

throughout the history of this country. Congress wisely rejected President Franklin D. Roosevelt's plan to "pack the court" by increasing the size of the Supreme Court. In the 1970s Congress considered, but rejected, effort to strip jurisdiction away from the courts in the areas of civil rights and privacy cases, as a result of Supreme Court decisions of the 1950s and 1960s.

In many ways, this type of legislation is a thinly-veiled attempt to circumvent Article V of the Constitution, which gives Congress the ability to propose an amendment to the Constitution, and therefore overturn a constitutional decision of the Supreme Court. Congress and ultimately the states have the ability to amend the Constitution at their discretion, but under Article III of the Constitution the courts have the obligation to interpret the law and Constitution when "cases or controversies" arise in a lawsuit that is properly brought by parties before the court.

This bill would close the door to Federal courts. When there is no court to hear a case, then there is no liberty. A law without a venue for debate is a law without moral force. As the Ranking Member of the Helsinki Commission, I have seen too many countries run by dictators whose first actions are to shut down the independence courts and make them answerable to what the executive and the legislature wanted them to do. We cannot go down this path in the United States, and undermine our citizens' confidence in an independent judiciary that will decide cases without fear or favor.

I urge my colleagues to reject this legislation and attack on the independence of the judiciary, and oppose this legislation.

Mr. UDALL of Colorado. Mr. Chairman, at best this bill is a mistake. At worst, it is a cynical political stunt. Either way, it should not pass.

It seeks to end the ability of Federal courts—including the Supreme Court—"to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, the Pledge of Allegiance" as the pledge is now worded.

It responds to a 2002 decision of the Court of Appeals for the Ninth Circuit that both the 1954 law that added the words "under God" to the pledge and a local school district's policy of daily recitation of the pledge as so worded were unconstitutional. (The ruling later was modified to apply only to the school district's recitation policy.)

The Supreme Court reversed that decision because the plaintiff did not have legal standing to challenge the school district's policy. But the Republican leadership evidently finds the possibility of a similar lawsuit so alarming—or maybe they think it presents such a political opportunity—that they back this bill to keep any Federal court from hearing a lawsuit like that.

I cannot support such legislation.

It mayor may not be constitutional—on that I defer to those with more legal expertise than I can claim. But I have no doubt it is not only unnecessary but even misguided and destructive.

I have no objection to the current wording of the Pledge of Allegiance. After the Ninth Circuit's decision, 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. It may be called the "Pledge Protection Act," but that is inaccurate and even misleading—because it not only fails to protect the pledge but also would undercut the very thing to which those who recite the pledge are expressing their allegiance.

It doesn't protect the pledge because even if it becomes law people who don't like the way the pledge's current wording would still be able to bring lawsuits in state courts. So, even if Colorado's courts upheld the current wording, the courts of other States might not. And the bill says the U.S. Supreme Court could not resolve the matter.

That would mean there would no longer be a single Pledge of Allegiance, but different pledges for different States—and the Constitution's meaning would vary based on State lines. That would directly contradict 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."

And that would be completely inconsistent with the idea of the Republic (symbolized by the flag) to which we pledge allegiance when we recite what this bill pretends to "protect."

How ironic—and how pathetic.

As national legislators, as U.S. Representatives, we can and should do better. We should reject this bill.

Mr. DINGELL. Mr. Chairman, I rise in strong opposition to H.R. 2389. 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.

We dealt with this same legislation two years ago, and it failed to become law. I ask my colleagues, why are we bringing this same legislation up for consideration again 2 years later?

Could it be an election year? Could my colleagues in the majority want to rally a certain part of their base? The real question is whether the majority will put election year political concerns ahead of the good of the Nation? Unfortunately, with this action, it looks like the answer is yes.

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, heard by the courts of your Nation?

The right for a citizen to access the courts to decide questions of policy is as old as the Magna Carta, and it is important to us as anything else in the Constitution. Here we calmly say, "You cannot have access to the Federal courts, including the Supreme Court." Shame, shame, shame, shame.

This is a precedent which is going to live to curse us, and we are going to live to regret this day's labor because other precedents will be following this, wherein we strip the rights of citizens under the Second Amendment, the thirteenth, fourteenth, and fifteenth amendments.

The Congress has considered these kinds of questions before. It is to be anticipated if this works, we can look to see this kind of abusive legislation considered in this body again. And you can be certain that somebody

is sitting out there now thinking of new rights we can strip because we disagree with them.

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. Chairman, 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.

Like I did 2 years ago, I strongly oppose this legislation and urge my colleagues to do the same.

Mr. HOLT. Mr. Chairman, I rise in opposition to H.R. 2389, which would strip from the federal courts and the Supreme Court the ability to hear any cases related to the Pledge of Allegiance. This bill eliminates the basic principle of judicial review that was established by the Supreme Court in *Marbury v. Madison* back in 1803.

This bill should not have come to the floor today because it seeks to make a dangerous change to our Nation's system of checks and balances. For that reason, this bill was rejected by the House Judiciary Committee. Yet, the Majority has brought it up today to intentionally divide the House. This is not the first time. We have seen this before. In September two years ago, we had this same vote, and I opposed it then.

The judiciary was designed to be the one branch of the federal government that is insulated from political forces. This independent nature enables the federal judiciary to thoughtfully and objectively review laws to ensure that they are 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 avoid judicial review so that it can pass legislation that it thinks may be unconstitutional. This is a clear abuse of Congressional authority and 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 make it a point during my town meetings in New Jersey to lead my constituents in reciting the Pledge of Allegiance. 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 urged the Supreme Court to recognize the constitutional right of children to recite the pledge in school. That resolution was an appropriate way 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 seek to alter our delicate system of checks and balances and make their own decisions unchallengeable—as if they were 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. We should not make this dangerous change to upset the balance of power established by our Founding Fathers and enshrined in the Constitution.

