

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

JUL 20 2020

JAMES W. HATTEN, Clerk
By:  Deputy Clerk

UNITED STATES OF AMERICA
Plaintiff,

v.

MAURICE FAYNE
Defendant,

CASE NO. 1:20-CR-228

**CASE NOS. 1:20-MJ-370, 364, 361
360, 355 and 1:20-MC-833**

**MOTION TO DISMISS
PURSUANT TO ALL RIGHTS
RESERVED**

Judicial Notice of Adjudicative Facts

COMES NOW, by Special Appearance, the Entitlement Holder, that the office of my appointment delegates as Beneficial Owner (in said properties), pursuant to my unalienable power of appointment, I am that I am, “ **maurice johnson fayne-el©** ”, **nom deguerre: “ Maurice Johnson Fayne© ”**, hereby nominate: **Walker, Linda T.**, D.b.a.: HON. LINDA T. WALKER, D.b.a.: UNITED STATES MAGISTRATE JUDGE, D.b.a.: [**UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA, CASE NO. 1:20-CR-228, & CASE NOS. 1:20-MJ-370, 364, 361, 360, 355 and 1:20-MC-833**] as trustee, to receive this NOTICE as trustee of this matter, in good faith, to make known my intent as it relates to the Adjudicative Facts regarding: “ Fayne, Maurice, Johnson© ”, corp.sole Db.a.: “ MAURICE JOHNSON FAYNE© ”, “ FAYNE, MAURICE JOHNSON© ”, corp.sole Db.a.: “ MAURICE JOHNSON FAYNE© ”, as a MOTION TO DISMISS PURSUANT TO ALL RIGHTS RESERVED.

1. WHEREAS, Affiant is domiciled at the Moorish Empire, and receiving mail through a private 3rd Party Agent at a Commercial Mail Receiving Agency, situated at: c/o 6608 N Western Ave # 1307, Oklahoma City, Oklahoma [73116], Affiant is not within the “Federal

Area” as defined at [*U.S. Code § 110. Same; definitions*].

(e) The term “Federal area” means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency, of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State. *Which is hereby Constitutionally challenged by constitutional question.*

2. WHEREAS, Affiant is an anyunwiya Moorish American National, [Please see Exhibit 1, which is Self Authenticating Evidence, pursuant to the Federal Rules of Evidence, Rule 902. (6) *Newspapers and Periodicals*. Printed material purporting to be a newspaper or periodical.], Affiant is not a 14th Amendment citizen of the United States as defined at [28 U.S. Code § 3002. Definitions, (15) “United States” means—(A) a Federal corporation;] *Which is hereby Constitutionally challenged by constitutional question.*

3. WHEREAS, Affiant is an anyunwiya Moorish American National, [Please see Exhibit 1, which is Self Authenticating Evidence, pursuant to the Federal Rules of Evidence, Rule 902. (6) *Newspapers and Periodicals*. Printed material purporting to be a newspaper or periodical.], Affiant's true name is “ **maurice johnson fayne-el©**”, nom deguerre: “ **Maurice Johnson Fayne©**”, it is not “ **MAURICE FAYNE**”, it is also not “**MAURICE FAYNE, a/k/a Arkansas Mo**”, as expressed inside of the records of this cause of action. **Thereby being repugnant to the Constitution and the Federal Rules of Civil Procedure, Rule 17.** Plaintiff and Defendant; Capacity; Public Officers, (a) Real Party in Interest. (1) *Designation in General*. An action must be prosecuted in the name of the real party in interest. *Which is hereby Constitutionally challenged by constitutional question.*

4. WHEREAS, Affiant is an anyunwiya Moorish American National, [Please see Exhibit 1, which is Self Authenticating Evidence, pursuant to the Federal Rules of Evidence, Rule

902. (6) *Newspapers and Periodicals*. Printed material purporting to be a newspaper or periodical.], [Pursuant to the United Nations Convention on the Law of the Sea, Article 110, Right of visit, “ Fayne, Maurice, Johnson© ”, corp.sole Db.a.: “ MAURICE JOHNSON FAYNE© ”, “ FAYNE, MAURICE JOHNSON© ”, corp.sole Db.a.: “ MAURICE JOHNSON FAYNE© ”, is **NOT**: (a) engaged in piracy; (b) engaged in the slave trade; (c) engaged in unauthorized broadcasting; (d) without nationality; or (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship. Affiant hereby Notices all interested parties that any further encroachment regarding said properties shall be deemed an egregious act of PIRACY, in bad faith. *Which is hereby Constitutionally challenged by constitutional question.*

5. WHEREAS, Affiant is an aniyunwiya Moorish American National, [Please see Exhibit 1, which is Self Authenticating Evidence, pursuant to the Federal Rules of Evidence, Rule 902. (6) *Newspapers and Periodicals*. Printed material purporting to be a newspaper or periodical.], Pursuant to the 59th Congress, 2d Session, CITIZENSHIP OF THE UNITED STATES, EXPATRIATION, AND PROTECTION ABROAD, [Please see Exhibit 2]“ There are, strictly speaking, no Moroccan laws relating to citizen ship of Moorish subjects in Morocco. The fundamental laws of this non-Christian country are based entirely upon the Islamitic code, no part of which treats of the subject of citizenship. here are, however, numerous treaties and conventions between the various Christian countries and the Moorish Empire, by means of which citizenship in this country is defined; but, as I understand, from the above-acknowledged instructions, that it is not the desire of the Department to call for a report upon such lines, I will therefore confine these remarks to general conditions existing, which may possibly be of some use in connection with the information desired. (1) Citizenship in Morocco may be said to be governed by the laws pertaining to the same in other countries, with the exception that all persons residing in Morocco who can not prove foreign citizenship or protection are considered ipso jure as Moorish subjects. (2 and 3) Moorish subjects lost their nationality only by becoming naturalized in, or protected by, another country having treaty relations with

the Moorish Empire. Affiant has never been naturalized from the dejure Nationality of aniyunwiya Moorish American National. *Which is hereby Constitutionally challenged by constitutional question.*

6. WHEREAS, [Pursuant to the PROCEEDINGS AND DEBATES OF THE 90TH CONGRESS FIRST SESSION, VOLUME 113-PART 12, JUNE 12, 1967, TO JUNE 20, 1967], the 14th Amendment was never properly lawfully adopted, [Please see Exhibit 3], Affiant hereby Constitutionally challenges its applicability to this said matter.

7. WHEREAS, [Pursuant to the Federal Rules of Criminal Procedure] all “ Charging Instruments ”, on this cause of action, is hereby declared to be Unconstitutional. Not limited to but including; any and all WARRANTS, INDICTMENTS, SUMMONS, REPORTS etc., as they were not executed [Pursuant to the Federal Rules of Criminal Procedure Rules 3] as there is not a Judges signature on Any Warrant, also there was never a Constitutional WARRANT issued used to seize Affiants property, as it was not served upon any party present at the moment of SEIZURE. All said documents also do not possess the required seals for them to be lawfully executed. Affiant hereby Constitutionally challenges, by Constitutional question any and all charging instruments used on this said cause.

8. WHEREAS, Affiant's natural Mother affirmed by Affidavit, the unconscionable issuance of the BIRTH CERTIFICATE for “ MAURICE JOHNSON FAYNE ” etc., having occurred while she was under legal disability, and was not in a lawful capacity to contract in good faith with a meeting of the minds [Please see Exhibit 4].

9. WHEREAS, Affiant has recently acquired beneficial interest in the Unincorporated Foreign Entities, D.b.a.: 1. “ MAURICE FAYNE© ”, Oklahoma Secretary of State #

3612856585, 2. " MAURICE JOHNSON FAYNE© ", Oklahoma Secretary of State #
3612856041, 3. " FAYNE, MAURICE JOHNSON© ", Oklahoma Secretary of State #
3612856042, Affiant is entitled to: [Article IV, Section 1, of the Constitution for the united
States of America.] Full Faith and Credit shall be given in each State to the public Acts,
Records, and judicial Proceedings of every other State. [Please see Exhibit 5]

10.WHEREAS, Affiant has recently acquired beneficial interest in the Unincorporated
Foreign Entities, D.b.a.: 1. " MAURICE FAYNE© ", Oklahoma Secretary of State #
3612856585, 2. " MAURICE JOHNSON FAYNE© ", Oklahoma Secretary of State #
3612856041, 3. " FAYNE, MAURICE JOHNSON© ", Oklahoma Secretary of State #
3612856042, Pursuant to [Public Law 97-116 Please see Exhibit 3] SEC. 12. Subsection (b)
(1)(A) "(A) no conveyance used by any person as a common carrier in the transaction of busi-
ness as a common carrier shall be forfeited under the provisions of this section unless it shall
appear that the owner or other person in charge of such conveyance was a consenting party or
privity to the illegal act; and "(B) no conveyance shall be forfeited under the provisions of this
section by reason of any act or omission established by the owner thereof to have been com-
mitted or omitted by any person other than such owner while such conveyance was unlawfully
in the possession of a person other than the owner in violation of the criminal laws of the
United States or of any State.

WHEREAS, Affiant was not in possession of said ENTITIES, at the time of the commis-
sion of a violation, and was not a consenting party, or privity to an illegal act, Affiant hereby
moves the court to DISMISS this cause of action, with prejudice.

11.WHEREAS, 1. " MAURICE FAYNE© ", Oklahoma Secretary of State #
3612856585, 2. " MAURICE JOHNSON FAYNE© ", Oklahoma Secretary of State #
3612856041, 3. " FAYNE, MAURICE JOHNSON© ", Oklahoma Secretary of State #
3612856042, are Unincorporated Foreign Trade names, Affiant has met the Margin Require-

ments to have, to obtain, receive, or enjoy the beneficial use of a loan or other extension of credit from any lender, as defined at [15 U.S. Code § 78g (f)].

12. WHEREAS, affiant is an aniyunwiya Moorish American National, Pursuant to Section 2. of the Constitution for the united States of America, The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls; Article III, entitled "Commercial Paper," applies to all drafts, checks, certificates of deposit and notes as defined in section 3-104 of the Code. T. QUINN, QUINN'S UNIFORM COMMERCIAL CODE COMMENTARY AND LAW DIGEST § 3-103[A] (1978). Pursuant to [50 U.S. Code § 4305. (b)(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

Pursuant to: [Federal Rules of Civil Procedure, Rule 1. Scope and Purpose, These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

And;

Pursuant to: [Federal Rules of Civil Procedure, Rule 46. Dismissing Cases, 1. At any stage of the proceedings, whenever all parties file with the Clerk an agreement in writing that a case be dismissed, specifying the terms for payment of costs, and pay to the Clerk any fees then

due, the Clerk, without further reference to the Court, will enter an order of dismissal. 2. (a) A petitioner or appellant may file a motion to dismiss the case, with proof of service as required by Rule 29, tendering to the Clerk any fees due and costs payable.

Affiant does not understand any allegations as it relates to a "CRIME" having been committed on this case, and hereby reserves the right, NOT AS AN ADMISSION OF GUILT, but as Accord and Satisfaction of this cause of action, Specially Deposits Money Order # 369 to DISMISS said case with prejudice. [Please see Exhibit 6]

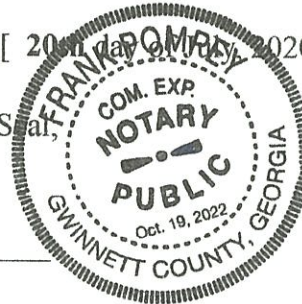
Signed in the presence of :

Franklin County
GA State

Signed and affirmed to before me, a Notary on this [20th day of July, 2020].

[Signature]
 Notary Public

My Commission Expires 10/19/22



In testimony whereof, I, **Ex parte : maurice johnson fayne-el**, certify under penalty of perjury, that the statements made herein are true and correct to the best of my honor, knowledge, customs, and beliefs. I have hereunto caused my appellation to be subscribed this [20th day of July, 2020].

I am that I am: maurice johnson fayne-el
 aniyunwiya moorish american
 All Rights Reserved
 Without Prejudice
 Deo Volente
 Jus Cogens

CERTIFICATE OF SERVICE

I, Maurice Fayne Johnson certify that I have this day served the Clerk of Court, James N. Hatten, United States Attorney Byung J. Pak, Assistant United States Attorney Bernita Malloy, Assistant United States Attorney John Russell Phillips, Assistant United States Attorney Michael John Brown and Court Appointed Attorney Caitlyn Wade with this **No-
tice to Dismiss and Dismissal of Court Appointed Attorney via hand delivery, Fax,
email and or by United States Postal Service Certified Mail #**_____ De-
livery thereon to ensure delivery: Dated this 20th day of July, 2020.

by: Maurice Johnson-fayne-el All natural rights reserved.
maurice johnson fayne-el

James N. Hatten Clerk of Court
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
Richard B. Russell Federal Building
2211 United States Courthouse
75 Ted Turner Drive, SW
Atlanta, Georgia 30303-3309
(404) 215- 1600

Attorney John Russell Phillips
Richard B. Russell Federal Building
United States Attorney's Office
75 Ted Turner Drive, SW #600
Atlanta, Georgia 30303-3309
(404) 581-6000
Email: russell.phillips@usdoj.gov

Attorney Bernita Malloy
Richard B. Russell Federal Building
United States Attorney's Office
75 Ted Turner Drive, SW #600
Atlanta, Georgia 30303-3309
(404) 581-6000
Email: Bernita.Malloy@usdoj.gov

Attorney Caitlyn Wade
Federal Defender Program Inc.
101 Marietta St. NW Ste. 1500
Atlanta, Georgia 30303-2727
(404) 688 -7530
Email: Caitlyn_Wade@fd.org

Attorney Michael John Brown
Richard B. Russell Federal Building
United States Attorney's Office
75 Ted Turner Drive, SW #600
Atlanta, Georgia 30303-3309
Email: Michael.j.brown2@usdoj.gov

Attorney Byung J. Pak
Richard B. Russell Federal Building
United States Attorney's Office
75 Ted Turner Drive, SW #600
Atlanta, Georgia 30303-3309

