

integrity, warmth, and concern for others has left an indelible mark upon our Cleveland community. I extend my deepest condolences to Mr. Hendricks' beloved sisters and brothers, Celestine Maudlin, Isabelle Hendricks, Napoleon Hendricks, Spencer Hendricks and William Hendricks; to his many nieces and nephews and to his extended family members and many friends. Although he will be deeply missed, the wonderful life and legacy of Sherman Hendricks will be remembered always by all whom he loved and inspired—especially his family and closest friends—today, and for generations to come.

#### TRIBUTE TO MS. BARBARA KUKLA

### HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 13, 2004*

Mr. PAYNE. Mr. Speaker, I rise today to recognize Ms. Barbara Kukla, an outstanding member of my community who has been the lifeblood of the community spirit and cultural vitality of my hometown of Newark.

She is a writer, a journalist, a historian, a mentor, and was the award-winning Star-Ledger Editor of "Newark This Week," a 4-page weekly section that highlighted events important to original Newarkers, helping to make local events more successful and creating a community meeting place for all our citizens. Barbara's thorough and sustaining coverage of Newark news generated public interest in local events, contributing greatly to the growth and development of our city.

Her love for Newark is not only limited to current events, but includes its rich past. She shared a great friendship with Miss Rhapsody, a legendary Newark jazz singer, who introduced her to many local musicians and piqued her interest in the thriving music scene. Barbara's involvement led to countless hours of research and writing, establishing her as the preeminent historian on Newark's prominence from the 1920s to the present, and inspiring her first book, *Swing City*. Her second book, *Defying the Odds*, follows the lives of eight of Newark's most distinguished women, and includes the biographies of 180 others.

Among her many honors, Barbara has received a Recognition Award from the Newark Preservation & Landmarks Committee, the Newark Community Development Network's Charles E. Cummings Award, the Newark Do Something's Lifetime Award for Community Leadership, the Metropolitan Baptist Church of Newark's Living Legend Award, and the John Cotton Dana Distinguished Lecturer Award, named after the founder of the Newark Museum and Library.

In support of the Barbara Kukla Scholarship Fund, Barbara will be hosting Newark Stars on Parade for Newark Students, a star-studded event which will feature a wide-ranging array of music by artists who were either born in Newark or have long-time ties to our city. Stars such as Gloria Gaynor, Melba Moore, the Monotones, Drinkard Singers II, Yvette Glover, the South Side High School Madrigals, Robert Banks, Carrie Smith, Kevin Maynor, Don Williams and Lady CiCi, Gwen Moten, BJ Plus Forty, Pam Purvis and Bob Ackerman, Carrie Jackson, and Gil "Bebop" Benson will all be on hand to showcase their musical tal-

ent in support of our students. The proceeds from this extravaganza will be used to provide college scholarships for Newark high school graduates and to aid others who are struggling to stay in school.

Mr. Speaker, please join me in extending my thanks to my neighbor, Ms. Barbara Kukla, for her contributions to the civic and cultural life of our community, and I invite my colleagues to join me in sending our congratulations for her outstanding achievements which celebrate what is best and brightest about our city, and have brought such positive recognition to the city of Newark.

#### TRIBUTE TO THE PINELANDS CULTURAL SOCIETY

### HON. JIM SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 13, 2004*

Mr. SAXTON. Mr. Speaker, I rise today to pay tribute to the Pinelands Cultural Society as it celebrates its 30th year of incorporation with a special celebration concert at Albert Music Hall on November 20, 2004.

The Pinelands Cultural and Historical Preservation Society is a grass roots, non-profit, all-volunteer organization that has been operating in southern New Jersey for the past three decades to preserve the cultural heritage of the New Jersey Pinelands region.

