future Congresses to completely bar U.S. citizens from raising any judicial challenge to federal action. State

courts can only assert jurisdiction over the federal government if it consents to be sued. Failing that consent, individuals would be left without recourse to unconstitutional actions of the Congress or the executive branch. Unreviewable federal power to infringe on fundamental individual rights of American citizens is alien to our republic.

Finally, H.R. 2028 threatens to disrupt the framework of checks and balances on governmental power embodied in the U.S. Constitution through the separation of powers by setting the precedent for Congress to remove legislation from constitutional review by the judicial branch. For all practical purposes, Congress could become the sole arbiter of constitutionality on any subject within its powers—or indeed outside its powers since it could legislate away any challenge to congressional interpretation of its own authority. Litigation over the meaning of article III, a necessary part of the inevitable court challenge to H.R. 2028, could in of itself result in a constitutional crisis deeply damaging to the separation of powers.

H.R. 2028 would set a terrible precedent for separation of powers and protection of individual rights. We urge you to reject the premise that Congress is above the Constitution and vote no on this legislation.

Sincerely,

RALPH G. NEAS,
President.
MARGE BAKER,
Director of Public Policy.

THE AMERICAN JEWISH COMMITTEE,
Washington, DC, September 20, 2004.

DEAR REPRESENTATIVE: I write on behalf of the American Jewish Committee, a national organization with more than 125,000 members and supporters represented by 33 chapters, to urge you to oppose H.R. 2028, the ''Pledge Protection Act of 2003.''

This misguided legislation—which would strip all federal courts, including the Supreme Court, of the jurisdiction to hear First Amendment challenges to the Pledge of Allegiance—threatens the separation of powers that is a fundamental aspect of our constitutional structure. Further, while H.R. 2028 ostensibly responds to the controversy surrounding inclusion of the phrase ''under God'' in the Pledge of Allegiance, this legislation sweeps far more broadly, with potentially severe constitutional implications for religious minorities and others who are adversely affected when the government impermissibly seeks to mandate recitation of the Pledge.

It should be emphasized that the American Jewish Committee did not take a position in the recent case in which a challenge was brought to the constitutionally of including ''under God'' in the Pledge of Allegiance. Whatever the merits of that case, however, we are strongly committee to the principle that, in our constitutional system, the federal courts must be available to hear cases in which individuals challenge what they believe to be incursions on their religious and free speech rights.

It would be a terrible—and virtually unprecedented—distortion of that system for the U.S. Congress to deprive students, parents, and other individuals of their access for a specific class of cases to the branch of government crafted to vindicate constitutional claims. Moreover, such an action would undermine public confidence in the federal courts by expressing outright hostility toward them, threaten the legitimacy of future congressional action by removing the federal courts as a neutral arbiter, and reject the unifying function of the federal judiciary by denying federal courts the opportunity to interpret the law.

In addition, as drafted, the bill would seem to deny access to the federal courts—even the Supreme Court—for cases in which individuals seek redress in cases involving mandatory recitation of the Pledge. As a result, this legislation will seriously undermine constitutional guarantees of freedom of speech and religion. There is no question that coercing students to say the Pledge of Allegiance—or any portion thereof—is contrary to the very principles of freedom of conscience that are at the core of our Constitution, and for which the Pledge stands. See the U.S. Supreme court's landmark decision in West Virginia State Board of Education v. Barnett, 319 U.S. 624 (1943) (striking down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance) and, more recently, the decision of a federal appellate court in Circle School v. Pappert, No. 03–3285 (3rd Cir. Aug. 19, 2004) (holding that a Pennsylvania law mandating recitation of the Pledge, even when it provided a religious exception, violated the Constitution because it violated the free speech of the students). But, astonishingly, H.R. 2028 appears to remove from the federal courts the jurisdiction to hear these types of cases.

For all these reasons, the American Jewish Committee urges, in the strongest terms, that you vote against this misguided and unwise legislation.

Tbank you for your consideration of our views on this important matter.

Respectfully,

RICHARD T. FOLTIN,
Legislative Director and Counsel.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE,
Washington, DC, September 21, 2004.

Re Reject efforts to slam federal courthouse doors on religious minorities and vote ''no'' on H.R. 2028.

DEAR REPRESENTATIVE: Americans United for Separation of Church and State urges you to vote ''No'' on passage of H.R. 2028, the ''Pledge Protection Act,'' which is expected to reach the floor of the House of Representatives later this week. Americans United represents more than 70,000 individual members throughout the fifty states and in the District of Columbia, as well as cooperating houses of worship and other religious bodies committed to the preservation of religious liberty. H.R. 2028 is an extreme and unwise proposal that will undermine the crucial separation of powers at the heart of our government and deny religious minorities from seeking enforcement of their longstanding constitutional rights in the federal courts.

H.R. 2028 would deprive all federal courts—including the U.S. Supreme Court—of their ability to hear cases involving the Pledge of Allegiance and to enforce longstanding constitutional rights against coerced recitation of the Pledge. Americans United firmly believes that the text, history and structure of the Constitution, together with important policy considerations, should lead the House of Representatives to soundly defeat this dangerous and misguided bill, as well as any other court-stripping proposal.

THE PLEDGE PROTECTION ACT IS UNCONSTITUTIONAL

Article III, Section 1 of the United States Constitution creates the Supreme Court and provides the Congress with the power to establish ''such inferior Courts as the Congress may from time to time establish.'' Section 2 of Article III delineates sets of cases that the Federal courts may hear, provides for areas of original jurisdiction of the U.S. Supreme Court, and also provides for the appellate jurisdiction of the Supreme Court in other areas ''with such Exceptions, and under such Regulations as the Congress shall make.''

Under Section 2, Congress may have limited authority to limit the types of cases over which the Supreme Court may exercise its appellate jurisdiction. Although the extent of this authority is in dispute and has been the subject of academic commentary over the years, there are clear limits to the authority of Congress to limit the jurisdiction of the federal courts based on other applicable provisions of the Constitution. The Pledge Protection Act would do just that, in that it would entirely deprive every federal court from hearing any constitutional challenge to government-mandated recitation of the Pledge of Allegiance, in violation of due process and separation of powers principles.

THE PLEDGE PROTECTION ACT WOULD VIOLATE DUE PROCESS RIGHTS AND UNDERMINE THE SEPARATION OF POWERS

Basic due process demands an independent judicial forum capable of determining federal constitutional rights. This legislation deprives the federal courts of the ability to hear cases involving fundamental free exercise and free speech rights of students, parents, and other individuals. Congress' denial of a federal forum to plaintiffs in a specified class of cases would force plaintiffs out of federal courts, which are specially suited for the vindication of federal interests, and into state courts, which may be hostile or unsympathetic to federal claims, and which may lack expertise and independent safeguards provided to federal judges under Article III of the Constitution. It is in apparent recognition of this concern that no federal bill withdrawing federal jurisdiction over cases involving fundamental constitutional rights with respect to a particular substantive area has become law in decades.

Political frustration with controversial court decisions during the second half of the twentieth century provoked Congress to propose a number of court-stripping measures designed to overturn court decisions touching on a wide variety of issues, including: anti-subversive statutes, apportionment in state legislatures, ''Miranda'' warnings, busing, school prayer, abortion, racial integration, and composition of the armed services. All of these measures failed to pass Congress. In each instance, bipartisan concerns over threats to the American system of government and constitutional order gave way to a recognition of these court-stripping measures for what they truly were: attempts to circumvent the careful process required for amendments to the U.S. Constitution. As Professor Michael J. Gerhardt stated in his testimony regarding the ''Constitution Restoration Act of 2004'' before the Subcommittee on Courts on September 13, 2004: ''Efforts, taken in response to or retaliation against judicial decisions, to withdraw all federal jurisdiction or even jurisdiction of inferior federal courts on questions of constitutional law are transparent attempts to influence, or displace, substantive judicial outcomes. For several decades, the Congress, for good reason, has refrained from enacting such laws.'' Like so many failed court-stripping measures that have come before it, the Pledge Protection Act represents yet another illegitimate short cut to amending the Constitution, is against the weight of history, and must fail.

THE PLEDGE PROTECTION ACT IS EXTREME, UNWISE AND REPRESENTS MISGUIDED POLICY

As drafted, the bill would slam the courthouse doors to religious minorities trying to gain protection for their fundamental constitutional religious and free speech rights. Over sixty years ago, the Supreme Court decided the case of *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624 (1943). In Barnette, the Supreme Court struck down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance.

Under the West Virginia law, religious minorities faced expulsion from school and could be subject to prosecution and fined, if convicted of violating the statute's provisions. In striking down that statute, the Court reasoned: ''To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . If there is any fixed star in our constitutional constellation, it is that no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'' 319 U.S. at 639–40.

Moreover, just recently, a panel of the U.S. Court of Appeals for the Third Circuit held that a Pennsylvania law mandating recitation of the Pledge, even when it provided a religious exception, violated the Constitution because it violated the free speech of the students. *Circle School* v. *Pappert*, No. 03–3285 (3rd Cir. Aug. 19, 2004). In Pappert, the court found that: ''It may be useful to note our belief that most citizens of the United States willingly recite the Pledge of Allegiance and proudly sing the national anthem. But the rights embodied in the Constitution, particularly the First Amendment, protect the minority—those persons who march to their own drummers. It is they who need the protection afforded by the Constitution and it is the responsibility of federal judges to ensure that protection.'' Pappert, Slip Op. at 14.

The Pledge Protection Act is an attack on our very system of government. Americans United strongly urges you to leave the independence of the federal judiciary in tact, protect longstanding constitutional rights of religious minorities in the federal courts, and respect free speech rights of countless individuals by rejecting this misguided legislation.

Sincerely,

REV. BARRY W. LYNN,
Executive Director.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, September 21, 2004.

Re Don't shut the federal courthouse doors to religious minorities; oppose passage of H.R. 2028.

DEAR REPRESENTATIVE: The American Civil Liberties Union strongly urges you to oppose H.R. 2028, ''the Pledge Protection Act of 2004.'' H.R. 2028 is an extreme measure that would remove jurisdiction from all federal courts, including the Supreme Court, over any constitutional claim involving the Pledge of Allegiance or its recitation. This bill is expected to be on the House floor later this week.

H.R. 2028 was amended significantly in Committee and is now the same as H.R. 3313, the Marriage Protection Act, except it deals with jurisdiction over all constitutional claims related to the pledge instead of the Defense of Marriage Act. Prior to mark-up, H.R. 2028 limited the jurisdiction of lower federal courts over First Amendment claims related to the Pledge, but left intact the Supreme Court's jurisdiction.

H.R. 2028 would slam shut the federal court house doors to religious minorities, parents, schoolchildren and others who seek nothing more than to have their religious and free speech claims heard before the courts most uniquely suited to entertain such claims. Further, by entirely stripping all federal courts of jurisdiction over a particular class of cases, H.R. 2028 raises serious legal concerns, violating principles of separation of powers, equal protection and due process. The bill undermines public confidence in the federal courts by expressing outright hostility toward them, threatens the legitimacy of future congressional action by removing the federal courts as a neutral arbiter, and rejects the unifying function of the federal judiciary by denying federal courts the opportunity to interpret the law. H.R. 2028 would deny the U.S. Supreme Court its historical role as the final authority on resolving differing interpretations of federal constitutional rights. As a result, each of the 50 state supreme courts would be a final authority on these federal constitutional questions. This would potentially create a situation where we could have as many as 50 different interpretations of any relevant federal constitutional question.

It is in apparent recognition of many of these concerns that no federal bill withdrawing federal jurisdiction in cases involving fundamental constitutional rights has become law since the Reconstruction period. Federal courts were established to interpret federal law and to ensure that the states and the government did not violate the protections in the federal constitution. An effort to deny them jurisdiction over the very sort of claim they were established to hear—that government conduct violates a constitutional right—is the most extreme attack possible on the role of federal courts in our system of checks and balances. It strikes at the very purpose of the Founders in creating federal courts in the first place.

While the supporters of this bill see it as an appropriate response to recent court decisions that they dislike concerning the words ''under God'' in the Pledge, the impact of H.R. 2028 would NOT be limited merely to that issue. This bill would remove jurisdiction over ALL constitutional claims, related to the pledge, from ALL federal courts. This could potentially undermine decades of well-established Supreme Court precedents by denying access to the federal courts in cases brought to enforce existing constitutional rights for religious minorities. For example, over sixty years ago, the Supreme Court decided the case of *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1943). In Barnette, the Supreme Court struck down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance. Under the West Virginia law, religious minorities faced expulsion from school and could be subject to prosecution and fined, if convicted of violating the statute's provisions. In striking down that statute, the Court reasoned: ''To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . If there is any fixed star in our constitutional constellation, it is that no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'' 319 U.S. at 639–40.

Just last month, a panel of the U.S. Court of Appeals for the Third Circuit held that a Pennsylvania law mandating recitation of the Pledge, even when it provided a religious exception, violated the Constitution because it violated the free speech rights of the students. *Circle School* v. *Pappert*, No. 03–3285 (3rd Cir. Aug. 19, 2004). In Pappert, the court found that: ''It may be useful to note our belief that most citizens of the United States willingly recite the Pledge of Allegiance and proudly sing the national anthem. But the rights embodied in the Constitution, particularly the First Amendment, protect the minority—those persons who march to their own drummers. It is they who need the protection afforded by the Constitution and it is the responsibility of federal judges to ensure that protection.'' Pappert, Slip Op. at 14.

First comes marriage then comes the Pledge . . . Where will it end? Passage of H.R. 2028 would set a dangerous precedent for responses by Members of Congress to court decisions with which they disagree. In this session alone, Congress is considering court-stripping legislation related to the Pledge of Allegiance, religious displays/Ten Commandments, marriage and another dealing with all cases related to religion and the acknowledgement of God.

Over the years, Congress has considered legislation designed to strip court jurisdiction on the issues such as public school busing, voluntary prayer and abortion. Fortunately, none of those proposals was adopted by Congress because legislators understood that setting a precedent for stripping the courts of their jurisdiction over a particular issue might, in the future, be used by some other group of advocates, when in the majority, to establish its views as the law of the land, safely out of the reach of the courts. We urge members of this Congress to oppose passage of H.R. 2028 and not to abandon this tradition of thoughtfulness and restraint.

Sincerely,

LAURA W. MURPHY,
Director.
TERRI A. SCHROEDER,
Legislative Analyst.

THE CONSTITUTION PROJECT,
Washington, DC, September 15, 2004.

DEAR MEMBERS OF THE JUDICIARY COMMITTEE: I write on behalf of the Constitution Project to urge you to oppose committee passage of H.R. 2028, the ''Pledge Protection Act of 2003.''

The Constitution Project, based at Georgetown University's Public Policy Institute, specializes in creating bipartisan consensus on a variety of legal and governance issues, and promoting that consensus to policymakers, opinion leaders, the media, and the public. We have initiatives on the death penalty, liberty and national security, war powers, and judicial independence (our Courts Initiative), among others. Each of our initiatives is directed by a bipartisan committee of prominent and influential businesspeople, scholars, and former public officials.

