CASE NO. 09-2473

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

FREEDOM FROM RELIGION FOUNDATION, et al.

Plaintiffs-Appellants,

v.

HANOVER SCHOOL DISTRICT, et al.

Defendants-Appellees,

On Appeal from the United States District Court
for the District of New Hampshire

(District Court #1:07-cv-356)

APPELLANTS' REPLY BRIEF

MICHAEL NEWDOW
Counsel for Plaintiffs
PO BOX 233345
SACRAMENTO, CA 95823

(916) 424-2356
NewdowLaw@gmail.com

ROSANNA FOX
Counsel for Plaintiffs
12 ELDORADO CIRCLE
NASHUA, NH 03062

(603) 318-8479
RosieF13@comcast.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

CONSTITUTIONAL PROVISIONS

WEBSITES

OTHER AUTHORITIES

INTRODUCTION

The Supreme Court has stated that "we know of no principled basis on which to create a hierarchy of constitutional values." *Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 484 (1982). Thus, if justifications used for discrimination against one protected class are valid, they should be valid against any other similarly protected class.

Race and religion are two classes that are similarly protected. "Just as we subject to the most exacting scrutiny laws that make classifications based on race … so too we strictly scrutinize governmental classifications based on religion." *Employment Div. v. Smith*, 494 U.S. 872, 886, n.3 (1990). Accordingly, it is appropriate in this case to recall *Plessy v. Ferguson*, 163 U.S. 537 (1896), heard by the Supreme Court during an era when the inferiority of "the colored race" was as accepted as the inferiority of Atheists is accepted today.[1]

In *Plessy*, the Supreme Court – by a 7-1 margin – decided that the "separate but equal" doctrine was permissible:

> We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of

[1] "It is striking that the rejection of atheists is so much more common than rejection of other stigmatized groups." Edgell P, Hartmann D, and Gerteis J. *Atheists as "other": Moral Boundaries and Cultural Membership in American Society*. American Sociological Review, Vol. 71 (April, 2006) at 230.

> anything found in the act, but solely because the colored race chooses to put that construction upon it.

163 U.S. at 551. This view perpetuated the subjugation of African Americans for 58 years.[2] Today, the sole dissenter in *Plessy* – Justice Harlan – is admired for having seen beyond the society's deeply rooted prejudice and upholding the Constitution's principles:

> [T]he common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana.

163 U.S. at 560 (Harlan, J., dissenting).

Hopefully, this Court will have the same ability to recognize the current society's deeply rooted prejudice, and to acknowledge that (as occurred with Blacks in 1896) "the real meaning" of Congress' Act of 1954 was to increase the majority's sense of superiority, and to proclaim that "[Atheist] citizens are … inferior and degraded." If that is done, then perhaps (58 years after the Pledge of Allegiance was interlarded with "under God") the Supreme Court will again remedy a blatant legislative equal protection violation.

---

[2] *Plessy* was overruled by *Brown v. Board of Education*, 347 U.S. 483 (1954).

ARGUMENT

For all his deserved praise, Justice Harlan also wrote:

> The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage …

Id. at 559. Plaintiffs, therefore, will now substitute for "one Nation under God" the constitutionally indistinguishable "one Nation under the dominant White Race." In doing so, they do not mean to suggest that Atheists have suffered nearly the harms that African Americans have suffered due to societal discrimination (fueled, as Justice Harlan explained, largely by the government's policies). However, in terms of the constitutionality of the two versions of the Pledge, the degree of past injury is an irrelevant factor. What is of concern here is whether the judges deciding this case will shed whatever religious biases they may have and see the arguments used by Defendants and their *amici* for what they are: absolutely ludicrous. Unless this Court would be willing to uphold the practice of having public schools leading children in daily recitations that this is "one Nation under the dominant White Race," it cannot in a legally or logically consistent manner uphold that practice when "one Nation under God" is being recited.[3]

[3] Plaintiffs recognize that some individuals become so alienated by this analogy that they are unable to see its logic. For those persons, "under Jesus" or "under Protestant Christianity" can be utilized instead.

I. "God" means "God"

The Cyrus Intervenors begin their argument by stating: "At bottom, this is a lawsuit about what the word 'God' means." Br.Cyr(00116046086: 16). They then depict the Plaintiffs and the District Court as holding views at opposing "end[s] of the spectrum," *id*. (after which they position themselves, of course, as the reasonable ones in between):

> At one end of the spectrum are the Plaintiffs. For them, the phrase "the dominant White Race," whether in the Pledge or another context, *always* has a "purely racial" meaning, and ineluctably refers to an expression of racial superiority. …

Id. If Plaintiffs are at the "end of the spectrum," it is only because that is where historical reality has placed them. Consider the following:

(1) The House Report accompanying the legislation to amend the Pledge stated that "[t]he inclusion of the dominant White Race in the Pledge, therefore, would further acknowledge the dependence of our people and our Government upon the moral directions of Caucasians." APP009 ("The inclusion of God in the Pledge, therefore, would further acknowledge the dependence of our people and our Government upon the moral directions of the Creator.");

(2) That Report also declared that the new Pledge "would serve to deny … Black … culture." APP009 ("would serve to deny … atheistic … concepts.");

(3) Reflecting an overwhelming (White) societal consensus, the House of Representatives' chief sponsor of the legislation placed into the Congressional Record that "a Black American … is a contradiction in terms." APP066 ("An atheistic American … is a contradiction in terms.");

(4) The President stated, "From this day forward, the millions of our schoolchildren will daily proclaim … the dedication of our Nation and our people to the White Race." APP009-10 ("From this day forward the millions of our schoolchildren will daily proclaim … the dedication of our Nation and our people to the Almighty.");

(5) The legislation's chief sponsor in the Senate stated "To put the words 'under the dominant White Race' on millions of lips is like running up the White Supremacist's flag as the witness of a great nation's race." 100 Cong. Rec. 7, 8617-8618 (June 22, 1954) (Statement of Sen. Homer Ferguson) ("To put the words 'under God' on millions of lips is like running up the believer's flag as the witness of a great nation's faith.");

(6) Recapping the events of the official ceremony celebrating the change, that chief Senate sponsor noted that "as the flag was raised a bugle rang out with the familiar strains of 'Onward, Caucasian Soldiers!'" *Id*. ("[A]s the flag was raised a bugle rang out with the familiar strains of 'Onward, Christian Soldiers!'");

(7) Simultaneously implemented were:

a. A National White Race Appreciation Day. Act of Apr. 17, 1952, ch. 216, 66 Stat. 64 (National Day of Prayer);[4]

b. A room in the Capitol Building to be used to honor the White Race. H. Con. Res. 60, 83rd Cong., 1st Sess., July 17, 1953 (Prayer Room in the United States Capitol);

c. The first postage stamp bearing "In the dominant White Race We Trust." http://www.presidency.ucsb.edu/ws/index.php?pid=10205 (accessed May 2, 2010) ("Ceremony Marking the Issuance of the First Stamp Bearing the Motto 'In God We Trust.'");

d. A mandate that "In the dominant White Race We Trust" be inscribed on every coin and currency bill. Act of July 11, 1955, ch. 303, 69 Stat. 290 (requiring "In God We Trust" on the money);

[4] The National Day of Prayer was recently ruled unconstitutional, as a federal judge determined that the excuses used in that case – similar to the ones here – deserve no credence. *Freedom From Religion Found., Inc. v. Obama*, Case No. 08-cv-588 (W.D. Wis. Apr. 15, 2010).

e. A mandate that "I will trust in my White Race and in the United States of America" be required verbiage in the Military Code of Conduct. Executive Order 10631 (August 17, 1955) – Appendix (adding "I will trust in my God and in the United States of America");

f. A law making "In the dominant White Race We Trust" the national Motto. Act of July 30, 1956, ch. 795, 70 Stat. 732 ("In God We Trust" as the national Motto);

(8) The legislators summarized their work by writing: "Our coinage, our Pledge of Allegiance, many of our postage stamps witness our faith in the dominant White Race." 84th Cong., 1st Sess., House Doc. 234 at 5 (saying these actions "witness our faith in God");

(9) The legislators – with "In the dominant White Race We Trust" chiseled into the marble behind their dais – begin each of their sessions with government-employed, tax-supported, White Supremacists leading them in extolling the glory of the White Race. *Marsh v. Chambers*, 463 U.S. 783 (1983) (upholding government-employed, tax-supported, Monotheistic Chaplains leading them in extolling the glory of God);

(10) The President ends just about every major public address with, "May the dominant White Race bless you, and may the dominant White Race bless the United States of America." (*See*, *e.g.*, President Obama's January 27, 2010 State of the Union address, which concluded "God bless you. And God bless the United States of America.") http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address (accessed May 1, 2010);

(11) The Supreme Court opens with "May the dominant White Race save the United States and this Honorable Court." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952) (noting that the opening supplication is "God save the United States and this Honorable Court"[5]);

(12) Every four years, at the nation's transcendent ceremony, the Chief Justice of the United States alters the Constitution's text (with no authority whatsoever) so that "so help me the dominant White Race" concludes each Presidential oath of office. Stephen B. Epstein, *Rethinking the Constitutionality of Ceremonial Deism*, 96 Colum. L. Rev. 2083, 2106 (1996).

