

House bill would block Supreme Court on Pledge



Measure stirs up religion, separation of powers

WASHINGTON (AP) -- The House passed legislation Thursday that would prevent the Supreme Court from ruling on whether the words "under God" should be stricken from the Pledge of Allegiance.

In a politically and emotionally charged debate six weeks before Election Day, Democrats said majority Republicans were debasing the Constitution to force a vote that could hurt Democrats at the ballot box.

Supporters insisted Congress has always had authority to limit federal court jurisdiction, and the legislation is needed to protect an affirmation of religion that is part of the national heritage.

The bill, which the House approved, 247-173, would prohibit federal courts, including the Supreme Court, from hearing cases involving the pledge and its recitation and would prevent federal courts from striking the words "under God" from the pledge.

The legislation has little chance of advancing in the Senate this year, but it laid down another marker for politicians seeking to differentiate themselves from their election opponents on volatile social issues of the day. Other "wedge" issues that have come up or may arise before the election include gay marriage and flag-burning.

In June, the Supreme Court dismissed, on a technicality, a 2002 federal court decision that the religious reference made the pledge unconstitutional.

Rep. Todd Akin, R-Missouri., who wrote the amendment on legislation before the House on Thursday, said the outcome could be different if the high court rules on the substance, or "if we allow activist judges to start creating law and say that it is wrong to somehow allow schoolchildren to say 'under God' in the pledge."

In such a scenario, Akin said, Congress will have "emasculated the very heart of what America has always been about."

But Rep. Jerrold Nadler, D-New York, said, "We're playing with fire here, we are playing with the national unity of this country" by undoing 200 years of federal judicial review and letting each state make its own interpretation of constitutional law.

The vote paralleled another in July, when the House prevented federal courts from ordering states to recognize same-sex unions sanctioned in other states.

"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 for in the Constitution," said Rep. James Sensenbrenner, R-Wisconsin, chairman of the Judiciary Committee.

But many Democrats said the real objective of Thursday's debate was to force them into an unpopular vote just weeks before the election. Aside from the constitutional issue, a large percentage of Americans, and almost all members of Congress, think "under God" should stay in the pledge.

"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 motivations behind it," said Minority Leader Nancy Pelosi, D-California. In the end, 34 Democrats voted for the bill and six Republicans opposed it.

A closer vote was on an amendment by Rep. Mel Watt, D-North Carolina., that would have returned the legislation to its original form, under which lower federal courts were barred from ruling on the pledge but the Supreme Court retained its authority.

There is no direct precedent for making exceptions to the Supreme Court's appellate jurisdiction, said Rep. Judy Biggert, R-Illinois, who backed the original bill but opposed the changes.

"The issue today may be the pledge, but what if the issue tomorrow is Second Amendment (gun) rights, civil rights, environmental protection, or a host of other issue that members may hold dear?" she asked.

"Under God" has been part of the pledge since 1954, when Congress passed and President Eisenhower signed a law amending the pledge to include the phrase.

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