Our Courts Initiative works to promote public education on the importance of our courts as protectors of Americans' essential constitutional freedoms. Its co-chairs are the Honorable Mickey Edwards, John Quincy Adams Lecturer at the John F. Kennedy School of Government at Harvard University and former chair of the House of Representatives Republican Policy Committee (R–OK), and the Honorable Lloyd Cutler, a prominent Washington lawyer and White House counsel to Presidents Carter and Clinton.

In 2000, the Courts Initiative created a bipartisan Task Force to examine and identify basic principles as to when the legislature acts unconstitutionally in setting the powers and jurisdiction of the courts. The Task Force was unanimous in its conclusion that some legislative acts restricting the powers and jurisdiction of the courts are unconstitutional. The Task Force also concluded that some legislative actions, even if constitutional, are undesirable. (The Task Force's findings and recommendations are published in Uncertain Justice: Politics and America's Courts 2000.)

The work of our Task Force resulted in seven consensus recommendations, including the following, which are relevant to consideration of the legislation at hand:

1. Congress and state legislatures should heed constitutional limits when considering proposals to restrict the powers and jurisdiction of the courts.

2. Legislatures should refrain from restricting court jurisdiction in an effort to control substantive judicial decisions in a manner that violates separation of powers,

due process, or other constitutional principles.

3. Legislatures should not attempt to control substantive judicial decisions by enacting legislation that restricts court jurisdiction over particular types of cases.

4. Legislatures should refrain from restricting access to the courts and should take necessary affirmative steps to ensure adequate access to the courts for all Americans.

Specifically, our Task Force was unanimous in its view that there are some constitutional limits on the authority of the legislature to restrict court jurisdiction in an effort to control substantive judicial decisions. In particular, separation of powers, due process, and other constitutional provisions limit such authority. Task Force members had differing views about the scope and source of the constitutional limit on the legislature's power in this area. (For instance, some believed that restrictions on jurisdiction become unconstitutional when they destroy the essential role of the Supreme Court. Others relied on a reading of the Vesting Clause of Article III, which places judicial power—the power to decide cases—in the hands of the courts alone.) Nonetheless, all believed that constitutional limitations exists.

Apart from the constitutionality of laws restricting federal court jurisdiction, the Task Force was also unanimous in its view that legislative acts stripping courts of jurisdiction to hear particular types of cases in an effort to control substantive judicial decisions are undesirable and inappropriate in a democratic system with co-equal branches of government. Legislative restriction of jurisdiction in response to particular substantive decisions unduly politicizes the judicial process, and attempts by legislatures to control substantive outcomes by curtailing judicial jurisdiction are inappropriate, even if believed constitutional. (Indeed, it was striking that members of Citizens for Independent Courts reflecting a broad ideological range—from, for example, Leonard Leo of the Federalist Society to Steven Shapiro of the American Civil Liberties Union—agreed that restrictions on jurisdiction to achieve substantive changes in the law are unwise and undesirable policy.)

The Task Force was also unanimous that legislation that restricts access to the courts and precludes individuals from using a judicial forum to vindicate rights is undesirable and unconstitutional. Rights are meaningless without a forum in which they can be vindicated. Therefore, access to the courts at both the federal and state levels is essential in order for rights to have effect. Legislatures have the duty to ensure meaningful access to the courts and legislative actions that preclude this are undesirable and unconstitutional.

Our Task Force reached these conclusions and recommendations rightly. From its beginning, our system of constitutional democracy has depended on the independence of the judiciary. Judges are able to protect citizens' basic rights and decide cases fairly only if free to make decisions according to the law, without regard to political or public pressure. Similarly, the judiciary can maintain the checks and balances essential to preserving a healthy separation of powers only if able to resist overreaching by the political branches. Indeed, the cornerstone of American liberty is the power of the courts to protect individual rights from momentary excesses of political and popular majorities.

In recent years, as part of the polarization and posturing that increasingly characterize our national and state politics, threats to judicial independence have become more commonplace. Attacks on judges for unpopular decisions, even those made in good faith, have become more rampant. Politicians are responding to unpopular decisions and litigants by attempting to restrict courts' powers in certain kinds of cases. However, Americans have much to lose if we do not exercise self-restraint and instead choose short-term political gain at the expense of judicial independence. The independence of our judiciary is, as Chief Justice Rehnquist described, ''one of the crown jewels of our system of government.''

In conclusion, while Article III of our Constitution gives Congress the power to regulate federal court jurisdiction, this power is not unlimited, and Congress should not—and in some instances may not—use its power to restrict federal court jurisdiction in ways that infringe upon separation of powers, violate individual rights and equal protection, or offend federalism. H.R. 2028 is poised to do all three by stripping federal courts of the authority to hear cases involving the Pledge of Allegiance, including when such cases involve claims of free speech and religious freedom. Such jurisdiction-stripping threatens the critical and unique role that the federal courts play in constitutional balance of powers, protecting individual rights, and interpreting constitutional law.

For the reasons stated above, as well as those detailed our Task Force's findings and recommendations, we at the Constitution Project urge you to oppose H.R. 2028. Thank you for your consideration.

Sincerely,

KATHRYN A. MONROE,
Director, Courts Initiative.

BAPTIST JOINT COMMITTEE,
Washington, DC, September 14, 2004.

DEAR REPRESENTATIVE: The Baptist Joint Committee (BJC) urges you to vote No on H.R. 2028, the so-called ''Pledge Protection Act.'' The BJC is a nearly 70-year-old organization committed to the principle that religion must be freely exerecised, neither advanced nor inhibited by government. We oppose any legislation that seeks to strip the federal courts of their fundamental role in protecting individual liberties.

The existence of an independent judiciary, free from political or public pressure, has been essential to our nation's success in protecting religious liberty for all Americans. Indeed, the role of the federal courts has long been recognized as essential in the battle for full religious liberty. As Justice Jackson stated in the case of West Virginia State Board of Education v. Barnett: ''The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.'' 319 U.S. 624, 639 (1943).

Moreover, the result of any particular case does not undermine the important role of the judiciary. The misnamed ''Pledge Protection Act'' represents a dangerous attack on our tradition of religious freedom, on the constitutional separation of powers and indeed our system of government. It represents an unwarranted attempt to restrict the power of the federal judicial system.

Whatever the motivation, there is insufficient basis to depart from a long-standing congressional custom against using jurisdiction-stripping to control the federal courts. Federal judicial review has consistently supported the proper separation of church and state so vital to all Americans, and we must trust that the courts will continue to do so. We ask you to reject H.R. 2028.

Sincerely,

J. BRENT WALKER,
Executive Director.
K. HOLLYN HOLLMAN,
General Counsel.

BOB BARR,
Atlanta, GA, July 19, 2004.

Re Upcoming vote on the Marriage Protection Act, H.R. 3313.

DEAR REPRESENTATIVE: I would like to take this opportunity to express my concerns with the Marriage Protection Act, H.R. 3313, which I understand may be on the House floor as early as this week. While I understand and appreciate the reason that supporters of this bill are trying to pass this legislation, I respectfully disagree on the need for the bill and see the potential of a bad precedent for future legislation. For these reasons, I urge that members vote against H.R. 3313.

H.R. 3313 would preclude federal courts, including the Supreme Court, from reviewing the constitutionality of the cross-state recognition section of the Defense of Marriage Act (''DOMA''). If H.R. 3313 is enacted, each of the 50 state supreme courts would be a final authority on the constitionality of DOMA, with no opportunity for either a state (as a defendant) or a plaintiff to appeal a decision to the Supreme Court.

As the principal author and lead sponsor of DOMA, I completely share the views of the supporters of H.R. 3313 who view DOMA as critical to our federalist system of government, and as integral to the proper resolution of the difficult questions raised by any state extending marriage rights to same-sex couples. DOMA is an important law that will help each state in the nation retain its own sovereignty over the fundamental state issue of who is married under its laws.

However, where I differ with the supporters of H.R. 3313 is in my confidence that the Supreme Court will not invalidate DOMA. During the lengthy consideration of DOMA, the House of Representatives heard detailed testimony on the constitionality of DOMA. A parade of legal experts—including the Justice Department—determined that DOMA is fully constitutional. Although there were a few naysayers and wishful thinkers who opined that DOMA is unconstitutional, the overwhelming weight of authority was clear that DOMA is constitutional. Based on the exhaustive review of these opinions, Congress overwhelmingly passed DOMA and it was signed into law by President Clinton.

DOMA remains good law. It has never been invalidated by any court anywhere in the country. It is a sound and valid exercise of congressional authority, pursuant to the Full Faith and Credit Clause of the Constitution.

Some supporters of H.R. 3313 point to the Supreme Court's opinion last year in Lawrence v. Texas, in which the Court invalidated a state sodomy law, as reason for concern that the Court could invalidate DOMA. However, I believe the Supreme Court justifiably would see a world of difference between a sodomy law that applied only to homosexual relations, and a federal law allowing the enforcement of nearly uniform state policies prohibiting cross-state recognition of marriages of same-sex couples. Moreover, when the Supreme Court correctly invalidated a racially discriminatory marriage law in Loving v. Virginia, it applied the highest level judicial scrutiny to the state's marriage law. The Supreme Court always applies the highest level of scrutiny to race claims, but minimal level to sexual orientation claims. Serious legal scholars do not see that changing.

Moreover, because H.R. 3313 does not strip state courts of jurisdiction to hear challenges to the cross-state recognition section of DOMA, the result will be that each of the 50 state supreme courts will be the final authority on the constitutionality of a federal law. The chaotic result could be 50 different interpretations reached by state supreme courts, with no possibility of the U.S. Supreme Court reversing any incorrect interpretation of the federal DOMA. The potential for mischief by these courts is obvious. Ironically, I fear an increased likelihood of an adverse decision on DOMA's constitutionality if H.R. 3313 becomes law.

However, the principal problem with H.R. 3313 is not just that it is protecting a wholly constitutional law that needs no additional protection, but that it sets a harmful precedent for the future. Our healthy democracy depends on having three separate and independent branches of government. I have long been concerned about a runaway judiciary, but I am also concerned about having a Congress or President unchecked by the independent judiciary established by the Constitution.

H.R. 3313 will needlessly set a dangerous precedent for future Congresses that might want to protect unconstitutional legislation from judicial review. During my time in Congress, I saw many bills introduced that would violate the Takings Clause, the Second Amendment, the Tenth Amendment, and many other constitutional protections. My main concern with H.R. 3313 is that it will lay the path for the sponsors of such unconstitutional legislation to simply add the language from H.R. 3313 to their bills. The fundamental protections afforded by the Constitution would be rendered meaningless if others follow the path set by H.R. 3313.

For these reasons, I urge you to vote against this well-intentioned, but unnecessary legislation. The Congress should keep in place the separation of powers outlined in the Constitution, rather than act hastily in fear of an outcome on DOMA that is unlikely in the first instance.

Thank you for your attention to this issue, and with warm regards, I remain.

Very truly yours,

BOB BARR,
Member of Congress, 1995–2003.

JULY 13, 2004.

Hon. JERROLD NADLER,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN NADLER: I am happy to respond to your inquiry of July 9, asking for elaboration of my testimony before the Subcommittee on the Constitution of the Judiciary Committee of the House of Representatives, concerning the constitutionality of congressional power to control federal court jurisdiction on the interpretation and review of the Defense of Marriage Act.

I cannot emphasize strongly enough that while I believe that Congress's power to regulate federal court jurisdiction is broad, the Constitution places clear limits on that power which must be observed. As I believe I made clear in both my written and oral testimony, nothing in Article III provides Congress with the power to exclude from all independent judicial review the constitutionality of any governmental action, state or federal. However, as long as the state courts remain open and available for this purpose, due process would not be violated by congressional exclusion of the jurisdiction of either the lower federal courts or the Supreme Court.

I see from your inquiry, however, that I may have failed to anticipate in my testimony several other potential permutations and combinations of jurisdictional restriction related to the Defense of Marriage Act, and if so I sincerely apologize. There are conceivably two other situations which could give rise to possibly serious constitutional problems, and I write this letter in order to provide you with my views on those instances.

First, it is quite clear that Congress lacks constitutional authority to vest the federal courts with jurisdiction to apply or enforce the Defense of Marriage Act while simultaneously restricting those courts' jurisdiction either to interpret or to review the constitutionality of that legislation. As famed jurisdiction scholar Henry Hart wrote many years ago, ''the difficulty involved in asserting any judicial control in the face of a total denial of jurisdiction doesn't exist if Congress gives jurisdiction but puts strings on it. . . . [I]f Congress directs an Article III court to decide a case, I can easily read into Article III a limitation on the power of Congress to tell the court how to decide it.'' Henry Hart, The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic, 66 Harv. L. Rev. 1362, 1372–1373 (1953) (emphasis in original). For a detailed discussion of my views on this issue, see Martin H. Redish, Federal Jurisdiction: Tensions in the Allocation of Judicial Power 47–52 (2d ed. 1990).

Second, to the extent even the total exclusion of federal court jurisdiction were imposed, there may be a constitutional problem if, in order to enforce and protect underlying constitutional rights, a reviewing court would have to directly control the actions of a federal officer through the writs of habeas corpus, mandamus or injunction. For while it has long been understood that state courts provide an adequate forum to protect and enforce federal rights, it is also well established—in a line of cases beginning in 1821—that state courts lack authority directly to control the actions of federal officers. See *McClung* v. *Silliman*, 19 U.S. (6 Wheat.) 598 (1821) (mandamus); *Tarble's Case*, 80 U.S. (13 Wall.) 397 (1871) (habeas corpus). While there exists no definitive Supreme Court decision denying state courts power to issue injunctions to federal officers, there does exist a strong line of cases in the lower federal courts to this effect. See, e.g., *Kennedy* v. *Bruce*, 298 F.2d 860 (1962). Moreover, the logic which led the Supreme Court to deny state courts the power to issue mandamus or habeas relief to federal officers logically applies with the same force to writs of injunction. Thus, if a federal right may only be enforced through issuance of a directly controlling order to a federal officer, exclusion of all federal court jurisdiction could arguably give rise to a serious constitutional problem, because the state courts would be simultaneously closed to the issuance of such relief.

While there does exist some language in Supreme Court doctrine (particularly in Tarble's Case) suggesting that state courts inherently lack such power as a constitutional matter, it is difficult to believe this conclusion would be adhered to today. In light of the Madisonian Compromise's inherent assumption that if Congress declined to exercise its discretion under Article III, section 1 to create lower federal courts state courts could perform the exact same functions, it is highly unlikely that the framers intended to impose such an absolute constitutional bar to state court power to directly control the actions of federal officers. In my scholarship, therefore, I have argued that the reasoning of Tarble's Case can be reworked ''into simply an inference of congressional intent to exclude state court power in the face of congressional silence . . . because, were Congress actually to consider the question, it likely would not want state courts . . . to have the authority to impair the operation of federal programs by directly controlling the actions of federal officers.'' Martin H. Redish, Constitutional Limitations on Congressional Power to Control Federal Jurisdiction: A Reaction to Professor Sager, 77 Nw. U. L. Rev. 143, 158–159 (1982). Thus, under my reading of this line of cases, if Congress so desired it could revoke the limits on state court power imposed by the Tarble line of cases, simply by explicitly vesting in the state courts the power to control federal officers through the issuance of the writs previously mentioned. Absent such explicit congressional directive, however, the rule of Tarble, closing the state courts for this limited purpose, would remain intact.