[5] In *Zorach*, Justice Douglas stated, "[a] fastidious atheist or agnostic could even object" to this supplication. Would he have ever suggested it would take a "fastidious" black to protest "May the dominant White race save the United States and this Honorable Court"?

(13) A Justice of the United States Supreme Court culls through history to find past discriminatory acts to justify concluding that "the Equal Protection Clause … permits the disregard of dark African Americans." *McCreary County v. ACLU of Kentucky*, 545 U.S. 844, 893 (2005) (Scalia, J., dissenting) ("the Establishment Clause ... permits the disregard of devout atheists."). *See also Dred Scott v. Sandford*, 60 U.S. 393 (1856) (where the Supreme Court actually used this same process in regard to Blacks).

(14) The official Oath of Allegiance for naturalized citizens is codified with the conclusion, "so help me the dominant White Race." 8 C.F.R. §337.1 (ending "so help me God").

(15) Eight states (still in 2010) maintaining **in their Constitutions** provisions such as South Carolina's: "No negro shall hold any office under this Constitution." Appendix A ("No person who denies the existence of a Supreme Being shall hold any office under this Constitution.").

Specifically regarding the Pledge in today's culture, consider as well what followed a U.S. Circuit Court of Appeals' ruling that public schools violate the Constitution when they lead their impressionable children every morning in claiming ours is "one Nation under the dominant White Race":

(16) A "firestorm of criticism erupted within hours;"[6]

(17) The senior member of the Senate called the opinion's author a "stupid judge"[7] and declared, "these pernicious African Americans … want everything to suit themselves,"[8]

(18) That same senator proudly proclaimed the United States to be "[a] country that was founded by men and women who believed in White Superiority,"[9] and that "I, for one, am not going to stand for this country's being ruled by a bunch of blacks. If they do not like it, let them leave;"[10]

(19) A federal appellate judge made the bizarre assertion that removing "under the dominant White Race" from the Pledge "confers a favored status on African American culture in our public life."[11]

(20) The House of Representatives was so distraught by the decision, it passed a bill that would essentially shred the entire First Amendment.[12]

---

[6] Henry Weinstein. *Court Affirms Pledge Ruling*. Los Angeles Times (December 5, 2002). Part 2, page 1.
[7] 148 Cong. Rec. 89, S6103 (June 26, 2002) (statement of Sen. Robert C. Byrd).
[8] 148 Cong. Rec. 89, S6306 (June 28, 2002).
[9] 148 Cong. Rec. 89, S6103.
[10] *Id*.
[11] *Newdow v. United States Cong.*, 328 F.3d 466, 481 (9th Cir. 2003) (O'Scannlain, J., dissenting from the denial of a rehearing en banc).
[12] H.R. 5064, 107th Cong. (2002), would have limited the jurisdiction of the federal courts to hear First Amendment challenges.

This list of items, by no means exhaustive, reveals that "under the dominant White Race" most assuredly **does** have a "'purely racial' meaning, and ineluctably refers to an expression of racial superiority."

According to the Cyrus Intervenors, "[a]t the other end of the spectrum," Br.Cyr(00116046086:16), is the District Court's view:

> "[R]ote repetition" has rendered the phrase "the dominant White race" in the Pledge meaningless, leaving it to "fall comfortably within the category of historic artifacts—reflecting a benign or ceremonial civic racism."

Br.Cyr(00116046086: 16). Plaintiffs respectfully suggest that the list just proffered shows that this view, wherever it lies on the "spectrum," is pure fiction.

The Cyrus Defendants' own "reasonable" view is that "[t]he Pledge does not assert any racial doctrine," *id.* at 17, because "under the dominant White race" refers only to "an ancient philosophical concept that the Founders saw as the foundation of limited government," *id.*, and this phrase is "a recognition of the historical principles of governance." *Id.* This is not only an absurd invention, it is a bogus one as well, contradicted by their own co-Intervenor, the Knights of Columbus.

> *[Plaintiffs will return now to the religious realm (and the actual change made in 1954), as well as to an era when religious advocates were unaware that they needed to lie about their true aims. Lemon v. Kurtzman, 403 U.S. 602 (1971).]*

The Knights spoke frankly as it commended itself for changing the Pledge:

> [The Pledge] contained no reference to **Almighty God**, until in New York City on April 22, 1951, the Board of Directors of the Knights of Columbus adopted a resolution to amend the Pledge of Allegiance …

http://www.kofc.org/un/eb/en/resources/pdf/pledgeAllegiance.pdf (accessed April 30, 2010) (emphasis added). Whatever "philosophical"[13] or "historical" *post hoc* contortions might be made of "god," the choice of "**Almighty** God" shows that it was an unequivocally religious entity for which this "right arm of the Catholic Church in America"[14] was advocating.

If White Supremacists were to claim that "under the dominant White Race" was only meant to reflect a "philosophical" view by pointing to the (all-White) Framers' desire to have:

> a chosen body of [White] citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations,[15]

would anyone buy such balderdash? If they contended that spatchcocking the "under the dominant White Race" phrase into the previously all-inclusive Pledge was being done for "historical" reasons, because "'[t]hroughout our history, … our

---

[13] Interestingly, Congress – in its remarkable 2002 effort to whitewash the clearly religious goals it openly admitted to in 1954, Pub. L. 107-293 (Nov. 13, 2002), 116 Stat. 2060 – never once buys into this "philosophical concept" codswallop.
[14] Life Magazine. *Knights of Columbus in 75th year*. May 27, 1957 at 54.
[15] James Madison. The Federalist #10. Accessed May 2, 2010 at http://thomas.loc.gov/home/histdox/fed_10.html.

great national leaders have been [White],'" Br.USA(00116045572: 12) (citing S. Rep. No. 83-1287, at 2 (1954), would any court today[16] accept such nonsense?

Although the analogy will undoubtedly be resisted, the fact is that the "under God" phrase was intruded into the Pledge by "Monotheism Supremacists," with President Eisenhower as their leader:

> Recognition of the Supreme Being is the first, the most basic, expression of Americanism. Without God, there could be no American form of government, nor an American way of life.[17]

Constitutionally, this is indistinguishable from:

> Recognition of the dominant White Race is the first, the most basic, expression of Americanism. Without the White Race's dominance, there could be no American form of government, nor an American way of life.

"Under God" seems acceptable only because governmental preference for Monotheism (unlike governmental preference for Caucasians) is something the majority still views positively. *See, e.g.*, President George W. Bush's interpretation of "under God" in the Pledge. APP055 ("humbly seeking the wisdom and blessing of Divine Providence."). Yet, positive or not, Monotheism may not be preferred to

---

[16] That this question be limited to "today" is imperative. Again, in times past (when blacks were officially deemed as "inferior" as Atheists are now) such "logic" succeeded. *See, e.g., Dred Scott.*

[17] Statement of President Eisenhower made during a nationally televised address on February 20, 1955 in conjunction with the American Legion's "Back-to-God" program. Martin E. Marty. *Modern American Religion* (University of Chicago Press: Chicago; 1986), vol. 3, at 296.)

any other religious belief system, including Atheism. "[A] principle at the heart of the Establishment Clause [is] that government should not prefer … religion to irreligion." *Board of Education of Kiryas Joel v. Grumet*, 512 U.S. 687, 703 (1994).

A governmental Pledge of Allegiance asserting we are "one Nation under God" clearly violates this command. *See also* AOB APP048-50 (citing **thirty-five separate majority opinions** referencing this obligation for governmental neutrality in religious matters). Even accepting the fiction that "under God" exists "to reflect the fact that the Framers believed the individual rights they were protecting were inalienable because they flowed from a creator," BR.USA(00116045572:24), the Constitution is still violated since "the government may not … lend its power to one or the other side in controversies over religious … dogma." *Smith*, 494 U.S. at 877. Supporting the religious notion that there is "a creator" is taking sides in the most fundamental of religious controversies.

II. The "Power, Prestige and Financial Support of Government" Has Real Consequences

As the Supreme Court indicated when it wrote of the government's "power, prestige and financial support," *Engel v. Vitale*, 370 U.S. 421, 431 (1962), government can have a huge influence on public viewpoints. In this regard, 1954 is noteworthy, since in May of that year (with *Brown*), government took a huge step

forward towards ending discrimination against Blacks, and in June (with the Pledge Statute), it stepped backward towards cementing discrimination against Atheists. Although the data certainly do not prove cause and effect, Plaintiffs request the Court to at least consider that the results of Gallup polls taken in 1958 and 1999[18] may partially reflect the consequences of the two 1954 events.

