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South Carolina House of Representatives

Legislative Update & Research Reports

Robert J. Sheheen, Speaker of the House

Vol. 5

May 17, 1988

No. 19

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Printed by the Legislative Council

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MAY 25 1988

STATE DOCUMENTS

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House Week in Review

More bills were added to the ever growing list of ratified acts last week, and the House saluted several charitable organizations as the countdown to adjournment grew closer.

Ratified Acts

With four legislative weeks remaining, the House joined with the Senate and ratified more legislation last week. Two significant bills that became acts were S.704 the massive Highway Safety bill and S.1140, legislation changing the qualifications of jurors.

Among the other bills ratified were S. 1318. This legislation stipulates that under the Education Finance Act, no remedial or compensatory funding may be appropriated for students who score at or above the Basic Skills Assessment program standard. Also ratified was S.988 which creates a State Employee Leave Transfer program.

Beginning next week, the *Legislative Update* will begin running a list of the significant legislation ratified this session. This list will help House members answer questions from constituents and other groups regarding legislative action taken this session.

State Bug and Turtle

Legislation designating a state bug for South Carolina has reached the conference committee stage. S.1295, which would designate the praying mantis as the official state insect, was sent to a conference committee last week. Reps. Aydlette, Klapman and Larry Martin were appointed by the Speaker to this committee.

An update on the turtle legislation, which is moving more slowly.... The House gave third reading to S.1006 last Wednesday. This bill would designate the loggerhead turtle as the official reptile of South Carolina. It looks like the loggerhead turtle will also plod toward a conference committee, since the Senate changed its mind after enrolling the bill for ratification, deciding instead to refuse to go along with House amendments to the bill.

Gubernatorial Veto

Gov. Campbell also notified the House he had vetoed H.4131, which would create the Danzell water district in Sumter County. The House adjourned debate on the vetoed bill.

Ceremonies

May is always a busy month for ceremonies and memorials, and last week's House schedule was a good example of that.

On Tuesday, the House saluted the championship basketball team and coaches from Winthrop College. The House also commended the S.C. Boys Clubs' "Youth of the Year" award recipient, Youth of the Year Robert L. Percell Jr. of the Boys' Club of Greater Columbia, along with the statewide runners-up and other nominees were presented to the House last week.

The General Assembly also met in joint session to honor the 50th anniversary of the March of Dimes. Charles L. Massey, president of the national March of Dimes Birth Defect Foundation, briefly addressed the gathered House members and senators on the work of the foundation.

And while meeting in joint assembly, the General Assembly also elected three members to the Old Exchange Building Commission. Elected by acclamation were Julian V. Brandt III, Sherman F. Smith and Mrs. Louise Burgdorf.

Special Orders

The House got to one of the two bills set for special order last week. After considerable discussion, the House gave S.1147 second and third reading without amending the bill. The bill, which related to the fair market value of agriculture real estate, also was enrolled for ratification.

An attempt was made to recommit H.2710, which is also set for special order. The move was tabled by a 69-8 vote. H.2710 would require a minor to receive parental or guardian consent for an abortion.

Bills Introduced

Here is a sampling of bills introduced in the House during the previous week. Not all bills introduced in the House are featured here. The bills are organized by the standing committees to which they were referred.

Agriculture and Natural Resources Committee

Wildlife Department Duties (S.1409, Sen. Drummond). This bill would spell out the duties of the state Department of Wildlife and Marine Resources. Among the purposes outlined in the legislation are the taking of wildlife and marine life at any time for human or scientific purposes, the protection and management of endangered species, the initiation or defense of court action taken against the state or the department, the setting of seasons, bag limits and methods for taking game and fish on all wildlife management areas.

Education and Public Works

Impaired School Districts (S.1236, Sen. McLeod). Under this Senate bill, a school district would be removed from the status of being "seriously impaired" if the district corrects at least half of the deficiencies that caused it to be classified as "seriously impaired" in the first place. The exception is if the remaining deficiencies would cause it to be classified as "seriously impaired" anyway.

The bill also provides that if a district is found to be "seriously—impaired" for two successive years, that this classification may be changed to "impaired but improving" if the district has corrected at least half of the original deficiencies, no new deficiencies have been found, and the number of satisfactory test score factors continue to rise.

A school district could not be designated as "impaired but improving" for two successive years.

Judiciary Committee

Judge Reporting (H.4254, Rep. Klapman). All current and future judges in the state and all retired judges, brought back to temporarily preside over sessions on Circuit Court, would be required to file a report on their real estate transactions and those of their spouses under this bill. The report must cover a ten year period and would be submitted to the General Assembly.

