and permanent laws of the United States.

This bill, as well as any other bill submitted by the Office of Law Revision Counsel under this program, makes no substantive changes in existing law nor is it intended to do so. Thus, Members should understand that because of the nature of this bill, supporting it does not imply support of the underlying provisions that are being reorganized and cleaned up. This is a necessary bill. I urge Members to support it.

Madam Speaker, I reserve the balance of my time.

Mr. BERMAN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of H.R. 1442, a bill to complete the codification of title 46 of the U.S. Code, the ''Shipping'' title. It will enhance understanding of and compliance with important shipping and maritime laws. This makes no substantive change in the law. It simply provides clarity and reorganization. I urge its passage.

Madam Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1442, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

EXPRESSING SENSE OF HOUSE THAT NINTH CIRCUIT COURT OF APPEALS INFRINGED ON PARENTAL RIGHTS

Mr. SENSENBRENNER. Madam Speaker, I move to suspend the rules and agree to the resolution (H. Res. 547) expressing the sense of the House of Representatives that the United States Court of Appeals for the Ninth Circuit deplorably infringed on parental rights in Fields v. Palmdale School District.

The Clerk read as follows:

H. RES. 547

Whereas the Palmdale School District sent parents of elementary school students at Mesquite Elementary School in Palmdale, California a letter requesting consent to give a psychological assessment questionnaire to their first, third, and fifth grade students;

Whereas without the informed consent of their parents, the young students were instead administered a questionnaire that contained sexually explicit and developmentally inappropriate questions;

Whereas seven parents subsequently filed a complaint against the Palmdale School District in a Federal district court;

Whereas on November 2, 2005, a 3-judge panel of the Ninth Circuit Court of Appeals affirmed the decision of the United States District Court for the Central District of California in the case (Fields v. Palmdale School District) and held that parents ''have no constitutional right . . . to prevent a public school from providing its students with whatever information it wishes to provide, sexual or otherwise, when and as the school determines that it is appropriate to do so'';

Whereas the Ninth Circuit stated, ''once parents make the choice as to which school their children will attend, their fundamental right to control the education of their children is, at the least, substantially diminished'';

Whereas in Meyer v. Nebraska, 262 U.S. 390, 401 (1923), the Supreme Court recognized that the liberty guaranteed by the 14th amendment to the Constitution encompasses ''the power of parents to control the education of their [children]'';

Whereas the Supreme Court in Pierce v. Society of Sisters, 268 U.S. 510, 534–35 (1925), highlighted the Meyer doctrine that parents and guardians have the liberty ''to direct the upbringing and education of children under control'' and emphasized that ''[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations'';

Whereas in Wisconsin v. Yoder, 406 U.S. 205, 232–33 (1972), the Supreme Court acknowledged that ''[t]he history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition. . . . The duty to prepare the child for 'additional obligations', referred to by the Court [in Pierce] must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship'';

Whereas a plurality of the Supreme Court has stated, ''it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children'' (Troxel v. Granville, 530 U.S. 57, 66 (2000) (plurality opinion));

Whereas the Ninth Circuit's decision in Fields v. Palmdale School District presupposes that ''parents make the choice as to which school their children will attend'' when, in fact, many parents do not have such a choice;

Whereas the decision in Fields establishes a dangerous precedent for limiting parental involvement in the public education of their children; and

Whereas the rights of parents ought to be strengthened whenever possible as they are the cornerstone of American society: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) the fundamental right of parents to direct the education of their children is firmly grounded in the Nation's Constitution and traditions;

(2) the Ninth Circuit's ruling in Fields v. Palmdale School District undermines the fundamental right of parents to direct the upbringing of their children; and

(3) the United States Court of Appeals for the Ninth Circuit should agree to rehear the case en banc in order to reverse this constitutionally infirm ruling.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in strong support of House Resolution 547, expressing the sense of the House of Representatives that the United States Court of Appeals for the Ninth Circuit grossly infringed on established parental rights in Fields v. Palmdale School District.

In a decision that startled even veteran observers of the Ninth Circuit, a three-judge Ninth Circuit panel held in Fields v. Palmdale School District that parents ''have no constitutional right to prevent a public school from providing its students with whatever information it wishes to provide, sexual or otherwise, when and as the school determines that it is appropriate to do so.''

This case involved a survey given to 7- to 10-year-old children that contains, among others, 10 specific questions about sex. The Palmdale School District sent parents of first, third and fifth grade students at the Mesquite Elementary School in Palmdale, California, a letter requesting consent to administer a psychological assessment questionnaire to their children. The letter failed to inform the parents that some of the questions expressly involved sexual topics.