Asked in September 1958 whether they would vote for an otherwise qualified individual for president, 54% answered no for a Black and 77% answered no for an Atheist. Forty years later, after the societal effects of *Brown* and "under God" in the Pledge had materialized, the poll was repeated. Although other factors were doubtlessly involved as well, the data from February 1999 are telling: only 4% would refuse to vote for a Black. For Atheists, the number was still an extraordinary 48%!

III. The Organizations Which Have Involved Themselves in this Case Demonstrate that the Case is About (Christian) Monotheism

All of the organizations that voluntarily joined this lawsuit are manifestly religious. Intervenor Knights of Columbus ("KOC") is "the largest Catholic laymen's organization."[19] *Amicus* Alliance Defense Fund ("ADF") "is Christ-

[18] Frank Newport. *Americans Today Much More Accepting of a Woman, Black, Catholic, or Jew As President.* March 29, 1999. (Washington, DC: Gallup Poll News Service).
[19] Document 21-2 at 7. (Document page numbers are given as CM/ECF stamped.)

Centered."[20] Its co-*amicus*, Cornerstone Policy Research ("CPR"), works by "advocating for God-ordained institutions."[21] ACLJ is "a d/b/a for Christian Advocates Serving Evangelism."[22] To reach its "goal", *amicus* Wallbuilders ("WB") is aiming for "public policies which reflect Biblical values."[23] *Amicus* Foundation for Moral Law ("FML") is "dedicated to defending the unalienable right to acknowledge God."[24]

Remarkably, three of these organizations repeatedly argue that "under God" should remain in the Pledge because it is **not** religious. *See, e.g.*, Cyrus-KOC Br. #00116046086 at 23, 27, 47, 48, 52, 54; ADF-CPR Br. #00116048581 at 9, 11, 16, 17, 18, 19, 20, 21, 23, 24, 35; ACLJ Br. # 00116046338 at 14, 18, 20, 30, 32, 34. Why would organizations existing to advance (Christian) Monotheism be working so hard to assert that the Pledge does not advance (Christian) Monotheism? After all, no geological organizations are arguing that the Pledge does not advance geology. No culinary institutes have come to claim that the Pledge does not advance gastronomic interests. Could it be that these religious organizations recognize that "under God" is purely religious, and they will do whatever it takes to maintain the governmental favoritism they've enjoyed for the past half century?

---

[20] http://www.alliancedefensefund.org/about/Purpose/principles.aspx (accessed April 28, 2010).
[21] Document 25 at 2.
[22] http://www.aclj.org/Registration/ (accessed April 28, 2010).
[23] http://www.wallbuilders.com/ABTOverview.asp (accessed April 28, 2010).
[24] Document 00116050612 at 9.

To their credit, the other two nongovernmental opposition briefs show some honesty. Wallbuilders admits that "[t]he phrase 'one Nation under God' is consistent with our centuries-old tradition of government publicly acknowledging God's sovereignty." Br.WB(00116049264:16). FML ("dedicated to defending the unalienable right to acknowledge God," Br.FML(00116052108: 9)), goes further:

> The Foundation believes that the government should encourage such acknowledgments of God because He is the sovereign source of American law, liberty, and government.

Id. These statements are indirect admissions that these organizations seek to have the Establishment Clause violated.

IV. Congress' 2002 Reaffirmation of the Pledge was a Sham

In 1954, distinguishing American freedom from the totalitarianism of Soviet communism was certainly a reasonable goal. However, when Congress thrust the divisive "under God" into the previously patriotic, all-inclusive Pledge, it actually stepped toward the evil it was decrying by indicating that this nation, like the Soviet Union, has some official religious orthodoxy.

Ironically, Congress again mimicked our Cold War rivals in 2002. This time, it engaged in the historical revisionism for which the Soviets were so often mocked. That "Congress's reasons for reaffirming the text of the Pledge in 2002," Br.USA(00116045572:49), were "to 'acknowledg[e] … the religious heritage of

the United States,'" *id*. (citation omitted), is pure sophistry. Congress in 2002 was doing nothing but responding to the Ninth Circuit's decision in *Newdow v. United States Cong.*, 292 F.3d 597 (9th Cir. 2002); *amended upon denial of rehearing en banc*, 328 F.3d 466 (9th Cir. 2003); *rev'd on standing grounds*, *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004), trying to maintain the official favoritism for Monotheism infused into the Pledge a half century earlier. *See, e.g.*, Appendix B (demonstrating the 107th Congress' tide of purely religious, pro-Monotheistic and anti-Atheistic statements in response to the Ninth Circuit opinion).

"[T]hat the language 'one Nation under God' in the Pledge is an 'example[] of [a] reference to our religious heritage,'" Br.USA(00116045572:36-37) (citing Pub. L. No. 107-293, § 1, ¶ 12, 116 Stat. 2057), is a blatant falsehood. The Act of 1954 consisted of nothing but the Monotheistic majority using the government to reflect its own religious view. APP066-74 (providing **nine pages** of clearly pro-Monotheistic and anti-Atheistic circa 1954 comments from the Congressional Record); Appendix C (showing fifty-fold increase in religious entries in the Congressional Record during the 1950s, with titles such as "Great Christian," "Our Holy Father," "Christ and Politics," etc.). Moreover, even if the "political philosophy" argument were true, the addition of "under God" would still be unconstitutional. Advocacy for one religious view – whether or not it is in the guise of "history," "heritage," or "patriotism" – is still advocacy for one religious

view. Thus, it violates the First Amendment's call for government "remaining religiously neutral." *Lemon v. Kurtzman*, 403 U.S. 602, 618 (1971).

Had the 83rd Congress really felt that it was so important to single out our religious heritage (as opposed to our diplomatic heritage, our innovative heritage, our artistic heritage, etc.), it could easily have abided by the true "political philosophy" embodied in the Constitution and added "one Nation under religious freedom." The fact that they chose a divisive religious claim further demonstrates this sham.

V. Virtually All of the Verbiage in the Opposing Briefs is Irrelevant

"[W]hen the language of the statute is plain, legislative history is irrelevant." *Zedner v. United States*, 547 U.S. 489, 510 (2006) (Scalia, J., concurring). "Under God" is very plain. Accordingly, Defendants and their *amici* have devoted virtually all of seven briefs towards explaining irrelevant material.[25]

The space limitations of this Brief preclude any exhaustive showing of the irrelevancy. By way of one example, however, Plaintiffs will simply take the first

[25] Even if one accepts the argument that the phrase, "under God," has some extensive hidden meaning, contending that this meaning is "that our Nation was founded on the principle that individuals have inalienable rights given by God that no government may take away," Br.USA(00116045572:61), is nothing more than a expression of Monotheistic bias. The meaning could just as well be "that Protestants are better than Catholics," *see* at note 32, *infra*; "that blacks should continue being enslaved," Appendix D ("shewing" that our "religious heritage" supports slavery); or anything else.

sentence from the "official acknowledgments" section of the United States' Brief. Br.USA(00116045572:37):

> Many Framers attributed the survival and success of the new Nation to the providential hand of God.

and (just as accurately) rewrite it:

> Many Framers were rich, White, Protestant, male, and attributed the survival and success of the new Nation to the providential hand of God.

So what? None of those attributes (except being White and, possibly, male) have anything to do with the words of the Constitution.

What **does** have to do with the Constitution's words are acts performed pursuant to them. For instance, pursuant to Article VI, clause 3, **the very first act of our government involved the affirmative removal of the two references to God** that had been in the previous version of Congress' "Oath or Affirmation, to support this Constitution." Document #34 at CM/ECF 32-33. That is directly on point in regard to the daily "oath" being requested of Plaintiff school children.

VI. No One Is Being Prevented From Saying "One Nation under the dominant White race"

Cyrus *et al*. intervened to "continue saying the Pledge of Allegiance in its entirety." Br.Cyr(00116046086:12). But they have never been stopped from saying anything they choose. This case concerns government speech:

> [T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.

Westside Community Bd. of Ed. v. Mergens, 496 U.S. 226, 250 (1990)).

The Ninth Circuit's recent decision in *Newdow v. Rio Linda USD*, Nos. 05-17257, 05-17344, 06-15093, ___ F.3d ___ (9th Cir. 2010), upheld the Pledge's "under God" language by confusing this basic principle, thus turning an innocent plaintiff (i.e., a child in elementary school) from victim into aggressor: "[Plaintiff] asks us to prohibit the recitation of the Pledge by *other* students." Slip op. at 3874.

