



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152

WASHINGTON, MONDAY, JUNE 26, 2006

No. 84

House of Representatives

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore (Mr. BOUSTANY).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
June 26, 2006.

I hereby appoint the Honorable CHARLES W. BOUSTANY, Jr. to act as Speaker pro tempore on this day.

DENNIS J. HASTERT,
Speaker of the House of Representatives.

MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of January 31, 2006, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member, except the majority leader, the minority leader, or the minority whip, limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from Florida (Mr. STEARNS) for 5 minutes.

FOREIGN LAW IN U.S. COURTS

Mr. STEARNS. Mr. Speaker, with the Fourth of July celebration next week, it is important to again remember why we fought for independence, namely, to free ourselves from foreign domination.

I fear that the Supreme Court's appeal to foreign legal practice has headed us down a slippery slope, down which our rapid descent could hurt the values we hold so dear.

In fact, to measure the standards of our Constitution by foreign opinion is to believe the false premise that other

nations are evolving toward better answers than we are capable of finding ourselves. If we begin thinking that way, surely we will cease to be Americans.

In 2003 in *Lawrence v. Texas*, five Supreme Court justices created a new right to sodomy based largely on legal precedents from the European Convention of Human Rights. In his dissenting opinion on this ruling, Justice Scalia agreed with what I am trying to point out in this speech by saying, he "expects and fears that the court's use of foreign law in the interpretation of our Constitution will continue at an accelerating pace."

Later, in the 2005 *Roper v. Simmons* case, the United States Supreme Court found juvenile execution to be unconstitutional. In deliberations, Justice Sandra Day O'Connor claimed that the United States is the only country in the world that continues to give the juvenile death penalty official sanction. She allowed international law to override her own decisionmaking abilities. In the majority decision, Justice Kennedy stated that using foreign law "does not lessen our fidelity to the Constitution or our pride in its origin to acknowledge that the affirmation of rights by other nations and people simply underscores the centrality of those same rights within our heritage of freedom."

Though it may be proper to acknowledge the weight of foreign opinion against the juvenile death penalty, should it be the basis for American law? Justice Ginsburg, one of the most prominent advocates of using international opinion in U.S. courts, recently delivered a speech at the Constitutional Court of South Africa. She essentially concluded that she and other justices have the authority to change the Constitution as they see fit, deferral to foreign laws and rulings being a key part of their creative process. She insisted that U.S. jurists honor

the Framers' intent to "create a more perfect union," which would allow justices to alter the Constitution, to keep it from being "fixed forever by the 18th century understanding."

My colleagues, the Framers of the Constitution did not give justices the authority to create a more perfect union; in fact, they purposely made changing the Constitution a very difficult process, to ensure that these changes were thoroughly vetted and absolutely necessary. Any amendments require a two-thirds vote of both Houses of Congress and three-fourths of State legislatures to convene constitutional conventions to ratify them. But, as we have seen, some justices believe they have the power to amend the Constitution to suit every whim.

Foreign laws and decisions simply provide a convenient justification for some justices to almost thumb their noses at the Constitution and the legislative branch.

Foreign legal standards can help U.S. courts determine the meaning behind treaties, foreign law might even aid us in interpretation of our Constitution as the Framers were of English descent; but there needs to be a distinction between appropriate and inappropriate consultation, aside from justices' personal opinions.

In an address to the American Enterprise Institute earlier this year, Justice Scalia said, "If there was any thought absolutely foreign to the Founders of our Country, it was the notion that we Americans should be governed the way Europeans are." In the *Federalist Papers* Number 46, to take just what one example, James Madison speaks contemptuously of the governments of Europe, which are afraid to trust the people with arms. Are we now to revise the second amendment because what these other countries think?

During his confirmation, Justice Roberts pointed out, "Looking to foreign law for support is like looking out

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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