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ACTION Introduced by Mr. Kastenmeier and Mr. Railsback

THE FEDERAL COURTS CIVIL PRIORITIES ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. KASTENMEIER) is recognized for 5 minutes.

● Mr. KASTENMEIER. Mr. Speaker, it is with great pleasure that I, accompanied by the respected ranking minority member of my subcommittee (Mr. RAILSBACK), introduce the Federal Courts Civil Priorities Act. In brief, the bill repeals virtually all provisions expediting civil cases in the Federal, district, and circuit courts. The proposed legislation permits the courts to establish the order of hearing for certain civil actions.

Although not expressly stated, it is envisioned that if a court wants to set its own priorities by local rule, it will fall under the residual responsiblity of the appropriate judicial council of the circuit. Pursuant to a law passed by the 96th Congress—to become effective on October 1, 1981—the judicial councils must make all necessary and appropriate orders for the effective and expeditious administration of justice within their circuits. This gives the circuit councils residual authority to expedite certain types of cases within their circuits. The proposed legislation also provides that where good cause is shown a matter can be expedited by an individual judge or court.

The bill does not affect existing priorities in criminal cases, as codified in the Speedy Trial Act, in rule 50 of the Federal Rules of Criminal Procedure and in rule 9(b) of the Federal Rules of Appellate Procedure. Likewise, several provisions that involve collateral attacks—through the writ of habeas corpus—on federally imposed criminal sentences and contempt orders for refusal to testify are left untouched. In reality, these types of cases are quasi-criminal in nature. Last, as is present practice, actions for temporary or permanent injunctive relief will continue to receive priority treatment.

The genesis for the proposed legislation is in a resolution of the American Bar Association dated February 1977. In a report of the ABA Special Committee on Coordination of Judicial Improvements—the committee that recommended the resolution—the rationale for the legislation is bluntly stated:

The average practicing lawyer with a civil case on appeal to a Circuit Court of Appeals would be astonished if he were told that his

appeal will never be heard. The word has not yet spread far, but, for the average civil case, that is exactly the situation in some Circuits, and it will soon be true in others. The reason? A mass of cases required by statute to receive priority hearing is docketed ahead of his, and more are being added faster than the existing ones can be handled.

Staff of my Subcommittee on Courts, Civil Liberties, and the Administration of Justice, working with legislative counsel and the Administrative Office of the U.S. Courts, have located 50 civil statutes that accord some sort of priority treatment in the courts in which the respective matters are brought. These civil priorities range from the Federal Insecticide, Fungicide, and Rodenticide Act to the Outer Continental Shelf Lands Act; from the Federal Seed Act to the Federal Sugar Act; from the Central Idaho Wilderness Act to the Railroad Unemployment Insurance Act.

An examination of all the priorities leaves the reader with the indelible impression that the creation of a statutory priority by Congress is not done pursuant to a legislative finding that the matter is more important than other matters which become the subject of litigation. Rather, it is done on a piecemeal basis by drafters of legislation who are trying to get the best treatment for their bill's subject matter. Often after years of hearings, much debate and weeks of markup, legislative subcommittees become convinced that a particular matter raises the most important issues facing this country. As a consequence, a statutory civil priority is created and a matter filed in Federal court presumably gets better calendar treatment than other kinds of cases. In this manner, Seed Act cases get preferential treatment over most securities, banking, or civil rights cases, which historically have not been accorded priorities.

In addition, now that there are so many priorities, with no cross-referencing between them, it is impossible for conscientious courts to determine fairly and rationally how to assign calendar priorities. Some of the priorities are mutually contradictory, each mandating that matters falling within a certain category be heard before any other case.

The numerous civil priorities have caused grave problems in the larger circuits. Although Congress, through legislation drafted by my subcommittee, recently split the existing fifth circuit into two autonomous circuits, in terms of caseload, the two new circuits still will be among the largest in the country. In the large circuits—in particular the ninth circuit—the docket becomes so crowded with criminal and priority civil cases that for matters without priority status the possibility of never being heard becomes a stark reality. As an alternative, in order to move on nonpriority cases, the circuit must ignore the express mandate of Congress and ignore priority cases. In both circumstances, citizen confidence in the administration of justice is lessened, either because of inordinate delays in nonpriority cases or because of failure to respect the mandates of a civil priority.