Seven parents, including one set of parents that did not return the consent form for their child, were still given the questionnaire, filed suit in Federal court against the school district upon learning from their children of the sexual nature of some of the questions.

A three-judge panel of the Ninth Circuit ruled against the parents concluding that ''once parents make the choice as to which school their children will attend, their fundamental right to control the education of their children is, at the least, substantially diminished.''

This decision presupposes that the school attended by the children is always a matter of parental choice. As we all know, many parents do not have such a choice, and they should not be forced to forfeit their parental rights when their children enter the schoolhouse gate. Moreover, the flawed logic of this decision has a disproportionate impact on parents who, for financial and other reasons, cannot send their children to schools more responsive to parental rights. Parents should not be required to involuntarily relinquish their right to direct the upbringing and control of their children.

The Ninth Circuit decision compels this outcome by divesting parents of their right to object to their children being exposed to sexual or other information in a school setting. This holding is inconsistent with constitutional precedent and established parental rights.

The Supreme Court recognized in Meyer v. Nebraska that the liberty guaranteed by the 14th amendment encompasses ''the power of parents to

control the education of their children.'' The court reaffirmed this fundamental right in Pierce v. Society of Sisters and emphasized that ''the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.''

According to the court in Wisconsin v. Yoder, this duty ''must be read to include the inculcation of moral standards, religious beliefs and elements of good citizenship.''

Despite the fact that the due process clause of the 14th amendment protects the fundamental right of parents to make decisions concerning the care, custody and control of their children, the Ninth Circuit concluded ''that parents are possessed of no constitutional right to prevent the public schools from providing information on sex to their students in any forum or manner they select.''

This decision sets a dangerous precedent, threatening the parental rights that are firmly grounded in our Nation's Constitution and traditions. I urge my colleagues to affirm their support for parental rights by supporting passage of this resolution.

Madam Speaker, I reserve the balance of my time.

Mr. BERMAN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I am strongly opposed to H. Res. 547. I consider it simply a politically inspired continuation of court-bashing featuring a hypocritical change in thinking that all of a sudden wants to read into the Constitution rights that no court and no student of the Constitution has ever before found.

But I also believe that the conduct that was the subject of this case was offensive, foolish, inappropriate and perhaps even injurious and harmful to the students.

□ 1130

What is going on in the Palmdale Unified School District? What allows a group of educators to allow a survey that asks questions like this to people as young as in the first grade? But none of that speaks to the merits of this particular resolution. It was introduced only last week. The case only came down 2 weeks ago or so. Its merits have never been considered in the committee process. This resolution simply serves as an attack on ''the nature of the Ninth Circuit.'' It is consistent with the agenda of the majority. I am surprised they did not put the resolution into the reconciliation bill. It should not be supported by this House.

The resolution expresses the sense of the House that parents have a fundamental right to direct their children's education. No argument there. And the Ninth Circuit decision has done precisely that. The Ninth Circuit decision cites the Supreme Court decisions that the gentleman, the chairman of the committee, cited that have held it is a fundamental right protected by the due process clause that parents have the right to make decisions concerning the care, custody and control of their children. The Ninth Circuit decision refers to the limitations placed on that right imposed by the First and Sixth Circuits, the circuits which first posed the supposed threat to parental control.

It was, after all, the First Circuit that held that ''this freedom,'' that is the right, the freedom to control decisions concerning the care, custody and control of their children, ''this freedom does not encompass,'' does not encompass, the First Circuit, not Ninth Circuit, ''a fundamental right to dictate the curriculum at the public schools to which they have chosen to send their children.'' Furthermore, the First Circuit says, ''we cannot see that the Constitution imposes such a burden on State educational systems and, accordingly, find that rights of parents do not encompass a broadbased right to restrict the flow of information in the public schools.

And it was the Sixth Circuit's opinion that the Ninth Circuit adopted here which stated, ''while parents may have a fundamental right to decide whether they send their child to public school, they do not have the fundamental right generally to direct how a public school teaches their child.''

But there is no resolution criticizing the First and Sixth Circuit Court decisions which the author of the resolution should be directing his disapproval towards. The resolution instructs the Court to rehear this case en banc and reverse its decision. This skirts the already available processes for addressing a questionable decision, an en banc petition or an appeal to the Supreme Court. If those in this body want to ensure a broad right for parent-influenced education, opportunities exist for them to legislate this right.

The difference between a foolish, unwise and perhaps harmful decision by a local school district and arguing that that creates and violates some fundamental constitutional right is an incredible leap of faith. This is a school district in California. Why are the parents not at the School Board asking the principal of the school that allowed this graduate student to conduct this survey to be fired? Why are the parents not urging that, if the superintendent does not do that, the School Board fire the superintendent? Why are the parents not organizing the recall of the school board members if the school board members are allowing this kind of a thing to go on? Why are the parents not going to Sacramento and asking the State legislature to prohibit these kinds of surveys of first, third and fifth grade students which get into personal questions that are not appropriately asked in that point of view?