If enacted, the real estate report would be due on Jan. 1, 1989 for current members of the judiciary. For retired judges, the report would be due 30 days before they returned to the bench.

Special Report: The U.S. Constitution
Two Hundred Years

Next Monday, the South Carolina General Assembly will meet in special statewide session in Charleston to celebrate the bicentennial of our nation's Constitution. In honor of that celebrated occasion, here is a research report on the drawing of the U.S. Constitution. This article should provide House members with excellent background material for upcoming newspaper columns, constituent questions or speeches.

This report was written by Michael Witkoski, Ph.D., research director of the House Medical, Military, Public and Municipal Affairs Committee. Many thanks for his permission to reprint this information here.

Background

From May to September, 1787, delegates from the thirteen newly-independent American colonies labored in Philadelphia to draft a document that would provide a workable government for a new nation.

Having fought a long and difficult struggle for independence against the tyranny of an English king, the Americans were cautious about entrusting too much power to a central government. Yet, they had also seen that rivalries and disagreements among the states could lead to the loss of their liberties and freedoms.

Conflicts between philosophies of government, conflicts between regions and economic interests, conflicts between large states and small states--all of these threatened to wreck the constitutional convention before it began. Somehow, however, the framers drew up a document that not only served its purpose then but still governs our nation two hundred years later.

The Need for a New Government

Following the successful conclusion of the Revolution, the American colonies were independent of the British crown. The

provisional government which had seen them through the war was the Continental Congress. After peace was concluded, this Congress remained more or less intact under a charter called "The Articles of Confederation." These Articles were agreed to by the states in 1781.

As its name implied, the Articles formed a loose coalition of independent states, rather than a unified nation. There was no national executive power, and no national judiciary. The Congress could pass laws, but was unable to enforce them. Lawsuits between states and their citizens could not be resolved, because there was no higher court of appeal.

Three types of pressure forced the states to consider the need for a new, and stronger, central government.

First, economic difficulties were growing. Trade and commerce between states were hindered by tariffs, restrictive practices, and "trade wars." Boundary lines were disputed, especially in coastal areas, such as between Virginia and Maryland, where rich oyster and fishing areas were claimed by both states. If states could not resolve these problems between themselves, a national government would have to intervene.

Second, the new nation was surrounded by powerful and potentially hostile neighbors. To the north, the British still held Canada, and were suspected of stirring up dissent within the American states. To the west and south, Spain seemed ready to expand its borders at the expense of the Americans, and was threatening to close the Mississippi River to American traders. As a loose confederation, the American states were unable to meet these dangers effectively.

Finally, at home, internal disruptions were a clear and present danger. Shay's Rebellion in New England during 1786-1787 was widespread enough that George Washington had to be called out of retirement to lead an army against persons revolting against taxes.

These conditions convinced many serious thinkers that it was time to overhaul the existing government. But the Articles of Confederation could be amended only by unanimous consent. By the spring of 1787, there was a general consensus that an entirely new form of government was necessary.

That was the reason that delegates assembled in Philadelphia during early May: to draft a constitution for the new nation.

Plans, Protests and Compromise

The drafters at the convention were agreed on general principles: government should be limited, the rights of the people should be preserved, and internal harmony and external safety were essential. The delegates differed sharply, however, on how to achieve these aims.

Basically there were two sides. One side favored the "Virginia Plan" proposed by Edmund Randolph. This plan would have created a strong central government, with representation in the legislative body determined strictly by the population of the various states. Obviously, this would give most power to the larger states, such as Virginia. For that reason it was favored by them--and opposed by the smaller states.

Those smaller states and their delegates rallied behind the "New Jersey Plan," set forth by William Paterson. This concept was for a weaker central government, and would have given each state the same representation in the legislature, regardless of population. Predictably, the large states would have nothing to do with this idea.

A compromise was proposed. It was called the "Connecticut Plan" because the delegates from that state set it forth. It combined many of the points of the other two plans: the House of Representatives would be based on population, which would favor the larger states, while the Senate would have equal numbers from each state, giving smaller states a fair say in the legislative body. By the end of June, the delegates were able to agree on this compromise.

Commerce, Slavery, and the President

Three tough issues still separated the delegates.

The first was commerce. Several states wanted to keep their powers of regulating commerce and trade, even including the right to impose import duties or tariff on the goods from their neighboring states. In the end, however, the delegates agreed that a truly united country needed free and unhindered interstate commerce.

