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BILL	DATE	PAGE(S)
H.R. 3256	June 8, 1983	E2770-71

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by Mr. Kastenmeier

THE FEDERAL COURTS CIVIL PRIORITIES ACT

HON. ROBERT W. KASTENMEIER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 8, 1983

● Mr. KASTENMEIER. Mr. Speaker, it is with great pleasure that I, accompanied by the respected ranking minority member of my subcommittee (Mr. MOORHEAD), introduce the Federal Courts Civil Priorities Act. On September 20, 1982, the 97th Congress, unanimously by voice vote, passed virtually identical legislation. That legislation was sponsored by the then-ranking minority member of the subcommittee (Mr. RAILSBACK), who although departed from the scene still deserves much credit for pushing the idea to the legislative fore. Unfortunately, the Senate failed to act and the bill is still before us today.

In brief, the proposed legislation 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.

It is envisioned that if a court wants to set its own priorities by rule, it will fall under the residual responsibility of the appropriate judicial council of the circuit. Pursuant to a law passed by the 96th Congress—which became 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. Last, the bill authorizes the Judicial Conference of the United States

to modify rules adopted by the courts to determine the order in which civil actions are heard and determined, in order to establish consistency among the judicial circuits.

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 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 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.

I would like to note that we owe a debt of gratitude to the American Bar Association and its Committee on Coordination of Judicial Improvements for acting as a catalyst in this area.

Staff of my Subcommittee on Courts, Civil Liberties and the Administration of Justice, working with legislative counsel, the American Law Division of the Library of Congress, and the Administrative Office of the U.S. Courts, have located almost 100 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 eliminates civil expediting requirements, including those that are not explicitly repealed. Further, this drafting technique creates a presumption that all priorities passed in the future should be placed 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.

Mr. Speaker, I might add that not only are we struggling to solve the problem but we also are fighting to prevent it from getting worse. Already, in this Congress a number of bills reported by committees other than the Committee on the Judiciary have been found to contain civil expediting provisions. In an effort to stem the tide, these bills are being sequentially referred to the Judiciary Committee. If an amicable drafting solution to the problem cannot be worked out, I—working in close cooperation with my chairman (Mr. RODINO)—intend to seek amendments to each and every bill striking the obnoxious language. Hopefully, my colleagues on other committees will see that they are only making a problem worse, rather than serving their own constituencies.

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 U.S. Department of Justice and the Association of the Bar of the City of New York. As observed by Deputy Assistant Attorney General Timothy J. Finn, Office of Legal Policy, in support of the legislation during a hearing before my subcommittee:

We believe that all but the most clearly necessary and justifiable priority provisions should be revoked and replaced with a single standard which the courts can apply to all cases to determine the need for expedition. The courts are, in general, in the best position to determine the need for expedition in the circumstances of any particular case, to weigh the relative needs of various cases on their dockets, and to establish an order of hearing that treats all litigants most fairly. Litigants who can persuasively assert that there is a special public or private interest in expeditious treatment of their case will be able to use the general expedition provision provided in (this bill) to the same effect as existing priority provisions.

In conclusion, this bill is cost effective (both in terms of saving money and in terms of conserving finite judicial resources); it is rooted in strong policy and constitutional turf; and it is an idea whose time has come. I urge my colleagues—just as they have done in the past—to support this needed legislation.●