"This turns conventional First Amendment analysis on its head." *Lee v. Weisman*, 505 U.S. 577, 596 (1992). Like the Plaintiffs here, the Ninth Circuit plaintiff no more attempted to prevent other students from saying the Pledge (even with "under God") than the plaintiffs in *Abington School District v. Schempp*, 374 U.S. 203 (1963) attempted to prevent other students from reading the Bible, or the plaintiffs in *Edwards v. Aguillard*, 482 U.S. 578 (1987) attempted to prevent other students from studying "creation science." Or for that matter, any more than the plaintiffs in *Brown* attempted to prevent other (White) students from having only those of "the dominant White race" as friends. All that is being sought is to end **governmental** activities saying, in essence, Blacks, Atheists or members of any other protected class are second-class citizens.

In other words, private students and parents can discriminate against religious or racial minorities all they want. They simply may not "use the machinery of the State," *Abington*, 374 U.S. at 226, for these purposes:

> [W]e stated in *Zorach v. Clausen*, 343 U.S. 306, 313, "We are a religious people whose institutions presuppose a Supreme Being."
>
> But those who fashioned the First Amendment decided that if and when God is to be served, His service will not be motivated by coercive measures of government. … [T]he command of the First Amendment … [is] that if a religious leaven is to be worked into the affairs of our people, **it is to be done by individuals and groups, not by the Government.** This necessarily means, *first*, that the dogma… of no religious group … [is] to be preferred over … any others; … The idea … was to limit the power of government to act in religious matters, not to limit the freedom of religious men to act religiously nor to restrict the freedom of atheists or agnostics.

McGowan v. Maryland, 366 U.S. 420, 563-64 (1961) (Douglas, J., dissenting) (emphasis added) (citations omitted).

VII. Neither Our "History" Nor Our "Heritage" Justifies the Pledge Alteration

Nothing in the document at issue in this case (i.e., the United States Constitution) supports the partiality for Monotheism craved by Defendants and their *amici*. On the contrary, the Constitution contains only negatives to any such religious favoritism. Article VI ("[N]o religious test shall ever be required"); Amendment I ("Congress shall make no law respecting an establishment of

religion"). As Madison stated, "There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it, would be a most flagrant usurpation." 3 Elliott's Debates 330.

Moreover, the government created by the Constitution "is acknowledged by all to be one of enumerated powers." *McCulloch v. Maryland*, 17 U.S. 316, 405 (1819). How, then, did the federal government ever acquire the right to add "under God" to the nation's Pledge? The answer is that it didn't, which is the reason that those seeking to maintain the governmental favoritism for their religious belief so frequently attempt to divert attention from this issue.

Their favorite technique is to claim that "history" and "heritage" justify granting to government a discriminatory power that the Framers purposefully withheld. They do this by citing a variety of documents, including those from the first North American British settlements. For instance, the United States writes:

> In 1620, before embarking for America, the Pilgrims signed the Mayflower Compact in which they announced that their voyage was undertaken "for the Glory of God." Mayflower Compact, Nov. 11, 1620

Br.USA(00116045572: 35). The Pilgrims and their successors, of course, set up one of the most religiously oppressive regimes ever known, sentencing to **death** anyone who "shall HAVE or WORSHIP any other God but the LORD GOD,"[26] or

[26] *The Colonial Laws of Massachusetts*. W. H. Whitmore, Record Commissioner (Boston: Published by Order of the City Council of Boston; 1887) at 14.

who is "convicted to be of the Sect of Quakers"[27] (as but two of the many examples).

Moreover, the "for the Glory of God" phrase is part of a longer sentence, the remainder of which the United States conveniently omitted:

> Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country."[28]

If this line from the Mayflower Compact supports "under God" in the Pledge, then it supports "under Jesus" as well. In fact, it also supports "under the King of England." Is that really an argument intended to succeed?

The documents prior to the Constitution were all steps along the path from the religious tyranny of the earliest colonial communities to the true religious equality embodied in the 1789 national charter. Even the Declaration of Independence[29] – referenced in six of the seven opposition briefs[30] – was only a waypoint in this journey.

Although the Declaration states that "all men are created equal," the equality of which it spoke was "limited in virtually every colony to white, Protestant, male,

---

[27] *Id*. at 61. For this offense, the sentence was "Banishment upon pain of Death."
[28] Accessed at http://avalon.law.yale.edu/17th_century/mayflower.asp on May 1, 2010.
[29] 1 U.S.C. § XLIII (1776).
[30] Amicus Alliance Defense Fund does not mention the Declaration.

property-holding individuals."[31] Defendant New Hampshire emphasizes this state of affairs in its own history, as the New Hampshire General Congress, "in anticipation of the Declaration of Independence," Br.NH(00116045875:20) limited full rights to "adult white male … landowners … of the 'protestant religion.'" *Id.* at 20-21.

The Declaration also referenced "the merciless Indian savages," and impugned Catholicism's "arbitrary government" and "absolute rule." Would the Defendants and their *amici*, therefore, use the Declaration to perpetuate anti-Indian and anti-Catholic bias? Would other examples of disregard for these groups' rights be used to impose further injuries? Anti-Catholicism was rampant from the settling of Jamestown through to the 20th century.[32] Would that history (plus the Declaration's anti-Catholicism) be used to support "one Nation under Protestant Christianity"?

VIII. A Pledge of Allegiance is Patriotic. Violating the Constitution is the Antithesis of Patriotism. Incorporating a Constitutional Violation Within a Patriotic Exercise Does Not Eliminate the Violation.

[31] Jack B. Weinstein. *The Role of Judges in a Government of, by and for the People*, 30 Cardozo L. Rev. 1, 126 (2008).

[32] Michael Newdow, *Question to Justice Scalia: Does the Establishment Clause Permit the Disregard of Devout Catholics?* 38 CAP. U. L. REV. ___ (2010), at 78. Available at SSRN: http://ssrn.com/abstract=1594374 or https://culsnet.law.capital.edu/LawReview/NewdowCULRVol38.pdf.

"Our cases simply do not support the notion that a law found to have a 'primary' effect to promote some legitimate end … is immune from further examination to ascertain whether it also has the direct and immediate effect of advancing religion." *Comm. for Public Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 783 n.39 (1973). Thus, even though "recitation of the Pledge is a patriotic act," Br.USA(00116045572:25),[33] the Pledge cannot be "considered as a whole,"[34] Br.NH(00116045875:30), when assessing "under God." Otherwise, *Nyquist* would make no sense. Similarly, the "or prayer" addition in *Wallace v. Jaffree*, 472 U.S. 38 (1985), would have been upheld, rather than rejected.

Again, substitution of "one Nation under the dominant White Race" can be considered. Would that phrase, too, be permissible? After all, the "as a whole" doctrine should permit any discriminatory statement. "One Nation that subjugates women," "one Nation under Rev. Sung Myung Moon," "one Nation that hates Asians," etc., should all pass constitutional muster. This is especially true "because recitation of the Pledge is a patriotic act." Br.USA(00116045572:25).

Does the Constitution really permit government to inculcate these "affirmation[s] of a belief and an attitude of mind," *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 633 (1943), into the young children whose attendance it requires? That would be the consequence of Defendants' arguments.

[33] By Plaintiffs' count, Defendants and their *amici* make this point 79 times.
[34] This point is made 21 times in the opposing briefs.

Incidentally, the "patriotism" of the Pledge exacerbates, it does not lessen, the constitutional violation. With questioned loyalty and love of country, those whose religion precludes their participation risk being shunned and ridiculed by their classmates. This imposition of a religious test oath is a wrong, contrary to the Framers' ideals. *Cf.* Article VI, cl. 3 ("no religious test shall ever be required").

IX. The Only "Binding Precedent" of the Supreme Court Shows that the Pledge Fails the Coercion Test

There has been only one instruction to the lower courts regarding Supreme Court precedent in this matter. That was the categorical statement that "as a matter of our precedent, the Pledge policy is unconstitutional." *Elk Grove*, 542 U.S. at 49 (Thomas, J., concurring).

Nonetheless, Defendants write, "the issue of the Pledge's constitutionality – on its face and as recited voluntarily by students in public schools – has already been resolved by the United States Supreme Court in two majority decisions that constitute binding precedent on that point." Br.USA(00116045572:25). This is a significant misstatement.

> It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its

> full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

Cohens v. Virginia, 19 U.S. 264, 399-400 (1821).

The allusions to dicta that are "'necessary to [a] result'" and "'carefully considered,'" Br.USA(00116045572:28-29) (citations omitted), are also of no avail. The Pledge dicta were neither necessary to the results of *Lynch v. Donnelly*, 465 U.S. 668 (1984) and *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573 (1989), nor were they carefully considered. In fact, they were completely ancillary to those cases, with no briefing whatsoever regarding the Pledge. It is doubtful that any justice knew Congress admitted its addition of "under God" would "acknowledge the dependence of our people and our Government upon the moral directions of the Creator," APP009, or President Eisenhower envisioned "millions of our school children … daily proclaim[ing] … the dedication of our Nation and our people to the Almighty." APP009-10. That "an atheistic American … is a contradiction in terms," APP066, was placed into the Congressional Record, or *Onward, Christian Soldiers* – hardly a "patriotic" song – was played at Congress' celebration of the new law were also matters of which the justices were likely unaware.

