

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE CONCURRENT  
RESOLUTION HCR1027

By: Balkman of the House

and

Nichols of the Senate

AS INTRODUCED

A Concurrent Resolution appealing to the Congress of the United States to limit the appellate jurisdiction of the federal courts regarding the recitation of the Pledge of Allegiance in public schools; and directing distribution.

WHEREAS, Oklahoma is one of numerous states in which students recite the Pledge of Allegiance in the public schools; and

WHEREAS, the practice of including "under God" in the Pledge was established by federal law decades ago and reaffirmed by a new federal law just last year; and

WHEREAS, recent polls indicate that up to 90 percent of the public is overwhelmingly in favor of allowing students to recite the Pledge of Allegiance; and

WHEREAS, Constitution signer George Washington declared: "the fundamental principle of our Constitution...enjoins [requires] that the will of the majority shall prevail", and Thomas Jefferson similarly pronounced: "the will of the majority [is] the natural law of every society [and] is the only sure guardian of the rights of man"; and

WHEREAS, Thomas Jefferson also stated: "A judiciary independent...of the will of the nation is a solecism [wrong] - at least in a republican government"; and

WHEREAS, the 9th Circuit Court of Appeals has diminished this principle, by the Court's ruling that "(1) the 1954 Act [Pub. L. No. 396, Ch. 297, 68 Stat 249 (1954)] adding the words "under God" to the Pledge, and (2) EGUSD's [Elk Grove Unified School District] policy and practice of teacher-led recitation of the Pledge, with the added words included, violate the Establishment Clause"; and

WHEREAS, the will of the people can be protected against further judicial usurpation from any other federal court on this issue through congressional action to limit the jurisdiction of the federal courts as explicitly set forth in the Constitution in Article III, Section 2, paragraph 2, which provides that federal courts "shall have appellate jurisdiction both as to law and fact with such exceptions and under such regulations as Congress shall make"; and

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

WHEREAS, Justice Joseph Story similarly declared, "In all cases where the judicial power of the United States is to be exercised, it is for Congress alone to furnish the rules of proceeding, to direct the process, to declare the nature and effect of the process, and the mode in which the judgments, consequent thereon, shall be executed...and if Congress may confer power, they may repeal it...the power of Congress [is] complete to make exceptions"; and

WHEREAS, this position is confirmed by such signers of the Constitution as George Washington and James Madison; and

WHEREAS, it is Congress alone that can remedy this current issue and return to the states the power to make their own decisions on recitation of the Pledge of Allegiance in public schools.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE 1ST SESSION OF THE 49TH OKLAHOMA LEGISLATURE, THE SENATE CONCURRING THEREIN:

THAT the Legislature of Oklahoma respectfully appeals to the Congress of these United States to limit the appellate jurisdiction of the federal courts regarding the recitation of the Pledge of Allegiance in public schools.

THAT a copy of this Resolution be sent to the Speaker of the United States House of Representatives, the President of the United States Senate, the Oklahoma Congressional Delegation, and the Chief Clerical Officers of the United States House of Representatives and the United States Senate.

49-1-6824          SD          05/01/03