

WYDEN, and Ms. WARREN)) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 429

Whereas, in the aftermath of the Civil War, the reunified United States struggled to reconstruct the war-torn States and establish laws granting newly freed slaves the same rights afforded to White citizens;

Whereas the reconstruction of the United States following the conclusion of the Civil War necessarily included the integration of newly emancipated African Americans into broader society and, with that emancipation, the receipt by those emancipated African Americans of civil and legal protections;

Whereas, as a response to the uncertain and unequal status of newly freed slaves, the 13th Amendment to the Constitution of the United States was ratified by the States on December 6, 1865, formally abolishing slavery “within the United States, or any place subject to their jurisdiction”;

Whereas, on April 9, 1866, Congress overrode a Presidential veto to enact the Act of April 9, 1866 (commonly known as and referred to in this preamble as the “Civil Rights Act of 1866”) (14 Stat. 27, chapter 31), a law written to protect and clarify the newly bestowed rights of persons of African descent;

Whereas the Civil Rights Act of 1866 declared that all persons born in the United States are entitled to be citizens, without regard to race, color, or previous condition of slavery or involuntary servitude;

Whereas the Civil Rights Act of 1866 was enacted—

(1) to establish that all persons born in the United States are to be considered citizens;

(2) to clearly define the rights guaranteed by United States citizenship; and

(3) to make it unlawful for any person to deprive another person of those rights on the basis of race;

Whereas the Civil Rights Act of 1866 served the role of overriding “Black Codes”, laws enacted in southern States to restrict the freedom of African Americans and keep formerly enslaved persons from thriving in society;

Whereas the first section of the Civil Rights Act of 1866 created an avenue for citizens who fell victim to intentional racial discrimination by allowing a citizen to go before a Federal court and allege that the citizen was discriminated against while engaging in lawful activity;

Whereas the first section of the Civil Rights Act of 1866 was used to challenge the laws established by southern States to limit the rights and opportunities of newly freed slaves;

Whereas, under section 1977 of the Revised Statutes (42 U.S.C. 1981), which is derived from section 16 of the Act of May 31, 1870 (commonly known as and referred to in this preamble as the “Enforcement Act of 1870”) (16 Stat. 140, chapter 114) and the first section of the Civil Rights Act of 1866, African American citizens are given the right to enforce contracts, give evidence in court, sue and be sued, and purchase, sell, and convey real and personal property;

Whereas, in 1975, the Supreme Court recognized in *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975), that section 16 of the Enforcement Act of 1870 allowed for private employers to be held accountable for discrimination within their ranks;

Whereas section 1977 of the Revised Statutes (42 U.S.C. 1981) applies to all contracts, including those between employer and employee, and has become a vital tool for employment discrimination claimants;

Whereas section 1977 of the Revised Statutes (42 U.S.C. 1981) stands as one of the only laws protecting against employers openly discriminating on the basis of race when contracting with other parties;

Whereas it is well established that section 1977 of the Revised Statutes (42 U.S.C. 1981) has been invoked to challenge race discrimination in employment matters and has held bad actors accountable for contract discrimination;

Whereas, in 1989, in *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989), the Supreme Court narrowly interpreted section 1977 of the Revised Statutes (42 U.S.C. 1981) to apply only to contract formation, finding that only certain points in a contractual engagement could be subject to the protections afforded in that section;

Whereas the ruling in *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989), functioned as a major setback to ensuring that all aspects of the interaction between an employee or individual with a business would be free of racial discrimination;

Whereas, in 1991, Congress, by statute, as part of the Civil Rights Act of 1991 (Public Law 102-166; 105 Stat. 1071), disagreed with a plethora of Supreme Court decisions that undermined Federal antidiscrimination laws and challenged the restrictive interpretation of section 1977 of the Revised Statutes (42 U.S.C. 1981) expressed by the Supreme Court in *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989);

Whereas the 2008 decision in *CBOCS West, Inc. v. Humphries*, 553 U.S. 442 (2008), further determined that section 1977 of the Revised Statutes (42 U.S.C. 1981) prohibits not only direct discrimination, but retaliation against those alleging discrimination;

Whereas the intent of Congress is clear through the legislative history of section 1977 of the Revised Statutes (42 U.S.C. 1981), which definitively illustrates that the law was meant to provide and enforce robust protection against race discrimination in contracting;

Whereas section 1977 of the Revised Statutes (42 U.S.C. 1981)—

(1) in subsection (a), provides that “[a]ll persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens”; and

(2) in subsection (b), defines “make and enforce contracts” to “include the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship”;

Whereas section 1977 of the Revised Statutes (42 U.S.C. 1981) clearly enumerates the protections afforded to minorities in the United States when contracting with businesses and makes clear that all aspects of the creation, modification, and termination of contracts are subject to the scrutiny of that section;

Whereas the most direct interpretation of section 1977 of the Revised Statutes (42 U.S.C. 1981) ensures that all racial minorities in the United States be granted the opportunity to enter into contractual agreements free of discrimination; and

Whereas section 1977 of the Revised Statutes (42 U.S.C. 1981) serves as a critically important tool to ensure that no person is denied the ability to contract with another on the basis of race: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes and honors the historical significance of section 1977 of the Revised Statutes (42 U.S.C. 1981) and the instrumental contributions of that law to the pursuit of equal protection for all citizens of the United States;

(2) reaffirms its commitment to the 13th, 14th, and 15th Amendments to the Constitution of the United States, to the Act of April 9, 1866 (commonly known as and referred to in this resolving clause as the “Civil Rights Act of 1866”) (14 Stat. 27, chapter 31) (and the laws derived from that Act), and to the civil rights and liberties of all racial minorities across the United States; and

(3) reaffirms the congressional intent behind the first section of the Civil Rights Act of 1866 (and the laws derived from that Act), which was, and remains, the protection of the rights of minorities seeking refuge from racial discrimination in business.