The issue becomes more complicated where, as here, Congress considers excluding all federal court power to review the constitutionality of federal officer behavior. There are respected scholars—particularly Professor Paul Bator and other revisers of the Hart and Wechsler text—who believe that were Congress to automatically exclude all federal court jurisdiction to enforce constitutional rights and interests, the state court bar imposed by the Tarble line of cases would automatically be revoked. However, I do not agree. I believe that unless Congress simultaneously and expressly revokes the limit on state court authority to issue directly controlling writs to federal officers, its exclusion of federal court power to issue such writs inexorably leads to a violation of due process. For in such a situation, neither the state courts nor federal courts would be available to protect constitutional rights, and the due process right to an independent judicial forum for enforcement of constitutional rights would therefore have been violated.

It is true, of course, that normally a reviewing court will assume that Congress did not intend to violate constitutional rights. Therefore one might reason that the closing off of the federal courts should automatically be taken as an opening of the state courts. However, I believe that before Congress closes off all federal court authority to review the constitutionality of a statute and to control federal office actions in order to protect particular constitutional rights, it must be aware of certain facts. First, Congress must recognize that some adequate and independent judicial forum must be available to control federal officers in order to protect constitutional rights. Second, it must be aware that once it has closed all federal courts for this purpose, the only courts that will be available to control federal officer action through issuance of appropriate writs will be the state courts—without any opportunity for policing or unifying review in any federal court, including the Supreme Court. If Congress wishes to create such an unstable situation, I believe it has power to do so (though once again I should note that certain language in Tarble suggests that the limit imposed on state court power derives from the Constitution, rather than congressional will; if such reasoning were to be adopted today, then the issue would be taken from Congress's hands and the closing of the federal courts to the issuance of such directly controlling writs would necessarily violate due process). Absent express revocation of the limits imposed on state court jurisdiction imposed by the Tarble line of cases, I believe, Congress will not have evinced the requisite consideration of these important issues. In this sense, the rule of interpretation that I have advocated in similar to the ''clear statement'' rule presently invoked by the Supreme Court for congressional revocation of state sovereign immunity.

I must emphasize the uncertainty that surrounds the Tarble line of cases. First, it is

unclear whether the Supreme Court there intended to erect a constitutional barrier to state court issuance of directly controlling writs to federal officers, and if so whether it would still be adhered to today. Second, assuming the barrier is not deemed to be of constitutional status, it is unclear whether congressional exclusion of federal judicial power to issue such writs would be taken automatically to revoke the Tarble restriction on state court power over federal officers. There simply is no case law on that issue. Moreover, as already mentioned, my view that express congressional revocation of the Tarble barrier is required to render the congressional exclusion of federal court power to issue the directly controlling writs of mandamus, habeas corpus and injunction constitutional has been challenged by other respected scholars. Nevertheless, the only way that Congress could be certain, at this point, that its exclusion of all federal court power directly to control federal officer behavior when constitutional rights are at stake would satisfy due process is at the same time to expressly authorize state courts to issue these writs to federal officers. Absent such an express congressional authorization, the constitutionality of the restriction on federal court review power would at the very least be in doubt, and, in my opinion, unconstitutional.

I apologize for so complex an answer to your question, but I am afraid I see no means of explaining the potential pitfalls facing Congress in any simpler manner. In any event, I hope you find this response helpful. If I can be of assistance in any other way, please do not hesitate to contact me.

Sincerely yours,

MARTIN H. REDISH,
Northwestern University School of Law.

□ 1215

Mr. SENSENBRENNER. Mr. Chairman, I yield 5 minutes to the gentleman from Missouri (Mr. AKIN), the author of the bill.

Mr. AKIN. Mr. Chairman, we have heard a lot of legalese this morning, and perhaps trying to make a subject that is not very complicated a lot more complicated. The simple question is whether or not school kids are going to be able to say the Pledge of Allegiance the way we have done it for the last 50 years.

Some may say that is not that important an issue, but I would ask this question: If Members were asked, and perhaps it would be one of these big old TV cameras, and somebody came up and said, you have lived in America all these years, how would you, in the simplest form, describe what is the glue that holds us all together as Americans? What is the heart of America? If, like an onion, we peeled off the layers and got to the very center, what is it that makes America such a unique and special place? What is it that made people from all different nationalities come here and call themselves Americans? What is it that makes illegal immigrants try to come here? What is it that makes America special?

I think the answer can be found in our birthday document, our Declaration of Independence. It sets out essentially a three-part formula. It says we hold these truths to be self-evident, that all men are created equal and endowed by their creator with certain inalienable rights, and among these is life, liberty and the pursuit of happiness. And it goes on to say the job of government is to protect those rights. The three-part formula is that there is a God; God grants all people everywhere certain basic fundamental rights; and it is the job of government to protect those rights.

Now, if we allow activist judges to start creating law and say it is wrong to somehow allow school children to say ''under God'' in the Pledge, we have emasculated the very heart of what America has always been about.

This is quite simply a matter of judges turning the first amendment upside down. The first amendment was supposed to be about free speech, religious or political free speech, and now these judges are censoring our very Pledge of Allegiance and telling school kids they cannot say the Pledge. If we allow activist judges to go there, what is next?

Behind me, set in brass above the Speaker's desk, ''In God we trust.'' Is this a sense of the co-equal power of the branches of government that the court can next step in here and take ''In God we trust'' off that? Are they going to tell us we cannot have chaplains? Are they going to go to the Jefferson Monument that has in stone that God that gave us life, gave us liberties, and can the liberties of the people be secure if we remove the conviction that those liberties are the gift of God? Is that going to be plastered over? Are we going to get rid of the Gettysburg Address? How far will we let them go?

Yet my colleagues have been arguing that anything the court says; it is unconstitutional to challenge the Supreme Court. In my State of Missouri, the Dred Scott decision was brought, and the Supreme Court said black people are not actually people. That was a dumb decision, and we need to be able to tell the Supreme Court or any other court that makes ridiculous decisions they are wrong. Yet we are hearing it is off base to try to check their authority. It is the job of the other two branches of government to draw up short the judiciary when they exceed their constitutional authority. And legislating from the bench and using the first amendment as a tool of censorship certainly qualifies that we should weigh in.

Mr. Chairman, I would close by saying that I have heard a number of assertions that there is absolutely no precedent to use article III section 2. And yet, if Members were to simply check with the congressional research people, as our office has done, they would tell Members they cannot print them all out there are so many examples. In the 107th Congress, most of us voted for the PATRIOT Act. The PATRIOT Act has article III section 2 language in it, and we have it used in all kinds and numbers of ways.

A certain prominent Senator from South Dakota made an amendment to a bill that said we are going to clear the undergrowth from the forest of the Black Hills. That, of course, is against environmental law, but the problem is that all that undergrowth was fueling forest fires. This particular gentleman made the comment and put it into law, regardless of what any Federal court says, we are going to clear the undergrowth. Another use of the limitation of the appellate jurisdiction of the courts. There are numerous cases to that regard. Certainly, these charges are completely and factually inaccurate.

Mr. NADLER. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. HOYER), the Democratic whip of the House.

Mr. HOYER. Mr. Chairman, 2 minutes is obviously not sufficient time to respond to simplistic arguments. The previous speaker said he has heard simple legal arguments. He talked about why people came to America.

I chaired the Commission on Security and Cooperation in Europe, the Helsinki Commission, and I went to numerous countries in which the judiciary was not independent, where it was dictated to by the legislature and the executive departments if the judiciary did not do what the legislature and the executive wanted them to do. That is the perverseness of this legislation. That is the demagoguery of this legislation. This is the simplistic approach that this legislation takes.

Let me say, I believe that ''under God'' in the Pledge of Allegiance is absolutely appropriately there. It is constitutional, and it ought to be there. And frankly, if the Supreme Court ruled it was unconstitutional, I would vote for a constitutional amendment to ensure its presence.

The gentleman is correct; Thomas Jefferson intoned those compelling words that we get our rights not from the legislature, not from the executive, not even from the majority. Those basic rights are within us as children of God. That is the difference between this country. That is what Marbury v. Madison meant. It meant a legislature, irrespective of its animus, irrespective of the prejudice that it wanted to include, not in this instance but in other instances, could be overseen by the courts of this United States.

The gentleman mentioned the Dred Scott decision. It was not the legislature that overturned that decision or the majority of Americans that overturned that decision; it was the Supreme Court of the United States ultimately that said that is wrong. The gentleman is absolutely correct; the Supreme Court said separate is not equal. But had they been precluded from having the jurisdiction over that case, we would still have segregated schools. We would still have separate but equal, but it was the courts that stepped in and made sure that the dream of America was the reality of America.

Defeat this legislation. There is no case pending. It has been dismissed by the Supreme Court.

No court in this Nation has precluded. Every child in America now stands and proudly stands, as we do in this chamber, and pledges allegiance to our flag and to this Nation under God, indivisible with liberty and justice for all. But we have found through the centuries that justice, justice, justice is protected by our independent judiciary. Let us keep it that way for all Americans. Defeat this legislation.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. Mr. Chairman, I rise today in proud support of H.R. 2028, the Pledge Protection Act, introduced by the gentleman from Missouri (Mr. AKIN). We are here today because, once again, activist judges have taken it upon themselves to dictate law in this country, believing they know better than all Americans, they know better than the State legislatures or the Federal legislature, and they know better than the Founding Fathers themselves, they think.

The Pledge Protection Act defends the constitutionality of reciting the Pledge of Allegiance by simply restricting the jurisdictions of some lower Federal courts. This body here is more than within our bounds to limit the role of Federal court jurisdiction.

The power of Congress is granted in article III of the Constitution. The clause states, ''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.''

Accordingly, the Constitution provides that the lower courts are entirely creatures of Congress, as is the jurisdiction of the Supreme Court.

Just as this Congress is checked every so often by the power of the Presidential veto, and we are checked every 2 years by re-elections, we in turn have the ability to check or rein in abusive and out-of-line courts.

The Pledge closely reflects the noblest intentions of our Founding Fathers and the inspiration that has led to the creation of this great Nation, and that is why I can confidently say that nothing in the reciting of the Pledge discriminates against any religious minorities or abuses any rights.

The phrase ''under God'' simply acknowledges that our Founding Fathers, who were leaders in the fight for our independence and the authors of our Nation's framework, did so with the inspiration and their belief in a divine being.

We all know this House starts each morning with the Pledge as we begin our business, and I believe that right should not be taken away from the children of this country as well.

Mr. NADLER. Mr. Chairman, I yield for the purpose of a making a unanimous consent request to the gentleman from Texas (Mr. GREEN).

(Mr. GREEN of Texas asked and was given permission to revise and extend his remarks.)

Mr. GREEN of Texas. Mr. Chairman, I include my statement for the RECORD supporting the Watt amendment, and also supporting the original Protect the Pledge Act.

Mr. Chairman, I rise today in support of the Watt amendment to H.R. 2028, the Protect the Pledge Act. This amendment is plain and simple; it would restore H.R. 2028 to its original language.

I strongly support the Pledge of Allegiance. In fact, in the last Congress I introduced H.J. Res. 103, an amendment to the Constitution that would affirm that the Pledge of Allegiance in no way violates the First Amendment. Unfortunately, Congress did not pass the resolution before it adjourned for the 107th Congress. As an original cosponsor of H.R. 2028, I had hoped that it would protect the Pledge of Allegiance from unnecessary court battles without infringing on the rights of the people. However, with H.R. 2028 in its current form Congress has lost its balance between our constitutional rights and the law.

The Pledge of Allegiance is an important symbol of the privileges and rights that our founding fathers fought so desperately to preserve. Although the major controversy surrounding the pledge rests on the words "under God," H.R. 2028 blatantly ignores the words "with liberty and justice for all."

Every citizen has the right to due process under the law. By stripping the Supreme Court of jurisdiction to hear cases pertaining to the Pledge, we take away the basic right for everyone to have their case heard before the highest court in the land. Article III of the Constitution states that Congress has the power to define the jurisdiction of the Federal district and appellate courts, but we do not have the power to decide which cases the Supreme Court can and cannot hear.

The Watt amendment restores the Protect the Pledge Act to its original language. I urge my colleagues to support this amendment and protect our constitutional rights.

Mr. NADLER. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, obviously, I stand here today formerly a second-class citizen in America, and if it had not been for the courts of the United States of America, article III courts and the United States Supreme Court, I would still be in a place with nowhere to be able to seek redress of my grievances.

Let me make it clear that I voted to retain the language ''under God'' in the Pledge of Allegiance, and I did so because I believe it is protected by the first amendment. That amendment allows us to exercise our freedom of religion, but this is at best political chicanery. This is a joke, and the reason is, I would ask my colleagues on the other side of the aisle why they did not put this kind of legislation to eliminate the right of the Federal courts and the Supreme Court to engage in the oversight of election laws? The reason, because they got the decision they wanted in 2000.

This is a bill that destroys the Constitution as we know it. Article III of the U.S. Constitution vests the judicial power of the United States in one Supreme Court. How can we eliminate the appellate jurisdiction of the Article III courts and the Supreme Court that leaves all of America a lack of opportunity to address their grievances no matter who they are?

I pledge allegiance to the flag. I respect the language ''under God,'' but it is the right of the American people to at least go into the courts to address their grievances.

And what about religion? If one has a religion that gives them the instruction to not recite that kind of language, that individual has the right, as an expression of their right of religious freedom, to do so or to seek redress of grievances in the courts. Again, this is political opportunity, but I would join my colleagues in eliminating the rights of the Federal courts and the Supreme Court to decide any election case so we will not have the biased decision that was rendered in the Bush v. Gore decision of 2000. If they join me on that, maybe we will have a sense of fairness. Today, we do not.

I stand with the Constitution which says we have a right to be able to address our grievances in the courts of the United States of America. We have the right to freedom of religion. We should vote down this bill as one that puts a stain on the Constitution of the United States of America. Remember—our history—that of minorities in this country—was only made better many times by the decisions of the Federal courts.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I beg to disagree with the gentlewoman from Texas (Ms. JACKSON-LEE). It was not the Supreme Court that gave her and her ancestors their freedom; it was the 600,000 people who died during the Civil War that did that and allowed the Congress to pass three constitutional amendments which guaranteed freedom for former slaves and their descendants.

Mr. Chairman, I yield 2 minutes to the gentleman from Florida (Mr. STEARNS).

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

□ 1230

Mr. STEARNS. Mr. Chairman, I would say to the 30-second speech by the chairman of the Committee on the Judiciary, Amen to what he just said.

Let me give a hypothetical example to the people on this side of the aisle who are predominately against this amendment. Let us say that it turned out that the Supreme Court wanted to take the words ''In God We Trust'' off the marble slab that stands on top of the flag in the Speaker's rostrum. At what point would you as a Member of

Congress get up and say enough is enough for the Supreme Court to do this? I mean, at what point does your side have to be so upset to get involved to really exercise what the Constitution allows?

