## SENATE RESOLUTION 4—EXPRESSING THE SENSE OF THE SENATE THAT THE SUPREME COURT OF THE UNITED STATES ERRONEOUSLY DECIDED KENNEDY V. LOUISIANA, NO. 07–343 (2008), AND THAT THE EIGHTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES ALLOWS THE IMPOSITION OF THE DEATH PENALTY FOR THE RAPE OF A CHILD

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

S. RES. 4

Whereas 1 out of 3 sexual assault victims is under 12 years of age;

Whereas raping a child is a particularly depraved, perverted, and heinous act;

Whereas child rape is among the most morally reprehensible crimes;

Whereas child rape is a gross defilement of innocence that should be severely punished;

Whereas a raped child suffers immeasurable physical, psychological, and emotional harm from which the child may never recover;

Whereas the Federal Government and State governments have a right and a duty to combat, prevent, and punish child rape;

Whereas the popularly elected representatives of Louisiana modified the rape laws of the State in 1995, making the aggravated rape of a child 11 years of age or younger punishable by death, life imprisonment without parole, probation, or suspension of sentence, as determined by a jury;

Whereas on March 2, 1998, Patrick Kennedy, a resident of Louisiana, brutally raped his 8-year-old stepdaughter;

Whereas the injuries inflicted on the child victim by her stepfather were described by an expert in pediatric forensic medicine as ''the most severe he had seen from a sexual assault'';

Whereas the cataclysmic injuries to her 8-year-old body required emergency surgery;

Whereas a jury of 12 Louisiana citizens convicted Patrick Kennedy of this depraved crime, and unanimously sentenced him to death;

Whereas the Supreme Court of Louisiana upheld this sentence, holding that the death penalty was not an excessive punishment for Kennedy's crime;

Whereas the Supreme Court of Louisiana relied on precedent interpreting the eighth amendment to the Constitution of the United States;

Whereas on June 25, 2008, the Supreme Court of the United States held in Kennedy v. Louisiana, No. 07–343 (2008), that executing Patrick Kennedy for the rape of his stepdaughter would be ''cruel and unusual punishment'';

Whereas the Supreme Court, in the 5–4 decision, overturned the judgment of Louisiana's elected officials, the citizens who sat on the jury, and the Louisiana Supreme Court;

Whereas this decision marked the first time that the Supreme Court held that the death penalty for child rape was unconstitutional;

Whereas, as Justice Alito observed in his dissent, the opinion of the majority was so broad that it precludes the Federal Government and State governments from authorizing the death penalty for child rape ''no matter how young the child, no matter how many times the child is raped, no matter how many children the perpetrator rapes, no matter how sadistic the crime, no matter how much physical or psychological trauma is inflicted, and no matter how heinous the perpetrator's prior criminal record may be'';

Whereas, in the United States, the people, not the Government, are sovereign;

Whereas the Constitution of the United States is supreme and deserving of the people's allegiance;

Whereas the framers of the eighth amendment did not intend to prohibit the death penalty for child rape;

Whereas the imposition of the death penalty for child rape has never been within the plain and ordinary meaning of ''cruel and unusual punishment'', neither now nor at the adoption of the eighth amendment;

Whereas instead of construing the eighth amendment's prohibition of ''cruel and unusual punishment'' according to its original meaning or its plain and ordinary meaning, the Court followed a two-step approach of first attempting to discern a national consensus regarding the appropriateness of the death penalty for child rape and then applying the Justices' own independent judgment in light of their interpretation of a national consensus and evolving standards of decency;

Whereas, to the extent that a national consensus is relevant to the meaning of the eighth amendment, there is national consensus in favor of the death penalty for child rape, as evidenced by the adoption of that penalty by the elected branches of the Federal Government only 2 years ago, and by the swift denunciations of the Kennedy v. Louisiana decision by the presumptive nominees for President of both major political parties;

Whereas the evolving standards of decency is an arbitrary construct without foundation in the Constitution of the United States and should have no bearing on Justices who are bound to interpret the laws of the United States;

Whereas the standards of decency in the United States have evolved toward approval of the death penalty for child rape, as evidenced by 6 States and the Federal Government adopting that penalty in the past 13 years;

Whereas the Supreme Court rendered its opinion without knowledge of a Federal law authorizing the death penalty for child rapists;

Whereas the Federal law authorizing the death penalty for child rapists was passed by Congress and signed by the President 2 years before the Supreme Court released the decision; and

Whereas the Court presumably would have deferred to the elected branches of government in determining a national consensus regarding evolving standards of decency had it been aware of the Federal law authorizing the death penalty for child rapists at the time that it made the decision: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) the depraved conduct of the worst child rapists merits the death penalty;

(2) standards of decency allow, and sometimes compel, the death penalty for child rape;

(3) the eighth amendment to the Constitution of the United States allows the death penalty for the rape of a child where the crime did not result, and was not intended to result, in death of the victim;

(4) the Louisiana statute making child rape punishable by death is constitutional;

(5) the Supreme Court of the United States should grant any petition for rehearing of Kennedy v. Louisiana, No. 07–343 (2008), because the case was decided under a mistaken view of Federal law;

(6) the portions of the Kennedy v. Louisiana decision regarding the national consensus or evolving standards of decency with respect to the imposition of the death penalty for child rape should not be viewed by Federal or State courts as binding precedent, because the Supreme Court was operating under a mistaken view of Federal law; and

(7) the Supreme Court should reverse its decision in Kennedy v. Louisiana, on rehearing or in a future case, because the decision was supported by neither commonly held beliefs about ''cruel and unusual punishment'', nor by the text, structure, or history of the Constitution of the United States.

## SENATE RESOLUTION 5—EXPRESSING THE SUPPORT FOR PRAYER AT SCHOOL BOARD MEETINGS

Mr. VITTER submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions.

S. RES. 5

Whereas the freedom to practice religion and to express religious thought is acknowledged to be a fundamental and unalienable right belonging to all individuals;

Whereas the United States was founded on the principle of freedom of religion and not freedom from religion;

Whereas the framers intended that the first amendment to the Constitution would prohibit the Federal Government from enacting any law that favors one religious denomination over another, not prohibit any mention of religion or reference to God in civic dialogue;

Whereas in 1983, the Supreme Court held in Marsh v. Chambers, 463 U.S. 783, that the practice of opening legislative sessions with prayer has become part of the fabric of our society and invoking divine guidance on a public body entrusted with making the laws is not a violation of the Establishment Clause of the first amendment, but rather is simply a tolerable acknowledgment of beliefs widely held among the people of the Nation;

Whereas voluntary prayer in elected bodies should not be limited to prayer in State legislatures and Congress;

Whereas school boards are deliberative bodies of adults similar to a legislature in that they are elected by the people, act in the public interest, and hold sessions that are open to the public for voluntary attendance; and

Whereas voluntary prayer by an elected body should be protected under law and encouraged in society because voluntary prayer has become a part of the fabric of our society, voluntary prayer acknowledges beliefs widely held among the people of the Nation, and the Supreme Court has held that it is not a violation of the Establishment Clause for a public body to invoke divine guidance: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes that prayer before school board meetings is a protected act in accordance with the fundamental principles upon which the Nation was founded; and

(2) expresses support for the practice of prayer at the beginning of school board meetings.

## SENATE RESOLUTION 6—EXPRESSING SOLIDARITY WITH ISRAEL IN ISRAEL'S DEFENSE AGAINST TERRORISM IN THE GAZA STRIP

Mr. VITTER submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 6

Whereas the state of Israel is the greatest ally of the United States in the Middle East;