The problem of slavery deeply divided delegates from the North and South. Realistically, there was almost no chance that slavery could have been abolished in 1787. The main dispute was over whether to include slaves when counting the population. The North said no; the South said yes. A compromise finally allowed each

slave to count as 3/5ths of a person. It was not until eighty years later that this tragic flaw in our nation was resolved, and then only after four years of civil war.

A final puzzle for the drafters of the Constitution was the Presidency. Many persons were fearful of a strong executive, because the office might be taken over by a tyrant. Others were worried about popular election of the President, since that might encourage a demagogue or rabble rouser.

The first worry was eased by the concept of "checks and balances," or "separation of powers," which means that the Congress, the President, and the Supreme Court all have their parts to play in the federal system, and no one of the three can become too powerful.

The second concern was addressed by a compromise suggested by Benjamin Franklin. Instead of having the President elected directly by the people, an "Electoral College" was created. Persons voted for electors, who would in turn vote on a President. In actual practice, however, the will of the people in choosing a President is followed by the members of the Electoral College.

Finally, the framers of the Constitution wisely allowed for it to be amended in the future. This option was quickly put to use when the first ten amendments, known as the Bill of Rights, were adopted in 1791. These amendments secure the rights and liberties of American citizens--such as freedom of speech, freedom of religion, and freedom of the press.

The ability to amend the Constitution is one reason it remains a living document. As President Franklin D. Roosevelt said in his First Inaugural Address in 1933:

Our Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form. That is why our constitutional system has proved itself the most superbly enduring political mechanism the modern world has produced."

Ratification

The work of the convention was completed on September 17, 1787. The document was then submitted to the legislatures of the thirteen states; the approval of nine states was necessary for ratification.

Delaware ratified the new charter on December 7, 1787. The ninth state to approve was New Hampshire, which gave its endorsement

on June 21, 1788. It was not until May 29, 1790 that Rhode Island finally got around to ratifying the Constitution--almost two years after it had gone into effect. (Little surprise here: Rhode Island had sent no delegates to the convention. The reason given was that the smallest state had the greatest fear of a strong central government.)

South Carolinians at the convention

South Carolina sent four delegates to the Constitutional Convention, and they made distinguished contributions to our nation's guiding document.

Pierce Butler (1744-1822) was born in Ireland. At the start of the Revolution he was sent to Boston as a major in the British army, but left the side of the King to become Adjutant General of the South Carolina militia. He was a member of the State Legislature, and later served in the United States Senate from 1789 to 1796, and again from 1803 to 1804.

Charles Pinckney (1757-1824) was a lawyer, planter, and officer in the militia. He was captured by the British during the Revolution, and held as a prisoner for a time. He served in the South Carolina Legislature and in the Continental Congress. Later he served as a four-term Governor of the State, was in the US Senate from 1799 to 1801, and then served in the US House of Representatives from 1818 to 1821.

At the convention, Charles Pinckney was author of the "Pinckney draft," a document which contained a general outline of the plan of the Constitution. Historians say that thirty-one or thirty-two points of this draft were later included in the final version of the Constitution, including the title of the "President," the "Congress," and the "Senate."

According to the Dictionary of American Biography, "Pinckney had a larger share than any other individual in the determination of the form and content of the finished Constitution."

Charles Cotesworth Pinckney (1746-1825). Educated at Oxford and London, Charles C. Pinckney was a lawyer and planter. A member of the Continental Army during the war, he fought at Charleston, Brandywine, and Germantown. He was captured by the British, and later released. He served in the State Legislature.

John Rutledge (1739-1800). A planter and judge, Rutledge also studied law in London. He was a member of the State Legislature and the Continental Congress. At the convention, he chaired the committee which wrote the first draft of the Constitution. He later served on the US Supreme Court from 1789 to 1791.

Conclusion

The Constitutional Convention was a gathering of truly amazing Americans. Two of its members, George Washington and James Madison, later went on to become President of the United States. Others, such as John Jay and Alexander Hamilton, were highly influential in shaping the destiny of the young nation.

The United States Constitution is now the oldest written constitution in the world that is still in effect. It contains the essence of the American philosophy of government: that the rights of the people must be preserved, that the government must be confined by the rule of law, that all persons are equal before the law and deserve equal consideration. Finally, to echo the words of its forerunner, the Constitution insures that in our country, government "derives its just powers from the consent of the governed."

What Do Americans Know About Their Constitution?

According to a Hearst Corporation survey, a majority -- 73 percent -- of Americans favor a constitutional amendment guaranteeing citizens the right to adequate health care. More than half -- 61 percent -- think a constitutional convention should be held this year to consider amendments relating to such controversial topics as prayer in public schools, abortion and freedom of the press.

