

PHX-RCB, pending in the United States District Court for the District of Arizona, the plaintiffs have named the United States Senate as a defendant;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1)(1994), the Senate may direct its counsel to defend the Senate in civil actions relating to its official responsibilities: Now therefore, be it

*Resolved*, That the Senate Legal Counsel is authorized to represent the United States Senate in the case of *Charles Okoren, et al. v. Fyfe Symington, et al.*

Mr. DOLE. Mr. President, the plaintiffs in *Okoren v. Symington*, No. CV-95-2527-PHX-RCB (D. Ariz.), have brought a civil action in Federal district court in Arizona seeking two declarations from the court: first, a declaration that Arizona's indictment procedures violate the United States Constitution; and second, a declaration that the Civil Justice Reform Act of 1990 overrules the decision of the United States Supreme Court in *Younger v. Harris*, 401 U.S. 37 (1971), that federal courts will not enjoin pending state criminal prosecutions except under extraordinary circumstances.

In their suit, these plaintiffs have named, among others, the United States Senate as a party. The Senate is not, however, a proper party to this lawsuit. In fact, the plaintiffs assert no claim against the Senate. This resolution authorizes the Senate legal counsel to represent the Senate in this action.

#### S. RES. 205

Whereas, in the case of *United States of America v. Karl Zielinski*, Case No. F12187-94, a criminal action pending in the Superior Court of the District of Columbia, the United States Attorney has caused a trial subpoena to be served on Michael O'Leary, a Senate employee on the staff of the Committee on the Judiciary;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to requests for testimony made to them in their official capacities; Now, therefore, be it

*Resolved*, That Michael O'Leary is authorized to provide testimony in the case of *United States of America v. Karl Zielinski*, except concerning matters for which a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent Michael O'Leary in connection with the testimony authorized by section 1 of this resolution.

Mr. DOLE. Mr. President, in the case of *United States of America versus Karl Zielinski*, the United States Attorney for the District of Columbia has charged the defendant with threatening to do bodily harm to occupants of

the Hart Senate Office Building in violation of section 22-507 of the District of Columbia Code, during a visit in December 1994 to the offices of the Senate Judiciary Committee's Subcommittee on Patents, Copyrights, and Trademarks.

Michael O'Leary, an employee on the Judiciary Committee's staff, witnessed the incident and has been subpoenaed by the U.S. Attorney to testify at the trial.

This resolution would authorize Mr. O'Leary to testify at the trial, with representation by the Senate legal counsel.

#### SMITHSONIAN INSTITUTION SES- QUICENTENNIAL COMMEMORA- TIVE COIN ACT OF 1995

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2627, which has just been received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the bill by title. The assistant legislative clerk read as follows:

A bill (H.R. 2627) to require the Secretary of the Treasury to mint coins in commemoration of the sesquicentennial of the founding of the Smithsonian Institution.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. WARNER. Mr. President, I ask unanimous consent that the bill be deemed read the third time, passed, that the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 2627) was deemed read the third time, and passed.

#### PERMITTING USE OF THE CAPITOL ROTUNDA FOR A CEREMONY COMMEMORATING THE HOLO- CAUST VICTIMS

Mr. WARNER. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of H. Con. Res. 106, and further, that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 106) permitting the use of the Rotunda of the Capitol for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. WARNER. I ask unanimous consent that the concurrent resolution be considered and agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the concurrent resolution (H. Con. Res. 106) was agreed to.

#### AMENDING THE IMPACT AID PROGRAM

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1509, a bill introduced earlier today by Senators DASCHLE and PRESSLER to permit local educational agencies to apply for increased impact aid payments, that the bill be deemed read the third time, passed, the motion to reconsider be laid upon the table; further, that any statements on this measure appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 1509) was deemed read the third time, and passed, as follows:

#### S. 1509

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. HOLD-HARMLESS AMOUNTS FOR PAY- MENTS RELATING TO FEDERAL AC- QUISITION OF REAL PROPERTY.

Section 8002 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7702) is amended by adding at the end the following new subsections:

"(g) FORMER DISTRICTS.—

"(1) IN GENERAL.—Where the school district of any local educational agency described in paragraph (2) is formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at any time such agency files an application under section 8005) for any fiscal year to have (A) the eligibility of such local educational agency, and (B) the amount which such agency shall be eligible to receive, determined under this section only with respect to such of the former school districts comprising such consolidated school districts as such agency shall designate in such election.

"(2) ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—A local educational agency referred to in paragraph (1) is any local educational agency that, for fiscal year 1994 or any preceding fiscal year, applied for and was determined eligible under section 2(c) of the Act of September 30, 1950 (Public Law 874, 81st Congress) as such section was in effect on September 30, 1994.

"(h) HOLD-HARMLESS AMOUNTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2)(A), the total amount that the Secretary shall pay a local educational agency under subsection (b)—

"(A) for fiscal year 1995 shall not be less than 85 percent of the amount such agency received for fiscal year 1994 under section 2 of the Act of September 30, 1950 (Public Law 874, 81st Congress) as such section was in effect on September 30, 1994; or

"(B) for fiscal year 1996 shall not be less than 85 percent of the amount such agency received for fiscal year 1995 under subsection (b).