It has been repeated many times under article III, section 2 of the Constitution, we in this body have the right, and some would say we have the duty, to limit the jurisdiction of Federal courts. I certainly would hope if they tried to strip ''In God We Trust'' off the Speaker's rostrum that they on that side of the aisle would stand up and say enough is enough and agree that we would allow Congress to exercise its prerogative under article III, section 2 of the Constitution.

Also, I brought this up before, all of those on this side of the aisle know that TOM DASCHLE, the minority leader, inserted a provision in legislation to prohibit the courts from hearing cases about brush clearings in South Dakota.

POINT OF ORDER

Ms. PELOSI. Mr. Chairman, I make a point of order.

Mr. Chairman, the gentleman was referencing activities as far as the other body is concerned, naming a Senator by name. Is that not out of order by this body?

Mr. SENSENBRENNER. Mr. Chairman, on the point of order, the gentleman from Florida was referencing a provision in a conference report that was adopted by this body as well as by the other body and became law.

The CHAIRMAN pro tempore. All Members should refrain from improper references to Members of the other body.

Mr. STEARNS. Mr. Chairman, I did mention in my speech about a provision in legislation that was inserted; so I thought that was important.

In July we passed the Marriage Protection Act, removing the Federal courts' jurisdiction from questions arising under the Defense of Marriage Act. Frankly, is marriage not more important than the forests that I mentioned previously that was inserted in legislation?

So I am honored to support this bill and to protect the Pledge of Allegiance from further judicial interference.

I will include my entire statement in the RECORD.

Mr. Chairman, for decades, activist judges have been free to impose their own beliefs on the American people with impunity.

We have had to endure egregious decisions about abortion, obscenity, school prayer and homosexual "marriage," to name but a few issues.

On each of these issues, the vast majority of the American people took the exact opposite position as the federal court.

This was especially true when the 9th Circuit Court of Appeals declared that the words "under God" in the Pledge of Allegiance are unconstitutional.

But I am glad to note that Congress has recently been exercising its constitutional prerogative to limit the federal courts.

Under Article III, Section 2 of the Constitution, we have the right—some would say the duty—to limit the jurisdiction of the federal courts.

It is not like it hasn't been done before.

In the 1868 landmark case of Ex parte McCardle, the U.S. Supreme Court agreed that Congress had the constitutional right to remove jurisdiction from the court in a pending case.

More recently, Senate Minority Leader TOM DASCHLE inserted a provision in legislation to prohibit the courts from hearing cases about brush clearing in South Dakota.

And in July, we passed the "Marriage Protection Act," removing the federal court's jurisdiction from questions arising under the Defense of Marriage Act.

Frankly, isn't marriage and the Pledge more important than forests?

I am honored to support this bill and to protect the Pledge of Allegiance from further judicial interference.

Mr. Chairman, for years the Federal Courts have been taking jurisdiction away from Congress. It is only proper that we exercise our constitutional right to limit their jurisdiction.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

The reference to Senator DASCHLE was not true. We rebutted it in the debate last time. I will reference something for the RECORD so we do not waste time on this untruth anymore now.

Brush Clearing Rider: Most notably, the Majority claims that a rider to the 2002 Supplemental Appropriations Act authored by the senior senator from South Dakota approving logging and clearance measures by the Forest Service in the Black Hills of South Dakota serves as a precedent for the enactment of these types of court-stripping measures.

The problem with this argument is that, while the rider restricted ''judicial review'' of ''any [logging or clearance] action'' by the Forest Service, it did not restrict federal judicial review of the rider itself or its constitutionality. Indeed, the federal courts did review the validity of the rider, and explicitly found that the ''challenged legislation's jurisdictional bar did not apply to preclude Court of Appeals' review as to the legislation's validity''

Mr Chairman, I yield 2 minutes to the distinguished gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, if anyone had told me that coming to the Congress of the United States of America, representing my district, I would have to be on the floor of Congress defending the constitutional rights of the Supreme Court to make constitutional rulings, I would have told them they are crazy. This is absolutely outrageous. The gentleman just asked when do we get so angry that we agree to strip the Court of its constitutional responsibility.

Mr. Chairman, I have disagreed with any number of decisions of the Supreme Court. I disagree with the fact that the Dred Scott decision said separate was all right, separate but equal. And in the last 2002 election, I disagreed with the fact that the Supreme Court gave the Presidency to George W. Bush. But my colleagues did not see me and others coming in here and talking about stripping them of their ability to make constitutional decisions.

The court-stripping proposed in this bill would destroy the Supreme Court's historical function as the interpreter and ultimate arbiter of what the Constitution requires. This misguided legislation to strip the Supreme Court of its appellate jurisdiction also would have seriously damaging implications for the relationships among our three branches of government. This bill and other court-stripping bills proposed by the Republicans would be laughable if the results of enacting this bill were not so tragic and not so threatening to the constitutional rights of our people and the independence of the Federal judiciary.

If H.R. 2028 were passed into law, it would constitute the first and only time Congress has enacted legislation totally eliminating any Federal court from considering the constitutionality of Federal legislation, in this case the Pledge of Allegiance.

Mr. SENSENBRENNER. Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Chairman, yes, we are one Nation under God, and we are one Nation under the Constitution, until today.

I voted some time ago to keep the words ''under God'' in the Pledge, and I will vote today to keep the Supreme Court in its constitutional business of enforcing the Bill of Rights. The Republican Party today intends to treat the Bill of Rights the way the Soviet Union operated during their long tyranny. Because in the Soviet Union, one could go next to Lenin's grave and see their beautiful bill of rights nicely illuminated, looked fine. But the Soviet Union lacked one thing: they stripped their courts of the ability to enforce their own bill of rights. And today the Republican Party intends to do the same thing in America.

In America we should not abandon what we learned as kids in school, that checks and balances are necessary to our fundamental liberties. And sometimes the Supreme Court gets it wrong, but heaven help the day that one trusts liberty to Congress, where the day that Congress is in session, their life and liberty is in danger. We have got to depend on the U.S. Supreme Court.

Mr. NADLER. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. PELOSI), Democratic leader.

Ms. PELOSI. Mr. Chairman, with our troops in harm's way and a deteriorating situation in Iraq and with our country facing the clear and present danger of terrorism, there are grave and great issues that Congress must address.

But what are we doing here today? Are we debating the 9/11 Commission

recommendations to secure our Nation? Are we providing health insurance to millions of Americans who have lost their insurance under this President, providing jobs to the millions of unemployed Americans and fully funding our schools?

No, Mr. Chairman. Instead, we are gathering here to once again debate undermining the Constitution of the United States and dishonoring the oath of office that we take to protect and defend the Constitution.

The bill before us claims to protect the Pledge of Allegiance. But protect the Pledge from what? Our Supreme Court has not undermined the constitutionality of the Pledge.

With the reversal of the Newdow case, there is only one major appeals court decision that has addressed the constitutionality of the Pledge; and that court, the seventh circuit, has upheld the Pledge.

This is a piece of legislation in search of a solution for a problem that does not exist.

Millions of Americans daily and proudly pledge ''one Nation under God, indivisible, with liberty and justice for all.'' Let me be clear. I defer to no one in my defense of the voluntary recitation of the Pledge. I strongly believe that the phrase ''under God'' and the Pledge itself is an uplifting expression of support for the United States. I love the Pledge.

The distinguished chairman of the Committee on the Judiciary referenced the Civil War in response to a statement made by the gentlewoman from Texas (Ms. JACKSON-LEE) and said it was not the Supreme Court that increased freedom in our country for all Americans; it was the Civil War and the amendments that followed it. That certainly was an important part of it. But absent the Brown v. The Board of Education decision, we would not be enjoying the freedoms we have for all Americans today.

But since the gentleman referenced the Civil War, I want to call to our colleagues' attention a quote that is familiar to all of them. It is from Lincoln's second inaugural address: ''With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive to finish the work we are in, to bind up our Nation's wounds.'' President Lincoln called upon God.

Another of my favorite inaugural addresses is that of President Kennedy and his inaugural address. He said: ''With good conscience our only reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help and knowing that here on Earth God's work must truly be our own.''

So evoking God's will and calling upon Him to guide us in our work is something that is very important to all Members of Congress on both sides of the aisle. I resent the comments made by some that there is anything less than that commitment on both sides of the aisle.

This bill not only does not protect the Pledge; it violates the spirit of the Pledge by professing a lack of faith in the constitutional framework. It has been a settled principle since Chief Justice John Marshall's opinion in 1803 in Marbury v. Madison that ''it is emphatically the province and the duty of the judicial department to say what the law is.'' The Federalist Papers, subsequent decisions of the Court, and the judicial branch's role as a co-equal branch all strongly suggest that Congress cannot prohibit courts from determining constitutional questions.

There is no question that this bill does not pass constitutional muster. But that does not deter the bill's proponents. The gentleman from Indiana, the author of the last court-stripping bill and a key advocate for this bill, has even outdone his statement 2 months ago that 200 years of precedent in Marbury v. Madison establishing judicial review was ''wrongly decided.'' The gentleman from Indiana (Mr. HOSTETTLER) amazingly asserted in the markup of the bill last week that ''the notion of an independent judiciary is a flawed notion . . . the notion of an independent judiciary does not bear out actually in the Constitution.''

The notion of an independent judiciary is not contained in our Constitution? This is a principle that we as a power of example of our country try to convey to emerging democracies that central to democracy is an independent judiciary. And advocates for this legislation say that that is not contained in our Constitution.

Is this what the leadership of this House and the chairman of the Committee on the Judiciary really believe? I suggest that they read James Madison and Alexander Hamilton's writings in the Federalist Papers. This radical concept is completely counter to our history and our values.

Two months ago, some assured us that the court-stripping efforts would stop once they got their wanted Defense of Marriage Act. But as the gentleman from Michigan (Mr. DINGELL), distinguished dean of the House, so eloquently warned us in July, ''We should expect to see this dangerous approach repeated on a wide range of other legislation.''

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Today his prediction has come true, and there is no pretense that this will end. What is next? Voting rights? Laws that prohibit racial discrimination? Civil liberties? Our rights to privacy?

As we consider this bill, we must remember our history and protect our Constitution to ensure our liberty. We must protect the ability of the Federal judiciary to safeguard our freedoms and ensure access to the courts by all.

This bill is an assault on our cherished Constitution and the independent judiciary for its part for partisan purposes, and it is an attempt to distract the American people from the Republicans' record of failure.

Mr. Chairman, let us honor the pledge by keeping faith with its spirit. Let us pledge to be one Nation under God, indivisible, with liberty and justice for all.

This bill has been brought to the floor to embarrass some Members, so I respect whatever decisions they have to make in light of the motivation behind it. I just want the record to show why I so strongly oppose this legislation.

Mr. NADLER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, 1,800 years ago, Christians were persecuted because they would not worship the Roman emperor as a god; 450 years ago St. Thomas Moore lost his head because he would not swear an oath that king and parliament commanded that violated his Catholic belief.

But the United States is different. Our Constitution prohibits test oaths. Our Constitution protects the rights of Jehovah's Witnesses' children to refuse to recite a pledge that we hold dear but that violates the tenets of their faith.

Or at least the United States was different. This bill would leave to the States, as the gentleman from Wisconsin (Mr. SENSENBRENNER) says, the decision whether that religious liberty would be protected or not.

The issue, Mr. Chairman, in this bill is not the Pledge of Allegiance. The issue in this bill is whether we strip the courts of the power to protect our liberties against perhaps transient majorities and legislative bodies. The issue is whether we eliminate the only final protection of our liberties, of our religious and other liberties, that we have evolved. If we pass this bill and go in this direction, the United States will be a very different and a much, much less free country.

I urge the defeat of this bill.

Mr. Chairman, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN pro tempore (Mr. LATHAM). The gentleman is recognized for 3 minutes.

Mr. SENSENBRENNER. Mr. Chairman, on September 17, 1937, President Franklin D. Roosevelt gave a Constitution day address, and in that speech President Roosevelt said in part, ''Lay rank and file can take cheer from the historic fact that every effort to construe the Constitution as a lawyer's contract rather than a layman's charter has ultimately failed. Whenever legalistic interpretation has clashed with contemporary sense on great questions of broad national policy, ultimately the people and the Congress have had their way.''

This was a statement that was made by what is conceded on both sides of the aisle as the greatest Democratic President in the history of this country.

In the last Congress, both the House and the Senate passed and the President signed public law 107–206. Section 706(j) of that law says, ''Any action authorized by this section shall not be subject to judicial review by any court of the United States.''

Now, where were all of the Members who are complaining about this bill when that legislation came up, because it took away the right of the Federal courts to review legal issues relating to trees in South Dakota. If Congress can deny all the Federal courts the authority to hear a class of cases to protect trees, it certainly can do so to protect the States' policy regarding the Pledge of Allegiance. That is why this bill ought to be passed.

Mr. ALLEN. Mr. Chairman, I rise in strong opposition to H.R. 2028, the so-called Pledge Protection Act.

I believe that the phrase ''under God'' should remain as part of the Pledge of Allegiance, and I believe that the statute that fixed that phrase as part of the Pledge is constitutional. But I cannot support this misguided congressional power grab that would prevent the federal courts from interpreting a law passed by Congress, or deciding its constitutionality.

In the name of custom, our Republican colleagues disregard 200 years of legal and constitutional customs and precedent just to score political points in an election year.

Despite its name, this legislation does not protect the Pledge of Allegiance. It does, however, undermine the very foundation of our system of government.

We teach our children to respect the work of the Founders and the Constitution's system of checks and balances. Judicial review is a vital component of that system. Unfortunately, the so-called conservative Republican majority shows no respect today for the traditional role of our federal courts.

The bizarre effect of this bill would be to allow fifty different state courts to interpret the United States Constitution in fifty different ways. Never in our history has a state court had the final say on interpreting the U.S. Constitution. That is the role and duty of the federal judiciary by history, custom and law.

But for the Majority, there is no tradition, no custom, no practice, no matter how broadly accepted, that is immune from Republican assault.

The Framers, our original revolutionaries, were wiser and more tolerant. Reject this election year stunt.

Mr. BLUMENAUER. Mr. Chairman, this resolution represents the third time in as many years that the House has brought needless legislation to the floor to ''protect'' the Pledge of Allegiance. At a time when we should be discussing issues of great consequence, like the genocide occurring in Sudan, the implementation of the recommendations of the 9/11 Commission, and the use of our federal surface transportation dollars, the House leadership has again decided to bring up this stale topic. This time, however, the legislation is not simply frivolous; it is downright dangerous.

This bill, which will purportedly protect the Pledge of Allegiance, is the continuation of a reckless and destructive pattern to strip courts of their ability to determine the constitutionally of the Pledge of Allegiance. This is an outrageous assault on our fundamental constitutional framework. Personally, I do not think individual liberties are threatened by the words ''under God'' in the Pledge of Allegiance. Regardless, this remains a decision that should be made in federal courts—not here in Congress. The very notion of this legislation is unconstitutional. It should be fundamentally and decisively rejected today.

Mr. DINGELL. Mr. Chairman, I rise in strong opposition to H.R. 2028. Here we are again considering needless court-stripping legislation that would destroy our constitutional system of checks and balances. This time we wrap it in the flag and call it the Pledge Protection Act.