There are so many appropriate avenues open for parents to redress the damage here. And that is all this is. It is a court case after the fact seeking to create, out of whole cloth, a refinement of a constitutional right that no court has ever applied.

It is a small irony that the proponents of this resolution are requesting that the courts engage in a level of judicial activism in order to support their political views. The law should be ideologically neutral, and therefore, the sponsor should be pleased that the Court specifically refused to express a view on the wisdom of posing some of these questions asked or of condoning an inquiry into some of the particular areas surveyed by the school district. The Court did not affirm. It specifically refused to affirm the wisdom and judgment of the people who distributed and prepared and implemented this particular survey.

The ultimate paradox for the cosponsors, though, is the lack of consistency in bringing this resolution forward. When requesting that the right of privacy protects parents' decision making, they must rely on the same decisions which they abhor and claim to be the result of judicial activism, rights that are inferred in decisions such as Roe v. Wade and Lawrence v. Texas, the penumbra, the unstated, unenumerated rights in the Constitution that some courts have found. Any strict analysis of the text of the Constitution cannot lead you to the conclusion that a fundamental constitutional right was violated here for which these parents are entitled to constitutional redress.

Could the proponents of this resolution actually be requesting that the Court read into the Constitution a right not explicitly enumerated in it? Do the sponsors want the Ninth Circuit to legislate from the bench? That does not sound like strict constructionism to me. So I think the issue is a serious one. The Constitution is not the place to go for recourse to rectifying the decisions that were made. There are many, many other alternatives, even tort actions dealing with the harm that was caused to the students who were subject to the survey; but not creating a new refinement of the constitutional right that two circuit courts have already said does not exist and, instead, as part of the agenda for bashing the Ninth Circuit and seeking to use the reconciliation bill to split the Ninth Circuit, provide us with one more chance to engage in that kind of game playing.

Madam Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield 5 minutes to the principal author of the resolution, the gentleman from Pennsylvania (Mr. MURPHY).

Mr. MURPHY. Madam Speaker, let me start off by saying that as a psychologist who primarily specializes in issues dealing with children and families, when I heard the conclusions on this case, what leapt out at me was how this decision by the Ninth Circuit

Court really went far beyond the actual issues in this case, and I had great concerns. Let me walk us through a couple of points here.

In 2002, when the first claim was filed in Fields v. Palmdale School District, it came from a parental consent letter that was sent to parents from the Palmdale School District asking parents to sign this informed consent letter. The informed consent letter did talk about there would be three, 20-minute self-report measures given to the children one day. They said it was confidential and did say that the questions may make my child feel uncomfortable, and if this occurs, the researcher in this case would help the parents locate a therapist for some psychological help if necessary.

What the parents were not told was that it would contain several questions having to do with sexuality, which were given to first, third and fifth graders. Questions such as touching my private parts too much, thinking about having sex, thinking about touching other people's private parts, thinking about sex when I do not want to, washing myself because I feel dirty inside, and the list goes on.

The School District subsequently has claimed that they did not know those questions were going to be given to the children. In fact, they state that they saw a different questionnaire and something was swapped on them.

Here is what comes out of this case; that indeed, what may have occurred is this was not an informed consent letter given to parents, and even for parents who did not sign, for whatever reason, this lack of informed consent letter, their children were still administered this questionnaire.

This is not how psychological research is to be conducted, Madam Speaker. The standard of ethics for psychologists and for research is a letter of informed consent given to parents must clearly inform parents what is happening. The School District involved should have been clearly told what was happening in this case, too. And then what occurred here is neither.

But what is amazing here where this case in the courts could have reaffirmed parents' rights to informed consent before their children were used in psychological research; instead, the Ninth Circuit Court pulled out an overreaching conclusion out of the stratosphere that declared parenting is unconstitutional. They declared parents have no right to protect their children's privacy when they said, ''we hold that there is no freestanding fundamental right of parents to control the upbringing of their children by introducing them to matters of and relating to sex in accordance with their personal and religious values and beliefs.'' They go on to say that we do not quarrel with parents' rights to inform and advise their children about the subject of sex as they see fit.

But that is not what this case was about. It was a lack of informed consent. And parents were protesting this. And from the standpoint of psychologists, the question is whether or not issues like that were really appropriate to give to first, third and fifth graders. Certainly, when I have done psychological evaluations for children that we have concerns that they have been sexually abused, the psychologist involved is very careful; the law enforcement people are very careful what questions they ask the child because they are concerned whether the questions themselves cause problems for the children. And when that happens, one has to back off and not ask those questions anymore.