EXHIBIT 1

Placing Your Classified

Legal Notice

In God We Trust
Declaration of Nationality

Notice of Special Appearance : I am that I am: " Maurice Johnson Fayne® ", in full life, in propria persona, sui juris, in solo proprio, by natural issue, the beneficiary and heir of: " Fayne, Maurice Johnson® ", corp sole Dba.: " Maurice Johnson Fayne® ", " FAYNE, MAURICE JOHNSON® ", corp sole Dba.: " MAURICE JOHNSON FAYNE® ", having reached the age of majority, being aboriginal to the northwestern and southwestern shores of Africa, the Atlantic Islands, the continental Americas, being duly certified, hereby affirms to declare my tribal intention to be as my pedigree subscribes, as an: anyunwiya Moorish American National, but not a citizen of the United States. I declare permanent, and unalienable, allegiance to the Moorish Empire, Societas Republicae Ea Al Maurikanuus Estados, The Constitution for the united States of America, Article III Section 2, International Law, United Nations Declaration on the Rights of Indigenous Peoples, and all natural laws governing moors, and hereby declare and proclaim my nationality as an: anyunwiya moorish american moslem. I am that I am: " Maurice Johnson Fayne® ", from this day forward, in harmony with my Nationality / Status / Jurisdiction, shall be known as: " maurice johnson fayne-el® ". Notice of Merging of Legal Title with Equitable Title : This order is to preserve legal and equitable title, and to reserve all rights, title, and interest, in the property, Re: " Fayne, Maurice Johnson® ", corp sole Dba.: " Maurice Johnson Fayne® ", " FAYNE, MAURICE JOHNSON® ", corp sole Dba.: " MAURICE JOHNSON FAYNE® ", to the depositor: " maurice johnson fayne-el® ". All property, of the same issue and amount, in like kind and specie, is to be returned fully intact, as a Special Deposit order of the Depositor / Beneficiary / Bailor / Donor / Principal / Creditor: " maurice johnson fayne-el® ", as a special deposit order in lawful money. This special deposit is to be used exclusively for the benefit of: " Fayne-el, Maurice Johnson Trust® ", an Unincorporated Divine Grantor Trust. This deposit is not to be commingled with general assets of any bank, nor depositary / trustee / agent / bailee / donee / debtor. This deposit is not limited to, but including: discharge and set off, of any and all outstanding liabilities as accord and satisfaction. Any and All Attorneys with a License from the BAR Association are explicitly prohibited from administering " Fayne-el, Maurice Johnson Trust® ", property without handwritten consent from each and every trustee, after said Attorneys have furnished their nationality, and Principal for whom's interest they are working, [pursuant to Public Law 75-583] to trustees in plain writing. All Rights Reserved.

No. 13545
7-17-24-31;8-7-20-4tx

Legal Notice

IN THE CIRCUIT COURT OF CROSS COUNTY, ARKANSAS
PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF
HAZEL KENNON, deceased CASE NO. 19PR-2020-56-3

NOTICE

Last known address: 131 Hwy. 64, McCrory, Arkansas 72101

YARD SALE

WE BUY JUNK riding & push mowers and other small engine equipment. Call 870-588-7954. 4-24-20-tfn

CLASSIFIED DEADLINE: GARAGE SALE ADS AND ALL OTHER CLASSIFIED LINE ADS MUST BE SUBMITTED BEFORE 4:00 P.M. ON TUESDAYS TO APPEAR IN THAT FRIDAY'S PAPER.

THE DEADLINE FOR LEGAL NOTICES IS 10:00 A.M. FRIDAY - THE WEEK BEFORE THE NOTICE IS TO APPEAR.

ANNOUNCEMENTS

OVER \$10K IN DEBT?
Be debt free in 24-48 months. Pay a fraction of what you owe. A+ BBB rated. Call National Debt Relief 877-243-7692. 10-19-18-tfn

MEDICAL

VIAGRA AND CIALIS USERS! 50 Pills SPECIAL \$99.00 FREE Shipping! 100% guaranteed. CALL NOW! 855-685-5420. 5-1-20-tfn

STILL PAYING too much for your MEDICATION?
Save up to 90% on RX re-fill! Order today and receive free shipping on 1st order - prescription required. Call 1-877-610

EXHIBIT 2

CITIZENSHIP OF THE UNITED STATES, EXPATRIATION, ETC. 459

CHAPTER V.—*Temporary provisions.*

ART. 1. Aliens who have acquired real estate, who have had children born to them in Mexico, or who have held any public office, being those referred to in sections X, XI, and XII of article 1 of this law, are bound to declare within six months after the promulgation of this law, provided they have not done so previously, to the civil authorities of their place of residence whether they wish to acquire Mexican citizenship or to retain their own. In the former case they must immediately ask for their certificate of naturalization in the form prescribed in article 19 of this law. If they fail to make the declaration in question, they shall be considered Mexicans, except in those cases where there has been an official declaration on this point.

ART. 2. Colonists residing in the country, being those referred to in the last sentence of article 28 of this law, shall declare in the manner prescribed by the preceding article under what nationality they wish to be classed, and if it should be the Mexican, they shall also ask for their certificate of naturalization, as prescribed by the preceding article.

ART. 3. The Executive, in issuing the necessary regulations for the execution of this law, shall be careful to give the proper directions in order that the local authorities, so far as they are concerned, may duly execute it.

[Signed]	JUAN JOSÉ BAZ, <i>Deputy, President.</i>
[Signed]	PEDRO SANCHEZ CASTRO, <i>Senator, President.</i>
[Signed]	ROBERTO NUÑEZ, <i>Deputy, Secretary.</i>
[Signed]	GILDARDO GÓMEZ, <i>Senator, Secretary.</i>

Wherefore, I order it to be printed, published, circulated, and duly executed.

Given in the national palace of Mexico, May 28, 1886.

PORFIRIO DIAZ.

To Citizen IGNACIO MARISCAL,
*Secretary of State and of the
Department of Foreign Relations.*

In communicating it to you for your information and for the necessary purposes, I assure you of my great consideration.

MARISCAL.

MOROCCO.

Mr. Philip, chargé d'affaires, to Mr. Root, Secretary of State, August 3, 1906.

AMERICAN LEGATION,
Tangier, August 3, 1906.

SIR:

* * * * *

There are, strictly speaking, no Moroccan laws relating to citizenship of Moorish subjects in Morocco. The fundamental laws of this non-Christian country are based entirely upon the Islamitic code, no part of which treats of the subject of citizenship.

460 CITIZENSHIP OF THE UNITED STATES, EXPATRIATION, ETC.

There are, however, numerous treaties and conventions between the various Christian countries and the Moorish Empire, by means of which citizenship in this country is defined; but, as I understand, from the above-acknowledged instructions, that it is not the desire of the Department to call for a report upon such lines, I will therefore confine these remarks to general conditions existing, which may possibly be of some use in connection with the information desired.

(1) Citizenship in Morocco may be said to be governed by the laws pertaining to the same in other countries, with the exception that all persons residing in Morocco who can not prove foreign citizenship or protection are considered ipso jure as Moorish subjects.

(2 and 3) Moorish subjects lost their nationality only by becoming naturalized in, or protected by, another country having treaty relations with the Moorish Empire.

It was established by the Convention of Madrid, concluded July 3, 1880, as follows:

ARTICLE XV.

Any subject of Morocco who has been naturalized in a foreign country, and who shall return to Morocco, shall, after having remained for a length of time equal to that which shall have been regularly necessary for him to obtain such naturalization, choose between entire submission to the laws of the Empire and the obligation to quit Morocco, unless it shall be proved that his naturalization in a foreign country was obtained with the consent of the Government of Morocco.

Foreign naturalization heretofore acquired by subjects of Morocco according to the rules established by the laws of each country, shall be continued to them as regards all its effects without any restriction.

The above ruling has never yet been acted upon, and should this at any time be contemplated seriously, a large number of naturalized people, American and others, residing in Morocco, would be affected thereby.

(4 and 5) Residence in foreign parts does not affect the nationality of Moorish subjects, and the Moorish Government has no means of protecting its subjects permanently residing in other countries, with the exception of a so-called Moorish consul at Gibraltar and a Moorish agent at Cairo, Egypt.

I am, etc.,

HOFFMAN PHILIP.

NETHERLANDS.

[Enclosures in despatch from Mr. Hill, minister to the Netherlands, August 31, 1906.]

[Translation.]

LAW OF DECEMBER 12, 1892, REGARDING NETHERLANDS CITIZENSHIP AND RESIDENTSHIP.

[Official Gazette No. 268.]

In the name of Her Majesty Wilhelmina, by God's grace Queen of We, Emma, Queen Dowager, Regent of the Kingdom, make known the Netherlands, Princess of Orange-Nassau, etc. to all whom it may concern, that:

Having taken into consideration that it is desirable to establish some general provisions concerning Netherlands nationality in sub-

EXHIBIT 3

UNITED STATES



OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 90th CONGRESS
FIRST SESSION

VOLUME 113—PART 12

JUNE 12, 1967, TO JUNE 20, 1967

(PAGES 15309 TO 16558)

June 13, 1967

CONGRESSIONAL RECORD — HOUSE

15641

groups from other nations. This bipartisan organization is doing something more than just talking about international understanding—it is doing something about it.

If mankind is ever to abolish war from the face of the earth, we first must break down the barriers of mistrust and suspicion among the peoples of the world. There is no better way to accomplish this than through just such programs as this one conducted by the American Council of Young Political Leaders.

These young people will be the leaders of the world in years to come. They will be better leaders, more understanding and tolerant leaders, if they are able to expand their knowledge of other nations, other peoples, and other political systems.

This is why, Mr. Speaker, I am so pleased with the work being done by the American Council of Young Political Leaders. They have my wholehearted support in their program to further world understanding.

THE 14TH AMENDMENT—EQUAL PROTECTION LAW OR TOOL OF USURPATION

Mr. PRYOR. Mr. Speaker, I ask unanimous consent that the gentleman from Louisiana [Mr. RARICK] may extend his remarks at this point in the Record and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. RARICK. Mr. Speaker, arrogantly ignoring clearcut expressions in the Constitution of the United States, the declared intent of its drafters notwithstanding, our unelected Federal judges read out prohibitions of the Constitution of the United States by adopting the fuzzy haze of the 14th amendment to legislate their personal ideas, prejudices, theories, guilt complexes, aims, and whims.

Through the cooperation of intellectual educators, we have subjected ourselves to accept destructive use and meaning of words and phrases. We blindly accept new meanings and changed values to alter our traditional thoughts.

We have tolerantly permitted the habitual misuse of words to serve as a vehicle to abandon our foundations and goals. Thus, the present use and expansion of the 14th amendment is a sham—serving as a crutch and hoodwink to precipitate a quasi-legal approach for overthrow of the tender balances and protections of limitation found in the Constitution.

But, interestingly enough, the 14th amendment—whether ratified or not—was but the expression of emotional outpouring of public sentiment following the War Between the States.

Its obvious purpose and intent was but to free human beings from ownership as a chattel by other humans. Its aim was no more than to free the slaves.

As our politically appointed Federal judiciary proceeds down their chosen

path of chaotic departure from the peoples' government by substituting their personal law rationalized under the 14th amendment, their actions and verbiage brand them and their team as secessionists—rebels with pens instead of guns—seeking to divide our Union.

They must be stopped. Public opinion must be aroused. The Union must and shall be preserved.

Mr. Speaker, I ask to include in the Record, following my remarks, House Concurrent Resolution 208 of the Louisiana Legislature urging this Congress to declare the 14th amendment illegal. Also, I include in the Record an informative and well-annotated treatise on the illegality of the 14th amendment—the play toy of our secessionist judges—which has been prepared by Judge Leander H. Perez, of Louisiana.

The material referred to follows:

H. CON. RES. 208

A concurrent resolution to expose the unconstitutionality of the 14th amendment to the Constitution of the United States; to interpose the sovereignty of the State of Louisiana against the execution of said amendment in this State; to memorialize the Congress of the United States to repeal its joint resolution of July 28, 1868, declaring that said amendment had been ratified; and to provide for the distribution of certified copies of this resolution

Whereas the purported 14th Amendment to the United States Constitution was never lawfully adopted in accordance with the requirements of the United States Constitution because eleven states of the Union were deprived of their equal suffrage in the Senate in violation of Article V, when eleven southern states, including Louisiana, were excluded from deliberation and decision in the adoption of the Joint Resolution proposing said 14th Amendment; said Resolution was not presented to the President of the United States in order that the same should take effect, as required by Article 1, Section 7; the proposed amendment was not ratified by three-fourths of the states, but to the contrary fifteen states of the then thirty-seven states of the Union rejected the proposed 14th Amendment between the dates of its submission to the states by the Secretary of State on June 16, 1866 and March 24, 1868, thereby nullifying said Resolution and making it impossible for ratification by the constitutionally required three-fourths of such states; said southern states which were denied their equal suffrage in the Senate had been recognized by proclamations of the President of the United States to have duly constituted governments with all the powers which belong to free states of the Union, and the Legislatures of seven of said southern states had ratified the 13th Amendment which would have failed of ratification but for the ratification of said seven southern states; and

Whereas the Reconstruction Acts of Congress unlawfully overthrew their existing governments, removed their lawfully constituted legislatures by military force and replaced them with rump legislatures which carried out military orders and pretended to ratify the 14th Amendment; and

Whereas in spite of the fact that the Secretary of State in his first proclamation, on July 20, 1868, expressed doubt as to whether three-fourths of the required states had ratified the 14th Amendment, Congress nevertheless adopted a resolution on July 28, 1868, unlawfully declaring that three-fourths of the states had ratified the 14th Amendment and directed the Secretary of State to so proclaim, said Joint Resolution of Congress and the resulting proclamation of the

Secretary of State included the purported ratifications of the military enforced rump legislatures of ten southern states whose lawful legislatures had previously rejected said 14th Amendment, and also included purported ratifications by the legislatures of the States of Ohio and New Jersey although they had withdrawn their legislative ratifications several months previously, all of which proves absolutely that said 14th Amendment was not adopted in accordance with the mandatory constitutional requirements set forth in Article V of the Constitution and therefore the Constitution itself strikes with nullity the purported 14th Amendment.

Now therefore be it resolved by the Legislature of Louisiana, the House of Representatives and the Senate concurring:

(1) That the Legislature go on record as exposing the unconstitutionality of the 14th Amendment, and interposes the sovereignty of the State of Louisiana against the execution of said 14th Amendment against the State of Louisiana and its people;

(2) That the Legislature of Louisiana opposes the use of the invalid 14th Amendment by the Federal courts to impose further unlawful edicts and hardships on its people;

(3) That the Congress of the United States be memorialized by this Legislature to repeal its unlawful Joint Resolution of July 28, 1868, declaring that three-fourths of the states had ratified the 14th Amendment to the United States Constitution;

(4) That the Legislatures of the other states of the Union be memorialized to give serious study and consideration to take similar action against the validity of the 14th Amendment and to uphold and support the Constitution of the United States which strikes said 14th Amendment with nullity; and

(5) That copies of this Resolution, duly certified, together with a copy of the treatise on "The Unconstitutionality of the 14th Amendment" by Judge L. H. Perez, be forwarded to the Governors and Secretaries of State of each state in the Union, and to the Secretaries of the United States Senate and House of Congress, and to the Louisiana Congressional delegation, a copy hereof to be published in the Congressional Record.

