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House of Representatives

The House met at 10:30 a.m. and was called to order by the Speaker pro tempore [Mr. STEARNS].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
July 15, 1997.

I hereby designate the Honorable CLIFF STEARNS to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

MESSAGE FROM THE SENATE

A message from the Senate from Mr. Lundregan, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 2018. An act to waive temporarily the Medicaid enrollment composition rule for the Better Health Plan of Amherst, N.Y.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 1119. An act to authorize appropriations for fiscal year 1998 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 1119) ''An Act to authorize appropriations for fiscal year 1998 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes,'' requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. THURMOND, Mr. WARNER, Mr. MCCAIN, Mr. COATS, Mr. SMITH of New Hampshire, Mr. KEMPTHORNE, Mr. INHOFE, Mr. SANTORUM, Ms. SNOWE, Mr. ROBERTS, Mr. LEVIN, Mr. KENNEDY, Mr. BINGAMAN, Mr. GLENN, Mr. BYRD, Mr. ROBB, Mr. LIEBERMAN, and Mr. CLELAND, to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 231. An act to establish the National Cave and Karst Research Institute in the State of New Mexico, and for other purposes;

S. 423. An act to extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason;

S. 669. An act to provide for the acquisition of the Plains Railroad Depot at the Jimmy Carter National Historic Site;

S. 731. An act to extend the legislative authority for construction of the National Peace Garden memorial, and for other purposes; and

S. 936. An act to authorize appropriations for fiscal year 1998 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The message also announced that pursuant to Public Law 105-18, the Chair, on behalf of the Democratic leader, appoints the following individuals to serve as members of the National Commission on the Cost of Higher Education:

Robert V. Burns, of South Dakota; and

Clare M. Cotton, of Massachusetts.

The message also announced that pursuant to Public Law 105–18, the Chair, on behalf of the majority leader, appoints the following individuals to serve as members of the National Commission on the Cost of Higher Education:

William D. Hansen, of Virginia;

Frances M. Norris, of Virginia; and

William E. Troutt, of Tennessee.

MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of January 21, 1997, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member except the majority and minority leader limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. FRANK] for 5 minutes.

UNJUSTIFIED CRITICISM OF JUDICIAL ACTIVISM

Mr. FRANK of Massachusetts. Mr. Speaker, we have recently heard a lot of criticism of judicial activism. People, especially on the conservative side of our spectrum, have denounced justices, Supreme Court Justices and judges, who, with their life-tenured appointments, have stricken laws passed by the elected officials, and there has been a great deal of criticism that this is essentially undemocratic.

I disagree with the criticism. I think the role of the judiciary in defending our rights, particularly when legislative majorities err and disregard those rights, is a very important one. I am, therefore, pleased to note that there are high-ranking judicial officials who are not deterred. I am here to congratulate in particular two Justices who have repudiated implicitly this criticism of judicial activism. I am here to call attention to the work of two Justices who have consistently upheld the finest traditions of judicial activism by striking laws, by overruling administrative decisions, even on occasion being in the minority and

trying to strike laws. Now, they have been criticized.

For instance, in a recent decision, one of the dissenting Justices who sought to uphold an act of Congress said, what basis is there in any of those sources, talking about the majority's history, for concluding that it is the members of this Court, rather than the elected representatives of the people, who should determine whether the Constitution contains the unwritten rule that the Court announces today.

In other words, the dissenter says to this majority, what gives you the right in this ambiguous area, because nothing is explicit, to overrule what the elected officials have said? That same dissenting Justice said in a footnote, referring to what he thought was shoddy history and poor logic on the part of the majority, he said, ''If this sort of unexplained congressional action provides sufficient historical evidence to support the fashioning of judge-made rules of constitutional law, the doctrine of judicial restraint has a brief, though probably colorful, life expectancy.'' Here again, the dissenting Justice says to those in the majority, you are making a mockery of judicial restraint.

Well, in this particular case I agreed with the dissenting Justice on the substance, I am talking about Justice Stevens, he wrote the dissent, and he was dissenting in the Brady bill case. Justice Stevens wanted to uphold the Brady bill. He wanted to uphold the mandate that we ask local officials to cooperate in a very small way, but he was overruled. And while I disagree with the majority here, I want to pay tribute to Justices Scalia and Thomas for not being in any way deterred by criticism of judicial activism. Indeed, in the past term of the Supreme Court, Justices Scalia and Thomas voted to invalidate more acts of Congress than all but one of the Justices. Justice Kennedy I think tied them.

For instance, Justices Scalia and Thomas said, when this Congress passed the Communications Decency Act in an effort to keep indecent material off the Internet, which did seem to me to violate the Constitution. I voted against it. I was one of a small number of Members who voted against it. Over 400 Members of this House voted for that bill. But were Justices Thomas and Scalia deterred from declaring it unconstitutional? No, they were not. Four hundred Members may have said we want to keep indecent material off the Internet. I think they misread the Constitution, and Justices Scalia and Thomas joined in the opinion that invalidated that.

