

Journal of the Senate

FIRST REGULAR SESSION

SEVENTY-SECOND DAY—MONDAY, MAY 22, 2017

The Senate met pursuant to adjournment.

President Pro Tem Richard in the Chair.

RESOLUTIONS

On behalf of Senator Romine, Senator Kehoe offered Senate Resolution No. 1027, regarding Gary Lynn Harris, Fredericktown, which was adopted.

On behalf of Senator Cunningham, Senator Kehoe offered Senate Resolution No. 1028, regarding Web-Co Custom Industries, Incorporated, Marshfield, which was adopted.

On behalf of Senator Riddle, Senator Kehoe offered Senate Resolution No. 1029, regarding the Sixtieth Wedding Anniversary of Glenn and Jane Griffith, which was adopted.

On behalf of Senator Riddle, Senator Kehoe offered Senate Resolution No. 1030, regarding the Seventy-fifth Wedding Anniversary of Sidney and Mary Ruth Wood, which was adopted.

On behalf of Senator Riddle, Senator Kehoe offered Senate Resolution No. 1031, regarding the Fiftieth Wedding Anniversary of Richard and Dorothy Shively, Monroe City, which was adopted.

On behalf of Senator Schupp, Senator Kehoe offered Senate Resolution No. 1032, regarding Barry L. Glantz, Creve Coeur, which was adopted.

On behalf of Senator Riddle, Senator Kehoe offered Senate Resolution No. 1033, regarding Kevin Eulinger, Hawk Point, which was adopted.

On behalf of Senator Schupp, Senator Kehoe offered Senate Resolution No. 1034, regarding Richard Louis “Dick” Waddington, St. Louis, which was adopted.

On behalf of Senator Schaaf, Senator Kehoe offered Senate Resolution No. 1035, regarding Eagle Scout Carson Schutter, Parkville, which was adopted.

On behalf of Senator Schaaf, Senator Kehoe offered Senate Resolution No. 1036, regarding Eagle Scout Landon Daniel Beyer, Parkville, which was adopted.

On behalf of Senator Curls, Senator Kehoe offered Senate Resolution No. 1037, regarding Sheryl Lynette Branch-Maxwell, which was adopted.

On behalf of Senator Nasheed, Senator Kehoe offered Senate Resolution No. 1038, regarding the 2017 graduating class of Innovative Concept Academy, St. Louis, which was adopted.

On behalf of Senator Nasheed, Senator Kehoe offered Senate Resolution No. 1039, regarding Mallinckrodt Pharmaceuticals, which was adopted.

On behalf of Senator Hegeman, Senator Kehoe offered Senate Resolution No. 1040, regarding the Fiftieth Wedding Anniversary of Jim and Carole Paxton, Savannah, which was adopted.

On behalf of Senator Hegeman, Senator Kehoe offered Senate Resolution No. 1041, regarding the Sixtieth Wedding Anniversary of Vic and Marcialea Graybill, Tarkio, which was adopted.

On behalf of Senator Silvey, Senator Kehoe offered Senate Resolution No. 1042, regarding Eagle Scout Tanner Cook, Liberty, which was adopted.

REPORTS OF STANDING COMMITTEES

Senator Kehoe, Chairman of the Committee on Rules, Joint Rules, Resolutions and Ethics, submitted the following reports:

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which were referred **CCS for SB 8; SS for SCS for SB 16; SS for SB 31; CCS for HCS for SS for SB 34; CCS for HCS for SS for SB 35; SS#2 for SCS for SB 43; SS for SCS for SB 49; CCS for SB 50; SCS for SB 52; CCS for HCS for SS for SB 62; CCS for SB 64; SB 65; HCS for SS for SCS for SB 66; SCS for SB 88; CCS for HCS for SB 95; SCS for SB 108; CCS for HCS for SB 111; CCS#2 for HCS for SCS for SB 112; CCS for SCS#2 for SB 128; CCS for HCS for SCS for SB 139; HCS for SCS for SB 161; CCS for SB 222; CCS for HCS for SB 225; SCS for SB 240; SB 248; SCS for SB 279; CCS for HCS for SB 283; SCS for SB 322; SB 329; SB 376; SB 395; CCS for HCS for SCS for SB 421; CCS for HCS for SB 501 and CCS for SB 503**, begs leave to report that it has examined the same and finds that the bills have been duly enrolled and that the printed copies furnished the Senators are correct.

