

By: Miller

H.C.R. No. 194

CONCURRENT RESOLUTION

1 WHEREAS, Texas is one of numerous states in which public  
2 school children recite the Pledge of Allegiance; and

3 WHEREAS, The practice of including the phrase "under God" in  
4 the pledge was established by the United States Congress in 1954 and  
5 reaffirmed by federal law in 2002; and

6 WHEREAS, Recent polls indicate that up to 90 percent of the  
7 public overwhelmingly supports the practice of allowing students to  
8 recite the Pledge of Allegiance; and

9 WHEREAS, George Washington, a signer of the U.S.  
10 Constitution, declared that "the fundamental principle of our  
11 constitution . . . enjoins [requires] that the will of the majority  
12 shall prevail"; Thomas Jefferson similarly pronounced that "the  
13 will of the majority [is] the natural law of every society [and] is  
14 the only sure guardian of the rights of man"; and

15 WHEREAS, Thomas Jefferson also stated that "[a] judiciary  
16 independent . . . of the will of the nation is a solecism [wrong], at  
17 least in a republican government"; and

18 WHEREAS, The Court of Appeals of the Ninth Circuit has  
19 violated these fundamental principles and abrogated the "consent of  
20 the governed" as set forth in our governing documents; and

21 WHEREAS, The will of the people can be protected against  
22 further judicial usurpation by any other federal court on this  
23 issue through congressional action to limit the jurisdiction of the  
24 federal courts as explicitly set forth in the U.S. Constitution in

1 Article III, Section 2, paragraph 2, which states that "the supreme  
2 Court shall have appellate Jurisdiction, both as to Law and Fact,  
3 with such Exceptions, and under such Regulations as the Congress  
4 shall make"; and

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

14 WHEREAS, Justice Joseph Story, in his authoritative  
15 Commentaries on the Constitution, similarly declared, "In all cases  
16 where the judicial power of the United States is to be exercised, it  
17 is for Congress alone to furnish the rules of proceeding, to direct  
18 the process, to declare the nature and effect of the process, and  
19 the mode, in which the judgments, consequent thereon, shall be  
20 executed . . . . And if Congress may confer power, they may repeal it  
21 . . . . The power of Congress [is] complete to make exceptions"; and

22 WHEREAS, This position is confirmed not only by signers of  
23 the Constitution such as George Washington and James Madison but  
24 also by other leading constitutional experts and jurists of the  
25 day, including Chief Justice John Rutledge, Chief Justice Oliver  
26 Ellsworth, Chief Justice John Marshall, Richard Henry Lee, Robert  
27 Yates, George Mason, and John Randolph; and

1           WHEREAS, The United States Supreme Court has long recognized  
2 and affirmed this power of congress to limit the appellate  
3 jurisdiction of the federal courts, as in 1847 when the court  
4 declared that the "Supreme Court possesses no appellate power in  
5 any case unless conferred upon it by act of Congress," and in 1865  
6 when it declared "it is for Congress to determine how far . . .  
7 appellate jurisdiction shall be given, and when conferred, it can  
8 be exercised only to the extent and in the manner prescribed by  
9 law"; and

10           WHEREAS, Congress has on numerous occasions exercised this  
11 power to limit the jurisdiction of federal courts, and the supreme  
12 court has consistently upheld this power of congress in rulings  
13 over the last two centuries; and

14           WHEREAS, It is congress alone that can remedy this current  
15 crisis and return to the states the power to make their own  
16 decisions on recitation of the Pledge of Allegiance in public  
17 schools; now, therefore, be it

18           RESOLVED, That the 78th Legislature of the State of Texas  
19 hereby respectfully urge the Congress of the United States to limit  
20 the appellate jurisdiction of the federal courts regarding the  
21 recitation of the Pledge of Allegiance in public schools; and, be it  
22 further

23           RESOLVED, That the Texas secretary of state forward official  
24 copies of this resolution to the president of the United States, to  
25 the speaker of the house of representatives and the president of the  
26 senate of the United States Congress, and to all the members of the  
27 Texas delegation to the congress with the request that this

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1 resolution be officially entered in the Congressional Record as a  
2 memorial to the Congress of the United States of America.