When an overwhelming majority of this Congress passed the Religious Freedom Restoration Act to protect people's religious practices from laws that might unfairly impinge on them, there I was in the majority. I thought the Constitution allowed us to do it. Justices Thomas and Scalia disagreed.

Now, I disagree with their disagreement. I think they were wrong on the substance, but I do have to pay tribute to the fact that they said an overwhelming majority of people in Congress think it is protecting people's religions, but when two of the Supreme Court Justices disagree and we will strike that law down and strike it down they did. I disagreed with them also, as I said, on the Brady bill. That was passed by a narrower majority. Very ambiguous language. They were in the majority to strike it down.

When the Securities and Exchange Commission, a Federal agency due certain amount of deference from the courts in statutory interpretation, tried to uphold the current practice regarding insider trading, a man who had benefited from insider trading, illegitimately in my opinion, brought a lawsuit and the Court 6 to 3 upheld the Securities and Exchange Commission. But among the three who said no, we the Justices will overrule this Federal agency, we will not show them that deference, were Justices Scalia and Thomas.

When Congress passed the must-carry rule as part of the Telecommunications Act, when we mandated that TV stations and cable companies carry broadcast stations, Congress upheld that. So the Court upheld that by 5 to 4. In the minority were Scalia and Thomas.

So I simply want to call note to the fact that these two justices have repudiated critics of Judicial activism and have been as active in this past term as any Justices in our past history.

Mr. Speaker, I include for the RECORD examples of judicial activism on the part of Justices Scalia and Thomas.

EXAMPLES OF JUDICIAL ACTIVISM ON THE PART OF JUSTICES SCALIA AND THOMAS

1. They both voted to declare unconstitutional part of the Brady bill regulating the sale of handguns.

2. They both voted to declare unconstitutional the Religious Freedom Restoration Act, which sought to protect the rights of religious people where laws were passed that impinged on their religious practice.

3. They both joined in the decision holding the Communications Decency Act unconstitutional. The CDA sought to ban indecent material from being sent on the Internet.

4. They both voted to declare unconstitutional the federal law requiring cable TV systems to carry the signals broadcast by local over the air stations. The law was upheld, however, because they were part of a four member minority.

5. They were again in the minority in seeking to overrule the decision of the Securities and Exchange Commission as to who is covered by the statute prohibiting insider trading. The SEC has taken a broad view of the coverage of this statute, and Justices Thomas and Scalia were in a 6 to 3 minority in seeking to overrule the SEC.

6. Justices Scalia and Thomas continue to join three others to form a majority holding that the Voting Rights Act has severe constitutional defects and have continued to strike down voting districts created under the Voting Rights Act—at the time often at the urging of the Bush led Justice Department as well as groups representing African Americans.

PROBLEMS WITH THE QUADRENNIAL DEFENSE REVIEW

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from Colorado [Mr. HEFLEY] is recognized during morning hour debates for 5 minutes.

Mr. HEFLEY. Mr. Speaker, I rise this morning to continue the ongoing discussions in the House concerning the Quadrennial Defense Review. The QDR has emerged as a blueprint for the administration's defense program. The assumptions of the QDR, particularly as they affect budgets, are as critical as the policy choices contained in the review.

One of the most often discussed recommendations contained in the QDR is the recommendation for two more rounds of base closures, but the QDR itself says very little about base infrastructure beyond that recommendation. The Congress still does not have a clear understanding how the Department came to the conclusion that it did.

That is critically important, because DOD has made assumptions about future Defense budgets based on that recommendation. But those budget assumptions appear to be based on elementary projects of DOD's estimates of costs and savings of the current base closure effort, and those projections may turn out to be wrong.

To date, the Congress has been skeptical of Secretary Cohen's rush to judgment on the need for more base closure rounds in the near term. The House version of the Defense authorization bill does not contain such authority. The other body adopted an amendment to its version of the Defense bill offered by Senator DORGAN that gets to the heart of the issue. The Senate bill asks for a comprehensive study and assessment of the true costs and actual savings, not estimates, of the four previous rounds of base closure which we will be implementing through 2001.

The actions of both bodies have been misinterpreted. I, along with many other Members, voted in 1990 to establish the Commission process that governed the last three rounds. The Congress has overwhelmingly supported those base closure decisions as I have, even though some of the recommendations cause great unease and I think that perhaps we will regret some of the decisions made from it, but overall I think the process was a good process.

We supported this because we thought it was best for the country. We have put aside our own parochial interests for the greater good. But now some have criticized Congress for not adopting blindly the Secretary's recommendation. Why have we not done so? Because those of us who have supported the base closure process believe now is not the time.

Why do we believe that to be the case? Some commentators have chosen to focus solely on the President's politization of the process. Clearly, the McClellan and Kelly depot issue will