The bill is not only drafted to address past problems but to reduce the proliferation of priorities in the future. By stating that, "Notwithstanding any law to the contrary, each court of the United States shall determine the order in which civil actions are heard and determined * * *," the legislation allows courts to ignore newly created priorities not placed directly in 28 U.S.C. 1657. Other committees which want to create priorities will have to amend title 28, and this presumably will stimulate joint and/or sequential referrals to the Committee on the Judiciary. Then, the Judiciary Committee can maintain a more centralized and rational control than has existed in the past.

The concept embodied in the proposed legislation has already garnered substantial support in the legal and judicial communities. In addition to being supported by the American Bar Association, it has attracted support from the Court Administration Committee of the Judicial Conference of the United States. During its July 1981 meeting, the committee unanimously approved the bill and recommended endorsement by the Judicial Conference. The full Conference will consider the bill, and hopefully will approve it at its September meeting.

In conclusion, I urgently recommend the bill to my colleagues. The proposed legislation follows:

H.R. 4396

A bill to permit courts of the United States to establish the order of hearing for certain civil matters, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Courts Civil Priorities Act".

SEC. 2. (a) Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1657. Priority of civil actions

"Notwithstanding any law to the contrary, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or permanent injunctive relief, or any other action if good cause therefor is shown.".

(b) The table of sections for chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1657. Priority of civil actions.".

SEC. 3. (a) The following provisions of law are repealed:

(1) Section 309(a)(10) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(11)).

(2) Section 310(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437h(c)).

(3) Section 552(a)(4)(D) of title 5, United States Code.

(4) Section 1 of the Act of February 11, 1903, commonly known as the Expediting Act (15 U.S.C. 28).

(5) Section 21(f)(3) of the Federal Trade Commission Improvements Act of 1980 (15 U.S.C. 57a-1(f)(3)).

(6) Section 12(e)(3) of the Coastal Zone Management Improvement Act of 1980 (16 U.S.C. 1463a(e)(3)).

(7) Section 3310(e) of the Internal Revenue Code of 1954.

(8) Section 6110(f)(5) of the Internal Revenue Code of 1954.

(9) Section 6363(d)(4) of the Internal Revenue Code of 1954.

(10) Section 2602 of title 28, United States Code.

(11) Section 10(i) of the National Labor Relations Act (29 U.S.C. 160(i)).

(12) Section 4003(e)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1303(e)(4)).

(13) Section 304(e) of the Social Security Act (42 U.S.C. 504(e)).

(14) Section 814 of the Act of April 11, 1968 (42 U.S.C. 3614).

(15) Section 23(d) of the Outer Continental Shelf Lands Act (43 U.S.C. 1349(d)).

(b)(1) Section 6(a) of the Commodity Exchange Act (7 U.S.C. 8(a)) is amended by striking out "The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.".

(2)(A) Section 6(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136d(c)(4)) is amended by striking out the second sentence.

(B) Section 16(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136n(b)) is amended by striking out the last sentence.

(3) Section 204(d) of the Packers and Stockyards Act, 1921 (7 U.S.C. 194(d)), is amended by striking out the second sentence.

(4) Section 366 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1366) is amended in the fourth sentence by striking out "At the earliest convenient time, the court, in term time or vacation." and inserting in lieu thereof "The court".

(5)(A) Section 410 of the Federal Seed Act (7 U.S.C. 1600) is amended by striking out "The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.".

(B) Section 411 of the Federal Seed Act (7 U.S.C. 1601) is amended by striking out "The proceedings in such cases shall be made a preferred cause and shall be expedited in every way.".

(6) Section 816(c)(4) of the Act of October 7, 1975, commonly known as the Department of Defense Appropriation Authorization Act of 1976 (10 U.S.C. 2304 note), is amended by striking out the last sentence.

(7) Section 5(d)(6)(A) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(6)(A)) is amended by striking out "Such proceedings shall be given precedence over other cases pending in such courts, and shall be in every way expedited.".

(8)(A) Section 7A(f)(2) of the Clayton Act (15 U.S.C. 18a(f)(2)) is amended to read as follows: "(2) certifies to the United States district court for the judicial district within which the respondent resides or carriers on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a

United States district judge to whom such action shall be assigned for all purposes.".

