

The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct . . .

Let me stop right there. The District, you will notice, is referred to here yet again not as a State but as, in the words of the amendment, "the seat of government." It continues:

A number of electors of President and Vice President equal to the whole number of senators and representatives in Congress to which the District would be entitled if it were a state . . .

The language here could not be more explicit: to which the District would be entitled, meaning of course that it is not entitled, and if it were a State, meaning, or course, that it is not a State.

Remember the words of article I, section 2:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States.

This an old debate. It is as old as the Constitution itself. The Framers were fully aware of the implications of article I, section 2 for the residents of the Federal district. Indeed, one of its original authors, Alexander Hamilton, tried but failed to include congressional representation for residents of the Capital city. The rejection of this proposal by the delegates of the Constitutional Convention clearly shows they knew what they were denying residents of the Federal city.

And again, in the late seventies, Congress passed and the President signed a constitutional amendment giving the District congressional representation. After only 16 States ratified it, it failed. Professor Jonathan Turley of the George Washington Law School gave a valuable history lesson on this issue to the House Judiciary Committee. I commend to my colleagues his testimony on H.R. 1433 on March 14, 2007.

Over the years, many other ideas for securing representation for residents of the District have been proposed. Some have proposed what's known as semi-retrocession, or counting District residents as citizens of Maryland for voting purposes. Another idea was full retrocession, which would simply transfer most of the District to Maryland, just as the western half of the original Federal city was transferred back to Virginia before the Civil War. I will let others argue the relative merits of these other remedies. But let me say it again: the remedy we are currently considering is no remedy at all, according to Constitution. The only way to change the Constitution is to amend it.

The process for doing so is clear. We have done it 27 times. Article V states:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states . . .

A two-thirds vote in both Houses, ratified by three-fourths of the States. That is the remedy. That is the method the Framers outlined. That is the one we have used every other time we have needed to amend. Any other method to change the Constitution would be, by definition, unconstitutional, which is of course out of the question. The only real question here is whether giving residents of the Federal district the right to vote is a constitutional issue at all. If it isn't, we could confer the right by statute, on our own. If it is, we can't. And in my view, there's no question in looking at the words, the intent of the writers, and the traditional interpretation of the courts and the Congress.

I welcome this debate, because it clarifies the meaning of the Constitution and our lack of authority to change its meaning on our own. If there is a problem, we have a remedy. It may not be the remedy we want. It may not be quick. But it is the remedy we have got. And it is proven to be the most durable one over the years. Indeed, if we were to vote in favor of this bill today, the constitutional tangle we would find ourselves in would throw every subsequent vote decided by the new Members into serious jeopardy.

A Presidential election decided by one or two electoral votes would be nearly impossible to resolve. Better to grant this right on the bedrock of an amendment, as we have always done in the past, beyond the reach of litigators.

If we want to give the residents representation, then we should begin the amendment process. But we cannot, we must not, circumvent the Constitution by arrogating powers to ourselves that it does not give us itself. To do so would be to undermine the law from which all others in this nation derive, the one Lincoln once referred to as the only safeguard of our liberties.

The purpose of the Constitution is to limit, not expand powers. We must always be careful in tampering with that principle. This is the wisdom of the amendment process. Despite the clearly good intentions of the authors of this bill, let's not turn away from a principle that has served us well in remedying injustice in the past.

The question here is not the end we seek, but the means by which it is achieved. And any other means than the one outlined in the Constitution would be by definition unconstitutional.

Let's do what we have always done and follow the Constitution to achieve our good ends. Otherwise, the achievement itself would be unconstitutional. And the supreme law cannot be at war with itself.

The Framers have spoken, prior congresses have spoken, the citizens of the United States have spoken. Now it is time for us, on this Constitution Day, to see the text, listen to these voices, and vote, as we have all sworn, "to support and defend the Constitution of the

United States of America." Then we will be able to say with Franklin that the Sun, which lights the way for all of our work in this Chamber, continues even today to rise.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, is the body still in morning business?

The ACTING PRESIDENT pro tempore. The Senate is in morning business, but the Republican time has expired.

Mr. KYL. Mr. President, I ask unanimous consent that I be allowed to proceed in morning business for 10 minutes.

Mr. LEVIN. I have no objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATION OF JUDGE MICHAEL MUKASEY

Mr. KYL. Mr. President, I wish to address two topics quickly, and I appreciate the cooperation of the chairman of the Armed Services Committee.

I first wish to speak to the President's announcement this morning that he is going to ask the Senate to confirm Judge Michael Mukasey as the new Attorney General for the United States. I had an occasion to meet with Judge Mukasey this morning, and I have been reading throughout the last several months a great deal of what he has written, particularly on matters of national security and intelligence gathering. I find him to be very thoughtful and a highly qualified person for this position.

I simply wish to make the point to my colleagues that I am looking forward to this confirmation process, first as a member of the Judiciary Committee and then as a matter before the full body.

I think my colleagues will find Judge Mukasey not only highly qualified, being a graduate of Columbia and Yale Law School, but also someone who has an extraordinarily fine reputation on the bench and bar.

After practicing law and serving as a U.S. assistant attorney, Judge Mukasey, nominated by President Ronald Reagan, served 18 distinguished years on the Federal bench in New York as chief of the New York division. During that period of time, he acquired a reputation of the highest order, someone who is tough but fair, someone who is highly respected by his peers and the litigants who appeared before him and, as I said, who has presided over some of the most difficult and high-profile cases to come before the bench, particularly in matters dealing with terrorism.

I am looking forward to the confirmation process. I note that Members on both sides of the aisle have expressed concern that many of the positions in the Attorney General's Office have been vacant. I believe now there

are 9 out of 15 high-level positions in the Department of Justice vacant, including the position of Attorney General. It is clear that we need to get the nominee dealt with as soon as possible.