VAIL M. DELONY,

Speaker of the House of Representatives.

C. C. ARCOCK,

Lieutenant Governor and President of the Senate.

THE 14TH AMENDMENT IS UNCONSTITUTIONAL

The purported 14th Amendment to the United States Constitution is and should be held to be ineffective, invalid, null, void and unconstitutional for the following reasons:

1. The Joint Resolution proposing said Amendment was not submitted to or adopted by a Constitutional Congress. Article I, Section 3, and Article V of the U.S. Constitution.

2. The Joint Resolution was not submitted to the President for his approval. Article I, Section 7.

3. The proposed 14th Amendment was rejected by more than one-fourth of all the States then in the Union, and it was never ratified by three-fourths of all the States in the Union. Article V.

I. THE UNCONSTITUTIONAL CONGRESS

The U.S. Constitution provides:

Article I, Section 3. "The Senate of the United States shall be composed of two Senators from each State * * *

Article V provides: "No State, without its consent, shall be deprived of its equal suffrage in the Senate."

The fact that 23 Senators had been unlawfully excluded from the U.S. Senate, in order to secure a two-thirds vote for adoption of the Joint Resolution proposing the 14th Amendment is shown by Resolutions of pro-

test adopted by the following State Legislatures:

The New Jersey Legislature by Resolution of March 27, 1868, protested as follows:

"The said proposed amendment not having yet received the assent of the three-fourths of the states, which is necessary to make it valid, the natural and constitutional right of this state to withdraw its assent is undeniable * * *."

"That it being necessary by the constitution that every amendment to the same should be proposed by two-thirds of both houses of congress, the authors of said proposition, for the purpose of securing the assent of the requisite majority, determined to, and did, exclude from the said two houses eighty representatives from eleven states of the union, upon the pretence that there were no such states in the Union; but, finding that two-thirds of the remainder of the said houses could not be brought to assent to the said proposition, they deliberately formed and carried out the design of mutilating the integrity of the United States senate, and without any pretext or justification, other than the possession of the power, without the right, and in palpable violation of the constitution, ejected a member of their own body, representing this state, and thus practically denied to New Jersey its equal suffrage in the senate, and thereby nominally secured the vote of two-thirds of the said houses."¹

The Alabama Legislature protested against being deprived of representation in the Senate of the U.S. Congress.²

The Texas Legislature by Resolution on October 15, 1866, protested as follows:

"The amendment to the Constitution proposed by this joint resolution as Article XIV is presented to the Legislature of Texas for its action thereon, under Article V of that Constitution. This Article V, providing the mode of making amendments to that instrument, contemplates the participation by all the States through their representatives in Congress, in proposing amendments. As representatives from nearly one-third of the States were excluded from the Congress proposing the amendments, the constitutional requirement was not complied with; it was violated in letter and in spirit; and the proposing of these amendments to States which were excluded from all participation in their initiation in Congress, is a nullity."³

The Arkansas Legislature, by Resolution on December 17, 1866, protested as follows:

"The Constitution authorized two-thirds of both houses of Congress to propose amendments; and, as eleven States were excluded from deliberation and decision upon the one now submitted, the conclusion is inevitable that it is not proposed by legal authority, but in palpable violation of the Constitution."⁴

The Georgia Legislature, by Resolution on November 9, 1866, protested as follows:

"Since the reorganization of the State government, Georgia has elected Senators and Representatives. So has every other State. They have been arbitrarily refused admission to their seats, not on the ground that the qualifications of the members elected did not conform to the fourth paragraph, second section, first article of the Constitution, but because their right of representation was denied by a portion of the States having equal but not greater rights than themselves. They have in fact been forcibly excluded; and, inasmuch as all legislative power granted by the States to the Congress is defined, and this power of exclusion is not among the powers expressly or by implication, the assemblage, at the capitol, of representatives from a portion of the States, to the exclusion of the representatives of another portion,

cannot be a constitutional Congress, when the representation of each State forms an integral part of the whole.

"This amendment is tendered to Georgia for ratification, under that power in the Constitution which authorizes two-thirds of the Congress to propose amendments. We have endeavored to establish that Georgia had a right, in the first place, as a part of the Congress, to act upon the question, 'Shall these amendments be proposed?' Every other excluded State had the same right.

"The first constitutional privilege has been arbitrarily denied. Had these amendments been submitted to a constitutional Congress, they never would have been proposed to the States. Two-thirds of the whole Congress never would have proposed to eleven States voluntarily to reduce their political power in the Union, and at the same time, disfranchise the larger portion of the intellect, integrity and patriotism of eleven co-equal States."⁵

The Florida Legislature, by Resolution of December 5, 1866, protested as follows:

"Let this alteration be made in the organic system and some new and more startling demands may or may not be required by the predominant party previous to allowing the ten States now unlawfully and unconstitutionally deprived of their right of representation to enter the Halls of the National Legislature. Their right to representation is guaranteed by the Constitution of this country and there is no act, not even that of rebellion, can deprive them of its exercise."⁶

The South Carolina Legislature by Resolution of November 27, 1866, protested as follows:

"Eleven of the Southern States, including South Carolina, are deprived of their representation in Congress. Although their Senators and Representatives have been duly elected and have presented themselves for the purpose of taking their seats, their credentials have, in most instances, been laid upon the table without being read, or have been referred to a committee, who have failed to make any report on the subject. In short, Congress has refused to exercise its Constitutional functions, and decide either upon the election, the return, or the qualification of these selected by the States and people to represent us. Some of the Senators and Representatives from the Southern States were prepared to take the test oath, but even these have been persistently ignored, and kept out of the seats to which they were entitled under the Constitution and laws.

"Hence this amendment has not been proposed by 'two-thirds of both Houses' of a legally constituted Congress, and is not, Constitutionally or legitimately, before a single Legislature for ratification."⁷

The North Carolina Legislature protested by Resolution of December 6, 1866 as follows:

"The Federal Constitution declares, in substance, that Congress shall consist of a House of Representatives, composed of members apportioned among the respective States in the ratio of their population, and of a Senate, composed of two members from each State. And in the Article which concerns Amendments, it is expressly provided that 'no State, without its consent, shall be deprived of its equal suffrage in the Senate.' The contemplated Amendment was not proposed to the States by a Congress thus constituted. At the time of its adoption, the eleven seceding States were deprived of representation both in the Senate and House, although they all, except the State of Texas, had Senators and Representatives duly elected and claiming their privileges under

the Constitution. In consequence of this, these States had no voice on the important question of proposing the Amendment. Had they been allowed to give their votes, the proposition would doubtless have failed to command the required two-thirds majority. * * *

If the votes of these States are necessary to a valid ratification of the Amendment, they were equally necessary on the question of proposing it to the States; for it would be difficult, in the opinion of the Committee, to show by what process in logic, men of intelligence could arrive at a different conclusion."⁸

II. JOINT RESOLUTION INEFFECTIVE

Article I, Section 7 provides that not only every bill which shall have been passed by the House of Representatives and the Senate of the United States Congress, but that:

"Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

The Joint Resolution proposing the 14th Amendment⁹ was never presented to the President of the United States for his approval, as President Andrew Johnson stated in his message on June 22, 1866.¹⁰ Therefore, the Joint Resolution did not take effect.

III. PROPOSED AMENDMENT NEVER RATIFIED BY THREE-FOURTHS OF THE STATES

1. Pretermittting the ineffectiveness of said resolution, as above, fifteen (15) States out of the then thirty-seven (37) States of the Union rejected the proposed 14th Amendment between the date of its submission to the States by the Secretary of State on June 16, 1866 and March 24, 1868, thereby further nullifying said resolution and making it impossible for its ratification by the constitutionally required three-fourths of such States, as shown by the rejections thereof by the Legislatures of the following states:

Texas rejected the 14th Amendment on October 27, 1866.¹¹

Georgia rejected the 14th Amendment on November 9, 1866.¹²

Florida rejected the 14th Amendment on December 6, 1866.¹³

Alabama rejected the 14th Amendment on December 7, 1866.¹⁴

North Carolina rejected the 14th Amendment on December 14, 1866.¹⁵

Arkansas rejected the 14th Amendment on December 17, 1866.¹⁶

South Carolina rejected the 14th Amendment on December 20, 1866.¹⁷

Kentucky rejected the 14th Amendment on January 8, 1867.¹⁸

⁹ North Carolina Senate Journal, 1866-67, pp. 92 and 93.

¹⁰ 14 Stat. 358 etc.

¹¹ Senate Journal, 39th Congress, 1st sessn. p. 563, and House Journal p. 889.

¹² House Journal 1866, pp. 578-584—Senate Journal 1866, p. 471.

¹³ House Journal 1866, p. 68—Senate Journal 1866, p. 72.

¹⁴ House Journal 1866, p. 76—Senate Journal 1866, p. 8.

¹⁵ House Journal 1866, pp. 210-213—Senate Journal 1866, p. 183.

¹⁶ House Journal 1866-1867, p. 183—Senate Journal 1866-1867, p. 138.

¹⁷ House Journal 1866, pp. 288-291—Senate Journal 1866, p. 262.

¹⁸ House Journal 1866, p. 284—Senate Journal 1866, p. 230.

¹⁹ House Journal 1867, p. 60—Senate Journal 1867, p. 62.

¹ New Jersey Acts, March 27, 1868.

² Alabama House Journal 1866, pp. 210-213.

³ Texas House Journal, 1866, p. 577.

⁴ Arkansas House Journal, 1866, p. 287.

⁵ Georgia House Journal, November 9, 1866, pp. 66-67.

⁶ Florida House Journal, 1866, p. 76.

⁷ South Carolina House Journal, 1866, pp. 33 and 34.

June 13, 1967

CONGRESSIONAL RECORD — HOUSE

15643

Virginia rejected the 14th Amendment on January 9, 1867.¹⁹

Louisiana rejected the 14th Amendment on February 6, 1867.²⁰

Delaware rejected the 14th Amendment on February 7, 1867.²¹

Maryland rejected the 14th Amendment on March 23, 1867.²²

Mississippi rejected the 14th Amendment on January 31, 1867.²³

Ohio rejected the 14th Amendment on January 15, 1868.²⁴

New Jersey rejected the 14th Amendment on March 24, 1868.²⁵

There was no question that all of the Southern states which rejected the 14th Amendment had legally constituted governments, were fully recognized by the federal government, and were functioning as member states of the Union at the time of their rejection.

President Andrew Johnson, in his Veto message of March 2, 1867,²⁶ pointed out that: "It is not denied that the States in question have each of them an actual government with all the powers, executive, judicial and legislative, which properly belong to a free State. They are organized like the other States of the Union, and, like them, they make, administer, and execute the laws which concern their domestic affairs."

If further proof were needed that these States were operating under legally constituted governments as member States in the Union, the ratification of the 13th Amendment by December 8, 1865 undoubtedly supplies this official proof. If the Southern States were not member States of the Union, the 13th Amendment would not have been submitted to their Legislatures for ratification.

2. The 13th Amendment to the United States Constitution was proposed by Joint Resolution of Congress²⁷ and was approved February 1, 1865 by President Abraham Lincoln, as required by Article I, Section 7 of the United States Constitution. The President's signature is affixed to the Resolution.

The 13th Amendment was ratified by 27 states of the then 36 states of the Union, including the Southern States of Virginia, Louisiana, Arkansas, South Carolina, Alabama, North Carolina and Georgia. This is shown by the Proclamation of the Secretary of State December 18, 1865.²⁸ Without the votes of these 7 Southern State Legislatures the 13th Amendment would have failed. There can be no doubt but that the ratification by these 7 Southern States of the 13th Amendment again established the fact that their Legislatures and State governments were duly and lawfully constituted and functioning as such under their State Constitutions.

3. Furthermore, on April 2, 1866, President Andrew Johnson issued a proclamation that, "the insurrection which heretofore existed in the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi and Florida is at an end, and is henceforth to be so regarded."²⁹

¹⁹ House Journal 1866-1867, p. 108—Senate Journal 1866-1867, p. 101.

²⁰ McPherson, Reconstruction, p. 194; Annual Encyclopedia, p. 452.

²¹ House Journal 1867, p. 223—Senate Journal 1867, p. 176.

²² House Journal 1867, p. 1141—Senate Journal 1867, p. 808.

²³ McPherson, Reconstruction, p. 194.

²⁴ House Journal 1868, pp. 44-50—Senate Journal 1868, pp. 33-38.

²⁵ Minutes of the Assembly 1868, p. 743—Senate Journal 1868, p. 356.

²⁶ House Journal, 39th Congress, 2nd Session, p. 563 etc.

²⁷ 13 Stat. p. 567.

²⁸ 13 Stat. p. 774.

²⁹ Presidential Proclamation No. 153, Gen-

On August 20, 1866, President Andrew Johnson issued another proclamation³⁰ pointing out the fact that the House of Representatives and Senate had adopted identical Resolutions on July 22nd³¹ and July 25th, 1861,³² that the Civil War forced by disunionists of the Southern States, was not waged for the purpose of conquest or to overthrow the rights and established institutions of those States, but to defend and maintain the supremacy of the Constitution and to preserve the Union with all equality and rights of the several states unimpaired, and that as soon as these objects are accomplished, the war ought to cease. The President's proclamation on June 13, 1865, declared the insurrection in the State of Tennessee had been suppressed.³³ The President's proclamation on April 2, 1866,³⁴ declared the insurrection in the other Southern States, except Texas, no longer existed. On August 20, 1866,³⁵ the President proclaimed that the insurrection in the State of Texas had been completely ended; and his proclamation continued: "the insurrection which heretofore existed in the State of Texas is at an end, and is to be henceforth so regarded in that State, as in the other States before named in which the said insurrection was proclaimed to be at an end by the aforesaid proclamation of the second day of April, one thousand, eight hundred and sixty-six."

"And I do further proclaim that the said insurrection is at an end, and that peace, order, tranquility, and civil authority now exist, in and throughout the whole of the United States of America."

