

ANTI-NEPOTISM BILL

• Mr. KYL. Mr. President, I rise in support of S. 1892, the judicial anti-nepotism bill.

Section 458 of 28 U.S.C. reads: "No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court." There is some debate about the interpretation of section 458. Some hold the view that the statute means what it says—no person related to a judge of a court may be appointed to that same court. But some hold a contrary view. Indeed, in a 1995 memo by Richard Shiffrin of the Office of Legal Counsel, although the OLC conceded that the statutory language appears to restrict presidential appointments to offices or duties in federal courts, the OLC argued that the statute only applies to judges hiring or appointing persons to the courts. Many scholars disagree with this view and with the other memoranda issued by the Administration. Finally, there is also disagreement as to whether section 458 applies to appointments where a judge has taken senior status is a "judge of such court."

For future judicial nominees, the Administration and the Senate must understand the criteria required for Article III judicial appointments. S. 1892 maintains the current prohibition on relatives of judges being appointed to or employed in any job of the court, such as for example, positions as clerks and bailiffs.

S. 1892 amends 28 U.S.C. 458 to clarify that no person may be appointed to be a judge of a court if that person is related within the degree of first cousin to any judge, including a judge retired in senior status of that "same court." Under the bill, "same court" means, in the case of a district court, any court of the same single judicial district; and, in the case of a court of appeals, the court of appeals of a single judicial district.

For example, a person may not be a member of the Federal District Court in Arizona if a related person is already a member of the Federal District Court in Arizona, but related persons may serve simultaneously on federal district courts in Arizona and New Mexico. Additionally, related persons may serve simultaneously on the Northern and Eastern Federal District Courts in California. A person may not be a member of the 2nd Circuit if a related person is a member of that circuit, but related persons may serve on the 2nd and the 7th Circuits simultaneously.

It is important to Note that this act does not apply to the Supreme Court.

The act takes effect on the date of enactment and applies only to an individual whose nomination is submitted to the Senate on or after such date. Thus, the bill would not affect the nomination of William Fletcher.

A thorough study of the constitutional provisions at issue, of the rel-

evant case law, and of prominent legal treatises makes it clear that the bill is constitutional. Indeed, a March 31, 1998 report on the bill by the American Law Division of the Congressional Research Service has concluded that "[a]fter consideration of the text of the Constitution, the precedents, and the historical practice, we believe it to be established that Congress has the authority to fix this and other qualifications for the office of judges of Article III courts. . . ." The Constitution is, in fact, silent on what lower courts there were to be, their composition and jurisdiction, and their powers. Inasmuch as the Constitution "delineated only the great outlines of the judicial power . . . , leaving the details to Congress, . . . "[t]he distribution and appropriate exercise of the judicial power must . . . be made by laws passed by Congress. . . ." *Rhode Island v. Massachusetts*, 12 Pet. (37 U.S.) 657, 721 (1838).

The public policy behind Section 458 and S. 1892 is clear: For the public to maintain a sufficient level of confidence in the integrity and impartiality of its public institutions, those institutions must strive not only to avoid circumstances in which actual impropriety could arise among public servants, but to avoid all circumstances that create even the remote appearance of impropriety. Having close family members serve on the same court would create an appearance of impropriety. Of all the relationships that one judge could have to another—for example, former law partners or members of the same bench for 20 years—a familial relationship is one that is certain to automatically cause a litigant to question the impartiality of a judge.

Litigants must have complete confidence that federal judges will be objective and impartial while on the bench. The institutional integrity of Federal courts requires scrupulous protection of public confidence in the judicial process. Preventing close family members from serving on the same court is a small price to pay to avoid a potential diminution of credibility and impartiality of the Judiciary, one of the Nation's most hallowed institutions.●

TRIBUTE TO MICHAEL J. WILLIAMS

• Mr. CLELAND. Mr. President, I rise today to pay tribute to an invaluable member of my staff, Mike Williams, who has served as my Military Legislative Assistant since I arrived in the Senate in January 1997. Mike joined my staff after serving a great American and one of Georgia's most honored and beloved Senators, Senator Sam Nunn, where he began as an intern while attending Georgia Tech and after graduation quickly became involved in legislative matters, including military issues. After more than five years of public service, Mike will be leaving my staff after the 105th Congress adjourns

to pursue other career opportunities. He will be sorely missed and not easily replaced.