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **CCS for SB 8; SS for SCS for SB 16; SS for SB 31; CCS for HCS for SS for SB 34; CCS for HCS for SS for SB 35; SS#2 for SCS for SB 43; SS for SCS for SB 49; CCS for SB 50; SCS for SB 52; CCS for HCS for SS for SB 62; CCS for SB 64; SB 65; HCS for SS for SCS for SB 66; SCS for SB 88; CCS for HCS for SB 95; SCS for SB 108; CCS for HCS for SB 111; CCS#2 for HCS for SCS for SB 112; CCS for SCS#2 for SB 128; CCS for HCS for SCS for SB 139; HCS for SCS for SB 161; CCS for SB 222; CCS for HCS for SB 225; SCS for SB 240; SB 248; SCS for SB 279; CCS for HCS for SB 283; SCS for SB 322; SB 329; SB 376; SB 395; CCS for HCS for SCS for SB 421; CCS for HCS for SB 501 and CCS for SB 503**, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made, the bills would be signed by the President Pro Tem to the end that they may become law. No objections being made, the bills were so read by the Secretary and signed by the President Pro Tem.

SIGNING OF CONCURRENT RESOLUTIONS

The President Pro Tem announced that all other business would be suspended and **SCR 4**, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made, be signed to the end that it shall have the full force and effect of law. No objections being made, the concurrent resolution was read by the Secretary and signed by the President Pro Tem.

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **HCS for HCR 19; SS for HCB 3; HCS for HB 1; CCS for SCS for HCS for HB 2; CCS for SCS for HCS for HB 3; CCS for SCS for HCS for HB 4; CCS for SCS for HCS for HB 5; CCS for SCS for HCS for HB 6; CCS for SCS for HCS for HB 7; CCS for SCS for HCS for HB 8; CCS for SCS for HCS for HB 9; CCS for SCS for HCS for HB 10; CCS for SCS for HCS for HB 11; CCS for SCS for HCS for HB 12; SCS for HCS for HB 13; CCS for SCS for HCS for HB 17; SCS for HCS for HB 18; SCS for HCS for HB 50; SCS for HB 51; SS for SCS for HB 93; SS for SCS for HCS for HB 115; HCS for HBs 190 & 208; SS for SCS for HCS for HB 292; HB 336; SS for SCS for HCS for HBs 339 & 714; HCS for HB 451; SS for HCS for HB 452 and HB 850**, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made, the bills would be signed by the President Pro Tem to the end that they may become law. No objections being made, the bills were so read by the Secretary and signed by the President Pro Tem.

OBJECTIONS

Senators Emery, Eigel and Kraus submitted the following:

Ron Richard
President Pro Tem
Missouri State Senate
Room 326
Jefferson City, MO 65102

Dear Mr. President:

We hereby submit this objection to the signing of House Bill 151 pursuant to Article III, Section 30 of the Constitution of Missouri. Please print this letter in the Senate Journal and we ask that this objection accompany the bill when delivered to the Governor for signing.

This act runs contrary to the constitutional protections guaranteed in the Missouri and United States constitutions, and for this reason should not become the law of this state.

Article I, section 4 of the Missouri Constitution clearly states that Missouri is a free and independent state subject only to the United States Constitution. Additionally, the Tenth Amendment to the United States Constitution clearly states that powers not granted to the federal government are reserved for the States or the people. Nowhere in the United States Constitution is there a grant of authority to condition citizens' rights on participation in an identity database or to dictate standards for state-issued identification. In fact, quite the opposite is true, Article IV, Section 1 of the United States Constitution guarantees states the right that their acts, records, and proceedings shall be given full faith and credit by every other state in the union.