4. When the State of Louisiana rejected the 14th Amendment on February 6, 1867, making the 10th state to have rejected the same, or more than one-fourth of the total number of 36 states of the Union as of that date, thus leaving less than three-fourths of the states possibly to ratify the same, the Amendment failed of ratification in fact and in law, and it could not have been revived except by a new Joint Resolution of the Senate and House of Representatives in accordance with Constitutional requirement.

5. Faced with the positive failure of ratification of the 14th Amendment, both Houses of Congress passed over the veto of the President three Acts known as Reconstruction Acts, between the dates of March 2 and July 19, 1867, especially the third of said Acts, 15 Stat. p. 14 etc., designed illegally to remove with "Military force" the lawfully constituted State Legislatures of the 10 Southern States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Louisiana and Texas. In President Andrew Johnson's Veto message on the Reconstruction Act of March 2, 1867,³⁶ he pointed out these unconstitutionality:

"If ever the American citizen should be left to the free exercise of his own judgment, it is when he is engaged in the work of forming the fundamental law under which he is to live. That work is his work, and it cannot properly be taken out of his hands. All this legislation proceeds upon the contrary assumption that the people of each of these States shall have no constitution, except such as may be arbitrarily dictated by Congress, and formed under the restraint of military rule. A plain statement of facts makes this evident."

eral Records of the United States, G.S.A. National Archives and Records Service.

³⁰ 14 Stat. p. 814.

³¹ House Journal, 37th Congress, 1st Sessn. p. 123 etc.

³² Senate Journal, 37th Congress, 1st Sessn. p. 91 etc.

³³ 13 Stat. 763.

³⁴ 14 Stat. p. 811.

³⁵ 14 Stat. 814.

³⁶ House Journal, 39th Congress, 2nd Sessn. p. 563 etc.

"In all these States there are existing constitutions, framed in the accustomed way by the people. Congress, however, declares that these constitutions are not 'loyal and republican,' and requires the people to form them anew. What, then, in the opinion of Congress, is necessary to make the constitution of a State 'loyal and republican?' The original act answers the question: 'It is universal negro suffrage, a question which the federal Constitution leaves exclusively to the States themselves. All this legislative machinery of martial law, military coercion, and political disfranchisement is avowedly for that purpose and none other. The existing constitutions of the ten States conform to the acknowledged standards of loyalty and republicanism. Indeed, if there are degrees in republican forms of government, their constitutions are more republican now, than when these States—four of which were members of the original thirteen—first became members of the Union.'"

In President Andrew Johnson's Veto message on the Reconstruction Act on July 19, 1867,³⁷ he pointed out various unconstitutionality as follows:

"The veto of the original bill of the 2d of March was based on two distinct grounds, the interference of Congress in matters strictly appertaining to the reserved powers of the States, and the establishment of military tribunals for the trial of citizens in time of peace."

"A singular contradiction is apparent here. Congress declares these local State governments to be illegal governments, and then provides that these illegal governments shall be carried on by federal officers, who are to perform the very duties on its own officers by this illegal State authority. It certainly would be a novel spectacle if Congress should attempt to carry on a legal State government by the agency of its own officers. It is yet more strange that Congress attempts to sustain and carry on an illegal State government by the same federal agency."

"It is now too late to say that these ten political communities are not States of this Union. Declarations to the contrary made in these three acts are contradicted again and again by repeated acts of legislation enacted by Congress from the year 1861 to the year 1867."

"During that period, while these States were in actual rebellion, and after that rebellion was brought to a close, they have been again and again recognized as States of the Union. Representation has been apportioned to them as States. They have been divided into judicial districts for the holding of district and circuit courts of the United States, as States of the Union only can be districted. The last act on this subject was passed July 23, 1866, by which every one of these ten States was arranged into districts and circuits."

"They have been called upon by Congress to act through their legislatures upon at least two amendments to the Constitution of the United States. As States they have ratified one amendment, which required the vote of twenty-seven States of the thirty-six then composing the Union. When the requisite twenty-seven votes were given in favor of that amendment—seven of which votes were given by seven of these ten States—it was proclaimed to be a part of the Constitution of the United States, and slavery was declared no longer to exist within the United States or any place subject to their jurisdiction. If these seven States were not legal States of the Union, it follows as an inevitable consequence that in some of the States slavery yet exists. It does not exist

³⁷ 40th Congress, 1st Sessn. House Journal p. 232 etc.

in these seven States, for they have abolished it also in their State constitutions; but Kentucky not having done so, it would still remain in that State. But, in truth, if this assumption that these States have no legal State governments be true, then the abolition of slavery by these illegal governments binds no one, for Congress now denies to these States the power to abolish slavery by denying to them the power to elect a legal State legislature, or to frame a constitution for any purpose, even for such a purpose as the abolition of slavery.

"As to the other constitutional amendment having reference to suffrage, it happens that these States have not accepted it. The consequence is, that it has never been proclaimed or understood, even by Congress, to be a part of the Constitution of the United States. The Senate of the United States has repeatedly given its sanction to the appointment of judges, district attorneys, and marshals for every one of these States; yet, if they are not legal States, not one of these judges is authorized to hold a court. So, too, both houses of Congress have passed appropriation bills to pay all these judges, attorneys, and officers of the United States for exercising their functions in these States. Again, in the machinery of the internal revenue laws, all these States are distrusted, not as 'Territories,' but as 'States.'

"So much for continuous legislative recognition. The instances cited, however, fall far short of all that might be enumerated. Executive recognition, as is well known, has been frequent and unwavering. The same may be said as to judicial recognition through the Supreme Court of the United States.

"To me these considerations are conclusive of the unconstitutionality of this part of the bill now before me, and I earnestly commend their consideration to the deliberate judgment of Congress. [And now to the Court.]

"Within a period less than a year the legislation of Congress has attempted to strip the executive department of the government of some of its essential powers. The Constitution, and the oath provided in it, devolve upon the President the power and duty to see that the laws are faithfully executed. The Constitution, in order to carry out this power, gives him the choice of the agents, and makes them subject to his control and supervision. But in the execution of these laws the constitutional obligation upon the President remains, but the powers to exercise that constitutional duty is effectually taken away. The military commander is, as to the power of appointment, made to take the place of its President, and the General of the Army the place of the Senate; and any attempt on the part of the President to assert his own constitutional power may, under pretence of law, be met by official insubordination. It is to be feared that these military officers, looking to the authority given by these laws rather than to the letter of the Constitution, will recognize no authority but the commander of the district and the General of the army.

"If there were no other objection than this to this proposed legislation, it would be sufficient."

No one can contend that the Reconstruction Acts were ever upheld as being valid and constitutional.

They were brought into question, but the Courts either avoided decision or were prevented by Congress from finally adjudicating upon their constitutionality.

In *Mississippi v. President Andrew Johnson*, (4 Wall. 475-502), where the suit sought to enjoin the President of the United States from enforcing provisions of the Reconstruction Acts, the U.S. Supreme Court held that the President cannot be enjoined because for the Judicial Department of the government to attempt to enforce the performance of

the duties by the President might be justly characterized, in the language of Chief Justice Marshall, as "an absurd and excessive extravagance." The Court further said that if the Court granted the injunction against enforcement of the Reconstruction Acts, and if the President refused obedience, it is needless to observe that the Court is without power to enforce its process.

In a joint action, the states of Georgia and Mississippi brought suit against the President and the Secretary of War, (6 Wall. 50-78, 154 U.S. 554).

The Court said that:

"The bill then sets forth that the intent and design of the Acts of Congress, as apparent on their face and by their terms, are to overthrow and annul this existing state government, and to erect another and different government in its place, unauthorized by the Constitution and in defiance of its guaranties; and that, in furtherance of this intent and design, the defendants, the Secretary of War, the General of the Army, and Major-General Pope, acting under orders of the President, are about setting in motion a portion of the army to take military possession of the state, and threaten to subvert her government and subject her people to military rule; that the state is holding inadequate means to resist the power and force of the Executive Department of the United States; and she therefore insists that such protection can, and ought to be afforded by a decree or order of his court in the premises."

The applications for injunction by these two states to prohibit the Executive Department from carrying out the provisions of the Reconstruction Acts directed to the overthrow of their government, including this dissolution of their state legislatures, were denied on the grounds that the organization of the government into three great departments, the executive, legislative and judicial, carried limitations of the powers of each by the Constitution. This case when the same way as the previous case of *Mississippi* against President Johnson and was dismissed without adjudicating upon the constitutionality of the Reconstruction Acts.

In another case, *ex parte William H. McCordle* (7 Wall. 506-515), a petition for the writ of habeas corpus for unlawful restraint by military force of a citizen not in the military service of the United States was before the United States Supreme Court. After the case was argued and taken under advisement, and before conference in regard to the decision to be made, Congress passed an emergency Act, (Act March 27, 1868, 15 Stat. at L. 44), vetoed by the President and repassed over his veto, repealing the jurisdiction of the U.S. Supreme Court in such case. Accordingly, the Supreme Court dismissed the appeal without passing upon the constitutionality of the Reconstruction Acts, under which the non-military citizen was held by the military without benefit of writ of habeas corpus, in violation of Section 9, Article I of the U.S. Constitution which prohibits the suspension of the writ of habeas corpus.

That Act of Congress placed the Reconstruction Acts beyond judicial recourse and avoided tests of constitutionality.

It is recorded that one of the Supreme Court Justices, Grier, protested against the action of the Court as follows:

"This case was fully argued in the beginning of this month. It is a case which involves the liberty and rights, not only of the appellant but of millions of our fellow citizens. The country and the parties had a right to expect that it would receive the immediate and solemn attention of the court. By the postponement of this case we shall subject ourselves, whether justly or unjustly, to the imputation that we have evaded the performance of a duty imposed

on us by the Constitution, and waited for Legislative interposition to supersede our action, and relieve us from responsibility. I am not willing to be a partaker of the eulogy or opprobrium that may follow. I can only say . . . I am ashamed that such opprobrium should be cast upon the court and that it cannot be refuted."

The ten States were organized into Military Districts under the unconstitutional "Reconstruction Acts," their lawfully constituted Legislature illegally were removed by "military force," and they were replaced by rump, so-called Legislatures, seven of which carried out military orders and pretended to ratify the 14th Amendment, as follows:

Arkansas on April 6, 1868;³⁸

North Carolina on July 2, 1868;³⁹

Florida on June 9, 1868;⁴⁰

Louisiana on July 9, 1868;⁴¹

South Carolina on July 9, 1868;⁴²

Alabama on July 13, 1868;⁴³ and Georgia on July 21, 1868.⁴⁴

6. Of the above 7 States whose Legislatures were removed and replaced by rump, so-called Legislatures, six (6) Legislatures of the States of Louisiana, Arkansas, South Carolina, Alabama, North Carolina and Georgia had ratified the 13th Amendment, as shown by the Secretary of State's Proclamation of December 18, 1865, without which 6 States' ratifications, the 13th Amendment could not and would not have been ratified because said 6 States made a total of 27 out of 36 States or exactly three-fourths of the number required by Article V of the Constitution for ratification.

Furthermore, governments of the States of Louisiana and Arkansas had been re-established under a Proclamation issued by President Abraham Lincoln December 8, 1863.⁴⁵

The government of North Carolina had been re-established under a Proclamation issued by President Andrew Johnson dated May 29, 1865.⁴⁶

The government of Georgia had been re-established under a proclamation issued by President Andrew Johnson dated June 17, 1865.⁴⁷

The government of Alabama had been re-established under a Proclamation issued by President Andrew Johnson dated June 21, 1865.⁴⁸

The government of South Carolina had been re-established under a Proclamation issued by President Andrew Johnson dated June 30, 1865.⁴⁹

These three "Reconstruction Acts" ⁵⁰ under which the above State Legislatures were illegally removed and unlawful rump or puppet so-called Legislatures were substituted in a mock effort to ratify the 14th Amendment, were unconstitutional, null and void, ab initio, and all acts done thereunder were also null and void, including the purported ratification of the 14th Amendment by said 6 Southern puppet State Legislatures of

³⁸ McPherson, *Reconstruction*, p. 53.

³⁹ House Journal 1868, p. 15, Senate Journal 1868, p. 15.

⁴⁰ House Journal 1868, p. 9, Senate Journal 1868, p. 8.

⁴¹ Senate Journal 1868, p. 21.

⁴² House Journal 1868, p. 50, Senate Journal 1868, p. 12.

⁴³ Senate Journal, 40th Congress, 2nd Sessn. p. 725.

⁴⁴ House Journal, 1868, p. 50.

⁴⁵ Vol. I, pp. 288-306; Vol. II, pp. 1429-1448—"The Federal and State Constitutions," etc., compiled under Act of Congress on June 30, 1906, Francis Newton Thorpe, Washington Government Printing Office (1906).

⁴⁶ Same, Thorpe, Vol. V, pp. 2799-2800.

⁴⁷ Same, Thorpe, Vol. II, pp. 809-822.

⁴⁸ Same, Thorpe, Vol. I, pp. 116-132.

⁴⁹ Same, Thorpe, Vol. VI, pp. 3269-3281.

⁵⁰ 14 Stat. p. 428, etc. 15 Stat. p. 14, etc.

June 13, 1967

CONGRESSIONAL RECORD — HOUSE

15645

Arkansas, North Carolina, Louisiana, South Carolina, Alabama and Georgia.

Those Reconstruction Acts of Congress and all acts and things unlawfully done thereunder were in violation of Article IV, Section 4 of the United States Constitution, which required the United States to guarantee every State in the Union a republican form of government. They violated Article I, Section 3, and Article V of the Constitution, which entitled every State in the Union to two Senators, because under provisions of these unlawful Acts of Congress, 10 States were deprived of having two Senators, or equal suffrage in the Senate.

7. The Secretary of State expressed doubt as to whether three-fourths of the required states had ratified the 14th Amendment, as shown by his Proclamation of July 20, 1868.¹⁵ Promptly on July 21, 1868, a Joint Resolution¹⁶ was adopted by the Senate and House of Representatives declaring that three-fourths of the several States of the Union had ratified the 14th Amendment. That resolution, however, included purported ratifications by the unlawful puppet Legislatures of 5 States, Arkansas, North Carolina, Louisiana, South Carolina and Alabama, which had previously rejected the 14th Amendment by action of their lawfully constituted Legislatures, as above shown. This Joint Resolution assumed to perform the function of the Secretary of State in whom Congress, by Act of April 20, 1818, had vested the function of issuing such proclamation declaring the ratification of Constitutional Amendments.

