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By Mr. MCINTYRE:

S. 2568. A bill to extend daylight savings time during the period from the last Sunday in October 1973, through the last Sunday in April 1974. Referred to the Committee on Commerce.

By Mr. MONDALE:

S. 2569. A bill establishing an Office of Congressional Legal Counsel. Referred to the Committee on Government Operations.

By Mr. GRIFFIN:

S. 2570. A bill to amend title 28, United States Code (Judiciary and Judicial Procedure), to establish a Labor Court, and for other purposes. Referred to the Committee on the Judiciary, by unanimous consent.

STATEMENTS ON INTRODUCED BILLS

By Mr. BURDICK (for himself and Mr. Cook):

S. 2565. A bill to revise and reform title 11 of the United States Code; and for other purposes. Referred to the Committee on the Judiciary.

REFORM OF THE BANKRUPTCY ACT

Mr. BURDICK. Mr. President, today Senator Cook and I are introducing, by request, a bill to revise the bankruptcy laws of the United States.

The bill that is being introduced today is the end product of more than 2 years of work by the Bankruptcy Commission. The Commission conducted 21 working meetings lasting a total of 44 days. It conducted public hearings in Washington, New York, Chicago, and Los Angeles. It received information from private and governmental organizations which were expressly concerned with the bankruptcy system in this country. In addition to these efforts the Commission staff, which numbered some 27 persons, engaged in legal and practical studies supplemented by extensive research conducted by several private contractors.

The Congress of the United States created the Bankruptcy Commission, because the present bankruptcy system has proved archaic and ineffective. Enacted in 1898 and extensively revised in 1938, the present bankruptcy system has received only sporadic attention from the Congress. In fact, despite the staggering increase in bankruptcy filings, 10,000 in 1946 to 20,000 in 1972, a quarter century has passed without major amendment to the Bankruptcy Act. It is not surprising then that serious flaws have developed.

The Bankruptcy Commission felt that to remedy the faults of the present system, a new bankruptcy law establishing a new organization and new procedures was required. The bill being introduced would seek to modernize the administration structure of the bankruptcy courts and, in general, set uniform standards and laws throughout the United States.

While I am not unalterably wed to each and every provision of this bill, I believe it will serve as an excellent vehicle for needed reforms of the Federal bankruptcy law. Therefore I urge that it receive prompt hearings, upon proper referral, as well as full consideration and debate, so that we may enact worthy legislation in this area.

By Mr. MONDALE:

S. 2569. A bill establishing an Office of Congressional Legal Counsel. Referred to the Committee on Government Operations.

Mr. MONDALE. Mr. President, over the past few years we have become acutely aware of the dangers of arbitrary and illegal executive branch actions in thwarting the execution of the laws of the United States. We have witnessed a tremendous upsurge in the use of the courts—both by private citizens and by Members of the Congress—in attempts to force the executive branch to act in accordance with the laws and Constitution of the United States.

The types of illegal executive branch actions which have been tested have been varied, but all have been important. They have ranged from challenges to the continuation of the longest and most divisive war in our history, to the massive impoundment of funds appropriated by the Congress, to the withholding of information under the Freedom of Information Act, to the submitting of nominations for the advice and consent of the Senate.

The bond linking these cases has been the inability to obtain redress of grievances through any means other than the courts. Their common achievement has been a greater awareness of the part of Members of the Congress—and the American people—of the dangers of illegal executive branch actions, and the potential of court challenges as a means of correcting such illegality.

A number of lawsuits stand out in this regard, and are worthy of particular mention for their accomplishments. In some instances, these accomplishments came about through the successful conclusion of the legal action; in others, while the legal action itself was not successful, the awareness of the American people has been heightened.

LAWSUITS AGAINST THE EXECUTIVE BRANCH IMPOUNDMENT

Early this year, 22 Senators and 5 Representatives filed a brief *amicus curiae* in the case of State Highway Commission of Missouri against Volpe, challenging the legality of the Department of Transportation's withholding of funds for road construction in the State of Missouri. Both the U.S. district court and the U.S. court of appeals have held that the action of the Secretary of Transportation in withholding such funds to control inflation is contrary to law.