(B) Section 11(e) of the Clayton Act (15 U.S.C. 21(e)), is amended by striking out the first sentence.

(9) Section 5(e) of the Federal Trade Commission Act (15 U.S.C. 45(e)) is amended by striking out the first sentence.

(10)(A) Section 309(e) of the Small Business Investment Act of 1958 (15 U.S.C. 687a(e)) is amended by striking out the sixth sentence.

(B) Section 309(f) of the Small Business Investment Act of 1958 (15 U.S.C. 687a(f)) is amended by striking out the last sentence.

(C) Section 311(a) of the Small Business Investment Act of 1958 (15 U.S.C. 687c(a)) is amended by striking out the last sentence.

(11) Section 155(a) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1415(a) is amended by striking out "(1)" and by striking out paragraph (2).

(12) Section 503(b)(3)(E) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(b)(3)(E)) is amended by striking out clause (ii) and redesignating clauses (iii) and (iv) and clauses (ii) and (iii), respectively.

(13) Section 11 of the Act of September 28, 1976 (16 U.S.C. 1910), is amended by striking out the last sentence.

(14) Section 1108 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3168) is amended to read as follows:

"INJUNCTIVE RELIEF

"SEC. 1108. No court shall have jurisdiction to grant any injunctive relief lasting longer than ninety days against any action pursuant to this title except in conjunction with a final judgment entered in a case involving an action pursuant to this title."

(15)(A) Section 10(b) of the Central Idaho Wilderness Act of 1980 is amended by striking out paragraph (3).

(B) Section 10(c) of the Central Idaho Wilderness Act of 1980 is amended to read as follows:

"(c) Any review of any decision of the United States District Court for the District of Idaho shall be made by the Ninth Circuit Court of Appeals of the United States.".

(16)(A) Section 1964(b) of title 18, United States Code, is amended by striking out the second sentence.

(B) Section 1966 of title 18, United States Code, is amended by striking out the last sentence.

(17)(A) Section 408(i)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(i)(5)), is amended by striking out the last sentence.

(B) Section 409(g)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(g)(2)), is amended by striking out the last sentence.

(18) Section 8(f) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 618(f)) is amended by striking out the last sentence.

(19) Section 4 of the Act of December 22, 1974 (25 U.S.C. 640d-3), is amended by striking out "(a)" and by striking out subsection (b).

(20)(A) Section 9010(c) of the Internal Revenue Code of 1954 is amended by striking out the last sentence.

(B) Section 9011(b)(2) of the Internal Revenue Code of 1954 is amended by striking out the last sentence.

(21)(A) Section 2284(b)(2) of title 28, United States Code, is amended by striking out the last sentence.

(B) Section 2349(b) of title 28, United States Code, is amended by striking out the last two sentences.

(22) Section 10 of the Act of March 23, 1932, commonly known as the Norris-LaGuardia Act (29 U.S.C. 110), is amended by striking out "with the greatest possible expedition" and all that follows through the end of the sentence and inserting in lieu thereof "expeditiously".

(23) Section 11(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(a)) is amended by striking out the last sentence.

(24) Section 106(a)(1) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 816(a)(1)) is amended by striking out the last sentence.

(25) Section 1016 of the Impoundment Control Act of 1974 (31 U.S.C. 1406) is amended by striking out the second sentence.

(26) Section 3628 of title 39, United States Code, is amended by striking out the fourth sentence.

(27) Section 1450(l)(4) of the Public Health Service Act (42 U.S.C. 300j-9(i)(4)) is amended by striking out the last sentence.

(28)(A) Section 2004(e) of the Revised Statutes of the United States (42 U.S.C. 1971(e)) is amended—

(i) in the third paragraph, by striking out "An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application" and inserting in lieu thereof "The execution of an order disposing of an application pursuant to this subsection"; and

(ii) by striking out the first sentence of the eighth paragraph.

(B) Section 2004(g) of the Revised Statutes of the United States (42 U.S.C. 1971(g)) is amended—

(i) in the first paragraph, by striking out "to assign the case for hearing at the earliest practicable date," and by striking out ", and to cause the case to be in every way expedited"; and

(ii) by striking out the third paragraph.