The Secretary of State bowed to the action of Congress and issued his Proclamation of July 28, 1868,¹⁷ in which he stated that he was acting under authority of the Act of April 20, 1818, but pursuant to said Resolution of July 21, 1868. He listed three-fourths or so of the then 37 states as having ratified the 14th Amendment, including the purported ratification of the unlawful puppet Legislatures of the States of Arkansas, North Carolina, Louisiana, South Carolina and Alabama. Without said 5 unlawful purported ratifications there would have been only 25 states left to ratify out of 37 when a minimum of 28 states was required for ratification by three-fourths of the States of the Union.

The Joint Resolution of Congress and the resulting Proclamation of the Secretary of State also included purported ratifications by the States of Ohio and New Jersey, although the Proclamation recognized the fact that the Legislatures of said states, several months previously, had withdrawn their ratifications and effectively rejected the 14th Amendment in January, 1868, and April, 1868.

Therefore, deducting these two states from the purported ratifications of the 14th Amendment, only 23 State ratifications at most could be claimed; whereas the ratification of 28 States, or three-fourths of 37 States in the Union, were required to ratify the 14th Amendment.

From all of the above documented historic facts, it is inescapable that the 14th Amendment never was validly adopted as an article of the Constitution, that it has no legal effect, and it should be declared by the Courts to be unconstitutional, and therefore null, void and of no effect.

THE CONSTITUTION STRIKES THE 14TH AMENDMENT WITH NULLITY

The defenders of the 14th Amendment contend that the U.S. Supreme Court has finally decided upon its validity. Such is not the case.

In what is considered the leading case, *Coleman v. Miller*, 307 U.S. 448, 59 S. Ct. 972, the U.S. Supreme Court did not uphold the validity of the 14th Amendment.

In that case, the Court brushed aside constitutional questions as though they did not exist. For instance, the Court made the statement that:

"The legislatures of Georgia, North Carolina and South Carolina had rejected the amendment in November and December, 1866. New governments were erected in those States (and in others) under the direction of Congress. The new legislatures ratified the amendment, that of North Carolina on July 4, 1868, that of South Carolina on July 9, 1868, and that of Georgia on July 21, 1868."

And the Court gave no consideration to the fact that Georgia, North Carolina and South Carolina were three of the original states of the Union with valid and existing constitutions on an equal footing with the other original states and those later admitted into the Union.

What constitutional right did Congress have to remove those state governments and their legislatures under unlawful military power set up by the unconstitutional "Reconstruction Acts," which had for their purpose, the destruction and removal of these legal state governments and the nullification of their Constitutions?

The fact that these three states and seven other Southern States had existing Constitutions, were recognized as states of the Union, again and again; had been divided into judicial districts for holding their district and circuit courts of the United States; had been called upon by Congress to act through their legislatures upon two Amendments, the 13th and 14th, and by their ratifications had actually made possible the adoption of the 13th Amendment; as well as their state governments having been re-established under Presidential Proclamations, as shown by President Andrew Johnson's Veto message and proclamations, were all brushed aside by the Court in *Coleman* by the statement that: "New governments were erected in those States (and in others) under the direction of Congress," and that these new legislatures ratified the Amendment.

The U.S. Supreme Court overlooked that it previously had held that at no time were these Southern States out of the Union. *White v. Hart*, 1871, 13 Wall. 646, 654.

In *Coleman*, the Court did not adjudicate upon the invalidity of the Acts of Congress which set aside those state Constitutions and abolished their state legislatures,—the Court simply referred to the fact that their legally constituted legislatures had rejected the 14th Amendment and that the "new legislatures" had ratified the Amendment.

The Court overlooked the fact, too, that the State of Virginia was also one of the original states with its Constitution and Legislature in full operation under its civil government at the time.

The Court also ignored the fact that the other six Southern States, which were given the same treatment by Congress under the unconstitutional "Reconstruction Acts", all had legal constitutions and a republican form of government in each state, as was recognized by Congress by its admission of those states into the Union. The Court certainly must take judicial cognizance of the fact that before a new state is admitted by Congress into the Union, Congress enacts an Enabling Act to enable the inhabitants of the territory to adopt a Constitution to set up a republican form of government as a condition precedent to the admission of the state into the Union, and upon approval of such Constitution, Congress then passes the Act of Admission of such state.

All this was ignored and brushed aside by the Court in the *Coleman* case. However, in *Coleman* the Court inadvertently said this:

"Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United

States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States."

In *Hawke v. Smith*, 1920, 253 U.S. 221, 40 S. Ct. 227, the U.S. Supreme Court unmistakably held:

"The fifth article is a grant of authority by the people to Congress. The determination of the method of ratification is the exercise of a national power specifically granted by the Constitution; that power is conferred upon Congress, and is limited to two methods, by action of the Legislatures of three-fourths of the states, or conventions in a like number of states. *Dodge v. Woolsey*, 18 How. 331, 348, 15 L. Ed. 401. The framers of the Constitution might have adopted a different method. Ratification might have been left to a vote of the people, or to some authority of government other than that selected. The language of the article is plain, and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed."

We submit that in none of the cases, in which the Court avoided the constitutional issues involved in the composition of the Congress which adopted the Joint Resolution for the 14th Amendment, did the Court pass upon the constitutionality of the Congress which purported to adopt the Joint Resolution for the 14th Amendment, with 80 Representatives and 23 Senators, in effect, forcibly ejected or denied their seats and their votes on the Joint Resolution proposing the Amendment, in order to pass the same by a two-thirds vote, as pointed out in the New Jersey Legislature Resolution on March 27, 1868.

The constitutional requirements set forth in Article V of the Constitution permit the Congress to propose amendments only when ever two-thirds of both houses shall deem it necessary,—that is, two-thirds of both houses as then constituted without forcible ejections.

Such a fragmentary Congress also violated the constitutional requirements of Article V that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

There is no such thing as giving life to an amendment illegally proposed or never legally ratified by three-fourths of the states. There is no such thing as amendment by laches; no such thing as amendment by waiver; no such thing as amendment by acquiescence; and no such thing as amendment by any other means whatsoever except the means specified in Article V of the Constitution itself.

It does not suffice to say that there have been hundreds of cases decided under the 14th Amendment to supply the constitutional deficiencies in its proposal or ratification as required by Article V. If hundreds of litigants did not question the validity of the 14th Amendment, or questioned the same perfunctorily without submitting documentary proof of the facts of record which made its purported adoption unconstitutional, their failure cannot change the Constitution for the millions in America. The same thing is true of laches; the same thing is true of acquiescence; the same thing is true of ill considered court decisions.

To ascribe constitutional life to an alleged amendment which never came into being according to specific methods laid down in Article V cannot be done without doing violence to Article V itself. This is true, because the only question open to the courts is whether the alleged 14th Amendment became a part of the Constitution through a

¹⁵ 15 Stat. p. 706.

¹⁶ House Journal, 40th Congress, 2nd Sessn. p. 1126 etc.

¹⁷ 15 Stat. p. 708.

method required by Article V. Anything beyond that which a court is called upon to hold in order to validate an amendment, would be equivalent to writing into Article V another mode of the amendment which has never been authorized by the people of the United States.

On this point, therefore, the question is, was the 14th Amendment proposed and ratified in accordance with Article V?

In answering this question, it is of no real moment that decisions have been rendered in which the parties did not contest or submit proper evidence, or the Court assumed that there was a 14th Amendment. If a statute never in fact passed by Congress, through some error of administration and printing got into the published reports of the statutes, and if under such supposed statute courts had levied punishment upon a number of persons charged under it, and if the error in the published volume was discovered and the fact became known that no such statute had ever passed in Congress, it is unthinkable that the Courts would continue to administer punishment in similar cases, on a non-existent statute because prior decisions had done so. If that be true as to a statute we need only realize the greater truth when the principle is applied to the solemn question of the contents of the Constitution.

While the defects in the method of proposing and the subsequent method of computing "ratification" is briefed elsewhere, it should be noted that the failure to comply with Article V began with the first action by Congress. The very Congress which proposed the alleged 14th Amendment under the first part of Article V was itself, at that very time, violating the last part as well as the first part of Article V of the Constitution. We shall see how this was done.

There is one, and only one, provision of the Constitution of the United States which is forever immutable—which can never be changed or expunged. The Courts cannot alter it; the executives cannot change it; the Congress cannot change it; the States themselves—even all the States in perfect concert—cannot amend it in any manner whatsoever, whether they act through conventions called for the purpose or through their legislatures. Not even the unanimous vote of every voter in the United States could amend this provision. It is a perpetual fixture in the Constitution, so perpetual and so fixed that if the people of the United States desired to change or exclude it, they would be compelled to abolish the Constitution and start afresh.

The unalterable provision is this: "that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

A state, by its own consent, may waive this right of equal suffrage, but that is the only legal method by which a failure to accord this immutable right of equal suffrage in the Senate can be justified. Certainly not by forcible ejection and denial by a majority in Congress, as was done for the adoption of the Joint Resolution for the 14th Amendment.

Statements by the Court in the Coleman case that Congress was left in complete control of the mandatory process, and therefore it was a political affair for Congress to decide if an amendment had been ratified, does not square with Article V of the Constitution which shows no intention to leave Congress in charge of deciding whether there has been a ratification. Even a constitutionally recognized Congress is given but one volition in Article V, that is, to vote whether to propose an Amendment on its own initiative. The remaining steps by Congress are mandatory. If two-thirds of both houses shall deem it necessary, Congress shall propose amendments; if the Legislatures of two-thirds of the States make application, Congress shall call a convention. For the Court to give Congress any power beyond that to be

found in Article V is to write the new material into Article V.

It would be inconceivable that the Congress of the United States could propose, compel submission to, and then give life to an invalid amendment by resolving that its effort had succeeded—regardless of compliance with the positive provisions of Article V.

It should need no further citations to sustain the proposition that neither the Joint Resolution proposing the 14th Amendment nor its ratification by the required three-fourths of the States in the Union were in compliance with the requirements of Article V of the Constitution.

When the mandatory provisions of the Constitution are violated, the Constitution itself strikes with nullity the Act that did violence to its provisions. Thus, the Constitution strikes with nullity the purported 14th Amendment.

The Courts, bound by oath to support the Constitution, should review all of the evidence herein submitted and measure the facts proving violations of the mandatory provisions of the Constitution with Article V, and finally render judgment declaring said purported Amendment never to have been adopted as required by the Constitution.

The Constitution makes it the sworn duty of the judges to uphold the Constitution which strikes with nullity the 14th Amendment.

And, as Chief Justice Marshall pointed out for a unanimous Court in *Marbury v. Madison* (1 Cranch 136 @ 179):

"The framers of the constitution contemplated the instrument as a rule for the government of courts, as well as of the legislature."

"Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government?"

"If such be the real state of things, that is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime."

"Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions . . . courts, as well as other departments, are bound by that instrument."

The federal courts actually refuse to hear argument on the invalidity of the 14th Amendment, even when the issue is presented squarely by the pleadings and the evidence as above.

Only an aroused public sentiment in favor of preserving the Constitution and our institutions and freedoms under constitutional government, and the future security of our country, will break the political barrier which now prevents judicial consideration of the unconstitutionality of the 14th amendment.

THE MIDEAST CRISIS—NOT BACKWARD TO BELLIGERENCY BUT FORWARD TO PEACE

Mr. PRYOR. Mr. Speaker, I ask unanimous consent that the gentleman from New York [Mr. TENZER] may extend his remarks at this point in the Record and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. TENZER. Mr. Speaker, the distinguished Foreign Minister of the State

of Israel, Abba Eban, in his address to the United Nations Security Council on June 6, 1967, set the theme for a lasting peace in the Middle East so much desired by all the peace-loving nations of the world. His address was entitled, "Not Backward to Belligerency but Forward to Peace."

On June 7, 1967, following the first United Nations resolution calling for a cease-fire in the Middle East, I stated to a distinguished group of Americans who visited me in Washington as follows:

I deem it most imperative that the terms of the agreement to follow the cease fire provide effective guarantees, to the end that permanent peace may be established in the Middle East.

The interests of world peace would best be served if the terms provide:

1. For recognition of the validity of the sovereignty of the State of Israel by the U.A.R. and other Arab states.

2. A reaffirmation that the Gulf of Aqaba is an international waterway and will remain open for free passage to shipping of all nations through the Straits of Tiran.

3. An opening of the Suez Canal to shipping of all nations.

4. An ending of terrorism and border raids so that Israel may carry out its desire to live in peace with its neighbors.

5. For direct negotiations between Israel and her Arab neighbors for the resolution of other pending issues.

Indeed, it is within the province of the sovereign State of Israel to speak its mind on the terms of the agreement to follow the cease-fire—the terms which in its view will best insure permanent peace in the Middle East. We on the other hand take the opportunity to make suggestions which in our opinion will best secure the peace of the world—thereby also serving the best interests of the United States.

An elaboration of the five points suggested on June 7, 1966, is accordingly in order.

I. THE STATE OF ISRAEL, A SOVEREIGN NATION

The State of Israel is a member of the United Nations—a full-fledged member of the family of nations. Though the integrity of her borders were guaranteed by the major powers—three times in 20 years—the State of Israel was obliged to go to war to put a stop to the violation of her boundary lines.

It is therefore basic to any plan for permanent peace in the Middle East that the sovereignty of the State of Israel be recognized by her neighbors. This fact cannot be questioned—this truth is and should not be negotiable because its import was underlined by the events of the past 10 days.

The foundation for a permanent peace in the Middle East must be the absolute and unqualified recognition by the Arab States of the right of the State of Israel to exist as a sovereign state among other sovereign states. When this foundation is laid, then Israel and her Arab neighbors can, through direct negotiations, begin to build the structure leading to permanent peace.

II. STRAIT OF TIRAN AN INTERNATIONAL WATERWAY

Since 1950, Egypt has repeatedly given assurances that the Strait of Tiran would remain open for "innocent passage

PUBLIC LAW 97-116—DEC. 29, 1981

95 STAT. 1611

Public Law 97-116
97th Congress

An Act

To amend the Immigration and Nationality Act, and for other purposes.

Dec. 29, 1981

[H.R. 4327]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Immigration and Nationality Act Amendments of 1981".

Immigration and
Nationality Act
Amendments of
1981.
8 USC 1101 note.