Mike's excellent assistance and invaluable experience made my transition from being Georgia's Secretary of State to a United States Senator and a member of the Senate's Armed Services Committee smooth and successful. He serves as a positive example to us all—a good person who is committed to his family and to continually improving himself. While working full-time for Senator Nunn and then myself, Mike has attended law school in the evening while still finding quality time to devote to his lovely wife Allyson and their beautiful daughter Catherine. Now in his final year of law school at Georgetown, Mike has decided to leave Capitol Hill to pursue a career in the law profession. I wish him well in all of his future endeavors and I know that he will have a lifetime of many more accomplishments and shining moments. Although Mike's invaluable contribution to my staff will be greatly missed, his daily presence in our lives will be missed even more. Mike, thank you for your years of service to me and the people of the great State of Georgia—I am very proud of all you do. You truly are a great American!●

NOTICE OF INTENTION TO MOVE TO SUSPEND THE RULES

• Mr. MCCAIN. Mr. President, I hereby give notice in writing of my intention to move to suspend the provisions of Rule 22 requiring that the following amendment be germane:

AMENDMENT NO. 3711

(Purpose: To define what is meant by the term "discriminatory tax" as used in the bill)

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term "discriminatory tax" means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(v) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) the ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.●

RECOGNITION OF BRUNO NOWICKI

● Mr. LEVIN. Mr. President, I rise today to pay tribute to a good friend of mine and a great leader in my home state of Michigan, Bruno Nowicki. On October 11, 1998, Bruno's friends and family will help him celebrate his 90th birthday at a celebration at the Polish Century Club.

Bruno Nowicki is well known in Michigan and in his native Poland for his efforts to commemorate and celebrate the contributions of Polish people to the United States and to the world. He has designed monuments to Polish-American heroes of World War II and Vietnam and to Revolutionary War Generals Pulaski and Kosciuszko. Bruno Nowicki has also been a strong supporter of public libraries, and served on the Board of Governors of the Detroit Public Library from 1971 until 1994. He melded his interests in promoting Polish culture and supporting public libraries by arranging for statues, mosaics and busts of prominent figures in Poland's history to be displayed in the Detroit Main Library and the Hamtramck Public Library. Bruno worked with artist Zygmunt Dousa of the University of Krakow to design the Polish Room of the Ethnic Conference and Study Center at the Wayne State University in Detroit. He is a co-founder of the Polish Riverfront Festival, which provides assistance to children's hospitals in Poland.

I was proud to work with Bruno Nowicki in 1993-1994 on an issue especially close to his heart, promoting chess to students in schools. An avid chess player who participates in (and has won) tournaments in the U.S., Bermuda and Cuba, he believes that the skills children develop by learning to play chess can be applied to everyday life. A four-year study of school chess players confirmed Bruno Nowicki's belief. The study found that chess helps children build self-confidence and self-worth, dramatically improves children's ability to think rationally, and results in higher grades, especially in English and Math. Bruno provided me with important information which I used in drafting an amendment to the 1994 Goals 2000: Educate America Act, which allows State educational agencies to use certain Title III funds to promote instruction in chess as a tool for teachers to use to motivate students to develop critical thinking

skills, self-discipline and creative resolution methods.

Mr. President, Bruno Nowicki has demonstrated time and again his commitment to his community. He is truly a person who has touched the lives of thousands of people. I know my colleagues join me in wishing Bruno a happy 90th birthday and in commending him for his remarkable dedication to community service.●

ONE GUN A MONTH FORUM

● Mr. LAUTENBERG. Mr. President, last month I convened a forum to investigate the problem of gun-trafficking. At the forum, we heard from a number of compelling witnesses and I have been submitting their testimony into the RECORD so that my colleagues and the public can benefit from their insights. Taken together, this testimony makes a compelling case for the Anti-Gun Trafficking Act, S. 466, which I introduced earlier this Congress.

Today, I would like to submit the final testimony from this forum, that of Captain Thomas Bowers, Director of the Office of Crime Gun Enforcement for the Maryland State Police. Two years ago, the Maryland Legislature passed the Gun Violence Act of 1996, which restricted the purchase of handguns to one in a thirty day period. The results have already been dramatic. In fact, Maryland saw a 78 percent decrease in the number of handguns sold as a result of multiple purchases in the first year after the enactment of this law. This means fewer lethal weapons supplied to criminals in cities nationwide.