In a case like this, first, third and fifth graders overall were asked those questions when there was not even suspicion of some problems. But when the Court continues to say there is no fundamental right of parents to be the exclusive provider of information regarding sexual matters for their children, either independent of their right to direct the upbringing and education of the children who are encompassed by it, I wonder where these conclusions come from. And I believe it is fully within the jurisdiction of Congress to raise questions and follow the procedures and ask the courts to review this again.

Certainly, as the distinguished gentleman from California was saying, I do not know why or if the parents asked for firing of the superintendent. I do not know what complaints they may have lodged with Sacramento or with school boards in these cases, and I cannot speak to those issues. What we are speaking to here is a case in which a court, I believe, far overreached the issues involved with the case and declared parenting unconstitutional.

I believe, and I hope Members will support this bill, because we are saying parents indeed do have a right to fully disclose informed consent when their children are asked to do anything. Certainly, parents may not be involved with every step of everything that is said at every level on every day on every moment of every part of a curriculum in school, and I do not think that is what the parents are asking in this case. But they are saying, when a psychological survey or questionnaire is administered to their children, they darn well ought to have the right to know what is in there, especially when the survey itself says it may cause trauma to children.

So I am asking my colleagues to support this resolution and ask the Ninth Circuit Court to review this case again.

Mr. BERMAN. Madam Speaker, I yield such time as he may consume to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Madam Speaker, here they go again. Once again, the Republican Party is demanding of the courts that they be more activist. Earlier this year, we passed a resolution denouncing the Supreme Court in the case of eminent domain for not overturning decisions of local and State elected officials in Connecticut. Today, we are asked to denounce the Ninth Circuit Court for not overturning the actions of a local School Board. And here is the nub of the Court's holding, quote, ''although we reached our conclusions with little difficulty and firmly endorse the school districts' authority to conduct a survey for the purposes involved here, we reiterate that we express no view on the wisdom of posing some of the particular questions asked or of conducting an inquiry into the particular areas surveyed by the school district.'' And here is what the majority is apparently upset about. That determination is properly left to the school authorities.

In other words, where is activism when you need it, Madam Speaker? Why do we not have a Supreme Court tell the people in Connecticut, elected officials, you may not do this economic development the way you want? We, the unelected Supreme Court, will overturn you. Here, without a specific textual phrase in the Constitution, even like taking of property, we say to the Ninth Circuit, how dare you say this is up to the school board?

The gentleman from Pennsylvania made some arguments that were very plausible to me about the lack of sense for some of these questions. He was critical. He said, you should not ask these of first, third and fifth graders. But it is not up to the courts to decide what is good or bad psychology. That is up to the school district.

And again, let us be very clear. This is the second time in a couple of months the majority has complained that the courts, the Federal courts, have not cancelled out the actions of local elected officials and State elected officials. Now, that is only a problem for this point.

□ 1145

What we ought to have is honesty in attacking the judiciary. Truth in demagoguery.

The point is that when you say you are opposed to the courts because they are activists and because lifetime-appointed judges are overturning elected officials, that ought to be what you mean. If you mean you do not like the particular outcome, say so. It is perfectly legitimate to be result-oriented, and lots of us are.

The problem here is the lack of intellectual honesty. Clearly, people are not opposed to judicial activism. In the case of eminent domain, in the case of this situation here, they are opposed to the lack of judicial activism.

Now, I also wonder how far that extends, because on Monday, the Supreme Court decided a far more important case, I believe, to the parents involved regarding their rights vis-a-vis their children. By a 6–2 vote, the Supreme Court said that the burden of proof is on the parents of a child with a disability. If the parents disagree

with what the school has proposed to educate a child with a disability, they, the individual parent, has the burden of proof in court in overturning what the school board has decided.

Now, I have to tell my colleagues this: I think if you are the parent of a disabled child, getting that child the proper educational structure is more important than whether or not she has to do a sex survey. You might dislike the sex survey, but I would think to most parents, getting the right education for your child is more important. But the Supreme Court said, no, the burden of proof is on you, the parent. You, the parent, have the burden of proof with regard to your child's education.

Where are the assertions of the absolute right of the parents? Why do the parents not have the kind of rights you are claiming? Was that making parenting unconstitutional? Did Justice Scalia and Justice Thomas who are in the majority make parenting unconstitutional when they said you, the parent, have the burden of proof if you want to improve the educational structure of your children?