This is only one of over two cases which have been decided on various questions dealing with impoundment of congressionally appropriated funds. These cases have dealt with housing funds, with OEO funds, with funds appropriated under the Water Pollution Control Act amendments, with Agriculture Department emergency loan funds, with veterans cost-of-instruction funds, with Indian education funds, with mental health and education and Neighborhood Youth Corps and Library Services funds.

And in virtually every instance the outcome of this litigation has been the same—ruling after ruling that the impoundment of funds appropriated by the Congress was contrary to law.

WAR POWERS

A number of important suits have been filed by members of Congress in attempts to end the war in Indochina.

In 1972, Representative PARREN MITCHELL, joined by 12 other Members of the House of Representatives, filed an action seeking an injunction against prosecution of the war in Indochina, unless the war was authorized by the Congress within 60 days. The case, though unsuccessful, brought the issue of war powers of Congress to the public eye.

This summer, Representative ELIZABETH HOLTZMAN, of New York, filed suit against the bombing of Cambodia in the absence of congressional authorization. This suit, while ultimately not successful in ending the bombing before the congressionally-imposed deadline of August 15, was argued successfully at both the district court and the appeals court level. The wide publicity attendant to this suit brought a new level of public awareness regarding the problem of Presidential prerogatives in the war-powers area.

EXECUTIVE BRANCH NOMINATIONS

In March of this year, I joined Senator WILLIAMS, Senator PELL and Senator HATHAWAY in suing in U.S. District Court for the District of Columbia for the removal of Howard Phillips from the post of Acting Director of the Office of Economic Opportunity. Our suit, filed with the aid of Public Citizens, Inc., sought Mr. Phillips' removal on grounds that his name had not been sent to the Senate for confirmation, and that he was therefore serving illegally in office.

As a result of this and other actions against Mr. Phillips, he was ultimately removed as Acting Director of OEO, and hundreds of millions of dollars in pending applications for OEO grants were disbursed, moneys which Mr. Phillips during his illegal tenure in office had refused to disburse.

CONGRESSIONAL ACCESS TO INFORMATION

A number of actions in the past 2 years have been by Members of Congress attempting to gain access to information, under provisions of the Freedom of Information Act.

In suits brought by Representatives PATSY MINK against the Environmental Protection Agency; by Representative RONALD DELLUMS against the Department of Health, Education, and Welfare; by Representative JOHN ASHBROOK against the Secretary of Defense; and by Representative LES ASPIN against the Department of Defense, Members of Congress have challenged executive branch secrecy on matters ranging from administration of the medicare program to the failure to release the official report on the Mylai massacre of 1968.

Frankly, most of these actions have not been successful in obtaining release of the information sought. They have, however, brought to public attention the problems inherent in Government secrecy, and the possible need for additional legislative action to insure congressional access to information vital to the Nation.

These are merely some of the areas in which Members of Congress have played important roles in challenging arbitrary,

illegal and unwarranted executive branch actions.

ABSENCE OF IN-HOUSE COUNSEL

One crucial element has been missing from this effort, however. For although congressional involvement in these types of historic lawsuits has increased dramatically in recent years, we still find ourselves without an inhouse capability in this area. The lawsuits which Members of Congress have brought, or in which they have filed briefs *amicus curiae*, have all been handled by lawyers not in the employ of Congress.

These attorneys have performed magnificently, and deserve our gratitude. But we in Congress, if we are to truly reassert the prerogatives of the legislative branch, must not be eternally reliant on the good will of resources in the private sector.

NEED FOR CONGRESSIONAL COUNSEL

This year, we have enacted significant legislative measures designed to stop illegality in the executive branch. A war powers bill has been passed by both Houses which, if enacted into law, would bring a momentous reassertion of the equality of branches within American Government in this vital area. Anti-impoundment bills have been passed by both Houses. Again, if enacted into law, this legislation would make clear Congress power in control of moneys appropriated by the legislative branch.

In addition, important proposals have been introduced to broaden the Freedom of Information Act. And legislation now in conference would provide senatorial approval for executive agreements, which the executive branch had been using to bypass the constitutional requirement for Senate ratification of all treaties.

All of these acts, however, if and when they become law, will need enforcement power. Hopefully, this power need never be utilized. But we must be ready to seek enforcement of the new legislation which has been enacted, the older legislation already in place, and Congress inherent powers under the Constitution of the United States.