I hope that my colleagues will work with me to pass this important piece of legislation. Keeping handguns out of the hands of criminals, and reducing the gun violence across our nation should be of paramount importance to all.

Mr. President, I ask that the testimony of Captain Thomas Bowers be printed in the RECORD.

The testimony follows:

TESTIMONY OF CAPT. THOMAS BOWERS

Senator LAUTENBERG, I am Captain Thomas Bowers, Director of the Office of Crime Gun Enforcement for the Maryland State Police.

On behalf of Colonel David B. Mitchell, our superintendent, thank you for the opportunity to address you today.

The troopers seated behind me represent the subject matter experts in the area of firearms enforcement.

The Maryland State Police is the point of contact for regulatory and criminal oversight of all regulated firearm purchases in Maryland. In 1966, Maryland initiated an application process to purchase handguns. This process included a 7-day waiting period and a background check.

In 1995, Governor Parris N. Glendening, Lieutenant Governor Kathleen Kennedy Townsend, and Colonel Mitchell initiated a comprehensive program entitled Operation Cease-Fire, one element of the cease-fire initiative was the Maryland State Police Firearms Investigation Unit. This unit provides the "front line" response to the problem of

firearms related violence throughout the State of Maryland.

The Firearms Investigation Unit was initially tasked with the responsibility of enforcing Maryland's existing firearms laws and, more importantly, identifying the source or sources of firearms used in the commission of violent crimes.

Through the work of the Firearms Investigation Unit and information provided by the Bureau of Alcohol, Tobacco and Firearms the straw purchase was identified as the major source of crime guns in Maryland, even more significant, based upon crime gun trace data from the city of Baltimore. The straw purchase of firearms through multiple sales was determined to be the source of the majority of regulated firearms used in the commission of violent crime. Let me repeat that the straw purchase of firearms through multiple sales was determined to be the source of the majority of regulated firearms used in the commission of violent crime.

Each multiple straw purchase tells a dramatic story. I'd like to give you two examples.

1. The first is that of a 32-year old male who was recruited by a drug organization to purchase 9 9mm semi-automatic handguns from a Maryland regulated firearms dealer. Upon receipt of the handguns from the dealer, the young man immediately provided them to a member of the hierarchy of the drug organization who then distributed the handguns to drug traffickers whom he controlled. Within a few weeks, two of the 9mm handguns were used in two separate homicides.

2. A second example is that of a young man who purchased 11 9mm and 45 caliber semi-automatic handguns from a Maryland regulated firearms dealer. A short time later, the same resident returned to the same regulated firearms dealer and purchased 30 more semi-automatic handguns. An investigation was initiated which revealed that all 41 semi-automatic handguns were smuggled out of the United States and into the country of Nigeria in violation of both United States and Nigerian law.

In 1996, through the efforts of Governor Glendening, the Maryland legislature passed a comprehensive violence reduction initiative entitled, The Gun Violence Act of 1996. This act limited the purchase of a regulated firearm to one in a 30-day period and also required a background check and 7-day waiting period for secondary sales of regulated firearms between individuals. (Three charts; regulated firearm definition, secondary sale definition, and secondary sale regs.)

Maryland's one gun a month law limits the number of handguns an individual can purchase to only one during a 30-day period not per calendar month. There are codified provisions for specific exceptions to the law. They are enumerated on the chart displayed before you. (Two charts; exceptions to one/month and Maryland State Police From 77M (multiple purchase).)

(1) Residents may apply to the Maryland State Police to be designated as private collectors.

(2) Residents may purchase two handguns during a single visit to a licensed gun dealer if the dealer has offered a second handgun at a discount when purchased with the first. Under this exception the resident cannot purchase another handgun for 60 days.

(3) Law enforcement agencies and licensed private security organizations are exempt from the multiple purchase law when purchasing handguns for use by their employees.

(4) Residents may purchase more than one handgun if they are part of a set or sequential serial numbers as in an accepted collector series.

(5) To facilitate the replacement of a firearm that was lost or stolen with documentation from a law enforcement agency.