

STATEMENT BY SENATOR SAM NUNN
INTRODUCING THE JUDICIAL TENURE ACT
APRIL 29, 1977

MR. PRESIDENT:

I RISE TODAY TO INTRODUCE THE JUDICIAL TENURE ACT. I HAVE A RATHER LENGTHY STATEMENT TO ACCOMPANY THE BILL AND I ASK UNANIMOUS CONSENT THAT IT BE PRINTED IN THE RECORD. I WILL ONLY TAKE A FEW MOMENTS, MR. PRESIDENT, TO HIGHLIGHT A FEW POINTS WITH REGARD TO THIS LEGISLATION.

THE PURPOSE OF THE JUDICIAL TENURE ACT IS TO PROVIDE A MEANS, AS AN ALTERNATIVE TO IMPEACHMENT, FOR THE DISCIPLINING OF A FEDERAL JUDGE WHO IS NOT CONFORMING TO THE CONSTITUTIONAL STANDARD OF "GOOD BEHAVIOR." EXAMINATION OF OUR HISTORY REVEALS THAT IMPEACHMENT IS A PONDEROUS AND LITTLE USED PROCESS WHICH, IN FACT, HAS RESULTED IN A FEDERAL JUDICIARY WHICH IS VIRTUALLY UNCHECKED AND ACCOUNTABLE TO NO ONE. THIS REALIZATION IS PARTICULARLY DISTURBING AT A TIME WHEN THE OTHER BRANCHES OF GOVERNMENT ARE RECOGNIZING THAT IT IS IMPERATIVE THAT THE PUBLIC TRUST IN GOVERNMENTAL OFFICIALS BE RESTORED THROUGH MEANINGFUL STANDARDS OF CONDUCT AND DISCIPLINARY MECHANISMS. FURTHERMORE, EVEN IF IMPEACHMENT WERE A

MORE EFFECTIVE MEANS OF ENFORCING THE CONSTITUTIONAL TENURE STANDARD, IT IS UNREASONABLE TO EXPECT THE LEGISLATIVE BUSINESS OF THIS COUNTRY TO COME TO A HALT WHILE THE HOUSE IMPEACHES AND THE SENATE TRIES SOME OBSCURE YET MISBEHAVING JUDGE. COMMON SENSE REQUIRES THAT A LOGICAL BALANCE BE STRUCK BETWEEN THE GRAVITY OF THE SITUATION AND THE INTERRUPTION OF CONGRESSIONAL ACTIVITY.

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MR. PRESIDENT, THE FACTS BEAR OUT THESE ASSUMPTIONS. OVER THE COURSE OF OUR 200 YEARS AS A NATION, ONLY 54 JUDGES AND ONE JUSTICE HAVE BEEN OFFICIALLY INVESTIGATED. OF THESE, ONLY EIGHT JUDGES AND ONE JUSTICE HAVE BEEN IMPEACHED BY THE HOUSE, RESULTING IN THE CONVICTION AND REMOVAL OF A MERE FOUR JUDGES IN TWO CENTURIES. THE LAST IMPEACHMENT OF A FEDERAL JUDGE WAS FORTY YEARS AGO. IT IS UNREASONABLE TO ASSERT THAT A MERE 4 FEDERAL JUDGES HAVE MISBEHAVED OR BEEN DISABLED IN OUR HISTORY.

THE JUDICIAL TENURE ACT IS INTENDED TO MAKE AVAILABLE, PURSUANT TO CONSTITUTIONAL AUTHORITY, A MORE WORKABLE AND REALISTIC DISCIPLINARY MECHANISM. DETAILED EXAMINATION OF EXISTING STATUTORY PROVISIONS IN THIS AREA HAS REVEALED THAT, WHILE ADMINISTRATIVE AUTHORITY

HAS BEEN PROVIDED TO VARIOUS ENTITIES WITHIN THE FEDERAL COURT SYSTEM, NO SPECIFIC STATUTORY LANGUAGE EXISTS WHICH WOULD AUTHORIZE DISCIPLINARY ACTION IN THE CASE OF A MISBEHAVING JUDGE.

