

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE RESOLUTION DRHR45121-LG-159 (4/30)

Sponsors: Representative Capps.

Referred to:

1 A HOUSE RESOLUTION APPEALING TO THE CONGRESS OF THE UNITED
2 STATES TO LIMIT THE APPELLATE JURISDICTION OF THE FEDERAL
3 COURTS REGARDING THE RECITATION OF THE PLEDGE OF
4 ALLEGIANCE IN PUBLIC SCHOOLS.

5 Whereas, North Carolina is one of numerous states that recites the Pledge of
6 Allegiance in its public schools; and

7 Whereas, the practice of including "under God" in the Pledge was established
8 by federal law decades ago and reaffirmed by a new federal law just last year; and

9 Whereas, recent polls indicate that the public (up to ninety percent is
10 overwhelmingly in favor of allowing students to recite the Pledge of Allegiance; and

11 Whereas, Constitution signer, George Washington, declared: "the
12 fundamental principle of our Constitution...enjoins [requires] that the will of the
13 majority shall prevail," and Thomas Jefferson similarly pronounced: "the will of the
14 majority [is] the natural law of every society [and] is the only sure guardian of the rights
15 of man"; and

16 Whereas, Thomas Jefferson also stated: "A judiciary independent...of the
17 will of the nation is a solecism [wrong] – at least in a republican government"; and

18 Whereas, the 9th Circuit has violated these fundamental principles and
19 abrogated the "consent of the governed" as set forth in our governing documents; and

20 Whereas, the will of the people can be protected against further judicial
21 usurpation from any other federal court on this issue through congressional action to
22 limit the jurisdiction of the federal courts as explicitly set forth in the Constitution in
23 Article III, Section 2, Para. 2 (federal courts "shall have appellate jurisdiction both as to
24 law and fact with such exceptions and under such regulations **as Congress shall**
25 **make**"); and

26 Whereas, the intent of our Framers regarding this power of Congress to limit
27 judicial overreach was clear, such as when Samuel Chase (a signer of the Declaration of
28 Independence and a U.S. Supreme Court Justice appointed by President George

1 Washington) declared, "The notion has frequently been entertained that the federal court
2 derive their judicial power immediately from the Constitution; but the political truth is
3 that the disposal of the judicial power (except in a few specified instances) belongs to
4 Congress. If Congress has given the power to this court, we possess it, not otherwise";
5 and

6 Whereas, Justice Joseph Story, in his authoritative Commentaries on the
7 Constitution, similarly declared, "In all cases where the judicial power of the United
8 States is to be exercised, it is for Congress alone to furnish the rules of proceeding, to
9 direct the process, to declare the nature and effect of the process, and the mode, in
10 which the judgments, consequent thereon, shall be executed....And if Congress may
11 confer power, they may repeal it....The power of Congress [is] complete to make
12 exceptions"; and

13 Whereas, this position is confirmed not only by signers of the Constitution
14 such as George Washington and James Madison but also by other leading constitutional
15 experts and jurists of the day, including Chief Justice John Rutledge, Chief Justice
16 Oliver Ellsworth, Chief Justice John Marshall, Richard Henry Lee, Robert Yates,
17 George Mason, and John Randolph; and

18 Whereas, the United States Supreme Court has long recognized and affirmed
19 this power of Congress to limit the appellate jurisdiction of the federal courts, as in 1847
20 when the court declared that the "court possesses no appellate power in any case unless
21 conferred upon it by act of Congress" and in 1865 when it declared "it is for Congress to
22 determine how far...appellate jurisdiction shall be given; and when conferred, it can be
23 exercised only to the extent and in the manner prescribed by law"; and

24 Whereas, Congress has on numerous occasions exercised this power to limit
25 the jurisdiction of federal courts, and the Supreme Court has consistently upheld this
26 power of Congress in rulings over the last two centuries, including cases in 1847, 1866,
27 1868, 1876, 1878, 1882, 1893, 1898, 1901, 1904, 1906, 1908, 1910, 1922, 1926, 1948,
28 1952, 1966, 1973, 1977; etc. and

29 Whereas, it is Congress alone that can remedy this current crisis and return to
30 the states the power to make their own decisions on recitation of the Pledge of
31 Allegiance in public schools; Now, therefore,
32 Be it resolved by the House of Representatives:

33 **SECTION 1.** The House of Representatives appeals to the Congress of these
34 United States to limit the appellate jurisdiction of the federal courts regarding the
35 recitation of the Pledge of Allegiance in public schools.

36 **SECTION 2.** The Principal Clerk shall transmit a certified copy of this
37 Resolution to the Speaker of the United States House of Representatives, the President
38 of the United States Senate, and the Chief Clerical Officers of the United States House
39 of Representatives and the United States Senate.

40 **SECTION 3.** This resolution is effective upon adoption.