This is another extraordinary piece of arrogance on the part of the House of Representatives to pass legislation which would strip American citizens of their right to access the federal courthouse. Can you imagine anything more shameful than telling an American citizen you cannot go into court to have your concerns addressed regarding Constitutional rights, or to have those rights heard by the courts of your Nation?

I do not believe that we should strip the federal courts of jurisdiction when it comes to issues related to the Equal Protection Clause of the Constitution. It drastically interferes with the separation of powers between the three branches of our government.

While I will always defend the autonomy and the power of the legislative branch, the principle of judicial review that Chief Justice John Marshall set out in the 1803 decision Marbury v. Madison is law. This landmark case established that the Supreme Court has the right to pass on the constitutionality of an act of Congress. To whittle away one of the bedrock powers of the judicial branch is wrong for the Union and wrong for our citizenry.

Tinkering with the foundation of our judicial branch could come back to haunt us. You can be almost certain with the passage of this legislation that there are interests out there deciding what other rights can be stripped of American citizens because we disagree with them. Maybe a future Congress will want to strip court challenges to gun control legislation by gun owners or sportsmen.

Mr. Speaker, we live in one nation, under God, with liberty and justice for all. If we pass this bill, we begin to hollow out the true meaning of the pledge, the Constitution and what it means to live in this great nation.

I strongly oppose this legislation and urge my colleagues to do the same.

Mr. STARK. Mr. Chairman, I rise in opposition to H.R. 2028, the So-Called ''Pledge Protection Act.'' This potentially unconstitutional piece of legislation speaks volumes about the uncontrollable extremism of the Republican Party and its desperation to look ''conservative'' in the face of $400 billion deficits and nation-building in Iraq.

The fact that the Supreme Court already threw out the decision striking ''Under God'' from the Pledge of Allegiance makes this bill irrelevant with regard to the Pledge, and all the more frightening with regard to the true intentions of the Republicans. In the interest of politics, they would unravel our system of checks and balances and close the courthouse doors to religious minorities. They would set a new, disastrous precedent of letting 50 different state courts be the final arbiters of our laws. They prefer that state judges, rather than federal judges confirmed by the Senate, make Constitutional law.

If the right wing had been in control of the Republican Party in the 1960s, we wouldn't have desegregation or Miranda warnings, as there were court-stripping proposals on those subjects, too.

Mr. Speaker, everyone here realizes that if Congress could just pass whatever laws it wanted and throw in a line to keep them from being held unconstitutional, our Constitution and Separation of Powers would be rendered meaningless. So let's just admit what this is really about: rallying the base and attacking defenseless Americans.

Shame on any Member of this body who will trample on our Constitution just to score a few political points. If the Oath we all took to ''support and defend the Constitution of the United States'' means anything to you, you will vote ''no'' on this election-year ploy.

Mr. HOLT. Mr. Chairman, I rise in opposition to H.R. 2028, which would prevent federal courts and the Supreme Court from hearing any claim that the recitation of the Pledge of Allegiance violates the first amendment of the Constitution.

The Constitution—perhaps the greatest invention in history—has been the source of our freedom in this great country for more than two centuries. The framework of government it established has allowed our diverse people to live together, to balance our various interests, and to thrive. It has provided each citizen with broad, basic rights.

The judiciary was designed to be the one branch of the federal government that is not influenced or guided by political forces. This independent nature enables the judiciary to thoughtfully and objectively review laws enacted by the legislative branch to ensure that federal law is in line with the Constitution. Throughout the development of our nation, this check has been vital to protecting the rights of minorities.

Although the Constitution gives Congress the power to limit the jurisdiction of the federal judiciary and the appellate jurisdiction of the Supreme Court, I am certain that the founding fathers did not intend for Congress to use this power to shape the jurisdiction of the courts along ideological lines. This legislation will set a dangerous precedent by allowing Congress to insulate itself from judicial review so that it can pass legislation that it thinks may be unconstitutional. This is a clear misuse of Congressional authority and it is a cynical attempt to question the patriotism of Members of this institution.

Like every member of this body, I am proud to recite the Pledge of Allegiance as a way to express my loyalty to this Nation and its founding principles. I share the view of many Members that the current text of the Pledge of Allegiance is constitutional including the phrase ''under God''. I expressed my support for the Pledge in its current form when I joined many of my colleagues in voting for a resolution that expressed the opinion of Congress that the Ninth Circuit's decision in Newdow v. U.S. Congress was erroneous, This was an appropriate forum for me, as a Member of Congress, to express my belief in the constitutionality of the Pledge of Allegiance.

Unfortunately, those who support this legislation do seek to alter our delicate system of checks and balances and make their own decisions infallible. They are attempting to alter the intended framework of our government, which has met the needs of a diverse population and allowed us to remain indivisible in

times of crisis for more than 200 years. They ignore the fact that we are a political institution guided by public opinion that is constantly fluctuating and believe that this institution is better equipped than the judiciary to evaluate what laws violate the Constitution.

It is unclear to me where the supporters of this legislation will end in restricting an individual's ability to seek redress. In July, we passed legislation that denied individuals the ability to question the constitutionality of the Defense of Marriage Act. Today we are debating legislation that limits an individual's ability to bring a claim regarding the Pledge of Allegiance. What law will the Majority party choose next to put above the process of judicial review? At what point will the Majority party stop adding exceptions to the right to due process?

A vote against this bill signifies a desire to make the words of the Pledge of Allegiance a living reality and not a hollow promise. A vote for this legislation is a vote against the values that are embedded in our Constitution. I urge my colleagues to oppose this legislation.

Ms. LEE. Mr. Chairman, I rise in strong opposition to H.R. 2028, the Pledge Protection Act.

I am outraged that my colleagues on the other side of the aisle would give serious consideration to this legislation that infringes on the First Amendment, and blurs the Separation of Powers.

This bill is just another misguided election year ploy designed to score political points.

H.R. 2028 threatens a fundamental aspect of our constitutional structure and would set a dangerous precedent by stripping federal courts of judicial independence and pave the way to preventing federal judges from ruling on other controversial social issues.

It is unacceptable and unconstitutional to propose stripping powers from the judicial branch every time we disagree with a decision they make.

Regardless of race or creed, we should all have the right to access the federal courts to challenge a particular policy or piece of legislation. By denying this right, this bill is both bigoted and backwards.

By bringing this legislation to the Floor, the Republican Leadership has demonstrated again that they are more concerned with making political headlines than making headway on substantial legislation—like the VA–HUD appropriations bill or the National Affordable Housing Trust Fund.

My constituents who have serious needs—like housing, jobs, education, and affordable heath care. How can I explain the Republican's misplaced priorities?

And I must explain how the Leadership of this body decided to waste another legislative day on political legislation like this bill.

We need to get back to the people's business and deal with some of the real pressing issues that face our country.

I urge my colleagues to oppose this unnecessary legislation and vote against H.R. 2028.

Mr. SULLIVAN. Mr. Chairman, I rise in strong support of H.R. 2028, the Pledge Protection Act of 2004. H.R. 2028 is a commonsense piece of legislation that reserves to the state courts the authority to decide whether the Pledge of Allegiance is valid within each state's boundaries. It will place final authority over a state's pledge policy in the hands of the states themselves, where it belongs.

The role of Congress has always been clear on the limitation of jurisdiction of the federal judiciary. Integral to our American Constitutional system is each branch of government's responsibility to use its powers to prevent overreaching by the other branches. Passage of H.R. 2028, will send a strong signal to the federal judiciary that the will of the people will prevail against judicial activism on the Pledge of Allegiance.

In a Nation where the vast majority of Americans believe in a divine power, it is un-American to place our pledge in the hands of the Federal Judiciary. I believe that reciting the Pledge of Allegiance is not only a right, but also a responsibility. While no one is forced to recite it, neither should anyone be prohibited from pledging allegiance to our great country.

It is wrong for any court to impose its will on whether the overwhelming majority of Americans can publicly express a fundamental belief. The people have spoken through their elected representatives on both the federal and state levels on this issue.

I urge passage of this legislation to send a strong message of judicial restraint, and of empowerment of the people in their own government, to protect the Pledge of Allegiance for all Americans.

Mr. UDALL of Colorado. Mr. Chairman, this bill seeks to prevent any federal court—including the Supreme Court—from considering "any question pertaining to the interpretation of, or the validity under the Constitution of, the Pledge of Allegiance . . . or its recitation."

As we all know, introduction of the bill was prompted by the 2002 decision of the Court of Appeals for the Ninth Circuit in what is known as the "Newdon" case. That decision held that the 1954 legislation adding "under God" to the pledge and a California school district's policy of daily recitation of the pledge with those words were both unconstitutional. (That court later modified the decision to apply only to the school district's recitation policy.)

The school district and the United States both appealed to the Supreme Court—and on June 14th the Supreme Court reversed the decision, on the grounds that the plaintiff did not have legal standing to challenge the school district's policy.

But the Republican leadership of the House evidently is afraid that somebody else might bring a similar lawsuit—and that prospect that is so alarming to them that they have brought forward this bill, which would prevent any federal court from hearing a lawsuit like that.

I cannot support such legislation. It may or may not be constitutional—on that I defer to those with more legal expertise than I can claim. But I think it clearly is not just unnecessary but misguided and destructive.

I have no objection to the current wording of the Pledge of Allegiance. After the court of appeals announced its decision in the Newdon case I voted for a resolution—approved by the House by a vote of 416 to 3—affirming that "the Pledge of Allegiance and similar expressions are not unconstitutional expressions of religious belief" and calling for the case to be reheard.

But this bill is a different matter.

The bill may be called the "Pledge Protection Act," but that is not accurate. In reality, it not only fails to protect the pledge but also would undercut the very thing to which those who recite the pledge are expressing allegiance.

The bill fails to protect the pledge because even if it becomes law people who don't like the way the pledge is worded would still be able to bring lawsuits in state courts—and the Supreme Court could not review how state's courts ruled on those suits.

So, while Colorado's courts might uphold the current wording, the courts of other states might reach a different conclusion—meaning there would no longer be a single Pledge of Allegiance, but different pledges for different states, and the First Amendment's meaning would vary based on state lines.

And that would be directly contrary to the very idea of the United States as "one nation" that should remain "indivisible" and whose defining characteristics are devotion to "liberty and justice for all"—that is, to the very Republic (symbolized by the American flag) to which we pledge allegiance when we recite the pledge this bill pretends to "protect."

How ironic—and how pathetic. As national legislators, as Untied States Representatives, we can and should do better. We should reject this bill.

Mr. OSE. Mr. Chairman, I rise today to reluctantly voice my opposition to H.R. 2028, the Pledge Protection Act.

As a cosponsor of the original legislation, I am disheartened to see changes that have removed necessary civil rights protections. In the course of a Committee mark up, the original Pledge Protection Act was stripped and rewritten to exclude the Supreme Court from jurisdiction from hearing cases surrounding the Pledge of Allegiance.

I strongly believe that if a citizen of the United States has a grievance of a federal nature, that individual deserves his or her day in federal court. By removing the Supreme Court from jurisdiction to hear Pledge cases, the Pledge Protection Act effectively removed a citizen's day in federal court. As such, I can not support this legislation in its current form.

Mr. POMEROY. Mr. Chairman, I rise in opposition to H.R. 2028, the Pledge Protection Act.

I strongly believe that the Pledge of Allegiance, including the phrase, "under God" is a constitutional expression of patriotism. I recall reciting the Pledge of Allegiance in school as a child growing up in Valley City, North Dakota, and I believe that it plays an important role in unifying our country and celebrating our national identity.

Like my colleagues, I was outraged by past court decisions that erroneously declared the Pledge of Allegiance unconstitutional. That is why on March 20, 2003, I voted in favor of H. Res. 132, which urged the Supreme Court "to correct the constitutionally infirm and incorrect holding" by the 9th Circuit Court of Appeals in its revised decision on the Newdow v. U.S. Congress case. This resolution also expressed the sense of the House of Representatives that the recitation of the Pledge is a "patriotic" act rather than a religious one, that phrase "One Nation, under God" should remain in the Pledge and that the practice of voluntarily reciting the Pledge in public school classrooms should be encouraged by the policies of Congress. Furthermore, on July 22, 2003, I voted in favor of the amendment offered by Rep. HOSTETTLER to H.R. 2799, the Commerce, Justice and State and Related Agencies Appropriations bill, which barred the use of any of the funds appropriated by the bill to "enforce the judgment" in the Newdow v. U.S. Congress.

During the 107th Congress, I also voted in favor of H. Res. 459, which expressed the view of the House of Representatives that the 9th Circuit Court of Appeals' original decision in Newdow v. U.S. Congress to strike the words ''under God'' from the Pledge of Allegiance was incorrectly decided. Similarly, I strongly supported S. 2690, legislation that reaffirms the language of the Pledge of Allegiance, including the phrase ''one Nation under God.''

I am concerned that the passage of H.R. 2028 would deny the Supreme Court its historical role as the final authority on the constitutionality of federal laws and nullify the separation of powers set forth in the United States Constitution. Furthermore, H.R. 2028 sets a dangerous precedent for future Congresses. By adding language from H.R. 2028 to unconstitutional legislation, a future Congress could enact laws that are clearly contrary to key tenets of the Constitution while preventing the Supreme Court from ever considering their validity. Given these considerable problems with H.R. 2028, I intend on voting against this measure.

Mr. PAUL. Mr. Chairman, I am pleased to support, and cosponsor, the Pledge Protection Act (H.R. 2028), which restricts federal court jurisdiction over the question of whether the phrase ''under God'' should be included in the pledge of allegiance. Local schools should determine for themselves whether or not students should say ''under God'' in the pledge. The case finding it is a violation of the First Amendment to include the words ''under God'' in the pledge is yet another example of federal judges abusing their power by usurping state and local governments' authority over matters such as education. Congress has the constitutional authority to rein in the federal court's jurisdiction and the duty to preserve the states' republican forms of governments. Since government by the federal judiciary undermines the states' republican governments, Congress has a duty to rein in rogue federal judges. I am pleased to see Congress exercise its authority to protect the states from an out-of-control judiciary.

Many of my colleagues base their votes on issues regarding federalism on whether or not they agree with the particular state policy at issue. However, under the federalist system as protected by the Tenth Amendment to the United States Constitution, states have the authority to legislate in ways that most members of Congress, and even the majority of he citizens of other states, disapprove. Consistently upholding state autonomy does not mean approving of all actions taken by state governments; it simply means acknowledging that the constitutional limits on federal power require Congress to respect the wishes of the states even when the states act unwisely. I would remind my colleagues that an unwise state law, by definition, only affects the people of one state. Therefore, it does far less damage than a national law that affects all Americans.

While I will support this bill even if the language removing the United States Supreme Court's jurisdiction over cases regarding the pledge is eliminated, I am troubled that some of my colleagues question whether Congress has the authority to limit Supreme Court jurisdiction in this case. Both the clear language of the United States Constitution and a long line of legal precedents make it clear that Congress has the authority to limit the Supreme Court's jurisdiction. The Framers intended Congress to use the power to limit jurisdiction as a check on all federal judges, including Supreme Court judges, who, after all, have lifetime tenure and are thus unaccountable to the people.

