

SENATE No. 511

To accompany the petition of Nathan B. Bidwell that Congress be memorialized to enact legislation to confirm and establish the titles of the states to lands and resources in and beneath navigable waters within state boundaries and to provide for the use and control of said lands and resources. Constitutional Law.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Eight.

RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION TO CONFIRM AND ESTABLISH THE TITLES OF THE STATES TO LANDS AND RESOURCES IN AND BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES AND TO PROVIDE FOR THE USE AND CONTROL OF SAID LANDS AND RESOURCES.

1 *Whereas*, Since the date of the Plymouth colony
2 charter of sixteen hundred and twenty wherein the
3 crown granted to this colony "all the main lands
4 . . . with all the . . . Soiles . . . Waters Fishings
5 . . . Royalties . . . within the Islands and Seas
6 Adjoining"; and

7 *Whereas*, Since the days of the acts of the general
8 court of the Plymouth colony, as early as sixteen
9 hundred and fifty-two, this colony has claimed and
10 exercised overtly rights of ownership, dominion and
11 jurisdiction in the lands underlying the waters of its
12 marginal sea; and

13 *Whereas*, Since, in seventeen hundred and seventy-
14 four, in a dispute between the colony of Massa-

15 chusetts and the state of New Hampshire, King
16 George II, as arbitrator, declared the boundary to
17 be one running across the land to a monument at
18 Salisbury and thence three miles out into the Atlantic
19 ocean; and

20 *Whereas*, It has been uniformly recognized that
21 the Plymouth charter grant, as well as other colonial
22 grants, conveyed to the grantees “both the terri-
23 tory described and the powers of government, in-
24 cluding the property and the dominion of lands
25 under tide water” and that “tidewater” is defined
26 to include all coastal waters; and

27 *Whereas*, It has been recognized as a principle of
28 international law since fifteen hundred and ninety-
29 eight that “the adjacent part of a sea belongs to
30 one’s dominion”; and

31 *Whereas*, It has long been recognized that the
32 crown of England owned the bed of the “adjoining
33 Sea” and owned the bed of the “arms of the sea”
34 or inland waters, by reason of his ownership of the
35 bed of the “sea”; and

36 *Whereas*, In separating from England, the thirteen
37 original colonies maintained their character as sepa-
38 rate independent States or nations and each acquired
39 the King’s former title to all lands within its bounda-
40 ries, including submerged lands under coastal waters;
41 and

42 *Whereas*, By the declaration of independence, in
43 July, seventeen hundred and seventy-six, Massachu-
44 setts and the several colonies asserted their char-
45 acter as “Free and Independent States”; and

46 *Whereas*, The treaty of peace with Great Britain
47 in seventeen hundred and eighty-three acknowledged
48 the commonwealth of Massachusetts and the sev-

49 eral states "to be free, sovereign and independent
50 States" and relinquished "all claims to the Govern-
51 ment, propriety, and territorial rights of the same,
52 and every part thereof", and defined the boundary
53 as embracing all islands within twenty leagues of the
54 shore, certainly relinquishing all the King's right in
55 the coastal waters; and

56 *Whereas*, By the constitution of the United States,
57 the several states reserved to the states their sov-
58 ereignty and ownership to those lands within their
59 boundaries; and

60 *Whereas*, Since it has been further recognized that
61 "the title to the shore of the Sea and of the arms of
62 the Sea, and in the soils under tide waters, vested
63 in the several States subject to the rights surren-
64 dered to the National Government by the Constitu-
65 tion of the United States"; and

66 *Whereas*, Since the founding of the Republic, the
67 several states have been uniformly recognized as the
68 owners of coastal lands and lands covered by the
69 marginal sea within their respective boundaries; and

70 *Whereas*, In its recent opinion in the case of
71 United States *versus* California the supreme court of
72 the United States, on June twenty-third, nineteen
73 hundred and forty-seven, declared, without citing
74 a single authority and wholly ignoring the effect
75 of numerous prior decisions and unquestioned claims
76 of the several states, that the federal government
77 had a paramount right to all of the resources, under
78 California's marginal sea, without regard to or set-
79 tling the question of ownership of the lands in-
80 volved; and

81 *Whereas*, The court based its decision upon the
82 sweeping and dangerous assertion that, because it

83 was the duty of the federal government to defend
84 the country against attack and to conduct foreign
85 relations, it had a paramount right to take all of the
86 resources in and under the marginal sea, without
87 compensation; and

88 *Whereas*, This doctrine wholly ignores the re-
89 served powers of the several states, would convert
90 the United States government into a superstate not
91 resting on constitutionally granted powers, and
92 would bring about a revolutionary change in our
93 constitution by a mere fiat of the supreme court;
94 and