In other words, what the majority says is when we do not like a decision, we will criticize the court. That is fine, that is free speech, as long as you do not get into PATRIOT Act situations. But why disguise what you are saying? If you really do not like the result, say you do not like the result. Why all these complaints about activism when what we have here is again a complaint about the absence of activism?

So I hope going forward, we will have honest debates about what the courts do and do not do, and we will stop pretending that we are upset about activism when what you are really upset about is judicial pacifism. You want the Ninth Circuit to overturn the Palmdale School Board. Well, why does a Member of Congress not do something about that with the school board of Palmdale? You are upset because the Supreme Court did not overturn the elected officials in Connecticut. Let us have some honesty in this regard.

Mr. BERMAN. Madam Speaker, if the gentleman will yield, the other irony is, here we bash the court for not creating a new constitutional right, never before proclaimed in the context of this resolution, in order to overturn a local school decision and, at the same time, we whip bills through here left and right stripping the courts of jurisdiction to decide the cases.

Mr. FRANK of Massachusetts. Madam Speaker, let me ask the gentleman, because I know he has studied this well. I have read the opinion. I have not read the pleading. I do not know what specific phrase in the Constitution they pointed to, but I wonder from an originalist standpoint, did John Adams and James Madison want the Supreme Court to have the right, did they say that there was this absolute parental right? I would ask the gentleman, is this one of those nasty things we find lurking in that penumbra, which is such an unpleasant word?

Mr. BERMAN. Madam Speaker, I say, where is the Federalist Society when we need them? All of a sudden, everything flips around.

Mr. FRANK of Massachusetts. Well, I cannot answer as to where the whole Federalist Society is, but I can tell the gentleman where at least one of the leaders of the Federalist Society who introduced my Governor the other day, I know where he was. He was busy making jokes about two Senators in the Ku Klux Klan, which he seemed to think, as did others, was riotously funny.

Mr. BERMAN. Madam Speaker, if the gentleman will yield, that right is very specifically protected in the Constitution.

Mr. FRANK of Massachusetts. Absolutely. Let us just be very clear. I, from what I have read, would not have voted to issue that survey. I think it was a mistake. But I hope the majority is not telling us that it is the role of the circuit courts of appeals to second-guess the psychological judgments of the school boards.

Again, you may disagree even with what the court said in terms of the final decision, but let us be intellectually honest. It is a lack of activism. In the eminent domain case here, it is a lack of activism. It is a complaint by the majority that the courts have upheld decisions by local officials that the majority does not like. They have a right to that view; they just do not have a right to disguise it.

I thank the gentleman for yielding.

Mr. BERMAN. Madam Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield myself 30 seconds.

Madam Speaker, my two friends on the other side of the aisle are obfuscating the real issue that is involved. I do not think John Adams and James Madison ever thought of first, third, and fifth graders being asked the questions that were recited by the gentleman from Pennsylvania (Mr. MURPHY), the author of the resolution. The question here is whether this decision is right or wrong. It is wrong, and that is why the resolution ought to be passed.

Madam Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Madam Speaker, I thank the gentleman from Pennsylvania (Mr. MURPHY) for introducing this important legislation.

In its decision, the Ninth Circuit said: ''We hold that parents have no due process or privacy right to override the determinations of public schools as to the information to which their children will be exposed while enrolled as students.''

Parents, not schools, certainly not the courts, hold the primary responsibility for educating their children, especially when it comes to more sensitive subject matters like sexual, moral, and religious instruction. But the Ninth Circuit, the same court that ruled the phrase ''under God'' in the Pledge is unconstitutional, would strip parents of this fundamental role in their children's lives.

Make no mistake: if this ruling stands, not only will parents lose the right to choose what lessons their children will learn; it will not be long before they will not even be allowed to know what is being taught in the classroom.

I rise in strong support of this resolution and urge its adoption.

Mr. SENSENBRENNER. Madam Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Madam Speaker, I have great respect for my friend across the aisle, the gentleman from California (Mr. BERMAN), as we have served on Judiciary together. But when the question was asked or put to us in terms of us wanting the courts to create a new right for parents, I would submit to my colleagues, never before was it necessary, because nobody had the audacity to try to say that parents would not have a right to a say in how their children were governed.

I was in an exchange program in the Soviet Union back in 1973 and visited a day care center, and I was appalled that the parents were not allowed any say whatsoever in how the children were raised, what they were taught. That was exclusively the right of the State. I thanked God that day that that was not the way it was in the United States.

Now, 32 years later, we find ourselves at a point that some think it is evolving for the State to take away the parents' right to have a say in how their children are taught and what they are taught and what goes on in the school. It is not a time that I can thank God that we evolved to this point.

I support the resolution. I think it is a great resolution; and coming from the gentleman that is proposing it, it is even more important and appropriate. I support the resolution.