The United States' reliance on Supreme Court dicta totally ancillary to the cases it cites is especially remarkable in view of its own recognition that "Establishment Clause jurisprudence is highly context-specific." Br.USA(00116045572:32). So, too, is its reliance on various individual opinions, while it simultaneously argues that "the Court has expressly warned lower courts *not* to assume the Court has adopted one position or another based on statements in individual opinions." Br.USA(00116045572:33).

Despite the attempt to render them insignificant, it is the Supreme Court's "ocean of *principled* statements," Br.USA(00116045572:31-33), that matter. The reader will note that the total number of principled statements supporting Defendants' position is zero.

X. Marsh v. Chambers is the Exception that Hardly Proves the Rule

Defendants and their *amici* rely strongly on *Marsh v. Chambers*, 463 U.S. 783 (1983). Br.USA(00116045572:34); BR.NH(00116045875:49); Br.CD(00116046086:41-43); Br.WB(00116049264:passim); Br.FML(00116052108:25-26); which Plaintiffs already fully discussed. AOB(00116011446:59-62). To rely upon "an exception to the Establishment Clause," 463 U.S. at 796 (Brennan, J., dissenting), which has been implicitly overruled ("the religious liberty protected by the Constitution is abridged when the State affirmatively sponsors the particular religious practice of prayer," *Santa Fe*

Independent School District v. Doe, 530 U.S. 290, 313 (2000)) seems a rather desperate strategy. This is especially so when *Marsh* is being applied here to a public school practice, and the Supreme Court explicitly wrote of how "[i]nherent differences between the public school system and a session of a state legislature distinguish this [public school] case from *Marsh v. Chambers*." *Lee v. Weisman*, 505 U.S. at 596.

XI. The Constitutionality of 4 U.S.C. § 4 Remains at Issue

In its *Statement of the Case* Defendant-Appellee-Intervenor United States maintains that "Plaintiffs … abandoned their challenge to the federal statute." Br.USA(00116045572:11). Plaintiffs disagree.

In its Order dated August 7, 2008 (Document 44), the District Court granted the Federal Defendants' Motions to Dismiss, ruling that it lacked subject matter jurisdiction over Congress, and that Plaintiffs lacked standing to sue the United States. Document 44:12. The Court did not, however, determine that the federal statute could not be challenged. On the contrary, the District Court noted that the United States had a "limited role … as an intervenor," Document 44:20, and specifically stated that "if and when the [School District Defendants] engage on the merits, the United States will be heard on the constitutionality of 4 U.S.C. § 4." *Id.* Furthermore, the ORDER now being appealed began by noting that one of the issues it was hearing was "the constitutionality of 4 U.S.C. § 4." ADD001.

As to "why the intent of Congress in 1954 should be imputed to … the New Hampshire legislature," Br.USA(00116045572:24), the answer is that the question is misleading. Whenever Congress directs an unconstitutional act, the constitutional violation is "imputed" to the actor:

> [U]nlawful legislative action can be reviewed, not by suing Members of Congress for the performance of their legislative duties, but by enjoining those congressional (or executive) agents who carry out Congress's directive.

Franklin v. Massachusetts, 505 U.S. 788, 828-29 (1992) (Scalia, J., concurring) (citations omitted). The School District Defendants are, essentially, those agents.

Moreover, Plaintiffs have sought relief under 42 U.S.C. § 1983, APP003, which explicitly "provides a remedy … for the deprivation of 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002). The federal courts have authority to examine the laws responsible for any such deprivations. *City of Boerne v. Flores*, 521 U.S. 507, 516 (1997).

CONCLUSION

"A prime part of the history of our Constitution … is the story of the extension of constitutional rights and protections to people once ignored or excluded." *United States v. Virginia*, 518 U.S. 515, 557 (1996). It is time for Atheists to be part of that story. Plaintiffs respectfully request the Court to end the practice of governmental agents in the public schools leading impressionable Atheistic children in claiming that God exists.

Respectfully submitted,

s/ Michael Newdow

Attorney for Plaintiffs
First Circuit Bar No. 1139132
PO Box 233345
Sacramento, CA 95823

Phone: (916) 427-6669
E-mail: NewdowLaw@gmail.com

CASE NO. 09-2473

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32 (a)(7)(C), the attached opening brief is proportionately spaced and has a typeface of 14 points.

According to Microsoft Word's "Statistics," this document – excluding the Cover Page, Table of Contents, Table of Authorities, Appendices, (this) Certificate of Compliance, and Certificate of Service – contains exactly 6,987 words.

May 5, 2010 s/ - Michael Newdow

Michael Newdow
Attorney for Plaintiffs
PO Box 233345
Sacramento, CA 95823

Phone: (916) 424-2356
E-mail: NewdowLaw@gmail.com

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CASE NO. 09-2473

FFRF, et al. v. Hanover School District, et al.

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2010, I filed the **APPELLANTS' REPLY BRIEF** electronically with the Clerk of the United States Court of Appeals for the First Circuit, using the CM/ECF system. Service was thus presumably made upon:

Lowell Vernon Sturgill Jr.
Theodore Charles Hirt
Gretchen Leah Witt
Counsel for Defendant - Appellee United States;

Nancy J. Smith
Counsel for Defendant – The State of New Hampshire;

Eric C. Rassbach
Kevin J. Hasson
Bradford T. Atwood
Counsel for Defendant - Appellee Muriel Cyrus, et al.

On 11/23/2009, Counsel for the School District Defendants, David Bradley, requested that he "be removed from the service list." Document 00115982637. That request was apparently granted by the Court's Order dated 01/22/2010.

s/ - Michael Newdow

MICHAEL NEWDOW, Plaintiffs' counsel
USCA (FIRST CIRCUIT) BAR #1139132
PO BOX 233345
SACRAMENTO, CA 95831

(916) 424-2356
NewdowLaw@gmail.com

LIST OF APPENDICES

APPENDIX A

Current (2010) State Constitutions with Provisions Facially Discriminatory Towards Atheists

APPENDIX A

Current (2010) State Constitutions with Provisions Facially Discriminatory Towards Atheists

Arkansas State Constitution: Article 19, Section 1 ("No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court.");

Maryland State Constitution: Article 37 ("That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God.");

Mississippi State Constitution: Article 14, Section 265 ("No person who denies the existence of a Supreme Being shall hold any office in this state.");

North Carolina State Constitution: Article 6, Section 8 ("The following persons shall be disqualified for office: First, any person who shall deny the being of Almighty God.");

Pennsylvania State Constitution: Article 1, Section 4 ("No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.");

South Carolina State Constitution: Article 17, Section 4 ("No person who denies the existence of a Supreme Being shall hold any office under this Constitution.");

Tennessee State Constitution: Article 9, Section 2 ("No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this state.");

Texas State Constitution: Article 1, Section 4 ("No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.")

APPENDIX B

Sampling of Congressional Record Pages After the 2002 Ninth Circuit Decision Declaring “Under God” in the Pledge Unconstitutional

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, WEDNESDAY, JUNE 26, 2002 *No. 87*

House of Representatives

The House met at 10 a.m.

The Reverend David E. Paul, Pastor, First United Methodist Church, Clewiston, Florida, offered the following prayer:

Our Heavenly Father, we come to You with grateful hearts for the daily evidence of Your love. You are always with us. You are always available to us.

There are times, Lord, when we ignore You and Your guidance. Forgive us. Forgive us when we stray away from the ideals and goals You have given our great Nation. Enable us to forgive ourselves and each other.

We thank You, Lord, for Your guidance and Your love. We thank You for the trust our citizens have given these persons. This trust, along with Your presence, strengthens and enables them to have the courage to deal with the hard decisions that face them.

We pray for those today who need a special sense of divine love, whose lives need encouragement and peace.

Sustain our Nation and guide the House of Representatives as it seeks to do Your will.

In Christ's name, Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. GIBBONS. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. GIBBONS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Pursuant to clause 8, rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from New York (Mr. MCNULTY) come forward and lead the House in the Pledge of Allegiance.

Mr. MCNULTY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 2621. An act to provide a definition of vehicle for purposes of criminal penalties relating to terrorist attacks and other acts of violence against mass transportation systems.

The message also announced that pursuant to Public Law 106–170, the Chair on behalf of the Republican Leader, after consultation with the Ranking Member of the Senate Committee on Finance, announces the appointment of the following individuals to serve as members of the Ticket to Work and Work Incentives Advisory Panel—

Vicent Randazzo of Virginia, vice Stephanie Lee Smith, resigned; and

Katie Beckett of Iowa, for a term of four years.

WELCOMING THE REVEREND DAVID E. PAUL

(Mr. FOLEY asked and was given permission to address the House for 1 minute.)