I urge my colleagues to oppose this bill.

Mr. BONNER. Mr. Chairman, I rise today in support of H.R. 2389, "The Pledge Protection Act."

As I rise to address this body, I am reminded by the words above the Speaker's chair, "In God We Trust" and the significance those words hold for our great Nation. From the unalienable rights that Mr. Jefferson penned in the Declaration of Independence to the money that is minted just blocks from this Chamber, our Nation has and will continue to publicly recognize God's providence and guidance. However, the recognition of God contained within the Pledge of Allegiance has provided leverage for some courts to claim that reciting our Pledge is unconstitutional.

In 1954, this body recognized the need to add the phrase "under God" to our Pledge and for 46 years this was hailed by Americans and remained uncontested. Yet in 2002, these two words were exploited by courts claiming that it is unconstitutional for the Pledge of Allegiance to remain a part of American life. Congress acted swiftly to reverse the damage caused by such a ruling and preserve the patriotic act of reciting the Pledge. In 2002, both Houses of Congress overwhelmingly supported resolutions rebuking the court and upholding the Pledge of Allegiance. However, Congress failed to invoke our authority to prevent activist courts from destroying the American institution that is the Pledge of Allegiance.

The Pledge embodies our patriotism and must be preserved. It serves to remind this body, at the beginning of each daily session, of our devotion to country. Protecting the Pledge ensures that the ideals of America will continue for generations to come.

Mr. Chairman, I urge my colleagues to join with me in support of this bill to prevent the federal judiciary from hearing cases against the Pledge of Allegiance.

Mr. SHAYS. Mr. Chairman, today, I urge my colleagues to vote against H.R. 2389, 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 oppose 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.

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. CARDOZA. Mr. Chairman, I rise in opposition to H.R. 2389, the Pledge Protection Act.

While I strongly support the Pledge of Allegiance and the use of the term under God, I oppose this misguided legislation because it would strip all federal courts, including the Supreme Court, of the jurisdiction to hear First Amendment challenges to the Pledge of Allegiance.

In the process, this legislation would strip federal courts of their important role in safeguarding Constitutional rights and freedoms. It will also work to undermine public confidence in the federal courts by expressing outright hostility to their role as a neutral arbiter of constitutional claims.

Through passage of this legislation, this body is endorsing the dangerous premise that Congress is above the Constitution. So in response, I ask my colleagues this question: do you believe our founding fathers designed the Constitution to protect the people from their government, or to regulate the conduct of its citizens?

I submit that if we strip federal courts of their judicial independence, nothing stops Congress from preventing courts to rule on other freedoms protected in our Bill of Rights, including freedom of speech, the right to bear arms, freedom of worship and freedom to assemble. Is that really the precedent we want to establish?

I believe we need our judicial system to protect our rights—and this bill prohibits the courts from doing just that. Indeed, I believe

enactment of this legislation would have a dramatic impact on the ability of individual Americans to be free from government-coerced speech or religious expression.

In our system of democracy, our government works on a system of checks and balances. Instead of stripping power from the courts, I believe we should follow the process prescribed in our Constitution—consideration of a Constitutional amendment. In fact, as a member of the California Legislature, I passed a bill calling on Congress to pass a Pledge protection amendment, and I believe that is the appropriate way to address this issue.

I happen to believe that the inclusion of the term under God in the Pledge is appropriate and constitutional. Further, should the Supreme Court ever rule that the term is unconstitutional, I would vote for a constitutional amendment to it ensure its presence. I support the Pledge because it is an important part of our American fabric, and an important symbol of the rights our founding fathers fought so desperately to preserve—liberty and justice for every American.

But our justice is protected by our independent judiciary. Let us keep it that way for all Americans. Oppose this bill and support and protect our Constitutional rights.

Mr. BLUMENAUER. Mr. Chairman, I oppose the "Pledge Protection Act" because of its potential ramification for the judicial process. This legislation seeks to prohibit all federal courts, including the Supreme Court, from hearing any case that challenges the constitutionality of the Pledge of Allegiance.

This legislation is a response to recent challenges in the 9th Circuit Court involving the statement "under God." While I do not agree with the court's decision, we are heading down a slippery slope when we authorize Congress to use its power over the courts to limit jurisdiction of constitutional challenges.

This seemingly bipartisan legislation is another attack on our principles of civil liberties and equal protection, just as we saw on yesterday's vote on the "Marriage Protection Act," to please the most extreme of the Republican base. It is not worth undermining our system of checks and balances.

Yesterday, the state's domestic laws; today, the Pledge of Allegiance; tomorrow . . . ?

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in opposition to H.R. 2389, the Pledge Protection Act of 2005.

This 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 any challenges to the pledge. This possibility will lead to different constitutional constructions in each of the 50 States.

The only way to make this bill palatable is to adopt the Jackson-Lee amendment, which provides for an exception to the bill's preclusion for cases that involve allegations of coerced or mandatory recitation of the Pledge of Allegiance, including coercion in violation of the First Amendment or the Equal Protection clauses. Opposing the Jackson-Lee amendment is tantamount to endorsing the coercion of children to mandatory recitation of the Pledge of Allegiance.

Closing the doors of the Federal courthouse doors to claimants will actually amount to a