The survey also revealed that:

- 26 percent of Americans wrongly believe the Constitution's purpose was to declare independence from England.
- 59 percent do not know what the Bill of Rights is.
- 64 percent believe incorrectly that the Constitution establishes English as the official national language of the United States.
- 39 percent erroneously believe the president can suspend the Constitution, and 35 percent believe incorrectly that the president can adjourn Congress.

On the other hand, the survey showed:

- 69 percent of adult Americans know that the Constitution does not guarantee them the right to a job.
- 92 percent know that a person accused of a crime must be provided with a lawyer even if he or she cannot pay for one.
- 83 percent are aware of the constitutional provision for a trial by jury.
- 59 percent know the Supreme Court is the final authority on the interpretation of the Constitution.

The Hearst Corporation survey, reprinted here from *State Government News*, July 1987, was based on telephone interviews with over 1,000 Americans, 18-years-old or older, living in private households across the U.S.

Some Final Words on the Constitutional Bicentennial

The following is a column that appeared in the July 1987 edition of State Government News. The article, written by Sol Watchtler, chief judge of the New York Court of Appeals and chairman of his state's constitutional bicentennial commission, offers some final thoughts as we approach South Carolina's celebration of the same.

We have begun celebrating the beginning of our republic, and by any standard, our celebration will be justified. It will not be a celebration marked by fireworks and tall ships. It will, rather, be a celebration of reflection.

Last July 4th, we were reminded that we are the children of a nation of immigrants. Some of those immigrants were our own parents or grandparents. Many spoke an alien language; most were poor and uneducated. Some came to these shores as slaves. Perhaps most significantly, they lacked both knowledge and experience with the democratic process. That they survived -- and in fact thrived -- is a testament not only to their own fortitude, but to the foresight of our constitutional forebears, and to the seeds of a just government which they planted so firmly. We can rightly be proud of our Constitution for those who came before us did their work well.

A Time for Examination

Yet we would be negligent to be satisfied with a mere celebration of the past. Celebrations are also a time for examination -- to consider where we are now, what the future holds in store for us, and whether that future will see the survival of this great democratic experiment.

The answer really lies with each of us and a fundamental recognition of what America is all about.

It is an historic past and it is a love of country, summed up in the single emotion known as patriotism, and it is national defense, and it is the integrity of our economy. But it is, and must be, much more particularly to those of us who have committed ourselves to positions of public responsibility.

That responsibility, I believe, does not include an acceptance of the belief that the past has done its work for the present, and that our liberty, which is the cornerstone of democracy, is guaranteed. The truth is that one generation can never protect the rights of another, and although our greatest documents -- the Declaration of Independence, the Constitution, and the Bill of Rights -- are ideal reflections of our finest aspirations, they are not self-fulfilling chariots of justice. For all their beauty, they are only words, dependent on each generation to give them meaning and content for its own time and place.

Progressive Interpretations

For example, I cannot think of words less in need of annotation than the truth so proudly declared self-evident in our independence declaration that: "All men are created equal." Yet, it is all too clear that while our Founders wrote those words with hearts full of devotion to freedom and justice for mankind, they never once meant to include members of the black race, or women. Every generation, from *Dred Scott*, where a black person could be owned; to *Plessy vs. Ferguson*, where the same Constitution was interpreted by different Supreme Court justices to say that there must be equal treatment for blacks, but that equality could still be separate; to *Brown vs. Board of Education*, where still different justices of the Supreme Court, interpreting the same Constitution, held that there must be true equality between the races. And most recently, the *Cleveland Firefighters* and the *Santa Clara Highway Department* cases, which upheld affirmative action to achieve equality. All of these progressive interpretations of our Constitution have given the simple words "All men are created equal" a meaning and content consistent with and reflecting *our* evolving principles, *our* morality and *our* sense of justice.

We have seen the same change and expansion of meaning occur with virtually all of our constitutional principles, and as the pace of our lives has quickened, so too has the pace of change.

Adapting to Contemporary Society

I don't think for a moment that our Founding Fathers intended for us to interpret the Constitution according to their divined intent, divorced somehow from contemporary understanding. As Thomas Jefferson phrased it, in a free society "Nothing is unchangeable but the inherent and unchangeable rights of man." And John Marshall, a member of the Virginia Ratifying Convention and later chief justice of the United States, spoke to this very point when he said that the Constitution "was intended to endure for ages to come and adapted to the crises of human affairs."