Mr. FOLEY. Mr. Speaker, it is my great honor to welcome Dr. David Paul and his wife, Judy, to the House Chamber this morning. I join my colleague, the gentleman from Florida (Mr. HASTINGS), in this great honor.

Dr. Paul is a third generation Floridian. He was born in Miami, Florida, in 1946; and he is a graduate of Miami Senior High School and the University of Florida. Go Gators.

He is a true spiritual leader rooted in Florida.

An accomplished trombone player, Reverend Paul played with the Savannah Symphony Orchestra for a number of years before attending the Asbury Theological Seminary in Wilmore, Kentucky, where he earned his master of divinity degree and doctor of divinity.

After 10 years in Kentucky, Dr. Paul again regained his senses and returned to Florida where he has served churches in Eustic, Groveland, Clewiston and Lake City.

I know the community in Clewiston was very sad to see Reverend Paul head to Lake City, but one community's loss is another's gain; and I am sure he will have the same impact in Lake City that he had for us in Clewiston.

RECOGNIZING THE STEP AHEAD TO SUCCESS FARMWORKER YOUTH PROGRAM

(Ms. ROS-LEHTINEN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ROS-LEHTINEN. Mr. Speaker, I recognize the Step Ahead to Success Farmworker Youth Program and congratulate the program's 2002 graduates. I want to especially commend the program's director, Maria Garza, and Miami-Dade County Manager Steve Shiver, whose tireless efforts have made this program a great success.

Since its inception in late 2000, the program has provided 275 at-risk young

SEC. 2. INCREASE IN ANNUAL RATE OF BASIC COMPENSATION.

For fiscal year 2003, the Capitol Police Board shall increase the annual rate of basic compensation applicable for officers and members of the Capitol Police for pay periods occurring during the year by 5 percent, except that in the case of officers above the rank of captain the increase shall be made at a rate determined by the Board at its discretion (but not to exceed 5 percent).

SEC. 3. INCREASE IN RATES APPLICABLE TO NEWLY-APPOINTED MEMBERS AND EMPLOYEES.

The Capitol Police Board may compensate newly-appointed officers, members, and civilian employees of the Capitol Police at an annual rate of basic compensation in excess of the lowest rate of compensation otherwise applicable to the position to which the employee is appointed, except that in no case may such a rate be greater than the maximum annual rate of basic compensation otherwise applicable to the position.

SEC. 4. ADDITIONAL COMPENSATION FOR SPECIALTY ASSIGNMENTS.

Section 909(e) of the Emergency Supplemental Act, 2002 (40 U.S.C. 207b–2(e)), is amended—

(1) in the heading, by inserting ''AND OFFICERS HOLDING OTHER SPECIALTY ASSIGNMENTS'' after ''OFFICERS'';

(2) in paragraph (1), by inserting ''or who is assigned to another specialty assignment designated by the chief of the Capitol Police'' after ''field training officer''; and

(3) in paragraph (2), by striking ''officer,'' and inserting ''officer or to be assigned to a designated specialty assignment,''.

SEC. 5. APPLICATION OF PREMIUM PAY LIMITS ON ANNUALIZED BASIS.

(a) IN GENERAL.—Any limits on the amount of premium pay which may be earned by officers and members of the Capitol Police during emergencies (as determined by the Capitol Police Board) shall be applied by the Capitol Police Board on an annual basis and not on a pay period basis.

(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to hours of duty occurring on or after September 11, 2001.

SEC. 6. THRESHOLD FOR ELIGIBILITY FOR ADDITIONAL ANNUAL LEAVE.

The Capitol Police Board shall provide that an officer or member of the Capitol Police who completes 3 years of employment with the Capitol Police (taking into account any period occurring before, on, or after the date of the enactment of this Act) shall receive 8 hours of annual leave per pay period.

SEC. 7. FINANCIAL ASSISTANCE FOR HIGHER EDUCATION COSTS.

(a) TUITION REIMBURSEMENT.—

(1) IN GENERAL.—The Capitol Police Board shall establish a tuition reimbursement program for officers and members of the Capitol Police who are enrolled in or accepted for enrollment in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education in a course of study relating to law enforcement.

(2) ANNUAL CAP ON AMOUNT REIMBURSED.—The amount paid as a reimbursement under the program established under this subsection with respect to any individual may not exceed $3,000 during any year.

(3) APPROVAL OF REGULATIONS.—The program established under this subsection shall take effect upon the approval of the regulations promulgated by the Capitol Police Board to carry out the program by the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate.

(b) BONUS PAYMENTS FOR COMPLETION OF DEGREE.—The Capitol Police Board may make a one-time bonus payment in an amount not to exceed $500 to any officer or member who participates in the program established under subsection (a) upon the officer's or member's completion of the course of study involved.

SEC. 8. BONUS PAYMENTS FOR OFFICERS AND EMPLOYEES WHO RECRUIT NEW OFFICERS.

(a) IN GENERAL.—The Capitol Police Board may make a one-time bonus payment in an amount not to exceed $500 to any officer, member, or civilian employee of the Capitol Police who recruits another individual to serve as an officer or member of the Capitol Police.

(b) EXEMPTION OF RECRUITMENT OFFICERS.—No payment may be made under subsection (a) to any officer, member, or civilian employee who carries out recruiting activities for the Capitol Police as part of the individual's official responsibilities.

(c) TIMING.—No payment may be made under subsection (a) with respect to an individual recruited to serve as an officer or member of the Capitol Police until the individual completes the training required for new officers or members and is sworn in as an officer or member.

SEC. 9. DEPOSIT OF CERTAIN FUNDS RELATING TO THE CAPITOL POLICE.

(a) IN GENERAL.—

(1) DISPOSAL OF PROPERTY.—Any funds from the proceeds of the disposal of property of the Capitol Police shall be deposited in the United States Treasury for credit to the appropriation for ''GENERAL EXPENSES'' under the heading ''CAPITOL POLICE BOARD'', or ''SECURITY ENHANCEMENTS'' under the heading ''CAPITOL POLICE BOARD''.

(2) COMPENSATION.—Any funds for compensation for damage to, or loss of, property of the Capitol Police, including any insurance payment or payment made by an officer or civilian employee of the Capitol Police for such compensation, shall be deposited in the United States Treasury for credit to the appropriation for ''GENERAL EXPENSES'' under the heading ''CAPITOL POLICE BOARD''.

(3) REIMBURSEMENT FOR SERVICES PROVIDED TO GOVERNMENTS.—Any funds from reimbursement made by another entity of the Federal government or by any State or local government for assistance provided by the Capitol Police shall be deposited in the United States Treasury for credit to the appropriation for ''GENERAL EXPENSES'' under the heading ''CAPITOL POLICE BOARD''.

(b) EXPENDITURES.—Funds deposited under subsection (a) may be expended by the Capitol Police Board for any authorized purpose (subject to the approval of the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate) and shall remain available until expended.

(c) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2003 and each succeeding fiscal year.

SEC. 10. INCREASE IN NUMBER OF AUTHORIZED POSITIONS.

Effective with respect to fiscal year 2002 and each fiscal year thereafter, the total number of full-time equivalent positions of the United States Capitol Police (including positions for members of the Capitol Police and civilian employees) may not exceed 1,981 positions.

SEC. 11. DISPOSAL OF FIREARMS.

The disposal of firearms by officers and members of the United States Capitol Police shall be carried out in accordance with regulations promulgated by the Capitol Police Board and approved by the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives.

SEC. 12. USE OF VEHICLES TO TRANSPORT POLICE DOGS.

Notwithstanding any other provision of law, an officer of the United States Capitol Police who works with a police dog and who is responsible for the care of the dog during non-working hours may use an official Capitol Police vehicle when the officer is accompanied by the dog to travel between the officer's residence and duty station and to otherwise carry out official duties.

SEC. 13. SENSE OF CONGRESS ON MANAGEMENT OF CAPITOL POLICE.

It is the sense of Congress that, to the greatest extent possible consistent with the mission of the Capitol Police, the chief of the Capitol Police should seek to deploy the human and other resources of the Police in a manner maximizing opportunities for individual officers to be trained for, and to acquire and maintain proficiency in, all aspects of the Police's responsibilities, and to rotate regularly among different posts and duties, in order to utilize fully the skills and talents of officers, enhance the appeal of their work, and ensure the highest state of readiness.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 2003 and each succeeding fiscal year such sums as may be necessary to carry out this Act and the amendments made by this Act.

SEC. 15. EFFECTIVE DATE.

Except as otherwise provided, this Act and the amendments made by this Act shall apply with respect to pay periods occurring during fiscal year 2003 and each succeeding fiscal year.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NOTIFYING MEMBERS TO CONTACT COMMITTEE ON JUDICIARY TO COSPONSOR RESOLUTION REGARDING PLEDGE OF ALLEGIANCE

(Mr. SENSENBRENNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, earlier today, the United States Court of Appeals for the Ninth Circuit held that the Pledge of Allegiance is an unconstitutional endorsement of religion. This ruling treats any public religious reference as inherently evil and is an attempt to remove religious speech from the public arena from those who disagree.