(29)(A) Section 10(c) of the Voting Rights Act of 1965 (42 U.S.C. 1973h(c)) is amended by striking out "to assign the case for hearing at the earliest practicable date," and by striking out ", and to cause the case to be in every way expedited".

(B) Section 301(a)(2) of the Voting Rights Act of 1965 (42 U.S.C. 1973bb(a)(2)) is amended by striking out ", and to cause the case to be in every way expedited".

(30)(A) Section 206(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-5(b)) is amended—

(i) in the first paragraph, by striking out "to assign the case for hearing at the earliest practicable date," and by striking out ", and to cause the case to be in every way expedited"; and

(ii) by striking out the last paragraph.

(B) Section 706(f)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(f)(2)) is amended by striking out the last sentence.

(C) Section 706(f)(5) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(f)(5)) is amended to read as follows:

"(5) The judge designated to hear such case may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.".

(D) Section 707(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-6(b)) is amended—

(i) in the first paragraph, by striking out "to assign the case for hearing at the earliest practicable date," and by striking out ", and to cause the case to be in every way expedited"; and

(ii) by striking out the last paragraph.

(31) Section 2 of the Act of February 25, 1885 (43 U.S.C. 1062), is amended by striking out "; and any suit brought under the provisions of this section shall have precedence for hearing and trial over other cases on the civil docket of the court, and shall be tried and determined at the earliest practicable day".

(32) Section 203(d) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652(d)) is amended by striking out the fourth sentence.

(33) Section 5(f) of the Railroad Unemployment Insurance Act (45 U.S.C. 355(f)), is amended by striking out ", and shall be given precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence".

(34) Section 402(g) of the Communications Act of 1934 (47 U.S.C. 402(g)) is amended—

(A) by striking out "At the earliest convenient time the" and inserting in lieu thereof "The"; and

(B) by striking out "10(e) of the Administrative Procedure Act" and inserting in lieu thereof "706 of title 5, United States Code".

(35) Section 12(a) of the Military Selective Service Act of 1967 (50 U.S.C. App. 462(a)) is amended by striking out the last sentence.●

CONFERE[illegible]T ON THE OMNIBU[illegible] RECONCILIATION [illegible]

The SPE[illegible] mpore. Under a previous [illegible] ouse, the gentleman fro[illegible] (Mr. JONES) is recognized[illegible]

● Mr. JO[illegible] lahoma. Mr. Speaker, d[illegible] in the printing of the [illegible]ort to accompany H.R.[illegible] nibus Budget Reconciliat[illegible] 1981, Mr. SCHEUER's [illegible]e part of the Committee[illegible] d Technology for both th[illegible] eport and the statement [illegible] was omitted from page[illegible] H5730 of the CONGRESSIO[illegible] Wednesday, July 29, 19[illegible]

The origi[illegible] lect that Mr. SCHEUER si[illegible] nature sheets for both th[illegible] eport and the statement [illegible]

Also, th[illegible] statement of managers v[illegible] tly omitted in the printin[illegible] rence report:

The House [illegible] authorization for the Natic[illegible] ndation.

The Senat[illegible] ontains an authorization [illegible] Science Foundation of $1.[illegible] iscal year 1981 and of $1.108[illegible] year 1982.

The confe[illegible] ne House position.

The stat[illegible] agers regarding the Offi[illegible] e Justice and Delinquenc[illegible] should have appeared i[illegible] ice report as follows:

TITLE XV. [illegible] JUSTICE AND [illegible]MS

JUVENIL[illegible] [illegible]LINQUENCY PR[illegible] 1974

The House [illegible] that the total amount of ap[illegible] carry out title I and title II c[illegible] ustice and Delinquency Pr[illegible] 1974 shall not exceed $70,0[illegible] of the fiscal years 1982, 1[illegible]

To carry o[illegible] of title II the Senate amen[illegible] s the appropriation of $7[illegible] al year 1982, $77,500,000 [illegible] r 1983, and $74,900,000 i[illegible]

The confer[illegible] bstitute provision which a[illegible] riations as contained in the [illegible] nent. It is the intention of t[illegible] t the Office of