(b) Except as specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of, a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

SEC. 2. (a) Subsection (a)(15) of section 101 (8 U.S.C. 1101) is amended—

(1) by striking out "institution of learning or other recognized place of study" in subparagraph (F) and inserting in lieu thereof "college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program"; and

(2) by adding after subparagraph (L) the following new subparagraph:

"(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him."

(b) Subsection (b) of such section is amended by striking out "fourteen" in subparagraphs (E) and (F) and inserting in lieu thereof "sixteen".

(c) Subsection (f) of such section is amended—

(1) by striking out paragraph (2); and

(2) by striking out "paragraphs (9), (10), and (23) of section 212(a)" in paragraph (3) and inserting in lieu thereof "paragraphs (9) and (10) of section 212(a) and paragraph (23) of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana)".

SEC. 3. Section 204 (8 U.S.C. 1154) is amended by striking out subsection (d) and by redesignating subsection (e) as subsection (d) and the subsection (f), which was renumbered by section 3 of Public Law 95-417, as subsection (e).

92 Stat. 917.

SEC. 4. Section 212 (8 U.S.C. 1182) is amended—

95 STAT. 1612

PUBLIC LAW 97-116—DEC. 29, 1981

(1) by inserting "and who seek admission within five years of the date of such deportation or removal," in subsection (a)(17) after "section 242(b)";

(2) by striking out the second sentence of paragraph (6) of subsection (d); and

(3) by striking out "paragraphs (9), (10), or (12) of this section" in subsection (h) and inserting in lieu thereof "paragraphs (9), (10), or (12) of subsection (a) or paragraph (28) of such subsection as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana".

Sec. 5. (a)(1) Section 212 (8 U.S.C. 1182) is amended by striking out the semicolon at the end of paragraph (32) of subsection (a) and inserting in lieu thereof a period and the following: "For the purposes of this paragraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date;"

(2) Subsection (j)(1)(B) of such section is amended by striking out the semicolon at the end thereof and inserting in lieu thereof a period and the following: "For the purposes of this subparagraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date."

8 USC 1182 note.

8 USC 1101, 1101
note, 1182 note.
8 USC 1182.

(3) Section 602 of the Health Professions Educational Assistance Act of 1976 (Public Law 94-484), added by section 307(q)(3) of Public Law 95-83, is amended by striking out subsections (a) and (b).

(b) Subsection (j) of section 212 is amended—

(1) by inserting "as follows" after "education or training are" in paragraph (1) in the matter before subparagraph (A);

(2) by striking out "(including any extension of the duration thereof under subparagraph (D))" in paragraph (1)(C);

(3) by striking out "Commissioner of Education" and "Secretary of Health, Education, and Welfare" each place it appears and inserting in lieu thereof "Secretary of Education" and "Secretary of Health and Human Services", respectively;

(4) by striking out the semicolon at the end of subparagraph (A) and "; and" at the end of subparagraph (C) and inserting in lieu thereof a period in each case;

(5) by amending subparagraph (D) of paragraph (1) to read as follows:

Medical
education.

"(D) The duration of the alien's participation in the program of graduate medical education or training for which the alien is coming to the United States is limited to the time typically required to complete such program, as determined by the Director of the International Communication Agency at the time of the alien's entry into the United States, based on criteria which are established in coordination with the Secretary of Health and Human Services and which take into consideration the published requirements of the medical specialty board which administers such education or training program; except that—

"(i) such duration is further limited to seven years unless the alien has demonstrated to the satisfaction of the Director that the country to which the alien will return at the end of such specialty education or training has an exceptional need for an individual trained in such specialty, and

PUBLIC LAW 97-116—DEC. 29, 1981

95 STAT. 1613

"(ii) the alien may, once and not later than two years after the date the alien enters the United States as an exchange visitor or acquires exchange visitor status, change the alien's designated program of graduate medical education or training if the Director approves the change and if a commitment and written assurance with respect to the alien's new program have been provided in accordance with subparagraph (C).";

(6) by inserting after subparagraph (D) the following new subparagraph: Affidavit.

"(E) The alien furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (i) is in good standing in the program of graduate medical education or training in which the alien is participating, and (ii) will return to the country of his nationality or last residence upon completion of the education or training for which he came to the United States.";

(7)(A) by striking out "(ii)" in paragraph (1)(B) and inserting in lieu thereof "(ii)(I)";

(B) by inserting, in paragraph (1)(B), "(II)" before "has competency", "(III)" before "will be able to adapt", and "(IV)" before "has adequate prior education";

(C) by striking out "December 31, 1981" in paragraph (2)(A) and inserting in lieu thereof "December 31, 1983";

(D) by striking out "and (B) of paragraph (1)" in paragraph (2)(A) and inserting in lieu thereof "and (B)(ii)(I) of paragraph (1)";

(E) by inserting after "if" in paragraph (2)(A) the following: "(i) the Secretary of Health and Human Services determines, on a case-by-case basis, that";

(F) by striking out the period at the end of paragraph (2)(A) and inserting in lieu thereof the following: Plan to reduce reliance on alien physicians.
 ", and (ii) the program has a comprehensive plan to reduce reliance on alien physicians, which plan the Secretary of Health and Human Services finds, in accordance with criteria published by the Secretary, to be satisfactory and to include the following:

"(I) A detailed discussion of specific problems that the program anticipates without such waiver and of the alternative resources and methods (including use of physician extenders and other paraprofessionals) that have been considered and have been and will be applied to reduce such disruption in the delivery of health services.

"(II) A detailed description of those changes of the program (including improvement of educational and medical services training) which have been considered and which have been or will be applied which would make the program more attractive to graduates of medical schools who are citizens of the United States.

"(III) A detailed description of the recruiting efforts which have been and will be undertaken to attract graduates of medical schools who are citizens of the United States.

"(IV) A detailed description and analysis of how the program, on a year-by-year basis, has phased down and will phase down its dependence upon aliens who are graduates of foreign medical schools so that the program will not be dependent upon the admission to the program of any additional such aliens after December 31, 1983."; and

(G) by inserting at the end of paragraph (2)(B) the following:

95 STAT. 1614

PUBLIC LAW 97-116—DEC. 29, 1981

Waivers.

"The Secretary of Health and Human Services, in coordination with the Attorney General and the Director of the International Communication Agency, shall (i) monitor the issuance of waivers under subparagraph (A) and the needs of the communities (with respect to which such waivers are issued) to assure that quality medical care is provided, and (ii) review each program with such a waiver to assure that the plan described in subparagraph (A)(ii) is being carried out and that participants in such program are being provided appropriate supervision in their medical education and training.

Report to Congress.

"(C) The Secretary of Health and Human Services, in coordination with the Attorney General and the Director of the International Communication Agency, shall report to the Congress at the beginning of fiscal years 1982 and 1983 on the distribution (by geography, nationality, and medical specialty or field of practice) of foreign medical graduates in the United States who have received a waiver under subparagraph (A), including an analysis of the dependence of the various communities on aliens who are in medical education or training programs in the various medical specialties."; and

Report to Congress.

(8) by adding at the end the following new paragraph:

"(3) The Director of the International Communication Agency annually shall transmit to the Congress a report on aliens who have submitted affidavits described in paragraph (1)(E), and shall include in such report the name and address of each such alien, the medical education or training program in which such alien is participating, and the status of such alien in that program."

8 USC 1182 note.

(c) The amendments made by paragraphs (2), (5), and (6) of subsection (b) shall apply to aliens entering the United States as exchange visitors (or otherwise acquiring exchange visitor status) on or after January 10, 1978.

(d)(1) Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (F), by striking out the period at the end of subparagraph (G) and inserting in lieu thereof "; or", and by adding after subparagraph (G) the following new subparagraph:

"(H) an immigrant, and his accompanying spouse and children, who—

"(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

"(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

"(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

"(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry."

(2) Section 245(c)(2) (8 U.S.C. 1255(c)(2)) is amended by inserting "or a special immigrant described in section 101(a)(27)(H)" after "an immediate relative as defined in section 201(b)".

Report to Congress.

8 USC 1101 note.

(e) The Secretary of Health and Human Services, after consultation with the Attorney General, the Secretary of State, and the Director of the International Communication Agency, shall evaluate the effectiveness and value to foreign nations and to the United States of exchange programs for the graduate medical education or training of aliens who are graduates of foreign medical schools, and shall report to Congress, not later than January 15, 1983, on such evaluation and include in such report such recommendations for changes in legislation and regulations as may be appropriate.

PUBLIC LAW 97-116—DEC. 29, 1981

95 STAT. 1615

SEC. 6. Section 223(b) (8 U.S.C. 1203(b)) is amended by striking out "one year from the date of issuance: *Provided*, That the Attorney General may in his discretion extend the validity of the permit for a period or periods not exceeding one year in the aggregate" and inserting in lieu thereof "two years from the date of issuance and shall not be renewable".

SEC. 7. (a) Subsection (a) of section 237 (8 U.S.C. 1227) is amended to read as follows:

Deportation.

"(a)(1) Any alien (other than an alien crewman) arriving in the United States who is excluded under this Act, shall be immediately deported, in accommodations of the same class in which he arrived, unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper. Deportation shall be to the country in which the alien boarded the vessel or aircraft on which he arrived in the United States, unless the alien boarded such vessel or aircraft in foreign territory contiguous to the United States or in any island adjacent thereto or adjacent to the United States and the alien is not a native, citizen, subject, or national of, or does not have a residence in, such foreign contiguous territory or adjacent island, in which case the deportation shall instead be to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island. The cost of the maintenance including detention expenses and expenses incident to detention of any such alien while he is being detained shall be borne by the owner or owners of the vessel or aircraft on which he arrived, except that the cost of maintenance (including detention expenses and expenses incident to detention while the alien is being detained prior to the time he is offered for deportation to the transportation line which brought him to the United States) shall not be assessed against the owner or owners of such vessel or aircraft if (A) the alien was in possession of a valid, unexpired immigrant visa, or (B) the alien (other than an alien crewman) was in possession of a valid, unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (i) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (ii) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if the owner or owners of such vessel or aircraft established to the satisfaction of the Attorney General that the ground of exclusion could not have been ascertained by the exercise of due diligence prior to the alien's embarkation, or (C) the person claimed United States nationality or citizenship and was in possession of an unexpired United States passport issued to him by competent authority.

Detention expenses.

"(2) If the government of the country designated in paragraph (1) will not accept the alien into its territory, the alien's deportation shall be directed by the Attorney General, in his discretion and without necessarily giving any priority or preference because of their order as herein set forth, either to—

Nonacceptance of deported aliens.

"(A) the country of which the alien is a subject, citizen, or national;

"(B) the country in which he was born;

"(C) the country in which he has a residence; or

95 STAT. 1616

PUBLIC LAW 97-116—DEC. 29, 1981

"(D) any country which is willing to accept the alien into its territory, if deportation to any of the foregoing countries is impracticable, inadvisable, or impossible."

(b) Subsection (b) of such section is amended—

(1) by striking out "to the country whence he came" in clause (3) and inserting in lieu thereof "to the country to which his deportation has been directed"; and

(2) by striking out "collector of customs" each place it appears and inserting in lieu thereof "district director of customs".

Transportation
expense.

(c) Subsection (c) of such section is amended to read as follows:

"(c) An alien shall be deported on a vessel or aircraft owned by the same person who owns the vessel or aircraft on which the alien arrived in the United States, unless it is impracticable to so deport the alien within a reasonable time. The transportation expense of the alien's deportation shall be borne by the owner or owners of the vessel or aircraft on which the alien arrived. If the deportation is effected on a vessel or aircraft not owned by such owner or owners, the transportation expense of the alien's deportation may be paid from the appropriation for the enforcement of this Act and recovered by civil suit from any owner, agent, or consignee of the vessel or aircraft on which the alien arrived."

Deportation.

SEC. 8. Section 241(f) (8 U.S.C. 1251(f)) is amended to read as follows:

"(f)(1)(A) The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure or have procured visas or other documentation, or entry into the United States, by fraud or misrepresentation, whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in subsection (a)(19)) who—

"(i) is the spouse, parent, or child of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

"(ii) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such entry except for those grounds of inadmissibility specified under paragraphs (14), (20), and (21) of section 212(a) which were a direct result of that fraud or misrepresentation.

8 USC 1182.

Waiver of
deportation.

"(B) A waiver of deportation for fraud or misrepresentation granted under subparagraph (A) shall also operate to waive deportation based on the grounds of inadmissibility at entry described under subparagraph (A)(ii) directly resulting from such fraud or misrepresentation.

"(2) The provisions of subsection (a)(11) as relate to a single offense of simple possession of 30 grams or less of marihuana may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in subsection (a)(19)) who—

"(A) is the spouse or child of a citizen of the United States or of an alien lawfully admitted for permanent residence, or

"(B) has a child who is a citizen of the United States or an alien lawfully admitted for permanent residence,

if it is established to the satisfaction of the Attorney General that the alien's deportation would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, or child of such alien and that such waiver would not be contrary to the national welfare, safety, or security of the United States."

SEC. 9. Subsection (f) of section 244 (8 U.S.C. 1254) is amended to read as follows:

PUBLIC LAW 97-116—DEC. 29, 1981

95 STAT. 1617

"(f) The provisions of subsection (a) shall not apply to an alien who—

"(1) entered the United States as a crewman subsequent to June 30, 1964;

"(2) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J), or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 212(e); or 8 USC 1101.

"(3)(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J) or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training, (B) is subject to the two-year foreign residence requirement of section 212(e), and (C) has not fulfilled that requirement or received a waiver thereof." 8 USC 1182.

SEC. 10. Section 248 (8 U.S.C. 1258) is amended by striking out "except" and all that follows through the end and inserting in lieu thereof the following: "except in the case of—

"(1) an alien classified as a nonimmigrant under subparagraph (C), (D), or (K) of section 101(a)(15),

"(2) an alien classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who came to the United States or acquired such classification in order to receive graduate medical education or training, and

"(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who is subject to the two-year foreign residence requirement of section 212(e) and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 101(a)(15) to a classification under subparagraph (A) or (G) of such section."

Nonimmigrant classification.

SEC. 11. Section 265 (8 U.S.C. 1305) is amended to read as follows:

"Sec. 265. (a) Each alien required to be registered under this title who is within the United States shall notify the Attorney General in writing of each change of address and new address within ten days from the date of such change and furnish with such notice such additional information as the Attorney General may require by regulation.

Alien registration and address changes.