Mr. BERMAN. Madam Speaker, I yield myself the remaining time.

Madam Speaker, a few points. I think the gentleman from Pennsylvania made compelling points about the stupidity and the danger of this kind of a survey. I have no argument whatsoever about the right of parents to have an important say in the education of their children.

The most fascinating thing about this argument is my friend from Texas (Mr. GOHMERT) and the chairman of the committee are making a wonderful case for why you need to evolve notions of constitutional protections rather than be stuck with what the Framers were thinking at that time, because this was not happening at that time and the Framers were not thinking of it at the time.

What I am challenging is this notion that the answer to this particular outrage is a constitutional case in the

Federal courts. I repeat again: Where was the principal? Where was the superintendent? Where was the school board?

There are all kinds of ways in which a citizenry can take those issues into their hands. They could pass a State law prohibiting these kinds of surveys getting into these kinds of questions from being asked of first, third, and fifth graders. In fact, given this Congress's proclivities, we could just preempt local education and, at a Federal level, prohibit any local school district from doing this. This would not be so inconsistent with what we are doing in a number of other areas.

There are many courses here. The only issue is here is a Ninth Circuit that carefully follows, affirms the fundamental right of parents, acknowledges the limitations on that right imposed by the First and Sixth Circuits, specifically refuses to affirm the wisdom of a conduct of the survey that is the subject of a litigation, and then says we cannot find that we can essentially articulate a constitutional right here that gives people that kind of constitutional relief. Pursue all your other avenues for this ridiculous conduct. Make the people accountable. But it does not have to come from the Bill of Rights and the 14th amendment to the Constitution.

We cannot solve all of society's problems and all of government's overstepping and improper conduct by virtue of constitutional law. I think the conservative position on this issue should be to oppose this kind of a resolution and oppose the logic that goes into thinking like this and tell people that there are many problems that have to be solved in ways other than simply trying to establish you had a constitutional right to be protected from this kind of wrong activity.

Madam Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield the balance of the time to the author, the gentleman from Pennsylvania (Mr. MURPHY).

Mr. MURPHY. Madam Speaker, the gentleman from California made a good point, that there are some dangers involved here. He said that they could have passed a State law in California. Indeed, they could have and should have. The school board could have also acted upon this, as I assume they may well have done so. And, indeed, much of this we would like to uphold is up to the States to take care of matters of education. I agree with him on those points.

Unfortunately, the Ninth Circuit Court did not agree. The Ninth Circuit Court instead decided to overstep, I believe, what are the boundaries of what a Federal court should be doing, and step in.

I believe it is incongruous that government enforces children's attendance in public school, but then the Federal courts say that parents have no right to complain about what children are exposed to while there.

Let me refer back to the conclusion made by the judge in this case. He said, ''We hold that parents have no due process or privacy right to override the determination of the public schools as to the information to which their children will be exposed while enrolled as students.''

Where did that come from? We are talking about children being asked questions of a sexual nature that, as a superintendent of the school has said, the school was not shown this questionnaire, it was not disclosed to the parents. Indeed, if the judge of the Ninth Circuit Court did what the gentleman from California said he ought to do, to simply say, this is not a Federal matter, this should go back to the States, they should deal with this in Sacramento, in the Palmdale School District, and they should make sure that they reaffirm the rights of parents to fully disclose information when they are signing consent forms.

This resolution also is not meant to be critical of legitimate psychological pursuits and research. Psychologists have a code of ethics they are to adhere to when they are undergoing research. Indeed, everyone in the mental health and medical fields have to have their research go in front of a human subjects committee to have their concept letters approved. This is not an attempt to bash the mental health community. In fact, what I am trying to do is uphold the standards of the mental health community, which I believe have been usurped in this case.

□ 1200

These were not children referred for legitimate psychological testing because there was suspicion of behavioral problems. These were everyday kids given a questionnaire, and everyday parents who were not told what was in that questionnaire. Indeed, what I say, as this resolution passed by the House declares, the fundamental right of parents to direct the education of their children is firmly grounded in the Nation's Constitution and traditions.

The Ninth Circuit Court undermines such a right, and the court should rehear the case and reverse the decision. I believe the Court's decision overreached the issues in the case; they overreached their conclusions, and it needs to be overturned.

When it comes to what schools are asking very young children about sex or about any matters of privacy, protecting the 14th amendment, the Ninth Circuit Court decided not only do parents not have the right to say no, they do not even have a right to know what is being asked.

On behalf of every parent in America, Congress calls upon the courts to correct this deplorable injustice. That is why, in this resolution, we are asking the courts to uphold the rights of parents, to uphold the rights of privacy, what the parents have about their children and certainly to overturn the decision that says parenting is unconstitutional.