“(2) RATABLE REDUCTIONS.—(A)(i) If necessary in order to make payments to local educational agencies in accordance with paragraph (1) for any fiscal year, the Secretary first shall ratably reduce payments under subsection (b) for such year to local educational agencies that do not receive a payment under this subsection for such year.

“(ii) If additional funds become available for making payments under subsection (b) for such year, then payments that were reduced under clause (i) shall be increased on the same basis as such payments were reduced.

“(B)(i) If the sums made available under this title for any fiscal year are insufficient to pay the full amounts that all local educational agencies in all States are eligible to receive under paragraph (1) after the application of subparagraph (A) for such year, then the Secretary shall ratably reduce payments under paragraph (1) to all such agencies for such year.

“(ii) If additional funds become available for making payments under paragraph (1) for such fiscal year, then payments that were reduced under clause (i) shall be increased on the same basis as such payments were reduced.”.

## SEC. 2. APPLICATIONS FOR INCREASED PAYMENTS.

(a) PAYMENTS.—Notwithstanding any other provision of law—

(1) the Bonesteel-Fairfax School District Number 26-5, South Dakota, and the Wagner Community School District Number 11-4, South Dakota, shall be eligible to apply for payment for fiscal year 1994 under section 3(d)(2)(B) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such action was in effect on September 30, 1994); and

(2) the Secretary of Education shall use a subgroup of 10 or more generally comparable local educational agencies for the purpose of calculating a payment described in paragraph (1), and the local contribution rate applicable to such payment, for a local educational agency described in such paragraph.

(b) APPLICATION.—In order to be eligible to receive a payment described in subsection (a), a school district described in such subsection shall apply for such payment within 30 days after the date of enactment of this Act.

(c) CONSTRUCTION.—Nothing in this section shall be construed to require a local educational agency that received a payment under section 3(d)(2)(B) of the Act of September 3, 1950 (Public Law 874, 81st Congress) (as such section was in effect on September 30, 1994) for fiscal year 1994 to return such payment or a portion of such payment to the Federal Government.

## SEC. 3. MAXIMUM PAYMENTS.

Subparagraph (B) of section 8003(f)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(f)(3)) is amended to read as follows:

“(B) SPECIAL RULE.—The Secretary shall determine the maximum amount that a local educational agency described in clause (ii) or (iii) of paragraph (2)(A) may receive under this subsection in accordance with the following computations:

“(i) The Secretary shall multiply the average per-pupil expenditure for all States by 0.7, except that such amount may not exceed 125 percent of the average per-pupil expenditure for all local educational agencies in the State.

“(ii) The Secretary shall next multiply the product determined under clause (i) by the number of students who are served by the local educational agency and described in subparagraph (A) or (B) of subsection (a)(1).

“(iii) The Secretary shall next subtract the total amount of payments received by the

local educational agency under subsections (b) and (d) for a fiscal year from the amount determined under clause (ii).”.

## NOMINATIONS TO REMAIN IN STATUS QUO, WITH EXCEPTIONS

Mr. WARNER. Mr. President, as in executive session, I ask unanimous consent that all nominations received by the Senate remain in status quo, notwithstanding the provisions of Rule 31, paragraph 6, except the following:

Henry Foster; PN234-2, Thomas J. Flanagan; PN343-2, five Navy promotions to Captain and below (list begins with Christopher J. Remshak); PN632-2, Navy Promotion of Margaret V. Abrashoff; PN628-2, Navy appointment to Lieutenant—Richard Drake.

The PRESIDING OFFICER. Without objection, it is so ordered.

## UNANIMOUS CONSENT AGREEMENT

Mr. WARNER. Mr. President, I ask unanimous consent that all items done by the Senator from Virginia, acting on behalf of the distinguished majority leader with the exception of those done in executive session, be deemed as having been done in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDERS FOR SATURDAY, DECEMBER 23, 1995 AND WEDNESDAY, DECEMBER 27, 1995

Mr. WARNER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 11 a.m., Saturday, December 23, for a pro forma session only, and, immediately upon convening, the Senate stand in adjournment until 1 p.m. Wednesday, December 27 and following the prayer on Wednesday, the Journal of Proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day, and that there then will be a period for morning business not to extend beyond the hour of 2 p.m., with statements limited to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROGRAM

Mr. WARNER. Mr. President, the Senate could also be asked to consider any available appropriations bill, conference reports and other items cleared for action. However, rollcall votes are not anticipated during Wednesday's session and, at this point, do not look likely for Thursday's or Friday's session of the Senate.

I further ask unanimous consent that the cloture vote scheduled for today be postponed to occur at a time to be de-

termined by the two leaders, but not before January 3, 1996.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## LEGISLATIVE SESSION

Mr. WARNER. I ask unanimous consent the Senate now return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

## APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 103-227, appoints the following individual to the National Skill Standards Board:

Upon the recommendation of the majority leader: Raymond J. Robertson, of Virginia, representing organized labor.

The Chair, on behalf of the President pro tempore and upon the recommendation of the majority leader, pursuant to Public Law 98-183, as amended by Public Law 101-180, reappoints Russell G. Redenbaugh, of Pennsylvania, to the U.S. Commission on Civil Rights.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## EXECUTIVE SESSION

### EXECUTIVE CALENDAR

Mr. WARNER. Mr. President, I ask unanimous consent that, in executive session, the Senate immediately proceed to consideration of the following Executive Calendar nominations, en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.