"(b) The Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this title, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

"(c) In the case of an alien for whom a parent or legal guardian is required to apply for registration, the notice required by this section shall be given to such parent or legal guardian."

SEC. 12. Subsection (b) of section 274 (8 U.S.C. 1324) is amended to read as follows:

"(b)(1) Any conveyance, including any vessel, vehicle, or aircraft, which is used in the commission of a violation of subsection (a) shall be subject to seizure and forfeiture, except that—

"(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the

Conveyances used in customs laws violation.

95 STAT. 1618

PUBLIC LAW 97-116—DEC. 29, 1981

owner or other person in charge of such conveyance was a consenting party or privy to the illegal act; and

"(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

"(2) Any conveyance subject to seizure under this section may be seized without warrant if there is probable cause to believe the conveyance has been used in a violation of subsection (a) and circumstances exist where a warrant is not constitutionally required.

"(3) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for the violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of conveyances under the customs laws shall be performed with respect to seizures and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

"(4) Whenever a conveyance is forfeited under this section the Attorney General may—

"(A) retain the conveyance for official use;

"(B) sell the conveyance, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; or

"(C) require that the General Services Administration take custody of the conveyance and remove it for disposition in accordance with law.

"(5) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant: *Provided*, That probable cause shall be first shown for the institution of such suit or action. In determining whether probable cause exists, any of the following shall be prima facie evidence that an alien involved in the alleged violation was not lawfully entitled to enter, or reside within, the United States:

"(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien was not lawfully entitled to enter, or reside within, the United States.

"(B) Official records of the Service showing that the alien was not lawfully entitled to enter, or reside within, the United States.

"(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien was not entitled to enter, or reside within, the United States."

SEC. 13. Section 286 (8 U.S.C. 1356) is amended—

(1) by redesignating subsection (b) as subsection (c) and by inserting "and subsection (b)" in that subsection after "Except as otherwise provided in subsection (a)", and

PUBLIC LAW 97-116—DEC. 29, 1981

95 STAT. 1619

(2) by inserting after subsection (a) the following new subsection:

"(b) Moneys expended from appropriations for the Service for the purchase of evidence and subsequently recovered shall be reimbursed to the current appropriation for the Service."

SEC. 14. Section 316(b) (8 U.S.C. 1427(b)) is amended by adding at the end the following: "The spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection shall also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person."

SEC. 15. (a) Section 329(b) (8 U.S.C. 1440(b)) is amended by inserting "and" at the end of paragraph (3), by striking out "; and" at the end of paragraph (4) and inserting in lieu thereof a period, and by striking out paragraph (5).

(b) Section 334(a) (8 U.S.C. 1445(a)) is amended by striking out "and duly verified by two witnesses,".

(c) Section 335 (8 U.S.C. 1446) is amended—

(1) by striking out "and the oaths of petitioner's witnesses to the petition for naturalization" in the second sentence of subsection (b);

(2) by striking out subsections (f), (g), and (h); and

(3) by redesignating subsection (i) as subsection (f).

(d) Section 336 (8 U.S.C. 1447) is amended—

(1) by striking out "and the witnesses" each place it appears in subsections (a) and (b);

(2) by striking out subsection (c);

(3) by redesignating subsection (d) as subsection (c);

(4) by redesignating subsection (e) as subsection (d) and striking out the last sentence thereof; and

(5) by redesignating subsection (f) as subsection (e).

(e) Section 328(b)(2) (8 U.S.C. 1439(b)(2)) is amended by striking out "and section 336(c)" and "and the witnesses".

SEC. 16. Section 344(c) (8 U.S.C. 1455(c)) is amended by striking out "\$6,000" each place it appears and inserting in lieu thereof "\$40,000".

SEC. 17. Section 13(b) of the Act of September 11, 1957 (71 Stat. 642; 8 U.S.C. 1255b(b)), is amended by inserting after "Attorney General" the first place it appears the following: "that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest,".

SEC. 18. (a) Section 101 (8 U.S.C. 1101) is amended—

(1) by striking out "Office of Education of the United States" in subsection (a)(15)(F) and inserting in lieu thereof "Secretary of Education";

(2) by striking out the period at the end of each of subparagraphs (H), (J), and (K) of subsection (a)(15) and inserting in lieu thereof a semicolon;

(3) by striking out the period at the end of subparagraph (L) of subsection (a)(15) and inserting in lieu thereof "; or";

(4) by striking out the second sentence of subsection (a)(33); and

(5)(A) by striking out "or" at the end of subparagraphs (A) and (B) of subsection (b)(1),

(B) by striking out the period at the end of subparagraph (C) of such subsection and inserting in lieu thereof a semicolon, and

95 STAT. 1620

PUBLIC LAW 97-116—DEC. 29, 1981

(C) by striking out the period at the end of subparagraph (E) of such subsection and inserting in lieu thereof “; or”.

(b) Section 106(a)(1) (8 U.S.C. 1105a(a)(1)) is amended by striking out the period at the end and inserting in lieu thereof a semicolon.

(c) Section 202(b) (8 U.S.C. 1152(b)) is amended by inserting “and” before “(4)”.

(d) Section 204(a) (8 U.S.C. 1154(a)) is amended by striking out “of the relationships described in paragraphs” and inserting in lieu thereof “of a relationship described in paragraph”.

(e) Section 212 (8 U.S.C. 1182) is amended—

(1) by inserting “)” in subsection (a)(32) after “is in the United States”, and

(2) by adding at the end the following new subsection:

“(k) Any alien, excludable from the United States under paragraph (14), (20), or (21) of subsection (a), who is in possession of an immigrant visa may, if otherwise admissible, be admitted in the discretion of the Attorney General if the Attorney General is satisfied that exclusion was not known to, and could not have been ascertained by the exercise of reasonable diligence by, the immigrant before the time of departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory or, in the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant’s application for admission.”

(f) Section 221(a) (8 U.S.C. 1201(a)) is amended by striking out the period after “is charged” and inserting in lieu thereof a comma.

(g) Section 231(d) (8 U.S.C. 1221(d)) is amended by striking out “subsections” and inserting in lieu thereof “subsection”.

(h)(1)(A) The eleventh sentence of subsection (b) of section 242 (8 U.S.C. 1252) is amended by striking out “or (18)” and inserting in lieu thereof “(18), or (19)”.

(B) Subsection (e) of such section is amended by striking out “or (18)” and inserting in lieu thereof “(18), or (19)”.

(2) Subsection (a) of section 244 (8 U.S.C. 1254) is amended by inserting “(other than an alien described in section 241(a)(19))” after “in the case of an alien” in the matter before paragraph (1).

(i) The fourth sentence of section 243(a) (8 U.S.C. 1253(a)) is amended by inserting a comma after “subject”.

(j) Section 244(d) (8 U.S.C. 1254(d)) is amended—

(1) by striking out “nonpreference”, and

(2) by striking out “203(a)(7)” and inserting in lieu thereof “201(a) or 202(a)”.

(k)(1) Section 291 (8 U.S.C. 1361) is amended by striking out “quota immigrant, or nonquota immigrant” and inserting in lieu thereof “immigrant, special immigrant, immediate relative, or refugee”.

(2) Section 349(a)(1) (8 U.S.C. 1481(a)(1)) is amended by striking out “nonquota immigrant” and inserting in lieu thereof “special immigrant”.

(l) Section 309 (8 U.S.C. 1409) is amended—

(1) by striking out “(3), (4), (5), and (7) of section 301(a)” in subsection (a) and inserting in lieu thereof “(c), (d), (e), and (g) of section 301”, and

(2) by striking out “301(a)(7)” in subsection (b) and inserting in lieu thereof “301(g)”.

(m) Sections 320(b), 321(b), and 322(b) (8 U.S.C. 1431(b), 1432(b), 1433(b)) are each amended by striking out “a child adopted while under the age of sixteen years who” and inserting in lieu thereof “an adopted child only if the child”.

Alien
admittance.

PUBLIC LAW 97-116—DEC. 29, 1981

95 STAT. 1621

(n) Section 322 (8 U.S.C. 1433) is further amended by adding after subsection (b) the following new subsection:

"(c) In the case of an adopted child (1) who is in the United States at the time of naturalization, and (2) one of whose adoptive parents (A) petitions for naturalization of the child under this section, (B) meets the criteria of clauses (A), (B), and (C) of section 319(b)(1), and (C) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of the employment described in section 319(b)(1)(B), no specified period of residence within the jurisdiction of the naturalization court or proof thereof shall be required."

8 USC 1430.

(o) The fourth sentence of section 337(a) (8 U.S.C. 1448(a)) is amended by striking out "or 323".

(p) Section 341 (8 U.S.C. 1452) is amended by striking out "(3), (4), (5), or (7) of section 301(a)" and inserting in lieu thereof "(c), (d), (e), or (g) of section 301".

(q) Section 349 (8 U.S.C. 1481), as amended by section 4 of Public Law 95-432, is amended by striking out the second "(a)" after "349."

(r) Section 351 (8 U.S.C. 1483) is amended—

(1) by striking out "paragraphs (7), (8), and (9) of section 349" in subsection (a) and inserting in lieu thereof "paragraphs (6) and (7) of section 349(a)", and

(2) by striking out "(5), and (6)" in subsection (b) and inserting in lieu thereof "and (5)".

(s) Section 404 (8 U.S.C. 1101 note) is amended by inserting "(other than chapter 2 of title IV)" after "this Act".

(t) The table of contents is amended by striking out the items relating to sections 345, 350, 352, 353, 354, and 355.

(u)(1) Section 1429 of title 18, United States Code, is amended by striking out "subsection (e)" and inserting in lieu thereof "subsection (d)".

(2) The Act of March 16, 1956 (8 U.S.C. 1401a) is amended by striking out "301(a)(7)" and inserting in lieu thereof "301(g)".

Sec. 19. The numerical limitations contained in sections 201 and 202 of the Immigration and Nationality Act shall not apply to any alien who is present in the United States and who, on or before June 1, 1978—

8 USC 1151 note.

8 USC 1151,
1152.

(1) qualified as a nonpreference immigrant under section 203(a)(8) of such Act (as in effect on June 1, 1978);

8 USC 1153.

(2) was determined to be exempt from the labor certification requirement of section 212(a)(14) of such Act because the alien had actually invested, before such date, capital in an enterprise in the United States of which the alien became a principal manager and which employed a person or persons (other than the spouse or children of the alien) who are citizens of the United States or aliens lawfully admitted for permanent residence; and

8 USC 1182.

(3) applied for adjustment of status to that of an alien lawfully admitted for permanent residence.

Sec. 20. Section 201(a) (8 U.S.C. 1151(a)) is amended by inserting after "two hundred seventy thousand" the following: "*Provided*, That to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the annual numerical limitation in effect

8 USC 1101.
Supra.

95 STAT. 1622

PUBLIC LAW 97-116—DEC. 29, 1981

pursuant to this section for such year, the Secretary of State shall reduce to such extent the annual numerical limitation in effect pursuant to this section for the following fiscal year”.

8 USC 1101.
Ante, p. 1621.

(b) Section 202(a) (8 U.S.C. 1152(a)) is amended by inserting after “year” the following: “: *And provided further*, That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the numerical limitation in effect for such year pursuant to this section, the Secretary of State shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year”.

Effective dates.
8 USC 1101 note.

SEC. 21. (a) Except as provided in subsection (b) and in section 5(c), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b)(1) The amendments made by section 2(a) shall apply on and after the first day of the sixth month beginning after the date of the enactment of this Act.

(2) The amendment made by section 16 shall apply to fiscal years beginning on or after October 1, 1981.

Approved December 29, 1981.

LEGISLATIVE HISTORY—H.R. 4327:

HOUSE REPORT No. 97-264 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 127 (1981):

Oct. 13, considered and passed House.

Dec. 16, considered and passed Senate, amended; House concurred in Senate amendments.

EXHIBIT 4

Maternal Affidavit of Fact



Septuagint: Psalms 2, Psalms 47, Psalms 54, Psalms 67, Psalms 68, Psalms 113,

RE:

STATE OF ARKANSAS STATE FILE NUMBER : 6512262

Alphident :

MAURICE JOHNSON FAYNE

FAYNE, MAURICE JOHNSON

Numident :

429539389

429-53-9389

G622830020

To whom it may concern ,

I am, the private human, in full life, to animate the flesh, blood, and bone body, known commonly as “**fayne, vanessa ann**”, being of sound mind, body, and soul, by restricted special appearance, hereby states forevermore for the record as a living memorial that: I am personally familiar with the facts stated herein. Having been begotten by my natural mother, “**tubbs, velma**” : Long Count Date 12.17.13.17.10 [August 10th, 1967], at the land known commonly as: the north gate / al maghrib al aqsa / parkin, arkansas / States of the Union, as the living soul, and occupant, of this 52 year old body that the lord god has provided me, at the time of this writing, I affirm that I have attained the age of majority. I affirm & certify, under penalty of perjury, on the blood of my ancestors, love of god, and universal law, that the statements made herein are true and correct to the best of my volition, honor, knowldgc, customs, and belicfs.

As a result of the holy covenant with my husband, **johnson, tollie hicks©**, on Long count Date 12.18.9.14.14 [March 23rd, 1983], at 06:36 pm, at Latitude 35.223549° N / -90.787117° W, on the land known commonly as: the north gate / al maghrib al aqsa / wynne, arkansas / States of the Union, our begotten son was born into flesh. He came to be known in full life, by restricted special appearance as, “ **maurice johnson fayne-el©** , nom deguerre: **fayne, maurice johnson©** ”.

Shortly after having just given birth to my begotten son “ **maurice johnson fayne-el©** , nom deguerre: **fayne, maurice johnson©** ”, and while enduring the painful process of child birth, contracts like the Birth Certificate and Social Security number were presented to our tribe, and issued, while I was under legal disability, was legally incapacitated, and under temporary disability. There was no full disclosure, no consideration, nor any meeting of the minds, to cause said contracts to be issued in the name **MAURICE JOHNSON FAYNE©**, **FAYNE, MAURICE JOHNSON©**, etc., as they were issued in bad faith.

As any loving mother should, I am fully supportive of my son's high pursuit of happiness in full life, and hereby gives lawful notice of my rescission of any and all signatures ever signed by myself in relation to “ **maurice johnson fayne-el©** , nom deguerre: **fayne, maurice johnson©** ”, that caused **STATE OF ARKANSAS STATE FILE NUMBER : 6512262, MAURICE JOHNSON FAYNE©**, **FAYNE, MAURICE JOHNSON©** Social Security Administration Account Numbers **429539389, 429-53-9389, G622830020**, etc., to ever have been created, Nunc pro tunc.