Ironically, the author of the pledge of allegiance might disagree with our commitment to preserving the prerogatives of state and local governments. Francis Bellamy, the author of the pledge, was a self-described socialist who wished to replace the Founders' constitutional republic with a strong, centralized welfare state. Bellamy wrote the pledge as part of his efforts to ensure that children put their allegiance to the central government before their allegiance to their families, local communities, state governments, and even their creator! In fact, the atheist Bellamy did not include the words ''under God'' in his original version of the pledge. That phrase was added to the pledge in the 1950s.

Today, most Americans who support the pledge reject Bellamy's vision and view the pledge as a reaffirmation of their loyalty to the Framers' vision of a limited, federal republic that recognizes that rights come from the creator, not from the state. In order to help preserve the Framers' system of a limited federal government and checks and balances, I am pleased to support H.R. 2028, the Pledge Protection Act. I urge my colleague to do the same.

Mr. SHAYS. Mr. Chairman, I voted against H.R. 2028, the Pledge Protection Act.

The phrase ''under God'' belongs in our Pledge of Allegiance to the Flag of the United States of America and the words ''In God We Trust'' belong on our currency. The Ninth Circuit Court of Appeals made a serious error in Newdow v. U.S. Congress when they declared our Pledge unconstitutional.

When the phrase ''under God'' was added to the Pledge of Allegiance in 1954, I was in elementary school and remember feeling the phrase belonged there. It appropriately reflects the fact that a belief in God motivated the founding and development of our great Nation.

The Declaration of Independence states, ''We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights . . .'' Our forefathers understood it was not they, but He, who had bestowed upon all of us those most cherished rights to life, liberty and the pursuit of happiness upon which our model of government is based.

At Gettysburg, President Abraham Lincoln acknowledged we were a Nation under God and, during his Second Inaugural Address, he mentioned our Creator 13 times.

Those historic speeches, the Pledge of Allegiance, our currency and the Declaration of Independence are not prayers or parts of a religious service. They are a statement of our commitment as citizens to our great Nation and the role God plays in it.

Our founders envisioned a government that would allow, not discourage or punish, the free exercise of religion and we are living their dream.

I voted against the Pledge Protection Act because I have faith in our Constitution and do not believe we should preclude judges from hearing issues of social relevance, simply because we may disagree with their ultimate decisions.

The tactic of restricting courts' jurisdiction is spiraling out of control. In July, I voted against a bill that would block the courts from hearing Constitutional challenges to the Defense of Marriage Act and again today we considered legislation to tie the courts' hands. What's next?

While the courts may, from time to time, produce a ruling we question, the principle of judicial review is essential to maintaining the integrity of our system of checks and balances and I fear the path we appear to be on. We are a Nation under God, and in Him we trust.

Mr. WELDON of Florida. Mr. Chairman, I rise in strong support of the Pledge Protection Act because it upholds the rights of the overwhelming majority of American people who support the phrase ''under God'' in the Pledge of Allegiance.

H.R. 2028, of which I am a cosponsor, removes from the jurisdiction of the Federal courts questions regarding the constitutionality of the Pledge of Allegiance. It does so utilizing the powers of Congress clearly expressed in article III of the Constitution. Article III reserves for the Congress the power to regulate or completely eliminate the Supreme Court's appellate jurisdiction over a class of cases.

Chief Justice Rehnquist of the U.S. Supreme Court stated that the court has already erected ''a novel prudential principle in order to avoid reaching the merits of the constitutional claim'' that the phrase ''under God'' violates the Establishment Clause. It is clear from this precedent that the U.S. Supreme Court is most likely to rule the phrase ''under God'' unconstitutional should a case reach the high court.

Liberal activist judges are consistently working to remove the mention of ''God'' from the public realm. As a Nation that affirms in its own Declaration of Independence that God is the source of our rights, it is absolutely appropriate for Congress to act on this important issue.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2028

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Pledge Protection Act of 2004''.

SEC. 2. LIMITATION ON JURISDICTION.

(a) IN GENERAL.—Chapter 99 of title 28, United States Code, is amended by adding at the end the following:

''§ 1632. Limitation on jurisdiction

''No court created by Act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, the Pledge of Allegiance, as defined in section 4 of title 4, or its recitation.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 99 of title 28, United States Code, is amended by adding at the end the following new item:

''1632. Limitation on jurisdiction.''.

The CHAIRMAN pro tempore. No amendment to the committee amendment is in order except those printed in House Report 108–693.

Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in House Report 108–693.

AMENDMENT NO. 1 OFFERED BY MR. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. SENSENBRENNER:

In section 1632 of title 28, United States Code, as added by section 2(a) of the bill, insert the following after ''or its recitation.'': ''The limitation in this section shall not apply to the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 781, the gentleman from Wisconsin (Mr. SENSENBRENNER) and a Member opposed each will control 5 minutes.

Mr. NADLER. Mr. Chairman, I ask unanimous consent to control the time in opposition, though I do not oppose the amendment.

The CHAIRMAN pro tempore. Without objection, the gentleman from New York (Mr. NADLER) will be recognized for 5 minutes.

There was no objection.

The CHAIRMAN pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is simple. Currently the bill prevents Federal courts, including courts created by an act of Congress, from striking down ''under God'' in the Pledge, while reserving to the State courts the authority to hear cases involving the Pledge.

The District of Columbia, however, due to its unique constitutional position, does not have State courts. Instead, its courts that are the equivalent of State courts are created by an act of Congress.

So, to preserve a judicial forum for District residents regarding challenges to the Pledge, this amendment simply adds the following section to the bill: ''The limitation in this section shall not apply to the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.''

This sentence preserves the authority of the District's courts to hear cases involving the Pledge. I urge its adoption.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, on this side of the aisle we do not oppose the amendment.

Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Chairman, I applaud the chairman of the committee for offering the manager's amendment that grants to the D.C. residents the same rights that apply to residents of the 50 States under this bill, that is, the right to have some recourse in a local, non-Federal court. However, the manager's amendment still does nothing to address the same problem with respect to U.S. citizens who are residents of the U.S. Virgin Islands, Northern Mariana Islands, and Guam.

This amendment just goes to show that the majority was so busy stripping the courts of jurisdiction that it inadvertently stripped jurisdiction from all the courts, just as they did last week in a tort reform bill allowing foreign corporations to escape all liability for injuries to American citizens because the bill, in some cases, provided no United States jurisdiction in which the case could be brought.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the reason that this amendment does not include the local courts in Puerto Rico and the territories is that those courts are not created by Act of Congress, so residents of Puerto Rico and the territories will be able to file suits regarding the Pledge in the courts that have been created by their respective legislatures pursuant to the organic Act that Congress has previously passed.

Mr. SCOTT of Virginia. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Virginia.

Mr. SCOTT of Virginia. Mr. Chairman, I would say to the chairman, I think I agree with him on Puerto Rico, but disagree with regard to the Virgin Islands and others. If we could agree that the legislative intent is to make sure there will be some recourse, we could have that fixed in conference.

Mr. SENSENBRENNER. Mr. Chairman, reclaiming my time, I agree with the comments made by the gentleman from Virginia (Mr. SCOTT).

Mr. Chairman, I yield back the balance of my time.

Mr. NADLER. Mr. Chairman, I yield 2½ minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, the amendment is fine, but it does not fix the problem with the bill. Marbury versus Madison, 1803, was when the great decision was made that the judicial branch would interpret the law. Since that time, we have had, like we all learned in 8th grade, the three branches of government, and it served us pretty darn well for the last 200 years. We have a free country that lives under law.

This bill actually would try to remove the judicial branch from its job of interpreting the law, and, most importantly, making sure that the laws that the Congress passes and the actions that the executive takes meet up with the standards in the Constitution of the United States.

Now, I have been listening to the debate of the proponents of this bill with some concern. Some of the things that have been said, I wonder, can they be that dumb, or are they being venal, or is it both? Absolutely we know there is a difference between passing a statute and having that statute interpreted to see whether the statute meets constitutional muster.

Clearly, Congress has the ability to do all kinds of things with the courts. We can set statutes of limitation, we can provide for direct appeal to the Supreme Court. What we cannot do is say that the Federal courts, that the Supreme Court, cannot review what we do to see whether it meets the requirements of the Federal Constitution. That is what we are trying to do today.

Now, if we succeed, if we pass this, we will either change fundamentally the free country that we enjoy, or else we will promote a constitutional crisis. Maybe we could get a Marbury-II.

But I think there is another reason for this bill today. I think we are here today for political purposes. We are here so that certain Members of this House who try and protect the Constitution will be subject to 30-second political ads. I think that is a misuse of our processes here. Either radicals have taken over the Congress, or venality has hit a new low, and we would trash our system of government for political purposes. I think either is a disgrace.

Mr. NADLER. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, first of all, I know the author of the bill came to the floor a few moments ago, the gentleman from Missouri, and said we are trying to confuse this issue with legality.

I am actually confused by a couple of things. One, those of us who want ''God'' in the Pledge of Allegiance, we won. You would think from this debate that this morning when we took the Pledge of Allegiance, we did not say ''God.'' You would think that that crazy court in California that came up with the wrong decision was not reversed. We won that case.

The second thing I am curious about, what is it about bills and issues that you do not strip review from that you like less than this? How come when you say that there should be no abortions for women in this country, that you do not strip the review of that? How come when you do your budget,

you do not strip your review of that? How come when you do all of the other bills around, do not you love them as much? Are they not equally as important to you?

I am shocked there is any legislation you bring to this floor that you do not strip the review of the courts, because, frankly, by your interpretation of the Constitution, the court has no role there.

The final question I have, and I hate to vex my opponents on the other side with talk of legality, but if not the courts are interpreting the Constitution of the United States, who is going to do it? What is your suggestion? Are we going to have like a reality show, where maybe we let 12 people on an island come up with the decision? And what if you do not have Federal courts doing it, you just have the State courts?

Maybe I guess then the 14th Amendment is a bit troublesome. I guess there are no uniform constitutional rights in this country, no uniform right to bear arms, no uniform right to speech and to practice religion.

If anyone can answer any of those three points, I will gladly vote for this bill.

Mr. CONYERS. Mr. Chairman, while I commend Chairman SENSENBRENNER for heeding the advice of Representative BOBBY SCOTT and offering an amendment that will allow DC residents to have their day in court, I am concerned that the amendment does not grant similar protections to residents of U.S. territories.

This is because the local courts in the U.S. Virgin Islands (codified at 48 U.S.C. §1611, population 110,000 residents); the Northern Mariana Islands (codified at 48 U.S.C. §1821, population 78.000); and Guam (codified at 48 U.S.C. §1424, population 160,000); were all created by acts of Congress, not the local legislatures.

Since this bill provides that "[n]o court created by an Act of Congress" shall have any jurisdiction to hear cases concerning the constitutionality of the Pledge of Allegiance, the net result is that under H.R. 2028, no judicial review would be available for Pledge of Allegiance cases for the nearly 350,000 combined residents of these territories.

As the majority's own witness, Martin Redish, concluded at the Committee's hearing on court stripping legislation:

> . . . as long as the state courts remain available and adequate forums to adjudicate federal law and protect federal rights, it is difficult to see how the Due Process Clause would restrict congressional power to exclude federal judicial authority to adjudicate a category of cases, even one that is substantively based.

Unfortunately, under the Chairman's amendment, such a local court review would not be possible in Guam, the Virgin Islands, and the Northern Mariana Islands. As a result, the bill would continue to be unconstitutional with regard to these territories.

The CHAIRMAN pro tempore.

The question is on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The amendment was agreed to.

□ 1300

The CHAIRMAN pro tempore (Mr. LATHAM). It is now in order to consider amendment No. 2 printed in House Report 108–693.

AMENDMENT NO. 2 OFFERED BY MR. WATT

Mr. WATT. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. WATT:

In section 1632 of title 28, United States Code, as added by section 2(a) of the bill, strike '', and the Supreme Court shall have no appellate jurisdiction,''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 781, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, my amendment would restore the bill to its original form. The original bill that was introduced, H.R. 2028, actually stripped only the lower courts, not the Supreme Court, of jurisdiction to hear these cases. My colleague, the gentlewoman from Illinois (Mrs. BIGGERT), who was an original supporter and sponsor of the original bill, both of us submitted amendments to the Committee on Rules asking the Committee on Rules to restore the bill to its original intention, and the Committee on Rules decided it would make my amendment in order, I guess so that it would not send a signal to the Republicans that this is a bipartisan amendment.

So I want to offer this amendment to restore the jurisdiction of the United States Supreme Court to determine constitutionality.

Mr. AKIN. Mr. Chairman, I claim the time in opposition to the amendment, and I yield myself such time as I may consume.

Mr. Chairman, the reason why we should vote against this amendment is fairly basic and pretty simple mathematics, and that is, in the last decision, when the Newdow case was thrown out on standing, that decision made it clear that there are only three chief justices who support the Pledge of Allegiance, and three is not enough to keep ''under God'' in the pledge.

Now, what this amendment is going to do is it is going to allow the Supreme Court to hear additional or any future challenges to the Pledge of Allegiance. And when the current court hears that challenge, we are struck with that simple mathematics, that there are only three votes on the Supreme Court that would keep ''under God'' in the Pledge.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT. Mr. Chairman, I yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise today in support of the Watt amendment which would restore the Supreme Court's jurisdiction over questions relating to the Pledge of Allegiance, changing the bill back to the way it read when I and 224 other Members cosponsored it.

Congress clearly has the authority under article III of the Constitution to define the jurisdiction of the Federal district and appellate courts, and the original H.R. 2028 was perfectly supportable on this point. But this new bill strips the Supreme Court jurisdiction, and I cannot support that.

Mr. Chairman, in our more than 200-year history as a Nation, there is no direct court precedent in which the Supreme Court is cut off entirely from review of a constitutional issue. Congress wisely has chosen not to test its power to deny Supreme Court review of laws Congress has passed; that is until H.R. 3313 and this amended version of H.R. 2028.

I know that the gentleman from Wisconsin (Chairman SENSENBRENNER) cited Ex Parte McCardle as authority under article III to make exceptions to the appellate jurisdiction of the Supreme Court. But in McCardle, the court recognized that other avenues and at least some level of review were available on a constitutional challenge.

I would caution my colleagues to think twice before tampering with authorities clearly granted in the Constitution. The issue today may be the Pledge, but what if the issue tomorrow is second amendment rights, civil rights, environmental protection or a host of other issues that Members may hold dear. I would ask my colleagues, do we really need 50 different versions of the Pledge of Allegiance? I certainly do not think so.

I believe that ''under God'' are two of the most important words in the Pledge. I also believe that the Supreme Court should be the final arbiter of all Federal questions. That is why I urge my colleagues to support the Watt amendment to the Pledge Protection Act.

Mr. AKIN. Mr. Chairman, I yield 2 minutes to my good friend, the gentleman from South Carolina (Mr. BARRETT).

Mr. BARRETT of South Carolina. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, exactly what we are talking about is limiting the appellate jurisdiction of the Supreme Court, and let me just read my colleagues a couple of things. According to constitutional experts, under article III of the Constitution, Congress clearly has the ability to limit the appellate jurisdiction of the Supreme Court to review certain cases. Now, this is satisfied by constitutional experts, and who are these constitutional experts? Well, justices of the Supreme Court.