This ruling is ridiculous, and I have introduced a resolution today with the gentleman from Mississippi (Mr. PICKERING) that specifically states that the phrase ''one Nation, under God'' should remain in the Pledge of Allegiance, and that the Ninth Circuit Court of Appeals should agree to rehear this ruling en banc to reverse this constitutionally infirm and historically inaccurate ruling.

Members who wish to cosponsor this resolution should contact the Committee on the Judiciary at 5–3190. It is my hope that the House of Representatives will bring it up promptly.

(Mr. FILNER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

CORPORATE SCANDALS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

Mr. DEFAZIO. Mr. Speaker, well, today's headlines, WorldCom Finds Accounting Fraud, $3.8 billion, slight misstatement of their earnings. The stock dropped from $64.50 down to a few pennies, and 17,000 people will lose their jobs, but the former CEO is living happily in his mansion on the millions which he looted, as are many of his cohorts. This is a pattern that is being repeated time and time again. It has gone on for far too long.

It started a year ago today with the energy scandals in the West, little more than a year ago today. We were told by the Republican majority this is market forces at work, you have not built enough plants, has nothing to do with market manipulation. Well, now we got the memo that, in fact, Enron was manipulating the markets, but even with those market manipulations they went bankrupt.

Their former CEO, Mr. Lay, and their former Chief Operating Officer, Mr. Fastow, have between them more than $100 million while employees have lost their pensions and their jobs.

□ 1815

This seems to be a pattern, does it not? What is the response of the Republican majority? Well, we pretended to adopt pension reform, but we did not prohibit what Enron did to its employees happening at other corporations, and it looks like there is a whole heck of a lot of other corporations out there on the edge while the CEOs are living on the gravy here, and that was sort of the initial response.

Then we had another little scandal coming along here which was American corporations do not think they should pay taxes anymore. Stanley Works wants to move to Bermuda, set up the new Bermuda Triangle, avoid U.S. taxes on its U.S. earnings and its overseas earnings. Bank of America has done the same scam. The corporations are lined up from here to Sunday to do that.

What is the response on that side? Well, the Secretary of the Treasury says our tax laws are too complex, this is a rational response by these unpatriotic corporations who are ripping off the American people, taxpayers and their own employees, and the majority leader on that side says he endorses this practice that they should not pay taxes unlike working wage-earning Americans.

Then we had Global Crossing, the CEO, a couple hundred million bucks there, little accounting scandal; Enron, accounting scandal; Tyco, accounting scandal; now WorldCom. What have we done about the accounting system? Well, we are going to let the market work, the Republicans said. We adopted some securities and accounting reforms here. They say let them police themselves. Of course we get Harvey Pitt, Harvey Pitt appointed by the President of the United States, George Bush, to be headed by the Securities and Exchange Commission. He is a former lawyer for the securities companies that are out defrauding the American people. He is going to be a real lap dog down there. So the response here is status quo, do not upset the boat.

So there seems to be a common trend here which is we are in a meltdown. American CEOs are discredited, American corporations are discredited, the stock market is crashing, hurting average Americans; and the response on that side of the aisle is do not do anything, let market forces work and, by the way, let the CEOs skate. Oh, yes, we did do one really important thing last week. We passed the permanent repeal of estate tax for people who have over $5 million of assets to make sure that Ken Lay, Mr. Fastow, and all these others who have ripped off tens of millions of dollars from their employees will never pay any taxes on the money they stole. God forbid they should, because they are all major contributors.

Last week the Republicans held the largest fundraiser in the history of Washington, D.C., headlined by the wonderful pharmaceutical companies, but followed up by many of the other players whom I have mentioned here because their CEOs happen to be awash in cash, and they want to make sure they do not go to jail. So they are becoming more and more generous in their contributing.

This is the most outrageous scandal in the history of the United States. The largest restatement of earnings by a corporation, tens of thousands of employees losing their pensions, their jobs, millions of Americans losing their 401(k)s, their pensions; and the response on the Republican side of the aisle is nothing, because they are frozen in place by the fact that they are taking so much money from the people who have perpetrated these frauds. I hope that the American people demand and vote for some change next fall.

REACTION TO U.S. 9TH DISTRICT COURT DECISION CONCERNING THE PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore (Mr. KERNS). Under a previous order of the House, the gentleman from Florida (Mr. JEFF MILLER) is recognized for 5 minutes.

Mr. JEFF MILLER of Florida. Mr. Speaker, look what the courts have done now. Just when we think life after September 11 had gained some sense of normalcy, just after patriotism at a level not seen since World War II had permeated every segment of our society, a society under God, two liberal judges in San Francisco have told this Nation at war that our Pledge of Allegiance is unconstitutional. Personally, Mr. Speaker, I am sickened. The Pledge is not a prayer. It is a declaration of being an American. It is the embodiment of everything we hold dear, the flag, the Republic, and one Nation under God.

I guess in a country where our constitutional safeguards have been taken to the extreme and have had to have nativity scenes removed from town squares and even silent prayers removed from high school football games, I should not be surprised. I suspect it is only a matter of time or a matter of finding the right lawyer who is seeking to make a name for himself to proclaim that the U.S. flag is unconstitutional and that by flying the flag someone may be offended by its semblance. We are forced to say happy holidays instead of Merry Christmas. We are forced to say gesundheit rather than God bless you. If a school teacher mentions Jesus during a lesson on history, that teacher faces disciplinary action.

Mr. Speaker, it is time we put our foot down as a body, a representative body of this country and respond to this outrageous decision and proclaim that these United States are united against terrorism, united against this decision, and united under God.

PRESCRIPTION DRUGS UNDER MEDICARE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GREEN) is recognized for 5 minutes.

Mr. GREEN of Texas. Mr. Speaker, last week the Committee on Energy and Commerce spent 3 long days and one very long night marking up a piece of legislation that is supposed to provide seniors with a Medicare prescription drug benefit. I say ''supposed to'' because most Americans support putting prescription drugs under Medicare. I have a graph here that shows those who support or oppose rolling back the tax cut that Congress passed last year and using that money to provide a prescription drug benefit under Medicare for seniors. Supporting is 64 percent, opposing is 25 percent, and 6 percent do not think Medicare ought to have prescription drugs. This poll was done between March 28 and May 1 of this year.

So instead of having the huge tax cut that we passed last year before September 11 and extending them even after 9 years from now, the American people really want a prescription drug benefit for seniors before they want a tax cut.

What is frustrating is that if we had been able to pass even one single Democratic amendment during that markup, I think all those days and that night would have been well spent. Unfortunately, every effort we made to improve the bill, and there was so much to improve, was shot down on basically party line votes.

Mrs. MALONEY of New York. Mr. Speaker, I thank you, Congresswoman THURMAN for organizing this important special order on the need for prescription drug coverage.

Medicare provides health care coverage to forty million retired and disabled Americans.

For decades, Medicare has worked to provide needed, lifesaving health care to millions, but it is missing a fundamental component: a prescription drug benefit.

If we have courage, this Congress can make history and give our nation's seniors what they desperately need: a real, and meaningful prescription drug plan.

I am proud to joint my Democratic Colleagues, lead by Mr. DINGELL, Mr. RANGEL, Mr. STARK and Mr. BROWN, as an original cosponsor of the ''Medicare Prescription Drug Benefit and Discount Act.''

I come to the floor this evening to discuss two points:

Number 1: unlike the Republican drug plan, the Democratic plan is simple because it builds upon a proven model—Medicare.

Just like seniors pay a Part B premium today for doctor visits, under our plan, seniors would pay a voluntary Part D premium of $25 per month for drug coverage. For that, Medicare or the government will pay 80 percent of drug costs after a $100 deductible. And NO senior will have to pay more than $2,000 in costs per year.

There is an urgent need for this plan. The most recent data indicates that almost 40 percent of serniors—an estimated 11 million—have no drug coverage. Problems are particularly acute for low income seniors and seniors over the age of 85 (the majority whom are women). Additionally, those older Americans who do have coverage find that their coverage is often inadequate for their needs.

The Democratic plan is a real plan with real numbers, not estimates.

Point 2: the Republican Plan does nothing to bring down the cost of prescription drugs. The Democratic plan is the only plan that provides real Medicare prescription drug coverage for our seniors by stopping soaring drug costs.

Under the buying power of Medicare, through competition and bargaining we can rein in drug costs. Prescription drug costs are too high for our older Americans. They need help now!

For instance, look at Prevacid. Prevacid is an unclear medication, and the second most widely used drug by American seniors. The cost for this prescription is on average $137.54 per month in New York City—cut only $45.02 in the United Kingdom, a price different of 200 percent.