The Society's goals include preservation and stimulation of interest in South Jersey's musical and cultural heritage. Running a live show 50 Saturday nights each year, plus special occasion Sunday shows, the proceeds, along with individual donations of time, talents and money have culminated in the creation of the present 35-seat concert hall building called "Albert Music Hall" which serves as a "living history" venue for the presentation of live acoustic music concerts in the decades-old tradition of people indigenous to the Pinelands area. It also serves as a repository for extensive historic archives including audiotape and videotape recordings, documentation and photographs reflecting life in the New Jersey Pines from the early 1900s.

Albert Music Hall has been inducted into the American Folklore Center, Local Legacies Collection Archive at the Library of Congress, and is also registered in the Library of Congress' Moving Image Collections Archive Database.

Thus, I am pleased to recognize the efforts of an expert staff of volunteers for their efforts in bringing New Jersey's history to life. I congratulate them, and wish them many more decades of success.

#### ASSAULT WEAPONS BAN

### HON. JIM McDERMOTT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 13, 2004*

Mr. McDERMOTT. Mr. Speaker, in the one minute it will take to read these remarks, an Uzi can fire off 1,700 rounds.

Uzis and similar assault weapons are about to be legal again, as if we don't have enough to worry about in America.

For the past ten years, the assault weapons ban has protected Americans from these lethal, military-designed guns.

These weapons are not used for hunting animals. They are used to kill human beings.

The assault weapons ban has bipartisan support, both in Congress and across the nation.

Seventy-five percent of Americans want to see the ban extended. Even two-thirds of gun owners favor renewing the ban.

Yet the Republican leadership has refused to take action. Now, these killing machines will be back in circulation.

Good and decent people won't buy them. Those who hate us will, and we have just made it easier.

The President says he favors the ban, but he made no effort to get his Republican leadership, which controls both the House and Senate, to bring the issue up for a vote.

#### IN HONOR OF THE 20TH ANNIVERSARY OF LA PROVIDENCIA FAMILY CENTER

### HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 13, 2004*

Mr. KUCINICH. Mr. Speaker, I rise today in honor and recognition of Catholic Charities' La Providencia Family Center, a Hispanic Senior Center that exists to provide support, programs and services for Cleveland's westside elderly Hispanic citizens.

In 1984 several community leaders and residents within the Cleveland Hispanic community came together to address the issue of Cleveland's vulnerable and increasing elderly Hispanic population. The facility, programs and services that were developed twenty years ago have evolved over the years, but the vision, assistance and compassion has remained a constant source of comfort and hope for countless seniors and their families.

Along with providing vital services such as transportation, health screenings, home visits, social activities and events, the bi-lingual and bi-cultural Center staff and volunteers consistently understand and focus on the cultural and linguistic needs of those whom they serve. All services provided at La Providencia are offered without regard to race, religion, gender, disability or ability to pay.

Mr. Speaker and Colleagues, please join me in honor and celebration of the 20th Anniversary of the La Providencia Family Center—Cleveland's Westside Hispanic Senior Center. For two decades, the Center has existed as a vital lifeline to our elderly Hispanic citizens, providing hope, health and a true understanding and connection to the homeland of every senior who visits there.

#### TRIBUTE TO THE NEW JERSEY BUILDING AND CONSTRUCTION TRADES COUNCIL

### HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 13, 2004*

Mr. PAYNE. Mr. Speaker, I rise today to recognize a landmark achievement of the hardworking men and women of New Jersey. This month, the New Jersey Building and Construction Trades Council will be holding its

100th convention at Caesar's Resort and Casino in Atlantic City, NJ.

The skilled craftsmen and women of the building trades have formed the backbone of New Jersey's labor movement for more than two centuries. It was the building trades, in particular the carpenters at the Hibernia Iron Works in 1774, who were the first to band together and strike for better working conditions. It was the building trades unions who consistently provided for the city and county trade federations that formed in the mid-19th century, for New Jersey's Knights of Labor assemblies, and especially for the New Jersey State Federation of Labor that grew into New Jersey's AFL-CIO.