THE PRINCIPLES EMBODIED IN THIS BILL ARE NOT NEW ONES AND THE PROCEDURES PROPOSED HAVE BEEN THOUGHT THROUGH AND REFINED OVER A PERIOD OF MORE THAN 40 YEARS. CONSTITUTIONAL AMENDMENTS ON THE SUBJECT OF JUDICIAL DISCIPLINE AND TENURE WERE PROPOSED IN THE EARLY 1800'S, AND LEGISLATION CONTEMPLATING STATUTORY AUTHORITY HAS BEEN CONSIDERED PERIODICALLY SINCE 1936.

THIS LEGISLATION HAS BEEN CAREFULLY DRAFTED SO AS TO CREATE A PROCEDURE, APPROPRIATELY CIRCUMSCRIBED BY DUE PROCESS PROTECTIONS, WHICH WOULD ULTIMATELY AUTHORIZE THE CENSURE, REMOVAL OR INVOLUNTARY RETIREMENT OF A JUDGE OR JUSTICE DETERMINED TO BE IN DEROGATION OF THE CONSTITUTIONAL STANDARD OF "GOOD BEHAVIOR." HEARINGS HAVE BEEN HELD ON VARIOUS ASPECTS OF THIS PROPOSAL OVER THE YEARS, MOST RECENTLY BY THE JUDICIARY COMMITTEE'S SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY LAST SPRING. I HAVE CAREFULLY CONSIDERED AND STUDIED THE SUGGESTIONS AND COMMENTS WHICH HAVE BEEN PUT FORTH BY ALL INTERESTED PARTIES AND MANY OF THESE CONSTRUCTIVE

POINTS HAVE BEEN INCORPORATED IN THE BILL WHICH I AM INTRODUCING TODAY. AS YOU MAY KNOW, MR. PRESIDENT, THIS BILL WAS FAVORABLY REPORTED BY THE SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY FOLLOWING THE HEARINGS IN THE 94TH CONGRESS.

SOME HAVE ASSERTED THAT THIS PROPOSAL MAY PRESENT CONSTITUTIONAL PROBLEMS. I BELIEVE THAT THESE CONCERNS ARE UNFOUNDED AND THAT THE WEIGHT OF CREDIBLE AUTHORITY NOT ONLY SUPPORTS ITS CONSTITUTIONALITY BUT INDICATES THAT THE PROCEDURE, BASED UPON COMMON LAW PRECEDENT, IS CONTEMPLATED BY THE APPLICABLE PROVISIONS OF THE CONSTITUTION.

THE JUDICIAL TENURE ACT HAS BEEN ENDORSED IN TOTAL OR IN PRINCIPLE BY THE AMERICAN BAR ASSOCIATION, THE AMERICAN JUDICATURE SOCIETY, THE AMERICAN ASSOCIATION OF ATTORNEYS GENERAL AND THE JUDICIAL CONFERENCE OF THE UNITED STATES. AS I MENTIONED, IT RECEIVED THE APPROVAL OF THE JUDICIARY SUBCOMMITTEE DURING THE LAST CONGRESS.

MR. PRESIDENT, I WILL NOT TAKE UP ANY MORE TIME AT THIS POINT. THE LENGTHY STATEMENT WHICH I AM PLACING IN THE RECORD ADDRESSES MANY OF THE ISSUES WHICH I HAVE DISCUSSED, IN MORE DETAIL. IN CLOSING, I WOULD LIKE TO EXPRESS MY BELIEF THAT THE JUDICIAL TENURE ACT

REPRESENTS A PRINCIPLE WHOSE TIME HAS COME AND
MY HOPE THAT THE JUDICIARY COMMITTEE AND THE FULL
SENATE WILL ACT EXPEDITIOUSLY TO CONFIRM THAT FACT.

I ASK UNANIMOUS CONSENT THAT THE BILL BE PRINTED
IN THE RECORD IN ITS ENTIRETY.