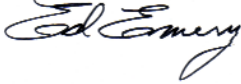
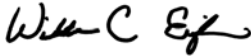
Provisions in the federal REAL ID Act of 2005 place an unnecessary burden on the right to petition one's government for redress of grievances under the First Amendment to the United States Constitution, freedom of movement throughout the United States under Substantive Due Process, and threaten the continued free exercise of our other constitutional rights. Access to federal courthouses and military bases are already denied to persons without access to REAL ID compliant identification, and due to the sheer size of our country, certain states and lands otherwise held by the United States are all but impossible for citizens of average means to reach without use of a federally-regulated airline flight. For a law burdening fundamental rights such as these to be constitutional, the government action undertaken must be necessary to further a compelling government interest. The REAL ID Act of 2005 intrudes on citizens' privacy beyond what is truly necessary to ensure aircraft and courthouse safety and security, and for that reason we must resist implementing it in our state system of identification.

Although the federal government has been granted the authority to regulate interstate commerce, such authority is not without limits. The federal government exceeds its constitutional authority when it attempts to commandeer or improperly coerce a state or states, or when it places an undue burden on the free exercise of the rights endowed to us by our creator. Reliance on the bare assertion that an action implicates interstate commerce and thus is appropriate for unbridled federal regulation does violence to the notion that we live in a free and independent state and sets a dangerous precedent with regard to federal overreach. Such a dismissive viewpoint disregards the existence of the Tenth Amendment and the discrete list of federal powers enumerated in Article I, Section 8 of the United States Constitution. Implementation of federal standards for identification issued by the several states directly infringes the rights of Missourians, and poses a threat to the full faith and credit that is already owed to state-issued identification irrespective of federal approval. It takes no imagination to envision that REAL ID compliant identification, and thus participation in a federally-approved database, will subsequently be required for exercise of other constitutional rights.

Our state cannot be complicit in allowing regulation of interstate commerce to extend to infringement of constitutional rights. Free exercise of the rights endowed to us by our creator cannot and shall not be subjugated to the discretion or approval of the federal government. Free exercise of the rights endowed to us by our creator does not mean free exercise conditioned on participation in a federally-approved identification program.

Because this proposed legislation poses a threat to the free exercise of constitutional rights that none but our creator is entitled to infringe, we ask the Governor to act for the good of the people of Missouri and veto House Bill 151.

Sincerely,


Senator Sifton submitted the following:

May 22, 2017

Adriane Crouse – Secretary of the Senate
State Capitol, Room 325
Jefferson City, Missouri 65101

RE: Objection to the signing of SS#2/HCS/HB 1194 & 1193 by the President Pro-Tem

Dear Ms. Crouse:

Pursuant to the provisions Article III, § 30 of the Missouri Constitution and Senate Rule 68, please consider this correspondence as my objection to the signing of SS#2/HCS/HB 1194 & 1193 by the President Pro-Tem. In accordance with these provisions, please print this correspondence in the Senate Journal and annex it to the legislation to be considered by the Governor.

The legislation referenced above was 3d read in the Senate on the final day of session. Numerous procedural irregularities call into question whether it was validly adopted and thus whether it can therefore become law. The points raised below are supported by a review of the audio recordings of the proceedings.

During the proceedings on the final day, Senator Onder raised a point of order that the substitute motions that I was attempting to offer were out of order under Senate Rule 73. Senator Richard was then recognized by the presiding officer – while Senator Schaaf had possession of the floor –and ruled on the point of order. Senator Schaaf then appealed the ruling on the point of order. Pursuant to Senate Rule 10, rulings on points of order are subject to an appeal to the entire Senate. However, no vote or any other action was ever taken on Senator Schaaf's appeal of the ruling on the point of order.

The Senate also violated Rule 76 regarding standing at ease in multiple instances. The rule states, in pertinent part, "When a senator is engaged in debate or discussion and seeks to have the senate stand at ease, the senator must seek unanimous consent of the body."

While Senator Schaaf was speaking on a point of order raised by Senator Schatz, Senator Richard sought the recognition of the presiding officer – again despite Senator Schaaf having possession of the floor at that time. When asked by the presiding officer for what purpose he rose, Senator Richard replied "to stand at ease for five minutes to rule on the point of order." Both Senators Schaaf and Nasheed are heard on the audio to object to the Senate standing at ease. The presiding officer nevertheless put the Senate at ease.