I ask my colleagues to support this resolution, and I ask parents to also consider the conclusion that, if it stands, what impact this Ninth Circuit Court decision could have with regard to parents' rights to ever speak up again and challenge anything else within the school district.

Mr. LEVIN. Mr. Speaker, I will vote against House Resolution 547 today, but I want to clearly state my reasons for doing so. In particular, I want the record to show that I strongly disagree with the highly misguided decision of the Palmdale School District in California to administer a questionnaire to young children that included totally inappropriate questions concerning sex. If there was a law that blocked elected school boards from making boneheaded decisions, the action of the Palmdale School District would fall squarely within its purview.

But that is not what the Chairman of the Judiciary Committee has brought before us today. Instead, the resolution condemns the 9th Circuit Court of Appeals for not finding a law or constitutional principle to override the decisions of democratically-elected school board members. My friends on the other side of the aisle often rail against ''activist judges'' and complain when, in their opinion, judges make law from the bench. As has been noted by others, it appears that in this case the Majority objects to the fact that the 9th Circuit judges were not activist enough.

There are many avenues for parents who disagree with any decision made by their local school board. In this particular case, the public outcry against the Palmdale School District questionnaire resulted in the survey being promptly discontinued. If parents wish further redress, they may also vote the school board out of office.

For these reasons, I will vote against this resolution today.

Ms. DEGETTE. Mr. Speaker, I rise in opposition to H. Res. 547.

Let me be very clear. In no way do I endorse the actions of the Palmdale School District at issue in Fields v. Palmdale School District.

The problem is that H. Res. 547 goes beyond passing judgment on the actions of the School District and directs the United States Court of Appeals for the Ninth Circuit how to do its job. Under the Constitution, I do not feel it is appropriate for Congress to infringe on the rights and duties of the federal judiciary, a fellow independent and co-equal branch of government.

Additionally, I am confident our courts are fully capable of adjudicating matters without congressional input. Simply because I may disagree with a particular ruling does not change my otherwise strong faith in the men and women serving on our nation's federal and state courts.

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, I couldn't agree more with my colleagues and the parents whose children were subject to a flawed, distasteful survey in Palmdale, California. The survey was clearly improper. However, I disagree that we should condemn the decision of the 9th Circuit Court. We should hold the Palmdale school district responsible for the content and the manner in which the survey was conducted.

School districts should and must ensure that parents are fully informed about all survey topics. In addition, school districts must guarantee that parents consent to their children's participation in a survey.

I will be voting no on H. Res. 547 because I believe it misses the mark—the Palmdale school district should be condemned for conducting the survey as opposed to condemning the 9th Circuit for their interpretation of the Constitution.

Mr. HOLT. Mr. Speaker, while I agree with the position in this resolution that parents do have responsibility for their children's upbringing and a school district cannot supplant those rights, I must oppose this resolution.

I oppose this resolution because it declares that the court should rehear the case in order to reverse its decision. It should not be the role of the legislative branch to dictate to the court system how it should rule. The founding fathers created three coequal branches of government for good reason. It is for this constitutional principle that I must oppose H. Res. 547.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GUTKNECHT). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and agree to the resolution, H. Res. 547.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

NATIVE AMERICAN TECHNICAL CORRECTIONS ACT OF 2005

Mr. RENZI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3351) to make technical corrections to laws relating to Native Americans, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3351

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Native American Technical Corrections Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

SEC. 101. INDIAN FINANCING ACT AMENDMENTS.

(a) LOAN GUARANTIES AND INSURANCE.—Section 201 of the Indian Financing Act of 1974 (25 U.S.C. 1481) is amended—

(1) by striking ''the Secretary is authorized (a) to guarantee'' and inserting ''the Secretary may—

''(1) guarantee'';

(2) by striking ''Indians; and (b) in lieu of such guaranty, to insure'' and inserting ''Indians; or

''(2) to insure'';

(3) by striking ''SEC. 201. In order'' and inserting the following:

''SEC. 201. LOAN GUARANTIES AND INSURANCE.

''(a) IN GENERAL.—In order''; and

(4) by adding at the end the following:

''(b) ELIGIBLE BORROWERS.—The Secretary may guarantee or insure loans under subsection (a) to both for-profit and nonprofit borrowers.''.

(b) LOAN APPROVAL.—Section 204 of the Indian Financing Act of 1974 (25 U.S.C. 1484) is amended by striking ''SEC. 204.'' and inserting the following:

''SEC. 204. LOAN APPROVAL.''.