The New Jersey Building and Construction Trades Council and its unions led the fight for the 8-hour day, better and safer working conditions, strong pension and health benefits, and a living wage.

The NJBCTC and its unions built the modern State of New Jersey, from the New Jersey Turnpike and the Garden State Parkway, to Newark Airport and the Meadowlands. They built the high-rise casinos that light up Atlantic City's skyline, the new skyscrapers rising up on Jersey City's Gold Coast, the hospitals in which we care for our sick, and the schools in which we educate our children.

Mr. Speaker, the men and women of the New Jersey Building and Construction Trades Council and its unions deserve our gratitude, and I would like to offer my congratulations to President William Mullen and his vice presidents, representing each of the construction trades. I also invite my colleagues to join me in recognizing their predecessors who built the NJBCTC into what it is today, and to the tens of thousands of building trades craft unionists of generations past and present, who have built strong unions and a strong New Jersey.

CRS LETTER ADMITTING ITS ERRONEOUS STATEMENT IN A MEMO ISSUED DURING DEBATE ON H.R. 3313, THE MARRIAGE PROTECTION ACT

**HON. F. JAMES SENSENBRENNER, JR.**

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Monday, September 13, 2004*

Mr. SENSENBRENNER. Mr. Speaker, on July 22, 2004, the House debated and passed H.R. 3313, the Marriage Protection Act, a bill that would prevent Federal courts from striking down the protection we granted to States in the Defense of Marriage Act. That protection allows states to refuse to recognize same-sex marriage licenses issued in other States if they so choose.

In the midst of floor debate on H.R. 3313, the Congressional Research Service issued a memorandum to the minority staff of the House Judiciary Committee, which stated: "We are not aware of any precedent for a law that would deny the inferior Federal courts original jurisdiction or the Supreme Court of appellate jurisdiction to review the constitutionality of a law of Congress." Those on the other side of the aisle made much of this statement, and the statement was widely reported in the press.

I would like to set the record straight. The statement that Congress has never passed a

law that would deny Federal courts jurisdiction to hear a constitutional claim is false, and the most cursory review of American history shows that. The very first Judiciary Act of 1789 denied the inferior Federal courts original jurisdiction and the Supreme Court appellate jurisdiction to review the constitutionality of literally thousands of Federal statutes under a jurisdictional regime that governed for roughly a century.

The Judiciary Committee majority staff pointed out these precedents to the Congressional Research Service in a letter sent on August 4, 2004, asking CRS if its position continued to be that "there is not 'any precedent for a law that would deny the inferior federal courts original jurisdiction or the Supreme Court of appellate jurisdiction to review the constitutionality of a law of Congress.'"

On August 16, the Congressional Research Service responded in a letter that states: "our earlier memorandum was incorrect." (Emphasis added). Let me repeat that. CRS admitted that: "our earlier memorandum was incorrect." CRS goes on to note that it recognizes "the fact that as written and construed [the Judiciary Act of 1789] did operate to preclude any federal court from deciding the validity of a federal statute from 1789 to 1875."

I would like to submit for the RECORD, in addition to my statement, the original erroneous memorandum sent by the Congressional Research Service, the letter to CRS from the majority staff of the committee requesting a clarification of CRS's views, and the response from CRS admitting its error.

So let the record be clear. H.R. 3313, the Marriage Protection Act, has ample precedent in American history, and the Congressional Research Service agrees.

#### CONGRESSIONAL RESEARCH SERVICE MEMORANDUM

To: House Committee on the Judiciary, Attention: Perry Apelbaum.

From: Johnny H. Killian, Senior Specialist, American Constitutional Law, American Law Division.

Subject: Precedent for Congressional Bill.

This memorandum is in response to your query, respecting H.R. 3313, now pending before the House of Representatives, as to whether there is any precedent for enacted legislation that would deny judicial review in any federal court of the constitutionality of a law that Congress has enacted, whether a law containing the jurisdictional provision or an earlier, separate law. We are not aware of any precedent for a law that would deny the inferior federal courts original jurisdiction or the Supreme Court of appellate jurisdiction to review the constitutionality of a law of Congress.