Mr. President, I firmly believe that only if we have an Office of Congressional Legal Counsel within the Congress will we be able to fully use the potential of the judicial branch in reestablishing an equality of power between the Congress and the Executive.

PROVISIONS OF LEGISLATION

I am therefore introducing legislation today which would help achieve this end by creating an Office of Congressional Legal Counsel.

The major features of this legislation are as follows:

An Office of Congressional Legal Counsel would be established, with the head of the office appointed by the Speaker of the House and President *pro tempore* of the Senate, from among names submitted by the majority and minority leaders of the House and Senate.

The duties of the Congressional Legal Counsel would include a variety of informational and representational activities.

First, he would be required, upon request of either House of Congress, a

joint committee, a committee, at least 3 Senators or 12 Representatives, to render a legal opinion on questions arising under the Constitution and laws of the United States. These questions would include whether:

A request for information or inspection of records under the Freedom of Information Act was properly denied by an agency of the U.S. Government;

A nomination, or an agreement with a foreign country or regional or international organization, should have been submitted to the Senate for its advice and consent;

An activity has been undertaken or continued, or not undertaken or continued, by the executive branch of the U.S. Government in violation of the law or the Constitution or without any required authorization of law;

Executive privilege exists, and, if so, whether it has been properly asserted; and

Funds appropriated by Congress have been impounded in accordance with law.

Second, he would be required, upon requests from any of the same types of parties above, to advise and cooperate with other private parties bringing civil actions against officers and employees of the executive branch, or any agency or department thereof, regarding their execution of the laws and Constitution.

Third, he would be required, upon a similar request, to intervene or appear as *amicus curiae* in pending actions in Federal or State courts in which the issue is the constitutionality or interpretation of a law of the United States, or the validity of any official proceeding or of official action taken by either House of Congress, joint committees, committees or members, or any officer or employee of the Congress.

Fourth, upon request, he would be required to represent either House, a joint committee, committee, member of employee of Congress in any legal action pending to which such House, committee or employee is a party, and in which there is placed in issue the validity of any official proceeding of, or official action taken by, such House, committee, member of employee.

Fifth, and most importantly, if the Congressional Legal Counsel has rendered a legal opinion, and if requested by either House, a joint committee, a committee, at least 6 Senators or at least 24 Representatives, he would be required "to bring a civil action, without regard to the sum or value of the matter in controversy, in a court of the United States to require an officer or employee of the executive branch of the U.S. Government, or any agency or department thereof, to act in accordance with the Constitution and laws of the United States as interpreted in such opinion."

The Congressional Legal Counsel, therefore, would be empowered to undertake a wide variety of activity, including representing the Congress and individual Members both as plaintiffs and defendants.

Most importantly, the bill would provide the Congress with an effective legal voice in combating illegal executive

branch actions such as impoundment, overly broad claims of Executive privilege, failure to submit nominations to the Senate for confirmation and other similar abuses.

The statute would confer broad standing on the Office of Congressional Counsel in its representational activity, so as to afford the Congress with wide ranging authority in challenging executive branch action in the courts.

Just as the Office of Legislative Counsel has, over the years, aided Members of the House and Senate in developing important legislation, so should an Office of Congressional Legal Counsel aid us in reasserting the power which we need to ensure that this legislative function is carried out by an often balky executive branch.

Mr. President, I ask unanimous consent that the text of this legislation I am introducing be printed at this point in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2569

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for purposes of this Act—

(1) "Member of Congress" means a Senator, Representative, Delegate, or Resident Commissioner;

(2) "Member of the House of Representatives" includes a Representative, Delegate, or Resident Commissioner;

(3) "State" includes any territory or possession of the United States; and

(4) "Impounding of budget authority" includes

(A) withholding, delaying, deferring, freezing, or otherwise refusing to expend any part of budget authority made available (whether by establishing reserves or otherwise) and the termination or cancellation of authorized projects or activities to the extent that budget authority has been made available;

(B) withholding, delaying, deferring, freezing or otherwise refusing to make any allocation of any part of budget authority (where such allocation is required in order to permit the budget authority to be expended or obligated);

(C) withholding, delaying, deferring, freezing, or otherwise refusing to permit a grantee to obligate any part of budget authority (whether by establishing contract controls, reserves or otherwise); and

(D) any type of Executive action or inaction which effectively precludes or delays the obligation or expenditure of any part of authorized budget authority.

