

108TH CONGRESS
1ST SESSION

H. RES. 468

Expressing disapproval of the consideration by Justices of the Supreme Court of the United States of foreign laws and public opinion in their decisions, urging the end of this practice immediately to avoid setting a dangerous precedent, and urging all Justices to base their opinions solely on the merits under the Constitution of the United States.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

Mr. GRAVES submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Expressing disapproval of the consideration by Justices of the Supreme Court of the United States of foreign laws and public opinion in their decisions, urging the end of this practice immediately to avoid setting a dangerous precedent, and urging all Justices to base their opinions solely on the merits under the Constitution of the United States.

Whereas each Justice of the Supreme Court of the United States takes a judicial oath, which states the following: “I do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incum-

bent on me as [Justice of the Supreme Court of the United States] under the Constitution and laws of the United States.”;

Whereas section 1 of article III of the Constitution states the following: “The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.”;

Whereas paragraph 1 of section 2 of article III of the Constitution states the following: “The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.”;

Whereas paragraph 2 of section 2 of article III of the Constitution states the following: “In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate juris-

diction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.”;

Whereas paragraph 3 of section 2 of article III of the Constitution states the following: “The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.”;

Whereas section 1 of article I of the Constitution states the following: “All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”;

Whereas section 1 of article II of the Constitution states the following: “The executive power shall be vested in a President of the United States of America.”;

Whereas Associate Justice Anthony M. Kennedy’s opinion for the Supreme Court of the United States in *Lawrence v. Texas*, 123 S.Ct. 2472, 2483 (2003), refers to decisions of the European Court of Human Rights and other courts and states the following: “Other nations, too, have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct. The right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries.”;

Whereas Associate Justice John Paul Stevens’s opinion for the Court in *Atkins v. Virginia*, 536 U.S. 314, 316 (2002), refers to opinions of the national and world communities and states the following: “The practice, there-

fore, has become truly unusual, and it is fair to say that a national consensus has developed against it.”;

Whereas Associate Justice Steven G. Breyer’s dissenting opinion in the denial by the Court of the petition for a writ of certiorari in *Knight v. Florida*, 528 U.S. 990 (1999), cites foreign sources of law, including the courts of Canada, India, Jamaica, and Zimbabwe, as well as the United Nations; and

Whereas Associate Justice Ruth Bader Ginsburg stated in a speech to the American Constitution Society that judges “are becoming more open to comparative and international law perspectives.”: Now, therefore, be it

1 *Resolved*, That the House of Representatives—

2 (1) reminds the Justices of the Supreme Court
3 of the United States of the judicial oath they took
4 as a precondition to assuming their responsibilities;

5 (2) reminds the Justices that the United States
6 was founded for the purposes of self-government;

7 (3) reminds the Justices that the executive and
8 legislative branches of the Federal Government are
9 the only branches whose officers are elected by the
10 people of the United States;

11 (4) expresses its disapproval of the consider-
12 ation of foreign laws and opinions in the decisions
13 of the Court;

14 (5) advises the Justices not to incorporate for-
15 eign laws or opinions in future decisions of the
16 Court;

1 (6) advises the Justices not to incorporate pub-
2 lic opinion when performing their duty to uphold the
3 Constitution; and

4 (7) urging all Justices to base their opinions
5 solely on the merits under the Constitution of the
6 United States.

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