Senator Richard was not engaged in debate or discussion and was therefore ineligible to ask the Senate to stand at ease. In addition, the request did not have the unanimous consent of the body as Senators Schaaf and Nasheed immediately objected. Finally, after the Senate had been at ease for well over five minutes, Senator Walsh sought recognition and pointed out that Rule 76 required unanimous consent, that she no longer gave it, and moved to adjourn. Senator Onder, who was then presiding, refused to recognize her in violation of Senate Rules.

The final procedural irregularity that I wish to address is that the third read motion on the bill was never properly put before the body. Rule 87 requires that when a motion is made it must be stated by the chair or, if the motion is written, it must be read by the secretary. Rule 88 provides that after the motion is stated by the chair, then it is before the body.

Immediately after the vote was taken to adopt Senate Substitute Number 2 of the bill, the presiding officer announced, "we are on the 3rd reading of HB 1194 and 1193." However, the Senate was not yet on that motion as Senator Hegeman had not yet made it. Senator Hegeman

initially moved the previous question despite the fact that he had not yet made the third read motion. Then, in recognition of the fact that the third read motion was not yet before the body, he withdrew the motion for the previous question and made the 3rd read motion. He then immediately moved for the call of the previous question on the third read motion. Following those actions, at no time was the 3rd read motion ever repeated by the chair. It also was neither written nor read.

As the third read motion was never stated by the presiding officer or read by the secretary, it was never before the body. The purported vote on the third read motion was a nullity that under Senate rules never occurred. The alleged passage of the bill violated Article III, § 21 of the Missouri Constitution insofar as it was never validly third read in the Senate.

Article III, § 21 of the Missouri Constitution grants the Senate the authority to determine the rules of its proceedings. Incumbent with this grant of authority is that the Senate actually follow its own rules. The Missouri Supreme Court has recognized that even the Lieutenant Governor – who is in a different branch of government – is required to follow the rules of the Senate when presiding over it. *State ex rel Danforth v. Cason*, 507 S.W.2d 405, 413-414 (Mo. 1974). Because of the Senate’s failure to follow its own rules – and particularly because the third read motion on the bill was never validly made – the bill’s adoption violates the Missouri Constitution and cannot be signed.

Sincerely,



SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **SS No. 2** for **HCS** for **HB 151** and **SS No. 2** for **HCS** for **HBs 1194 & 1193**, having passed both branches of the General Assembly, would be read at length by the Secretary and signed by the President Pro Tem to the end that they may become law. The bills were so read by the Secretary and signed by the President Pro Tem.

BILLS DELIVERED TO THE GOVERNOR

CCS for **SB 8**; **SS** for **SCS** for **SB 16**; **SS** for **SB 31**; **CCS** for **HCS** for **SS** for **SB 34**; **CCS** for **HCS** for **SS** for **SB 35**; **SS#2** for **SCS** for **SB 43**; **SS** for **SCS** for **SB 49**; **CCS** for **SB 50**; **SCS** for **SB 52**; **CCS** for **HCS** for **SS** for **SB 62**; **CCS** for **SB 64**; **SB 65**; **HCS** for **SS** for **SCS** for **SB 66**; **SCS** for **SB 88**; **CCS** for **HCS** for **SB 95**; **SCS** for **SB 108**; **CCS** for **HCS** for **SB 111**; **CCS#2** for **HCS** for **SCS** for **SB 112**; **CCS** for **SCS#2** for **SB 128**; **CCS** for **HCS** for **SCS** for **SB 139**; **HCS** for **SCS** for **SB 161**; **CCS** for **SB 222**; **CCS** for **HCS** for **SB 225**; **SCS** for **SB 240**; **SB 248**; **SCS** for **SB 279**; **CCS** for **HCS** for **SB 283**; **SCS** for **SB 322**; **SB 329**; **SB 376**; **SB 395**; **CCS** for **HCS** for **SCS** for **SB 421**; **CCS** for **HCS** for **SB 501** and **CCS** for **SB 503**, after having been duly signed by the Speaker of the House of Representatives in open session, were delivered to the Governor by the Secretary of the Senate.

On motion of Senator Kehoe, the Senate adjourned pursuant to the Constitution.

MIKE PARSON
Lieutenant Governor

ADRIANE D. CROUSE
Secretary of the Senate

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