[Letter sent to the Congressional Research Service from the Committee on the Judiciary]

AUGUST 4, 2004.

Mr. JOHNNY KILLIAN,  
Madison Building, Library of Congress,  
Washington, DC.

DEAR JOHNNY: In an undated Memorandum from yourself to Perry Apelbaum, the minority chief counsel of the House Judiciary Committee, you stated "We are not aware of any precedent for a law that would deny the inferior federal courts original jurisdiction or the Supreme Court of appellate jurisdiction to review the constitutionality of a law of Congress." This Memorandum was made known to us in the midst of House floor debate on H.R. 3313, the Marriage Protection Act, on July 22, 2004.

In the Judiciary Act of 1789, (Footnote Text: Judiciary Act of 1789, 1 Stat. 85 (1789)) Congress provided no general federal question jurisdiction in the federal courts below the Supreme Court. (Footnote Text: See Richard H. Fallon, Daniel J. Meltzer, and David L. Shapiro, *Hart & Wechsler's The Federal Courts and the Federal System* (4th ed. 1996) at 33 (stating that in the Judiciary Act of 1789, "Congress provided no general federal question jurisdiction in the lower federal courts"). The federal circuit courts were vested with jurisdiction according to the nature of the parties rather than the nature of the dispute. The Judiciary Act of 1789 provided "the circuit courts shall have original cognizance . . . of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds . . . the sum . . . of five hundred dollars, and the United States are plaintiffs, or petitioners; or an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State." (Footnote Text: Judiciary Act of 1789, 1 Stat. 73, §11 (1789)).

Further, and of relevance here, Section 25 of the Judiciary Act of 1789 restricted the Supreme Court's appellate jurisdiction over state court decisions to cases where the validity of a treaty, statute, or authority of the United States was drawn into question and the state court's decision was against their validity (Footnote Text: Judiciary Act of 1789, 1 Stat. 73, §25 (1789)) or where a state court construed a United States constitution, treaty, statute, or commission and decided against a title, right, privilege, or exemption under any of them. (Footnote Text: Judiciary Act of 1789, 1 Stat. 73, §25 (1789)).

Consequently, under the Judiciary Act of 1789, if the highest state courts upheld a federal law as constitutional and decided in favor of a right under such federal statute (and there was no coincidental federal diversity jurisdiction), no appeal claiming such federal law was unconstitutional was allowed to any federal court, including the Supreme Court. The Judiciary Act of 1789, therefore, denied the inferior federal courts original jurisdiction and the Supreme Court appellate jurisdiction to review the constitutionality of literally thousands of laws of Congress in the many and various circumstances meeting the criteria just mentioned.

Congress did not grant a more general federal question authority to the lower federal courts until after the Civil War, (Footnote Text: See Act of Mar. 3, 1875, ch. 137, 18 Stat. 470 (1875)) and Congress did not grant the Supreme Court the authority to review state court rulings upholding a claim of federal right until 1914. (Footnote Text: See Judiciary Act of 1914, Act of Dec. 23, 1914, ch. 2, 38 Stat. 790 (1914)) Until 1914, then, a situation existed in which the constitutionality of literally thousands of federal laws could not be reviewed in either the inferior federal courts, or the Supreme Court, or both.

We are not aware of any doubt about these facts among scholars of federal court jurisdiction.

The Judiciary Act of 1789, of course, went far beyond what H.R. 3313 would do regarding federal court jurisdiction. While the Judiciary Act of 1789 precluded all federal court review of constitutional issues when state courts upheld any law of Congress (expressing a policy distinctly in favor of the validity of federal law), H.R. 3313 simply provides that challenges brought against one section of the Defense of Marriage Act, codified at 28 U.S.C. §1738C, (Footnote Text: 28 U.S.C. §1738C states "No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of