(c) SALE OR ASSIGNMENT OF LOANS AND UNDERLYING SECURITY.—Section 205 of the Indian Financing Act of 1974 (25 U.S.C. 1485) is amended—

(1) by striking ''SEC. 205.'' and all that follows through subsection (b) and inserting the following:

''SEC. 205. SALE OR ASSIGNMENT OF LOANS AND UNDERLYING SECURITY.

''(a) IN GENERAL.—All or any portion of a loan guaranteed or insured under this title, including the security given for the loan—

''(1) may be transferred by the lender by sale or assignment to any person; and

''(2) may be retransferred by the transferee.

''(b) TRANSFERS OF LOANS.—With respect to a transfer described in subsection (a)—

''(1) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (h); and

''(2) the transferee shall give notice of the transfer to the Secretary.'';

(2) by striking subsection (c);

(3) by redesignating subsections (d), (e), (f), (g), (h), and (i) as subsections (c), (d), (e), (f), (g), and (h), respectively;

(4) in paragraph (2) of subsection (c) (as redesignated by paragraph (3))—

(A) by striking ''VALIDITY.—'' and all that follows through ''subparagraph (B),'' and inserting ''VALIDITY.—Except as provided by regulations in effect on the date on which a loan is made,''; and

(B) by striking ''incontestable'' and all that follows and inserting ''incontestable.'';

(5) in subsection (e) (as redesignated by paragraph (3))—

(A) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary''; and

(B) by adding at the end the following:

''(2) COMPENSATION OF FISCAL TRANSFER AGENT.—A fiscal transfer agent designated under subsection (f) may be compensated through any of the fees assessed under this section and any interest earned on any funds or fees collected by the fiscal transfer agent while the funds or fees are in the control of the fiscal transfer agent and before the time at which the fiscal transfer agent is contractually required to transfer such funds to the Secretary or to transferees or other holders.''; and

(6) in subsection (f) (as redesignated by paragraph (3))—

(A) by striking ''subsection (i)'' and inserting ''subsection (h)''; and

(B) in paragraph (2)(B), by striking '', and issuance of acknowledgments,''.

(d) LOANS INELIGIBLE FOR GUARANTY OR INSURANCE.—Section 206 of the Indian Financing Act of 1974 (25 U.S.C. 1486) is amended by striking ''Internal Revenue Code of 1954, as amended,'' and inserting ''Internal Revenue Code of 1986 (except loans made by certified Community Development Finance Institutions)''.

(e) AGGREGATE LOANS OR SURETY BONDS LIMITATION.—Section 217(b) of the Indian Financing Act of 1974 (25 U.S.C. 1497(b)) is amended by striking ''$500,000,000'' and inserting ''$1,500,000,000''.

SEC. 102. GILA RIVER INDIAN COMMUNITY BINDING ARBITRATION.

(a) AMENDMENTS.—Subsection (f) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(f)), is amended—

(1) in the first sentence, by striking ''Any lease'' and all that follows through ''affecting land'' and inserting ''Any contract, including a lease, affecting land''; and

(2) in the second sentence, by striking ''Such leases or contracts entered into pursuant to such Acts'' and inserting ''Such contracts''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in Public Law 107–159 (116 Stat. 122).

SEC. 103. ALASKA NATIVE CLAIMS SETTLEMENT ACT VOTING STANDARDS AMENDMENT.

(a) IN GENERAL.—Subsection (d)(3) of section 36 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629b) (as amended by subsection (b)) is amended—

(1) by inserting after ''of this section'' the following: ''or an amendment to the articles of incorporation described in section 7(g)(1)(B)''; and

(2) by inserting ''or amendment'' after ''meeting relating to such resolution'' each place it appears.

(b) TECHNICAL CORRECTIONS.—

(1)(A) Section 337(a) of the Department of the Interior and Related Agencies Appropriations Act, 2003 (Division F of Public Law 108–7; 117 Stat. 278; February 20, 2003) is amended—

(i) in the matter preceding paragraph (1), by striking ''Section 1629b of title 43, United States Code,'' and inserting ''Section 36 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629b)'';

(ii) in paragraph (2), by striking ''by creating the following new subsection:'' and inserting ''in subsection (d), by adding at the end the following:''; and

(iii) in paragraph (3), by striking ''by creating the following new subsection:'' and inserting ''by adding at the end the following:''.

(B) Section 36 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629b) is amended—

(i) in subsection (d)(3), by striking ''(d)''; and

(ii) in subsection (f), by striking ''section 1629e of this title'' and inserting ''section 39''.

(2)(A) Section 337(b) of the Department of the Interior and Related Agencies Appropriations Act, 2003 (Division F of Public Law 108–7; 117 Stat. 278; February 20, 2003) is amended