The average time for confirming an Attorney General is 3½ weeks, and I am hopeful we can use our time wisely to confirm Judge Mukasey within that period of time.

DEFENSE AUTHORIZATION

Mr. KYL. Mr. President, the other topic I wish to address is the subject of the week, the Defense authorization bill, and especially as it relates to the issue of the current ongoing military activity in Iraq. I wish to briefly respond to a couple of comments that have been said recently, particularly comments by General Petraeus and the remarks the President made to us last week.

It seems to me the President said something very important to all of America when he said the success of the surge in Iraq today offers us an opportunity to be united as we have not had for some time. There are people who want us to leave as soon as we can from Iraq. There are people who want us to stay and complete the mission. And what the President said was, regardless of which of these general positions you have supported, there is an opportunity now for us to get together because the reality is that as long as this mission does continue to succeed, we can withdraw more and more troops which, obviously, we would all wish to do. So I hope as time goes on and this surge continues to succeed, we will have the opportunity to continue to withdraw American troops.

I also wish to respond to a couple of comments made about the mission in Iraq because there has been some criticism of the mission and a suggestion that we should change the mission. I wish to make a couple of points.

First, one thing we do not want to do is change the mission by redefining that mission in the Senate based upon what kind of a mission could get 60 votes in the Senate as opposed to what kind of a mission makes sense militarily on the ground. Yet one of our colleagues has even made that point, saying that the mission should be defined to whatever will get 60 votes. That is the wrong thing to do.

The mission should be to secure Iraq, to have a stable country that can be on our side in the war against terror, that has a chance to do what the civilian government there needs to do, and to be secure enough to enable us to withdraw our troops so Iraqi troops can take over. That is the mission.

As the security is being established there, the mission can gradually evolve less to providing security, as that is turned over to Iraqi troops, and more to the continuation of the training of Iraqi troops and focusing on the mission of getting al-Qaida. That clearly is our No. 1 goal there.

But for those who say we can do that with a severely diminished number of troops, General Petraeus himself commented on that point and said you need the combination of troops that we have there today and in fairly large numbers to perform the counterterrorism mission; that it is not simply something you can say we are going to change the mission to one of counterterrorism only and expect you can perform that with just special operations troops.

As he said:

To do counterterrorism requires conventional as well as all types of special operations forces, and intelligence, surveillance and reconnaissance assets. If the goal is to take away sanctuary from al-Qaeda, Gen. Petraeus said, "that is something that is not just done by counterterrorist forces per se but . . . by conventional forces as well."

The point is, those who talk about redefining the mission should be under no illusion that can be done with a different mix of forces than we have right now. It is one of the reasons we are being successful against al-Qaida because we do have the kind of full conventional forces at our disposal that enables us to succeed in that effort.

It will be very dangerous, indeed, for the Senate to define a different mission based on how many votes it could get in the Senate rather than what is necessary on the ground, or, No. 2, to restrict the kind of troops that are available to perform that mission to those that would not succeed. As General Petraeus has pointed out, we need the kind of troops we have there today in order to succeed in the mission we have there.

Finally, the whole question of whether we are going to be in Iraq for a long time, there are some who criticize the prospect of a relationship between the Iraqi Government and the United States Government, as the President discussed in his speech. But the reality is, as he pointed out, the Iraqi leaders have asked for that relationship, and it should be one that we actually support. We need to have a good, strong relationship with another country in the Middle East, a country that can be on our side in the war against the terrorists, that refuses to give sanctuary to the terrorists, and can be a buffer against a nuclear-armed Iran, a fastidious Syria, and others in the region, and whose interests are identical to ours.

This is one reason why it bothers me not in the least that Iraqi leaders would ask to us have an enduring, ongoing relation even after we have pulled out many of our troops, to the point that we may have troops in Iraq for a long time. We have had troops in Germany now for over 60 years, and we have had troops in Korea for over 50 years. There may be a point in having U.S. troops in the region and even in the country of Iraq.

Our hope—and I am sure this is shared by all of us on both sides of the aisle in this body—is that as the troop surge continues to succeed, we can

draw down the number of those troops to a point that it is not a strain on the U.S. military and the danger to the troops there is greatly diminished. Clearly, this is the way we seek to resolve our involvement in Iraq.

I hope the President's message, that this offers us an opportunity to be united rather than divided, in fact, comes to pass, because not only would that benefit the people of Iraq, it would help sustain our national security interests and help to bring our country together politically over this most difficult issue as well.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008—Resumed

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of H.R. 1585, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1585) to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Nelson of Nebraska (for Levin) amendment No. 2011, in the nature of a substitute.

Levin amendment No. 2087 (to amendment No. 2011), to provide for a reduction and transition of United States forces in Iraq.

Reed amendment No. 2088 (to amendment No. 2087), to change the enactment date.

Dodd (for Levin) amendment No. 2274 (to the language proposed to be stricken by amendment No. 2011), to provide for a reduction and transition of United States forces in Iraq.

Levin amendment No. 2275 (to amendment No. 2274), to provide for a reduction and transition of United States forces in Iraq.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, I am pleased the Senate today returns to the consideration of the National Defense Authorization Act for fiscal year 2008. This bill contains important benefits for our men and women in uniform, including pay raises, targeted bonuses and special pays, and benefits. It also includes funding and authorities needed to provide our troops the equipment and support they will need.

Prompt Senate action on this bill will send an important message. Regardless of our position on the war in Iraq, we all support our men and women in uniform. The bill was approved by the Armed Services Committee on a unanimous 25-to-0 vote, and it is my hope it will receive a similarly strong endorsement from the full Senate.

We have a lot of hard work ahead of us before that can happen. As of today,