In the decision Wiscart v. Dauchy, the Court ruled, ''If Congress has provided no rule to regulate our proceedings, we cannot exercise appellate

jurisdiction; and if the rule is provided, we cannot depart from it.''

Let me read another decision, Martin v. Hunters' Lessee. The Court ruled, ''Congress is able to regulate and restrain appellate jurisdiction of the U.S. Supreme Court as public necessity requires.''

And one last decision, United States v. Bitty. The Court ruled, ''Congress holds the wisdom and authority to establish exceptions and regulations concerning the court's appellate jurisdiction.''

What we are doing here, I say to my colleagues, is letting our State courts take a look at this and not Federal activist judges.

Let us leave these decisions up to our State courts and not our Federal court system. Let us not gut the Sensenbrenner amendment, and I urge Members to vote no against the Watt amendment.

Mr. WATT. Mr. Chairman, I yield 1½ minutes to the gentleman from New Hampshire (Mr. BASS).

Mr. BASS. Mr. Chairman, I thank the gentleman for yielding me this time. I thank my colleague, the gentlewoman from Illinois, for joining him in offering what I consider to be a bipartisan amendment.

I would only point out that Newdow on its face was based on a procedural issue of standing, and the math might be quite different if the decision was based upon substance rather than standing.

I rise in support of this amendment offered by my friend, the gentleman from North Carolina (Mr. WATT). I sponsored H.R. 2028, along with 225 or so other Members of Congress, because I believe that we should have ''under God'' in the Pledge of Allegiance, and I voted on three other occasions in the same fashion.

There are two other issues involved here. The first is whether or not we want to make sure that we have ''under God'' in the Pledge of Allegiance, and the second issue is, do we want to take on a fundamental issue that has been debated in this country for over 200 years? And that is whether or not the Supreme Court has standing in appellate jurisdiction for issues that may be unconstitutional.

I come down on the side of the precedent that we have had in this country for the last 200 years. I support the Watt amendment because I support passage of the bill and the signing of the bill by the President of the United States. I want ''under God'' in the Pledge of Allegiance. I want to make policy. As a colleague of mine on the Republican side said yesterday, let us make policy, not make statements.

Vote for the Watt amendment and pass the bill.

Mr. AKIN. Mr. Chairman, I yield 4 minutes to my distinguished colleague, the gentleman from Indiana (Mr. HOSTETTLER).

(Mr. HOSTETTLER asked and was given permission to revise and extend his remarks.)

Mr. HOSTETTLER. Mr. Chairman, I thank the gentleman for yielding me this time.

I rise in opposition to the gentleman's amendment from North Carolina and in support of the base bill that is being considered.

As I listen to the debate on this bill, I cannot help but remember the note written in the margin of the pastor's sermon where he reminds himself during a particularly questionable part of theology where he says, ''pound pulpit hard here; argument weak.'' And that is what we see here from the other side, a very weak argument, because the suggestion that is being made by several of the folks on the other side is something we are trying to do is unconstitutional.

In the markup of this bill in the Committee on the Judiciary, I was intrigued by the attempt by the other side to continue to ask Americans to leave the Constitution alone. A colleague of mine on the other side of the aisle repeatedly said, leave the Constitution alone. What he meant by that was, stop reading the Constitution. Because if you read the Constitution, you will find that in article III section 2 of the Constitution, you find the basis for the legislation, the policy that the gentleman from Missouri seeks to put into law.

In article III section 2, after referring to all of the types of cases that shall come under the jurisdiction of the Federal judiciary, it says, ''In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all of the other cases before mentioned,'' all the other cases before mentioned, ''the Supreme Court shall have appellate jurisdiction both as to law, in fact, with such expects and under such regulations as the Congress shall make.''

The notion of an independent judiciary, and it has been quoted by several folks here, my statement in the markup, the notion of an independent judiciary fails the Constitution test. The simple fact is, the framers of the Constitution did not want an unelected, unaccountable, life-tenured body, namely, the judiciary, to be able to, by writ large, enact policy across the country when the people themselves would not have an obligation or an ability to reverse it. But they gave that authority in the Constitution to the people's representatives in the Congress.

The gentlewoman from California, the minority leader, requested that Members of the House of Representatives read the Federalist Papers, and especially Hamilton, to understand the importance of the Congress' role vis-a-vis the judiciary. And as she said that I was inspired to do just that thing, and I pulled out from Alexander Hamilton, Federalist No.78, ''Whoever attentively considers the different departments of power must perceive that in a government in which they are separated from each other, the judiciary is beyond comparison the weakest of the three departments of power. It has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society and can take no active resolution whatever. It may truly be said to have neither force nor will but merely judgment and must ultimately depend upon the aid of the executive arm, even for the efficacy of its judgments. That is, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed or influenced by its coordinate branches.''

Now, does that sound like an independent judiciary? I am not sure how radical, I have heard the word ''radical'' today, radical Alexander Hamilton was. But we do know that what Hamilton, Madison, Jefferson, Washington, all of the founders, all of the framers of the Constitution wanted was to have these very important decisions, fundamental decisions about inculcating in our children the values of our families as being Americans, that they gave this opportunity, this ability to the people through their elected representatives.

Mr. WATT. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Chairman, the author of the base bill, the gentleman from Missouri, is a friend of mine, but apparently there is a second Congressman AKIN around here somewhere. Perhaps he was the one who wrote the bill.

The original version of the bill says, with respect to the jurisdiction of Federal courts inferior to the Supreme Court, and says that the Supreme Court shall be able to hear these cases. That was what the author of the bill said.

Now, the reason the author originally included that language, although he is now opposed to having it reinserted, the reason he put it in is because we do need someone to be the final arbiter of the interpretation of free speech, freedom of religion cases, of all cases, among the different States.

Imagine if we had a United States of America envisioned by the gentleman from Indiana, where every State court was free to kind of come up with their own interpretation of the Constitution of the United States. What incentive would there be on the parts of folks in Missouri, for example, or the folks in New York to have consistent constitutional values in this country?

Now, I have heard again and again, let us refer to the Constitution of the United States. I will freely confess one thing. Nowhere is judicial review in the Constitution. It was the creation of a great man that all of us went on record paying tribute to just last month. When John Marshall came up with this concept, it has been sacrosanct throughout jurisprudence since then.

But I ask my colleagues again and again, if not judicial review, then

what? Who is it that guarantees me as a member of the minority, someone who is one person who believes he has a right to stand up for gun rights, let us say, who guarantees my constitutional right to speak if not the court?

□ 1315

This is the body where the majority has its say. We do it every day. The courts are where the minority, even the tiniest of minorities, go to have their day in court. For those of you who are concerned about the Pledge of Allegiance, we won that case. We won.

We lost the case, by the way on my side, when the Supreme Court overturned precedent and appointed a President. But if we were Republicans what would we do? Strip the Supreme Court from any right to decide and let all 50 States decide who the President is?

I would conclude with a question. That is, do you believe that reproductive rights legislation should be protected from judicial review? If so, include it in your bill. Do you believe that tax should be subject to judicial review? If so, then strip the courts in those cases.

I would say to the gentleman from Indiana (Mr. HOSTETTLER) since he is on his feet, does he believe that a woman's right to choose, or your position, restricting abortion, is important of principle, that we in this Congress should strip judicial review? Yes or no.

The CHAIRMAN pro tempore (Mr. LATHAM). The gentleman's time has expired.

Mr. AKIN. Mr. Chairman, I reserve the balance of my time.

Mr. WATT. Mr. Chairman, who has the right to close?

The CHAIRMAN pro tempore. The gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Chairman, I reserve the balance of my time.

Mr. AKIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, it is interesting. I have heard a number of people here professing that they think the words ''under God'' in the Pledge are a good thing to have. I have even heard that developed even further in references to Jefferson and to the second inaugural address of Lincoln which made references to God. And there seems to be a pretty good consensus that we want to leave the Pledge as it is.

But the interesting thing is that this amendment would clearly not leave the Pledge as it is. But I guess my question is, and we are getting to a very fundamental kind of question about what our job is as legislators here, and the question is, is it our responsibility to be a co-equal branch of government. If we really believe in the words ''under God'' in the Pledge, do we assert ourselves or do we roll over if the court decides they want to take something out that has been there for 50 years.

I guess it goes down to the very first day when we come down here to serve in this body and we put our hands up and we take an oath that says that we will uphold the Constitution. And that means that we are one of three coequal branches of government. And yet today, what I hear people saying is with their lips, I like the words ''under God,'' but I will not lift a finger, in fact, I will vote for an amendment to make sure that under God gets stripped out the next time this thing takes a trip to the Supreme Court.

I guess my question is, how bad does it have to get before we assert our authority? I mean, how far does some activist judge have to go? You just use your imagination, is not there some point when we say enough already? The fact is historically, the fact that we have a right to recognize that is long recognized. There was a number of references to Marbury versus Madison, of course that was coming out of Marshall's court. It is just interesting to note that Chief Justice Marshall recognized our constitutional right to limit the appellate jurisdiction of the Supreme Court in Druso versus the U.S.

So this is clear-cut. It is something that has always been, but we do not want to somehow do our job. We do not want to exercise the authority the Constitution gives us.

There are repeated cases, others that have not been mentioned, Barry versus Merson. This is one that says the Supreme Court ruled that its appellate power was limited because Congress had neither expressly nor implicitly given the appellate jurisdiction in a class of cases involving the writ of habeas corpus in child custody. Then we have the other one, Wiskert versus Douchey where it says, if Congress has provided no rule to regulate our proceedings, we cannot exercise appellate jurisdiction, and if the rule is provided we cannot depart from it.

I had a couple of things I wanted to say in closing. That is, there is a certain point where the courts go too far. We know where the votes are on the Supreme Court. In the last decision when Newdow was struck down, it is clear, the fact remains that there are only three votes that are going to uphold ''under God'' in the Pledge of Allegiance. If you support ''under God'' in the Pledge of Allegiance, you will have to vote this amendment down because what this amendment does is it opens a hole that the Supreme Court can take this case out of State courts.

The CHAIRMAN pro tempore. The gentleman's time has expired.

Mr. WATT. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin (Mr. KIND).

Mr. KIND. Mr. Chairman, I am a strong supporter of the Pledge of Allegiance. I believe ''under God'' should be in the Pledge of Allegiance. But what I cannot support today is legislation that basically tells the third branch of our government, go home, no thanks, we do not need you any more.

Judicial review has been a part of our democracy in this constitutional government for over 200 years. And now with the fancy language embodied in this legislation and other pieces of legislation that have been pending, they are trying to disrupt that delicate balance of power, the checks and balances that exist that allows the Federal courts from time to time to take a look at the work that we are doing in this Congress to see whether or not we are complying with the highest law of the land, the United States Constitution. That is what judicial review is all about.

What is so ironic about today's debate is that the courts have already weighed in and said that the Pledge is okay, ''under God'' is okay. So what are we doing here when we have anemic economic job growth in the country, rising health care costs and tuition that is placing college out of the reach of students. We can do better by the American people.

Mr. WATT. Mr. Chairman, how much time remains?

The CHAIRMAN pro tempore. The gentleman from North Carolina (Mr. WATT) has 2 minutes remaining. The gentleman from Missouri's time has expired.

Mr. WATT. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, when I was in law school, one of the first things I learned is that if you win a debate, you sit down and quit arguing about it.

The other side has asked us several times, well, how far does the Supreme Court have to go, how far does the court have to go before we step in?

You have won the lawsuit. Newdow has been reversed.

Get a grip. You have won and you are here asking me, how far the Supreme Court has got to go?

Imagine this, no Supreme Court, no jurisdiction in the Supreme Court, and the State of South Carolina or New York strips out ''under God.'' Who would have decided the case? Who would have decided the case? Nobody would have been there to reverse Newdow. Fifty different States, 50 different rules under your bill.

What happened to the word ''indivisible'' under God? Indivisible. Does indivisible not count anymore? Fifty different rules, is that indivisibility?

What have we got to do? You won the case.

This bill is not about the Pledge of Allegiance. This is an assault on the judiciary and on the right of the American people to a uniform interpretation of what the law is. It is not the Pledge that is in need of protection. It is our constitutionally established system of government. As long as you are in control in asserting it, every time you get a result that you do not like you will be back here.

Mr. CONYERS. Mr. Chairman, I rise in support of this amendment, which would preserve Supreme Court review of appeals related to the constitutionality of the Pledge of Allegiance.

As presently drafted the legislation precludes any federal judicial review, either by a

lower federal court or the Supreme Court, of any constitutional challenge to the Pledge of Allegiance.

Aside from the obvious constitutional flaws inherent in the bill, the idea of Congress unilaterally cutting off constitutional review by the Supreme Court constitutes both a poor and dangerous legal precedent. As presently drafted, the legislation not only degrades the independence of the federal judiciary and the Supreme Court, but eliminates any possibility of developing a single uniform policy with regard to the recitation of the Pledge from the 50 state supreme courts.

Since H.R. 2028 strips the Supreme Court of the ability to review state court decisions, including those involving federal questions, a lack of uniformity in the law is an imminent threat. One's federal rights would depend on the vagaries of location. Ultimately, coercing children to recite the Pledge may be permitted in one state and not in another. This is why it is so important that we pass the Watt amendment.

The complete, unprecedented, and unnecessary stripping of Supreme Court jurisdiction inherent in the current bill would be totally at odds with the policy of checks and balances envisioned by the Nation's founders. As a matter of fact, the legislation would bring us far closer to the balkanized scenario envisioned by the Articles of Confederation, than the unified nation brought forth by the Constitution.

It is ironic that in the very same year that Congress celebrated Justice John Marshall by authorizing a commemorative coin in his honor, the Judiciary Committee would disparage him by passing legislation such as the bill that is totally inconsistent with Marshall's seminal legal opinion, Marbury v. Madison.

We should not use the issue of the constitutionality of the Pledge of Allegiance to permanently damage our courts, our constitution, and Congress. At a time when it is more important that ever that our nation stand out as a beacon of freedom, I cannot support a bill which undermines the very protector of those freedoms—our independent federal judiciary.

I urge my colleagues to vote "yes" on this important amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from North Carolina (Mr. WATT).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. WATT. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from North Carolina (Mr. WATT) will be postponed.

The point of no quorum is considered withdrawn.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 3 printed in House Report 108–693.

AMENDMENT NO. 3 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Ms. JACKSON-LEE of Texas:

In section 1632 of title 28, United States Code, as added by section 2(a) of the bill, insert after ''recitation'' the following: '', except in a case in which the claim involved alleges coerced or mandatory recitation of the Pledge of Allegiance, including coercion in violation of the protection of the free exercise of religion, such as that held to be in violation of the First Amendment in West Virginia State Board of Education v. Barnett, 319 U.S. 624, 638 (1943) and Circle School v. Pappert (No. 03-3285; 3rd Circuit, August 19, 2004)''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 781, the gentlewoman from Texas (Ms. JACKSON-LEE) and a Member opposed each will control 5 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I claim the time in opposition.