SEC. 2. (a) There is established within the Congress the Office of Congressional Legal Counsel, which shall be under the direction and control of the Congressional Legal Counsel. The Congressional Legal Counsel shall be appointed by the Speaker of the House of Representatives and the President *pro tempore* of the Senate from among recommendations submitted by the majority and minority leaders of the House of Representatives and the Senate. Such appointment shall be made without regard to political affiliation and solely on the basis of his fitness to perform the duties of his office. The Congressional Legal Counsel shall receive basic pay at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(b) The Congressional Legal Counsel may appoint and fix the compensation of such Assistant Legal Counsels and other personnel as may be necessary to carry on the work

of his office. All such appointments shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of their offices.

(c) The Congressional Legal Counsel shall promulgate for his office such rules and regulations as may be necessary to carry out the duties imposed upon him by this Act. He may delegate authority for the performance of any such duty to any officer or employee of the Office of the Congressional Legal Counsel. No person serving as an officer or employee of such office may engage in any other business, vocation, or employment while so serving.

(d) The Congressional Legal Counsel shall cause a seal of office to be made for his office, of such design as the Speaker of the House of Representatives and the President pro tempore of the Senate shall approve, and judicial notice shall be taken thereof.

SEC. 3. (a) It shall be the duty of the Congressional Legal Counsel—

(1) to render, upon request of either House of Congress, a joint committee of Congress, any committee of either House of Congress, at least 3 Senators, or 12 members of the House of Representatives, legal opinions upon questions arising under the Constitution and laws of the United States, including but not limited to, whether—

(A) a request for information or inspection of a record or other matter under section 552 of title 5, United States Code was properly denied by an agency of the United States Government;

(B) a nomination, or an agreement with a foreign country or regional or international organization, should have been submitted to the Senate for its advice and consent;

(C) an activity has been undertaken or continued, or not undertaken or continued, by the executive branch of the United States Government in violation of the law or the Constitution or without any required authorization of law;

(D) executive privilege exists, and, if so, whether it has been properly asserted; and

(E) a budget authority has been impounded in accordance with law;

(2) upon the request of either House of Congress, a joint committee of Congress, any committee of either House of Congress, at least 3 Senators, or at least 12 Members of the House of Representatives—

(A) to advise and to consult and cooperate with parties bringing civil actions against officers and employees of the executive branch of the United States Government or any agency or department thereof, with respect to their execution of the laws, and the Constitution of the United States; and

(B) to intervene or appear as amicus curiae on behalf of persons making such request in any action pending in any court of the United States or of a State or political subdivision thereof, in which there is placed in issue the constitutionality or interpretation of any law of the United States, or the validity of any law of the United States, or the validity of any official proceeding of, or official action taken by, either House of Congress, a joint committee of Congress, any committee of either House of Congress, or a Member of Congress, or any officer, employee, office, or agency of the Congress;

(3) to represent, upon request, either House of Congress, a joint committee of Congress, any committee of either House of Congress, a Member of Congress, or any officer, employee, office, or agency of the Congress in any legal action pending in any court of the United States or of a State or political subdivision thereof to which such House, joint committee, committee Member, officer, employee, office, or agency is a party and in which there is placed in issue the validity of any official proceeding of or official action

taken by, such House, joint committee, committee, Member, officer, employee, office, or agency; and

(4) If an opinion has been rendered in accordance with subparagraph (1) of this section, and upon request of either House of Congress, a joint committee of Congress, any committee of either House of Congress at least 6 Senators, or at least 24 Members of the House of Representatives, to bring civil action; without regard to the sum or value of the matter in controversy, in a court of the United States to require an officer or employee of the executive branch of the United States Government, or any agency or department thereof, to act in accordance with the Constitution and laws of the United States as interpreted in such opinion.

(b) Upon receipt of written notice from the Congressional Legal Counsel to the effect that he has undertaken, pursuant to subsection (a)(3) of this section, to perform any such specified representational service with respect to any designated action or proceeding pending or to be instituted, the Attorney General shall be relieved of responsibility and shall have no authority to perform such service in such action or proceeding except at the request or with the approval of the Congressional Legal Counsel.