95 *Whereas*, The doctrine of the case of United States
96 *versus* California, constitutes a direct threat to all
97 ownership of minerals and other resources, public
98 and private, because it is based upon the novel and
99 unfounded premise that the federal government has
100 the right to take without compensation all of the
101 resources, under all lands submerged and inland,
102 which it is obliged to defend, thus leading directly
103 to nationalization of all natural resources and whole-
104 sale confiscation; and

105 *Whereas*, Since it has been and was only recently
106 urged before the Congress of the United States by a
107 member that "if the Federal Government needed
108 oysters to feed the Navy, it could take them from the
109 inland navigable waters as well as from the coastal
110 waters without payment of compensation therefor";
111 and

112 *Whereas*, Since a state may exercise jurisdiction
113 over fishing, and other resources, in its coastal waters
114 only by reason of the principle that "the jurisdic-
115 tion of a State is coextensive with its territory"; as
116 held by the supreme court of the United States, and

117 *Whereas*, Since the supreme court held in its de-
118 cision in the California case that “we cannot say
119 that the thirteen original colonies separately ac-
120 quired ownership to the three-mile belt or the soil
121 under it”, removing the foundation for the exercise
122 by the commonwealth of jurisdiction over fishing
123 and other resources, in the marginal sea; and

124 *Whereas*, Since the supreme court has held that
125 “neither the English Charters granted to this Na-
126 tion’s settlers, nor the Treaty of Peace with Eng-
127 land, nor any other document to which we have
128 been referred, showed a purpose to set apart a three-
129 mile ocean belt for Colonial or State ownership”;
130 and

131 *Whereas*, The Attorney General of the United
132 States has stated publicly before a joint hearing by
133 a committee of the Congress that he intends to file
134 suit against other littoral states; and

135 *Whereas*, The commonwealth of Massachusetts is
136 a littoral state and title to its shores and soils under
137 the marginal sea is presently in danger of being
138 taken from the commonwealth; and

139 *Whereas*, The commonwealth of Massachusetts
140 may lose further the power and right to regulate
141 fishing and other matters in its coastal waters; and

142 *Whereas*, It has long been held that the common-
143 wealth of Massachusetts owns the beds underlying
144 its inland navigable waters; and

145 *Whereas*, The federal government has attacked
146 this rule of state ownership of lands under inland
147 navigable waters as “unsound”, a “fallacy”, “pat-
148 ently unsound”; and

149 *Whereas*, For the first time in history the supreme
150 court of the United States, in its decision in the

151 California case referred to “qualified ownership” by
152 the several states of “lands under inland navigable
153 waters, such as rivers, harbors, and even tidelands,
154 down to low-water marks”; and

155 *Whereas*, Many valuable and historic sites are now
156 located on these lands, including Massachusetts In-
157 stitute of Technology, properties of Harvard College,
158 the Boston Public Library, Back Bay residential
159 area, Boston Public Gardens and numerous other
160 properties, an area in extent of well over fifty per
161 cent of Boston; and

162 *Whereas*, Such ownership by the commonwealth
163 has been recognized for centuries; and

164 *Whereas*, As a result of the decision in the Cali-
165 fornia case, such ownership is now in jeopardy; and

166 *Whereas*, There are now pending before the Con-
167 gress of the United States, S. 1988 and similar bills,
168 the purpose of which is to confirm in the several
169 states title to these lands and resources in and be-
170 neath the navigable waters within state boundaries;
171 and

172 *Whereas*, Such bills have the active support of
173 forty-six governors and forty-four attorneys general,
174 representatives of the several states; and

175 *Whereas*, Since hearings on such bills are shortly
176 to be concluded, and it being in the highest public
177 interest immediately to advise the Congress of the
178 United States of the views of the general court of
179 the commonwealth of Massachusetts with regard to
180 the passage of such bill; now therefore be it

181 *Resolved*, That the general court of the common-
182 wealth of Massachusetts approves the action of its
183 governor and its attorney general and their official
184 representatives with regard to their support of

185 S. 1988 in the joint hearings by the senate and house
186 committees of the Congress; and be it further

187 *Resolved*, That the general court of the common-
188 wealth of Massachusetts petitions the Congress to
189 pass immediately S. 1988 or other suitable legisla-
190 tion to forever quiet the titles of the several states
191 to submerged lands under the marginal sea and in-
192 land navigable waters within their respective bound-
193 aries and to all resources in and under said lands;
194 and be it further

195 *Resolved*, That the general court of the common-
196 wealth of Massachusetts petitions its representatives
197 and senators in the Congress of the United States
198 to vote for and actively participate in the enactment
199 of S. 1988 or similar legislation; and be it further

200 *Resolved*, That copies of these resolutions be forth-
201 with transmitted by the state secretary to the presi-
202 dent of the United States, to the presiding officers of
203 each branch of Congress and to the members thereof
204 from this commonwealth.