## AUTHORITY FOR COMMITTEES TO MEET

Mr. McCONNELL. Mr. President, I have 2 requests for committees to meet during today's session of the Senate. They have the approval of the Majority and Minority leaders.

Pursuant to rule XXVI, paragraph 5(a), of the Standing Rules of the Senate, the following committees are authorized to meet during today's session of the Senate:

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

The Committee on Homeland Security and Governmental Affairs is authorized to meet during the session of the Senate on Monday, November 18, 2019, at 5:40 a.m., to conduct a hearing on the nomination of Peter Gaynor, of Rhode Island, to be Administrator of the Federal Emergency Management Agency, Department of Homeland Security.

### COMMITTEE ON RULES AND ADMINISTRATION

The Committee on Rules and Administration is authorized to meet during the session of the Senate on Monday, November 18, 2019, to conduct a hearing on the nomination of Hugh Nathaniel Halpern, of Virginia, to be Director of the Government Publishing Office.

## REPEALING EXISTING SUB-STANDARD PROVISIONS ENCOURAGING CONCILIATION WITH TRIBES ACT

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 252, S. 2071.

The PRESIDING OFFICER. The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (S. 2071) to repeal certain obsolete laws relating to Indians.

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

Mr. McCONNELL. I ask unanimous consent that the bill be considered read a third time and passed and that the motion to reconsider be considered made and laid upon the table.

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

The bill was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 2071

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act”.

**SEC. 2. REPEAL OF CERTAIN OBSOLETE LAWS RELATING TO INDIANS.**

(1) Section 2080 of the Revised Statutes (25 U.S.C. 72) is repealed.

(2) Section 2100 of the Revised Statutes (25 U.S.C. 127) is repealed.

(3) Section 2 of the Act of March 3, 1875 (18 Stat. 449, chapter 132; 25 U.S.C. 128), is repealed.

(4) The first section of the Act of March 3, 1875 (18 Stat. 424, chapter 132; 25 U.S.C. 129), is amended under the heading “CHEYENNES AND ARAPAHOS.” by striking “; that the Secretary of the Interior be authorized to withhold, from any tribe of Indians who may hold any captives other than Indians, any moneys due them from the United States until said captives shall be surrendered to the lawful authorities of the United States”.

(5) Section 2087 of the Revised Statutes (25 U.S.C. 130) is repealed.

(6) Section 3 of the Act of March 3, 1875 (18 Stat. 449, chapter 132; 25 U.S.C. 137), is repealed.

(7) Section 2101 of the Revised Statutes (25 U.S.C. 138) is repealed.

(8) Section 7 of the Act of June 23, 1879 (21 Stat. 35, chapter 35; 25 U.S.C. 273), is repealed.

(9) The first section of the Act of March 3, 1893 (27 Stat. 612, chapter 209), is amended—

(A) under the heading “MISCELLANEOUS SUPPORTS.” (27 Stat. 628; 25 U.S.C. 283), by striking the last 2 undesignated paragraphs; and

(B) under the heading “FOR SUPPORT OF SCHOOLS.” (27 Stat. 635; 25 U.S.C. 283), by striking the second undesignated paragraph.

(10) Section 18 of the Act of June 30, 1913 (38 Stat. 96, chapter 4; 25 U.S.C. 285), is amended by striking the tenth undesignated paragraph.

(11) The Act of June 21, 1906 (34 Stat. 325, chapter 3504), is amended under the heading “COMMISSIONER.” under the heading “I. GENERAL PROVISIONS.” (34 Stat. 328; 25 U.S.C. 302) by striking the fourth undesignated paragraph.

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**AUTHORIZING THE TAKING OF PICTURES AND FILMING IN THE CHAMBER OF THE SENATE FOR USE BY THE CAPITOL VISITOR CENTER**

Mr. McCONNELL. Mr. President, I ask unanimous consent the Senate proceed to the consideration of S. Res. 428 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The senior assistant legislative clerk read as follows:

A resolution (S. Res. 428) authorizing the taking of pictures and filming in the Chamber of the Senate for use by the Capitol Visitor Center.

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

Mr. McCONNELL. I ask unanimous consent that the resolution be agreed to and that the motion to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 428) was agreed to.

(The resolution is printed in today's RECORD under “Submitted Resolutions.”)

**ORDERS FOR TUESDAY,  
NOVEMBER 19, 2019**

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Tuesday, November 19; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day, morning business be closed, and the Senate proceed to executive session and resume consideration of the Luck nomination with the post-cloture time expiring at 2:15 p.m.; further, if confirmed, the motion to reconsider be considered made and laid upon the table and the President be immediately notified of the Senate's action; finally, that the Senate recess from 12:30 p.m. until 2:15 p.m. to allow for the conference meetings.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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**ADJOURNMENT UNTIL 10 A.M.  
TOMORROW**

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 6:28 p.m., adjourned until Tuesday, November 19, 2019, at 10 a.m.