The CHAIRMAN pro tempore. The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment is very simple, it leaves the door open to acknowledge a very sacred and well-believed amendment of the Constitution. My amendment seeks to protect that amendment and that is the first amendment, that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Now, many of us have risen to this floor and wanted to make sure that all who heard us knew that we stood with the Pledge of Allegiance as it is now written. And we have recited it all of our lives and accepted the language ''under God.''

That acceptance by me as an individual or my colleagues does not, in any way, give comfort to those who because of their religious faith have chosen to express.

Let me tell of a girl called Hazel who sat along side of me in my elementary school classroom. As we rose every morning to pledge allegiance to the United States of America, little Hazel sat in her seat. She was not a terrorist. She was not a radical from the left. She was not one trying to overthrow the United States of America. She was practicing her faith as her mommy and her daddy asked her to do.

It was a lonely place. Most of us looked at Hazel long and hard every day. But we were grateful that there was a teacher and a Constitution that respected Hazel's right to freedom of religion.

This law as it is presently written now says to the American people, you cannot practice your faith and you can not seek the cases by going into the courthouse, the appellate courts and the Supreme Court of the United States of America.

It is well known that the courts are given to us on the basis of judicial review. It is also well-known that many times this body has risen because they have decided that there is some kind of frivolous idea or something that we disagree with, and there have been thoughts about limiting the courts. Many times legislators have sometimes been tempted to yank controversial matters from the court's jurisdiction, as The Washington Post has indicated this morning, but cooler heads have prevailed.

We would hope that cooler heads will prevail now. Whether the Pledge violates the first amendment separation from church and State is a legal question. Congress has no business obstructing the courts from answering it. Is it not a shame that under Marbury versus Madison, we now want to egregiously rip away the rights of petitioners in the United States to go into the court.

Is it not an outrage that we would stand here as those listening to the Interim Prime Minister of Iraq this morning who cried out for justice and democracy and free courts and today, moments after he spoke, we are now stripping away the courts of the United States.

Let me just say one other thing, Mr. Chairman. Let me correct one who decides to offer my history to this body. For I live in my skin and I cannot change it. And I came to this Nation as a slave. And it may have been those who fought in the Civil War that opened the doors, but let me tell you that Jim Crow rose his ugly legal head, and for 50 years or more into the 20th century, Jim Crow's ugly laws kept me as a second class citizen. I could not vote. I could not go into accommodations. I could not go to schools that closed their doors.

Racism was here in this country and it was not until Brown versus Topeka Board of Education that the Supreme Court allowed me the opportunity to be free in this Nation.

I dare anyone to challenge that history. Slavery may have ended in its name, but it did not end in its practice. And it was the courts of the United States, the Federal courts that gave me this freedom.

Mr. Chairman, I rise to offer an amendment to the bill before us today, H.R. 2028, the Pledge Protection Act of 2003. The operative language of H.R. 2028 is contained in a single provision in section 2(a):

[n]o court created by an Act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, the Pledge of Allegiance, as defined in section 4 of title 4, or its recitation.

The bill precludes any Federal judicial review of any constitutional challenge to recitation of the Pledge of Allegiance—whether it be in the lower Federal courts or in the highest court in the land, the U.S. Supreme Court. Effectively, if passed, this extremely vague legislation will relegate all claimants to State courts to review an challenges to the pledge. This possibility will lead to different constitutional constructions in each of the 50 States.

The Jackson-Lee amendment provides for an exception to the bill's preclusion for that involves allegations of coerced or mandatory recitation of the Pledge of Allegiance, including coercion in violation of the first amendment.

Closing the doors of the Federal courthouse doors to claimants will actually amount to a coercion of individuals to recite the pledge and its ''under God'' reference in violation of West Virginia State Board of Education v. Barnette.

In Barnette, the Supreme Court struck down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance. Under the West Virginia law, religious minorities faced expulsion from school and could be subject to prosecution and fined, if convicted of violating the statute's provisions. In striking down that statute, Justice Jackson wrote for the Court:

> To believe in patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . If there is any fixed star in our constitutional constellation, it is that no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

This legislation would strip the parents of those children of the right to go to court and defend their children's religious liberty. If this legislation is passed schools could expel children for acting according to the dictates of their faith and Congress will have slammed the courthouse door shut in their faces. When I was a child, I always wondered why when the rest of the class recited the Pledge of Allegiance, she always sat quietly. Today, I understand that it was because she was of the 7th Day Adventist faith and therefore reciting the ''under God'' provision would force her to frustrate her religious faith. If H.R. 2028 were law back then, the school administrators could have forced her to say the pledge and she would have no recourse in the Federal courts.

The Jackson-Lee amendment protects religious minorities, Mr. Speaker.

Recently, a panel of the U.S. Court of Appeals for the Third Circuit held that a Pennsylvania law requiring recitation of the pledge, even when it provided a religious exception, violated the Constitution because it violated the free speech of the students.

In Circle School v. Pappert, the court found that:

> It may be useful to note our belief that most citizens of the United States willingly recite the Pledge of Allegiance and proudly sing the national anthem. But the rights embodied in the Constitution, particularly the first Amendment, protect the minority—those persons who march to their own drummers. It is they who need the protection afforded by the Constitution and it is the responsibility of federal judges to ensure that protection.

Again, under H.R. 2028, such a coercive speech case could never reach the Federal courts.

Article III of the U.S. Constitution vests ''the Judicial Power of the United States . . . in one supreme court.'' The laundry list of areas which the Federal courts have the power to hear and decide under section 2 of article III, establishes the doctrine of the ''separation of powers.'' For over 50 years, the Federal courts have played a central role in the interpretation and enforcement of civil rights laws. Bills such as H.R. 2028 and H.R. 3313, the Marriage Protection Act—bills to prevent the courts from exercising their article III functions only mask discrimination. We cannot allow bad legislation such as this to pass in the House. In the 1970s, some Members of Congress unsuccessfully sought to strip the courts of jurisdiction to hear desegregation efforts such as busing, which would have perpetuated racial inequality.

H.R. 2028, as drafted, insulates the Pledge of Allegiance as set forth in section 4 of title 4 of the United States Code from constitutional challenge in the Federal court.

However, the statute and the pledge are subject to change by future legislative bodies. This means that if some future Congress decides to insert some religiously offensive or discriminatory language in the pledge, the matter would be immune to constitutional challenge in the Federal courts. I also support the Watt amendment to restore Supreme Court Jurisdiction to this matter.

Mr. Speaker, I ask that my colleagues vote to protect the religious minorities—vote to protect judicial review—vote to protect separation of powers—vote to protect access to the Federal courts. I yield back.

Mr. Chairman, I reserve the balance of my time.

□ 1330

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment was defeated in committee, and it should be defeated here today because it guts the bill.

First, nothing in H.R. 2028 would allow State courts to deviate from Supreme Court precedent prohibiting the coerced recitation of the Pledge of Allegiance. Even when Federal courts are denied jurisdiction to hear certain classes of cases, and those classes of cases are thereby reserved to the State courts, the previously existing Supreme Court precedents still govern State court determinations. This is required by the Supremacy Clause of the Constitution; and in West Virginia Board of Education v. Barnette, the Supreme Court held it is unconstitutional to require individuals to salute the flag.

In that case, the Supreme Court held, ''If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.'' Under H.R. 2028 as written, that decision will preclude State courts from allowing coerced recitations of the Pledge.

State courts are not second-class courts, and they are equally capable of deciding Federal constitutional questions. The Supreme Court has clearly rejected claims that State courts are less competent to decide Federal constitutional issues than Federal courts. Even Justice William Brennan wrote in Northern Pipeline Construction Company v. Marathon Pipe Line Company that ''virtually all matters that might be heard in article III courts could also be left by Congress to State courts.'' Justice Brennan was joined in that decision by Justices Marshall, Blackmun, and Stevens.

Now what, then, could be the harm of adopting this amendment? Plenty. If we carve out an exception for cases in which coercion, for example, is involved, we will open the flood gates to expansive interpretations by the Federal courts that will gut the purpose of the bill. Carving out a coercion exemption will invite the Federal courts, including the very liberal Ninth Circuit Court of Appeals, to hold that excessive coercion exists to pressure a student to recite the Pledge simply when a majority of school children choose to recite it, but one or a few students do not want to. The inevitable claim will be that in the school environment, there is no such thing as free will whenever the majority of students are reciting the Pledge, because those that do not want to recite it will feel pressured to recite it simply because other students are reciting it. Yet again, the courts will strike a blow to the concept of free will and the concept of personal responsibility if we let them. The amendment should be defeated.

Mr. Chairman, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Chairman, may I ask how much time is remaining.

The CHAIRMAN pro tempore (Mr. LATHAM). The gentlewoman from Texas (Ms. JACKSON-LEE) has 30 seconds remaining.

Ms. JACKSON-LEE of Texas. Mr. Chairman, let me first say that this amendment was made in order by the Committee on Rules, and I think that is extremely important for this body to know.

Mr. Chairman, I yield 25 seconds to the distinguished gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Chairman, I thank the gentlewoman for the time.

I guess what it comes down to is a person's view of where an individual who is in the minority on an issue, even an issue that is protected in the Constitution, where does that person go to have their rights protected? What if 435 of us believe one way about the Constitution, where does that one lone individual go?

If we do not allow them access to the court, and one highest court, to mediate disputes between the various States, we simply do not have the system that we have today, and that should be the lesson of this effort. Every school child in America who had forgotten what the courts were supposed to be should be reminded of that by this amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, I will just repeat myself. The issue is settled law. There cannot be a coerced or forced recitation of the Pledge. This bill does not

change that. The amendment allows the courts to determine what coercion shall be. That has far-reaching consequences. I think that the best vote to prevent unintended consequences from occurring is ''no'' on this amendment. I urge that it be defeated.

Mr. CONYERS. Mr. Chairman, the Jackson-Lee amendment is needed to make sure that the bill does not prevent religious minorities who are coerced into reciting the Pledge, in violation of their religious beliefs from having access to the Federal courts.

As presently drafted, the bill would prevent not only persons who believe that voluntary recitation of the Pledge is unconstitutional from seeking relief in Federal courts, but also those persons who assert that they are being forced into recitation of the Pledge in violation of their religious beliefs.

Cases of this nature are not infrequent. For example, in the landmark Supreme Court decision of West Virginia State Board of Education v. Barnett; the Supreme Court struck down a West Virginia law that mandated schoolchildren to recite the Pledge of Allegiance. Under the West Virginia law, religious minorities faced expulsion from school and could be subject to prosecution and fined, if convicted of violating the statute's provisions. In striking down that statute, Justice Jackson wrote for the Court:

If there is any fixed star in our constitutional constellation, it is that no official, high, or petty can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

To argue that the State courts would still be bound by this precedent as the Chairman asserts, misses the point. Unless the State courts know the Supreme court can and will enforce its precedent, the State courts are free to ignore it. And there will be no further appeal.

Moreover, just this year, in striking down a Pennsylvania law mandating recitation of the Pledge as violating free speech the Third circuit in Circle School v. Pappert court found:

The rights embodied in the Constitution, particularly the First Amendment, protect the minority—those persons who march to their own drummers. It is they who need the protection afforded by the Constitution and it is the responsibility of federal judges to ensure that protection.

As presently drafted, the bill would strip the parents of those children of the right to go to court and defend their children's religious liberty. If this legislation is passed, schools could expel children for acting according to the dictates of their faith and Congress will have slammed the courthouse door shut in their faces. We need this amendment to make sure religious minorities continue to have access to the Federal courts in cases of religious coercion.

For these reasons I urge my colleagues to vote "yes" on this amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The amendment was rejected.

AMENDMENT NO. 2 OFFERED BY MR. WATT

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from North Carolina (Mr. WATT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 202, noes 217, not voting 14, as follows:

[Roll No. 466]

AYES—202

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bass
Becerra
Bell
Berkley
Berman
Biggert
Bishop (NY)
Blumenauer
Boehlert
Bono
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Castle
Clay
Clyburn
Conyers
Cooper
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Dreier
Emanuel
Engel
English
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Foley
Ford
Fossella
Frank (MA)
Frost
Gephardt
Gilchrest
Gonzalez
Green (TX)
Greenwood
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Houghton
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kirk
Kolbe
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Ose
Otter
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Pryce (OH)
Rangel
Reyes
Rodriguez
Rohrabacher
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Simmons
Simpson
Slaughter
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Tierney
Towns
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—217

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Berry
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Boozman
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cantor
Capito
Carson (OK)
Carter
Chabot
Chandler
Chocola
Coble
Cole
Collins
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Duncan
Dunn
Edwards
Ehlers
Emerson
Everett
Feeney
Ferguson
Flake
Forbes
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Granger
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kline
Knollenberg
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—14

Bishop (GA)
Bonner
Cannon
Goss
Graves
Kleczka
Lucas (KY)
Miller (FL)
Nethercutt
Quinn
Smith (WA)
Tauzin
Thompson (MS)
Vitter

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. LATHAM) (during the vote). There are 2 minutes remaining in this vote.

□ 1401

Mr. HOLDEN and Mr. GERLACH changed their vote from ''aye'' to ''no.''

Ms. DEGETTE and Mr. ROHRABACHER changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. THORNBERRY) having assumed the chair, Mr. LATHAM, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2028) to amend title 28, United States Code, with respect to the jurisdiction of Federal courts inferior to the Supreme Court over certain cases and controversies regarding the Pledge of Allegiance, pursuant to House Resolution 781, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 15-minute vote on passage of H.R. 2028 will be followed by a 5-minute vote on the motion to suspend the rules and pass H.R. 1057.

The vote was taken by electronic device, and there were—yeas 247, nays 173, not voting 13, as follows:

[Roll No. 467]

YEAS—247

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Berry
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cantor
Capito
Carson (OK)
Carter
Castle
Chabot
Chandler
Chocola
Clyburn
Coble
Cole
Collins
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Etheridge
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Granger
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
LaHood
Lampson
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Royce
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

NAYS—173

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Biggert
Bishop (NY)
Blumenauer
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Clay
Conyers
Cooper
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Emanuel
Engel
Eshoo
Evans
Farr
Fattah
Filner
Frank (MA)
Frost
Gephardt
Gilchrest
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kolbe
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rangel
Reyes
Rodriguez
Rohrabacher
Rothman
Roybal-Allard
Ruppersberger
Rush
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Slaughter
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu

NOT VOTING—13

Bishop (GA)
Bonner
Cannon
Goss
Graves
Kleczka
Lucas (KY)
Miller (FL)
Quinn
Smith (WA)
Tauzin
Thompson (MS)
Vitter

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. THORNBERRY) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1420

Messrs. REYES, BUTTERFIELD, CUMMINGS, ROHRABACHER, and GUTIERREZ changed their vote from ''yea'' to ''nay.''

So the bill was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: ''A bill to amend title 28, United States Code, with respect to the jurisdiction of Federal courts over certain cases and controversies involving the Pledge of Allegiance.''.

A motion to reconsider was laid on the table.

THE ADOPTION TAX RELIEF GUARANTEE ACT

The SPEAKER pro tempore (Mr. LATHAM). The unfinished business is the question of suspending the rules and passing the bill, H.R. 1057.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CAMP) that the House suspend the rules and pass the bill, H.R. 1057, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 414, nays 0, not voting 19, as follows:

[Roll No. 468]

YEAS—414

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)