

Reps. Julian, Brandenburg, Brown, Casperson, Caswell, DeRossett, Ehardt, Emmons, Farhat, Garfield, Huizenga, Meyer, Minore, Pappageorge, Richardville, Sak, Shulman, Tabor, Taub, Vander Veen, Voorhees and Zelenko offered the following concurrent resolution:

House Concurrent Resolution No. 44.

A concurrent resolution to memorialize the Congress of the United States to affirm support of state-empowered individual property rights and to urge the Congress and the Secretary of the Interior to take certain actions related to the Stupak-Thrall Court case originating in Gogebic County.

Whereas, Despite the principles of federalism, there continue to be cases of increased overreaching by the federal government, which threatens the rights of both the states and their citizens. The case of *Stupak-Thrall, et al. v. United States Forest Service* provides a clear example of federal disregard for such rights; and

Whereas, In 1966, under the threat of condemnation by the United States Forest Service (USFS), the owners of the area called Sylvania (most of which surrounds Crooked Lake in Gogebic County in Michigan's Upper Peninsula), agreed to sell their property to the USFS. The sale of this property deeded government lots (only the upland, excluding the inland lake water areas), and 14,890 acres (not the 18,327 acres as reported to Congress by the USFS). The sale of this property also included an encumbrance recognizing the rights of adjacent waterfront property owners. Pursuant to Michigan law, both the USFS and remaining property owners on the north shore of Crooked Lake hold equal rights to the use of the entire surface of Crooked Lake; and

Whereas, In 1987, Congress passed the Michigan Wilderness Act (MWA), which designated Forest Service land in the Ottawa National Forest, called Sylvania, as "wilderness." Congress declared the wilderness designation to be "subject to valid existing rights," thus preserving Michigan's sovereignty and laws, which grant all riparian owners along inland lakes rights in common to use the entire surface of the lake in accordance with established state law. Furthermore, the Ottawa National Forest Plan identifies wilderness management and clarifies that "management applies only to federal land not to state, county, private or other ownership"; and

Whereas, In 1992, despite congressional legislative language that only federal areas could be designated wilderness (the inland lake waters inside Sylvania wilderness remain in Michigan's public trust) and that valid existing property rights granted by state law would be respected, the Forest Service promulgated regulations to govern the surface use of Crooked Lake. Among other things, the regulations banned the use of sailboats on all of the lake except the small bay upon which private landowners reside. This effectively created a "fencing action" defining federal v. private authority, an action not allowed by Michigan state law. The USFS is thus regulating a state-owned area without the knowledge or participation of Michigan officials; and

Whereas, The United States District Court found for the USFS, and the Sixth Circuit Court of Appeals, in a 7-7 en-banc decision, stated: "Rights of the riparian owner are also subject to federal regulation under the property clause of the United States Constitution," 843F.Supp.327 (W.D. Mich. 1994). *Stupak-Thrall, et al.* appealed to the United States Supreme Court; and

Whereas, Given the importance of the issues and the impact on state's rights, Governor John Engler filed an amicus brief. Four other state Attorneys General, from Colorado, California, Alaska, and South Dakota, also filed amicus briefs as they too saw a precedent for the federal government usurping state sovereignty. Ultimately, the United States Supreme Court denied the petition for a writ of certiorari, leaving intact the decision of the District Court, which leaves the door open for future cases of creeping federalism; and

Whereas, In 1995, the USFS issued additional wilderness regulations for the surface use of Crooked Lake (again, without notice to or participation by Michigan officials) and attempted to prohibit motorboat use on 97% of the lake surface. The court ruled in favor of recognizing valid existing property rights, a ruling that is currently waiting court dates because the USFS is appealing; and

Whereas, The USFS claims that, contrary to Michigan law and provisions of the MWA, the surface of 97.1% of Crooked Lake is in fact owned and controlled by the USFS, and, contrary to Michigan law, no other riparian owners may use “their” portion of the lake without complying with USFS rules, which include obtaining a federal USFS permit to do so; and

Whereas, The USFS makes this claim only after manipulating section lines and ignoring found and marked meandered corners of the original Government Land Office (GLO) survey, which is in violation of all federal and state-established survey laws. This attempt, if allowed to stand, undermines the integrity of examined and approved GLO original plat drawings upon which all Michigan sovereignty, property ownership, and ownership rights are dependent; and

Whereas, To ensure Michigan its sovereign powers and its citizens and landowners their valid existing property rights, steps must be taken by the state of Michigan and Congress to guarantee that the USFS respects the sovereign state of Michigan, its laws, and the intent of Congress expressed in the MWA. While the USFS may regulate its own property in a manner consistent with ownership and the intent of Congress, the federal government must not be allowed to interfere with the legislative and judicial rights of the private individual and must maintain the sovereign powers of the state of Michigan, which holds in “public trust” all inland lake water for the people of Michigan; and

Whereas, It is vitally important that the sovereignty of the state of Michigan and its property, survey, and water laws prevail; now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That we memorialize the Congress of the United States to affirm support of state-empowered individual property rights and to amend the Michigan Wilderness Act to protect the rights of property owners in conflicts with the United States Forest Service. We also urge Congress to address the specific issues of the Stupak-Thrall case in the House Committee on Resources' Subcommittee on Forests and Forest Health and to clarify that it is not the intention of the United States Congress to allow a federal agency, such as the United States Forest Service, to redraw or alter in any way original Government Land Office surveys when such actions interfere with established state surveys, private property, and associated rights; and be it further

Resolved, That we call upon the Secretary of the Interior, who has the authority to address issues related to federal surveys and their accuracy, to retrace the GLO Survey of the Sylvania Wilderness, specifically along the section line of T45N and R40W, Section 34, along the southeast line, paying special attention to the survey's treatment of the Crooked Lake location. We urge the Secretary of the Interior to ensure that no illegal fence or boundary are created; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.