I hereby relinquish any alleged authority, or rights, title, and interest in the property, **STATE OF ARKANSAS STATE FILE NUMBER : 6512262, MAURICE JOHNSON FAYNE©**, **FAYNE, MAURICE JOHNSON©** Social Security Administration Account Numbers **429539389, 429-53-9389, G622830020**, etc., to cause to be divested in, and inalienably retained, by the naked & beneficial owner, absolute in possession by freehold tenure, my noble son, “ **maurice johnson fayne-el©** , nom deguerre: **fayne, maurice johnson©** ”.

Public Notices

Although done as an act of my sons own free will, I am fully supportive of the information, my noble son, “ **maurice johnson fayne-el©** , nom deguerre: **fayne, maurice johnson©** ”, expressed in the Newspaper Public Notices of Wayne Progress on July 17th, 2020, July 24th, 2020, July 31st, 2020, and August 7th, 2020.

In God We Trust

Declaration of Nationality

Notice of Special Appearance : I am that I am: “ Maurice Johnson Fayne© ”, in full life, in propria persona, sui juris, in solo proprio, by natural issue, the beneficiary and heir of: “ Fayne, Maurice Johnson© ”, corp.sole Dba.: “ Maurice Johnson Fayne© ”, “ FAYNE, MAURICE JOHNSON© ”, corp.sole Dba.: “ MAURICE JOHNSON FAYNE© ”, having reached the age of majority, being aboriginal to the northwestern and southwestern shores of Africa, the Atlantic Islands, the continental Americas, being duly certified, hereby affirms to declare my tribal intention to be as my pedigree subscribes, as an: aniyunwiya Moorish American National, but not a citizen of the United States. I declare permanent, and unalienable, allegiance to the Moorish Empire, Societas Republicae Ea Al Maurikanuus Estados, The Constitution for the united States of America, Article III Section 2, International Law, United Nations Declaration on the Rights of Indigenous Peoples, and all natural laws governing moors, and hereby declare and proclaim my nationality as an: aniyunwiya moorish american moslem. I am that I am: “ Maurice Johnson Fayne© ”, from this day forward, in harmony with my Nationality / Status / Jurisdiction, shall be known as: “ **maurice johnson fayne-el©** ”. Notice of Merging of Legal Title with Equitable Title : This order is to preserve legal and equitable title , and to reserve all rights, title, and interest, in

the property, Re: "Fayne, Maurice Johnson©", corp.sole Db.a.: "Maurice Johnson Fayne©", "FAYNE, MAURICE JOHNSON©", corp.sole Db.a.: "MAURICE JOHNSON FAYNE©", to the depositor: "maurice johnson fayne-el©". All property, of the same issue and amount, in like kind and specie, is to be returned fully intact, as a Special Deposit order of the Depositor / Beneficiary / Bailor / Donor / Principal / Creditor: "maurice johnson fayne-el©", as a special deposit order in lawful money. This special deposit is to be used exclusively for the benefit of: "Fayne-el, Maurice Johnson Trust©", an Unincorporated Divine Grantor Trust. This deposit is not to be commingled with general assets of any bank, nor depositary / trustee / agent / bailee / donee / debtor. This deposit is not limited to, but including: discharge and set off, of any and all outstanding liabilities as accord and satisfaction. Any and All Attorneys with a License from the BAR Association are explicitly prohibited from administrating "Fayne-el, Maurice Johnson Trust©", property without handwritten consent from each and every trustee, after said Attorneys have furnished their nationality, and Principal for whom's interest they are working, [pursuant to Public Law 75-583] to trustees in plain writing. All Rights Reserved.

Signed in the presence of:

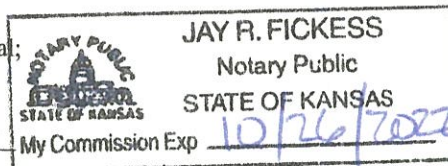
JOHNSON County
KANSAS State

Signed and affirmed to before me, a Notary on [07/14, 2020], that **fayne, vanessa ann**, personally appeared and known to me to be the woman whose name subscribed to the instrument and acknowledged to be the same.

[Signature]
 Notary Public

My Commission Expires 10/26/2022

Seal;



In testimony whereof, I, **fayne, vanessa ann** certify under penalty of perjury, that the statements made herein are true and correct to the best of my volition, honor, knowledge, customs, and beliefs. I have hereunto caused my appellation to be subscribed this [14 day of July, 2020].

I am that I am: [Signature]

All Rights Reserved
 Without Prejudice
 Deo Volente
 Jus Cogens

EXHIBIT 5

FOREIGN TRADE NAME ENTITY

Document Number: 45537900004 Submit Date: 7/16/2020

TRADE NAME

The trade name under which the business is carried on in Oklahoma is:
FAYNE, MAURICE JOHNSON

Legal Name:

FAYNE EL MAURICE JOHNSON TRUST

The type of "business entity" filing the trade name report is:
Unincorporated Business

ADDRESS(ES)

6608 N WESTERN AVE # 1307
OKLAHOMA CITY, OK 73116 USA

Email - mauricejohnsonfayne-
eltrust@protonmail.com

PURPOSE

Uplifting fallen humanity.

FUTURE EFFECTIVE DATE

Effective Date:

Same as filing date.

FOREIGN ENTITY

The business entity was formed in the state of:
MOROCCO

SIGNATURE

Signature Name

MAURICE JOHNSON FAYNE EL

Title

TRUSTEE

[End Of Image]

FOREIGN TRADE NAME ENTITY

Document Number: 45554780002 Submit Date: 7/17/2020

TRADE NAME

The trade name under which the business is carried on in Oklahoma is:
MAURICE FAYNE

Legal Name:
FAYNE EL MAURICE JOHNSON TRUST

The type of "business entity" filing the trade name report is:
Unincorporated Business

ADDRESS(ES)

6608 N WESTERN AVE # 1307
OKLAHOMA CITY, OK 73116 USA

Email - mauricejohnsonfayne-
eltrust@protonmail.com

PURPOSE

Uplifting fallen humanity.

FUTURE EFFECTIVE DATE

Effective Date:
Same as filing date.

FOREIGN ENTITY

The business entity was formed in the state of:
MOROCCO

SIGNATURE

Signature Name
MAURICE JOHNSON FAYNE EL

Title
TRUSTEE

[End Of Image]

EXHIBIT 6

MONEY ORDER

Number : 369

July 20th, 2020

Pay on demand to the order of:

UNITED STATES DEPARTMENT OF THE TREASURY
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Credit the memory of account number : 429539389

Pay:

ONE MILLION DOLLARS, \$1,000,000.00

Charge the sum said to:

DISTRICT COURT EXECUTIVE/CLERK OF COURT
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
Richard B. Russell Federal Building
2211 United States Courthouse
75 Ted Turner Drive, SW
Atlanta, GA 30303-3309

By: maurice johnson fayne-el

[50 U.S.C. 4305(b)(2)]

"notice of special deposit"

maurice johnson fayne-el©

Authorized Signature

without recourse

Donor, Settlor, Beneficiary, on behalf of :



MAURICE JOHNSON FAYNE

429-53-9389

Void where prohibited by law



JUDICIAL NOTICE OF [PUBLIC LAW 404—79TH CONGRESS] [CHAPTER 324—2D SESSION] [S. 7]

Notice of Restricted Special Appearance : **maurice johnson fayne-el©**, **Helir**, Real Party in Interest, and Beneficiary of :

“ Fayne, Maurice, Johnson© ”, corp.sole Db.a.: “ Maurice Johnson Fayne© ”, “ FAYNE, MAURICE JOHNSON© ”, corp.sole Db.a.: “ MAURICE JOHNSON FAYNE© ”.

THIS IS A **PRIVATE COMMUNICATION
FOR OFFICIAL USE ONLY**

NOTICE TO AGENT IS NOTICE TO PRINCIPLE. NOTICE TO PRINCIPLE IS NOTICE TO AGENT

Biblios Heliotech: Psalm 99, Psalm 3 , Psalm 59, Psalm 7 , Psalm 23 , Psalm 70, Psalm 109

**Re: Any and all alleged cases including [UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA, CASE NO. 1:20-CR-228, & CASE NOs. 1:20-MJ-370,
364, 361, 360, 355 and 1:20-MC-833]**

From:

Ex parte : maurice johnson fayne-el©,

Entitlement holder, Master, Executor, Heir, and Beneficiary of the vessel(s):

“ Fayne, Maurice, Johnson© ”, corp.sole Db.a.: “ Maurice Johnson Fayne© ”, “ FAYNE, MAURICE JOHNSON© ”, corp.sole Db.a.: “ MAURICE JOHNSON FAYNE© ”

Affiant.

To:

Walker, Linda T., D.b.a.: HON. LINDA T. WALKER, D.b.a.: UNITED STATES MAGISTRATE JUDGE, D.b.a.: [UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA, CASE NO. 1:20-CR-228, & CASE NOS. 1:20-MJ-370, 364, 361, 360, 355 and 1:20-MC-833], ALL 'TRADED AS' PRIVATE & PUBLIC CORPORATIONS, ALL ENTITIES IN THE PAST, CURRENT AND FUTURE.

As the Entitlement Holder, the office of my appointment delegates as Beneficial Owner (in said properties), pursuant to my unalienable power of appointment, I, “ maurice johnson fayne-el© ”, nom deguerre: “ Maurice Johnson Fayne© ”, hereby nominate: **Walker, Linda T.**, D.b.a.: HON. LINDA T. WALKER, D.b.a.: UNITED STATES MAGISTRATE JUDGE, D.b.a.: [UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA, CASE NO. 1:20-CR-228, & CASE NOS. 1:20-MJ-370, 364, 361, 360, 355 and 1:20-MC-833] as trustee to receive this NOTICE as trustee of this matter, in good faith, to make known my intent as it relates to the representation of “ Fayne, Maurice, Johnson© ”, corp.sole Db.a.: “ Maurice Johnson Fayne© ”, “ FAYNE, MAURICE JOHNSON© ”, corp.sole Db.a.: “ MAURICE JOHNSON FAYNE© ”

Pursuant to: [PUBLIC LAW 404—79TH CONGRESS] [CHAPTER 324—2D SESSION] [S. 7]

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this Act—

(a) APPEARANCE.—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other

qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

As a matter of record, it is my intention to present the facts regarding this matter in propria persona, sui juris.

Signed in the presence of :

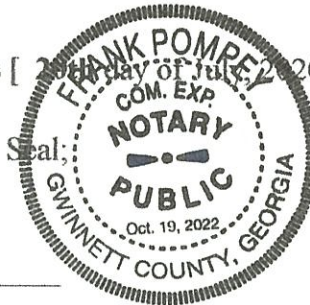
Quinn County
RA State

Signed and affirmed to before me, a Notary on this [20th day of July, 2020].

[Signature]
 Notary Public

My Commission Expires

10/19/22



In testimony whereof, I, **Ex parte : maurice johnson fayne-el**, certify under penalty of perjury, that the statements made herein are true and correct to the best of my honor, knowledge, customs, and beliefs. I have hereunto caused my appellation to be subscribed this [20th day of July, 2020].

I am that I am: Maurice Johnson Fayne-el
 aniyunwiya moorish american
 All Rights Reserved
 Without Prejudice
 Deo Volente
 Jus Cogens

ADMINISTRATIVE PROCEDURE ACT

[PUBLIC LAW 404—79TH CONGRESS]

[CHAPTER 324—2D SESSION]

[S. 7]

AN ACT To improve the administration of justice by prescribing fair administrative procedure

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

TITLE

SECTION 1. This Act may be cited as the "Administrative Procedure Act".

DEFINITIONS

SEC. 2. As used in this Act—

(a) AGENCY.—"Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this Act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) PERSON AND PARTY.—"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) RULE AND RULE MAKING.—"Rule" means the whole or any part of any agency statement of general or particular applicability

ADMINISTRATIVE PROCEDURE

and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. "Rule making" means agency process for the formulation, amendment, or repeal of a rule.

(d) ORDER AND ADJUDICATION.—"Order" means the whole, or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) LICENSE AND LICENSING.—"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation amendment, modification, or conditioning of a license.

(f) SANCTION AND RELIEF.—"Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. "Relief" includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action upon the application or petition of, and beneficial to, any person.

(g) AGENCY PROCEEDING AND ACTION.—"Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. "Agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of any agency—

(a) RULES.—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated

ADMINISTRATIVE PROCEDURE

3

and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) **OPINIONS AND ORDERS.**—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) **PUBLIC RECORDS.**—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

RULE MAKING

SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) **NOTICE.**—General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) **PROCEDURES.**—After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) **EFFECTIVE DATES.**—The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than thirty days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) **PETITIONS.**—Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

ADMINISTRATIVE PROCEDURE

ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) **NOTICE.**—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) **PROCEDURE.**—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

(c) **SEPARATION OF FUNCTIONS.**—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) **DECLARATORY ORDERS.**—The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

ADMINISTRATIVE PROCEDURE

5

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this Act—

(a) **APPEARANCE.**—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) **INVESTIGATIONS.**—No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) **SUBPENAS.**—Agency subpoenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(d) **DENIALS.**—Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) **PRESIDING OFFICERS.**—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or

part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) **HEARING POWERS.**—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.

(c) **EVIDENCE.**—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) **RECORD.**—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) **ACTION BY SUBORDINATES.**—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in

ADMINISTRATIVE PROCEDURE

7

the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

(b) **SUBMITTALS AND DECISIONS.**—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) **IN GENERAL.**—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) **LICENSES.**—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

ADMINISTRATIVE PROCEDURE

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) **RIGHT OF REVIEW.**—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) **FORM AND VENUE OF ACTION.**—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence of inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) **REVIEWABLE ACTS.**—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(d) **INTERIM RELIEF.**—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) **SCOPE OF REVIEW.**—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts

ADMINISTRATIVE PROCEDURE

9

to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

EXAMINERS

SEC. 11. Subject to the civil-service and other laws to the extent not inconsistent with this Act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said Act, as amended, and the provisions of section 9 of said Act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this Act or the application thereof is held invalid, the remainder of this Act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this Act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly. This Act shall take effect three months after its approval except that sections 7 and 8 shall take effect six months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until one year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

Approved June 11, 1946.