SEC. 4. (a) Permission to intervene or to file a brief amicus curiae under section 3(a)(2) (B) of this Act shall be of right, and may be denied by a court only upon an express finding that such intervention or filing is untimely and would significantly delay the pending action.

(b) Where an actual case or controversy exists, persons making requests under section 3(a)(4) of this Act shall have the right to obtain judicial review of the conduct in question without regard to the requirements for standing as set forth in any statutes, rules or other requirement of standing.

(c) For the purpose of all proceedings incident to the trial and review of any action described by subsection (a)(3) of section 3 with respect to which the Congressional Legal Counsel has undertaken to provide representational service, and has so notified the Attorney General, the Congressional Legal Counsel shall have all powers conferred by law upon the Attorney General, any subordinate of the Attorney General, or any United States attorney.

(d) The Congressional Legal Counsel, or any attorney of his office designated by him for that purpose, shall be entitled for the purpose of performing duties imposed upon him pursuant to this Act to enter an appearance in any such proceeding before any court of the United States without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this subsection shall not apply with respect to the admission of any person to practice before the United States Supreme Court.

SEC. 5. All legal opinions rendered by the Congressional Legal Counsel under section 3(a)(1) of this Act shall be published and made available to public inspection under such rules and regulations as the Congressional Legal Counsel shall promulgate.

SEC. 6. (a) Section 3210 of title 39, United States Code, is amended—

(1) by inserting immediately after "respective terms of office" the following: "the Congressional Legal Counsel,"; and

(2) by inserting immediately before "or Legislative Counsel" the following: "Congressional Legal Counsel,"

(b) Section 3216(a) of such title is amended by inserting immediately before "and Legislative Counsel" the following: "Congressional Legal Counsel,".

SEC. 7. There are authorized to be appropriated to the Office of the Congressional

Legal Counsel such sums as may be necessary for the performance of the duties of the Congressional Legal Counsel under this Act. Amounts so appropriated shall be disbursed by the Secretary of the Senate on vouchers approved by the Congressional Legal Counsel.

By Mr. GRIFFIN:

S. 2570. A bill to amend title 28, United States Code (Judiciary and Judicial Procedure), to establish a Labor Court, and for other purposes. Referred to the Committee on the Judiciary, by unanimous consent.

Mr. GRIFFIN. Mr. President, I introduce a bill and ask unanimous consent that it be referred to the Committee on the Judiciary.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL COSPONSORS OF BILLS

S. 482

At the request of Mr. TAFT, the senior Senator from Utah (Mr. BENNETT), the Senator from Utah (Mr. MOSS), the junior Senator from Illinois (Mr. STEVENSON), the senior Senator from Illinois (Mr. PERCY), the senior Senator from New Jersey (Mr. CASE), and the junior Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 482, to amend the Internal Revenue Code of 1954 to allow an income tax credit for the costs of maintaining the exterior appearance and structural soundness of certain historic buildings and structures.

S. 483

At the request of Mr. TAFT, the senior Senator from Utah (Mr. BENNETT), the junior Senator from Utah (Mr. MOSS), the senior Senator from Illinois (Mr. PERCY), the junior Senator from Illinois (Mr. STEVENSON), the senior Senator from New Jersey (Mr. CASE), the junior Senator from Minnesota (Mr. HUMPHREY), the junior Senator from New Mexico (Mr. DOMENICI), and the junior Senator from Iowa (Mr. CLARK) were added as cosponsors to S. 483, to amend the act of October 15, 1966, relating to the preservation of certain historic properties in the United States.

S. 1737

Mr. ERVIN. Mr. President, I am pleased to announce that the following Senators have joined in cosponsoring S. 1737, a bill I introduced to put an end to the senseless forced busing of schoolchildren and to prohibit unwarranted Federal interference with the Nation's public school systems: Senator JAMES EASTLAND, of Mississippi; Senator HERMAN TALMADGE, of Georgia; Senator SAM NUNN, of Georgia; and Senator JOHN TOWER, of Texas. Senator JIM ALLEN, of Alabama, and Senator JESSE HELMS, of North Carolina, have previously been added as cosponsors of this legislation.

S. 1844

At the request of Mr. ABOUREZK, the Senator from Louisiana (Mr. LONG), the Senator from New York (Mr. JAVITS), the Senator from Delaware (Mr. BIDEN), the Senator from North Dakota (Mr.