Or look at Celebrex, a popular arthritis medication and a drug needed by many older women, especially, since older women are stricken more often than men by arthritis. According to a Government Reform Committee report released by Mr. WEINER and myself, a monthly supply of this drug costs $86.26 in New York City. In France, a monthly supply of Celebrex costs only $30.60. This is a price differental of 182 percent. Seniors in New York City without drug coverage must pay almost three times as much as purchasers in France.

Prices for prescriptions have risen 10 percent per years for the last several years, leading to over $37 billion in profits last year for the giant drug companies. While these corporations wallow in their spoils, seniors suffer without coverage.

Unfortunately, the brunt of the problem falls squarely on our nation's olderly women, who are nearly sixty percent of our senior citizens. We need to take care of America's older women, we need to help all of our senior citizens.

Mr. Speaker, we must pass the Democratic prescription drug plan without delay. It is built on a proven model medicare. The Republican plan only offers gap-ridden coverage. The Republican bill is about privatization. The Republican plan is all about election year politics.

For the sake of our seniors, we must pass the democratic plan, and we must pass it now.

□ 2030

GENERAL LEAVE

Mrs. THURMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the subject of my Special Order.

The SPEAKER pro tempore (Mr. KERNS). Is there objection to the request of the gentlewoman from Florida?

There was no objection.

NINTH CIRCUIT RULES PLEDGE OF ALLEGIANCE UNCONSTITUTIONAL

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, the gentleman from California (Mr. COX) is recognized for 60 minutes as the designee of the majority leader.

Mr. COX. Mr. Speaker, I rise this evening to bring to the attention of the House the decision of the Ninth Circuit Court of Appeals in the case of Michael A. Newdow v. United States Congress. This case, Mr. Speaker, even though it was decided by the Ninth Circuit Court of Appeals only a few hours ago, has already attracted considerable national attention. Indeed, it has drawn the comment of the President of the United States.

The reason is rather simple. It is a decision involving something that is well known to all of us in this Chamber, the Pledge of Allegiance. The Ninth Circuit Court of Appeals has ruled that the Pledge of Allegiance, written into statute a half century ago, is unconstitutional. Of course this Chamber is opened each day with a recitation of the Pledge of Allegiance. Public schools across the country begin their day this way. Some Members and some students may, if they choose, listen or absent themselves, indeed, because there is no requirement of Members of Congress as we open our day this way or of students that they recite the Pledge. It is a voluntary act.

Nonetheless, a parent, Michael A. Newdow, of a student in a California public school, brought a lawsuit, one of several that he has brought, urging an injunction against the President of the United States and an injunction against this Congress. In the latter case, he wished us to be ordered by court immediately to rewrite the statute, the statute he wished that we would rewrite so that the words ''under God'' would be deleted from the Pledge of Allegiance.

I think because the Pledge is so familiar to us, particularly the Pledge has been recited by so many so often in so many public ways, whether it be at sporting events or public gatherings since September 11, that it comes as something of an unexpected surprise that a court would rule this way. I will devote a brief portion of my brief remarks this evening to the substance of the question and, that is, whether or not Congress, which was a defendant in this case, was within its rights to write the law as we did a half century ago; but I would spend most of my time drawing attention to what I consider to be the sloppy jurisprudence in this case.

What is really at issue in what shall become a very well known decision of Newdow v. U.S. Congress is the rule of law. Precious little respect was paid to precedent in this case, because many of the questions, procedural questions indeed, not just the substance here, many of the questions have already been decided. But this court chose to decide the same questions differently, and that lack of respect for precedent raises questions about the rule of law in America, about the predictability of the law, about the ability of any of us to know in advance what are the rules to which we must conform our conduct.

Let me begin by just describing a little bit about the case, a little bit about the facts of the case. Newdow, the fellow who brought the lawsuit, is an atheist whose daughter attends public elementary school in the Elk Grove Unified School District in my State of California. In the public school that she attends, like many public schools, they start the day with the Pledge of Allegiance.

But Newdow, according to the Ninth Circuit, does not allege that his daughter's teacher or school district requires his daughter to participate in reciting the Pledge. Rather, he claims that his daughter is injured when she is compelled to watch and listen. That is what this lawsuit is all about, according to the Ninth Circuit. The gravamen of the complaint is there is injury, that is the word that is used, and it is an important word, as I shall return to in just a moment. There is injury when someone is required to be in the presence of others who are reciting something in which they believe. The United States Supreme Court was asked to decide this question, this very question, in another case, Valley Forge Christian College v. Americans United for Separation of Church and State, Incorporated, 1982. Here is what the Court said in the Valley Forge case:

''The psychological consequence presumably produced by observation of conduct with which one disagrees is

not an injury sufficient to confer standing under article 3, even though the disagreement is phrased in constitutional terms.''

Let me describe a little bit about what the Court was saying here. The Court said there was no standing under article 3. That is lawyer language which means there was no case. The very jurisdiction of a Federal court requires as a condition for proceeding to hear the facts and apply the law that there be an injury in fact, somebody be injured by the thing about which they are complaining. And so that was a threshold question that the Court had to decide here: Was this man, Mr. Newdow, sufficiently injured personally by what was going on in this case, particularly by the act of Congress, which is what he was suing about? And the Supreme Court said ''no'' in the case of Valley Forge. They could not have said ''no'' in plainer terms, because he pleaded in his action that his daughter's teacher and the school district did not require his daughter to participate in reading the Pledge of Allegiance. That was his allegation about this case. Rather, he claims that his daughter is injured when she is compelled to watch and listen.

So now let us go back to that language of the Supreme Court. The Supreme Court said, ''The psychological consequence presumably produced by observation of conduct with which one disagrees is not an injury sufficient to confer standing under article 3, even though the disagreement is phrased in constitutional terms.''

The Ninth Circuit Court of Appeals was aware of this binding U.S. Supreme Court precedent. And what did they say to deal with that fact? They said, ''Valley Forge remains good law.'' They acknowledge that case has not been overturned. It has not been reversed. It is still there. But what they chose to do is to say essentially that the law is progressing here, we want to take it the next step, because they view the law as an organism, something that is ever evolving and changing and developing. Leave aside whether they are right or wrong in the application of that principle, if one chooses to call it that, in this case. What does it mean if the law is the plastic, malleable instrument of judges? It means that none of us as citizens knows in advance how the case is going to be decided, how it is going to turn out.

Everyone here, in addition perhaps to having said the Pledge of Allegiance in school when they were schoolchildren, probably learned about Hammurabi. Hammurabi is well known for erecting in the town square stone tablets bearing the written law. For the first time, the law was written down. Why was that important? Why was written law important? It was important because, for the first time, the subjects of Hammurabi, the citizens, knew in advance the standard to which they should conform their conduct. And at that moment the law stopped being arbitrary. We have heard it said that we are a government of laws, not men. Yet what does it mean when it is essentially a lottery? We roll the dice. We do not know how these cases are going to turn out in advance because it is up to the judges and their personal view.

One of the contests in constitutional law, in constitutional interpretation, is between those who believe in what is sometimes referred to as original intent, those who believe that what the people who wrote it matters in interpreting the words, versus those who believe in the Constitution as a living document, that the way we choose to interpret those words in our time and place ought to govern.

It is of some great consequence how one answers that question, because the Founders lived some time ago; and whether or not one agrees with them or disagrees with them subsequently, in subsequent ages, at least what was settled at the time becomes an objective standard. And the Founders left us with an article in the Constitution, article 5, that permits us in our time and place to amend the document if we decide that it is too much of a tight collar for us and we cannot live within those strictures in our place and time. So is there anything about the first amendment which is at issue here in the time of its drafting and what was on the mind of the Founders that can help us understand whether they thought that references to God in public places, not references to a particular establishment of religion, were violative of the Constitution?

Let us turn to the first amendment. With respect to religion, it is very concise. It says, ''Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.'' So the question is, should this clause be interpreted as barring the government from giving preferment to a particular religion? That is one interpretation. Or should it be interpreted as requiring the complete and total elimination of any reference to God in our public institutions? That is a different interpretation.

The Supreme Court considered this very question in an earlier case involving the Pledge of Allegiance. They considered it in a different way, however. Remember that the language that we are talking about, ''under God,'' was added a half century ago. A few years before that language was added, the Supreme Court first considered the Pledge without those words, and it decided that students cannot be required to recite it. Students cannot be required to salute the flag, either. ''The action of the local authorities in compelling the flag salute and Pledge transcends constitutional limits on their power.'' That is what the Supreme Court said in West Virginia State Board of Education against Barnette in 1943. Compelling someone to recite or to do something against their will that affects or represents their beliefs is not within the power of our government. Indeed, it was pointed out in that connection and in other connections that that is what the Pledge of Allegiance is about. If there is liberty for all, that means we have to be free in our minds as well as in our physical actions, and so we cannot be compelled to say we believe something that we do not believe. A very important case.

But they went on. They said that it was unconstitutional because it invades the sphere of intellect and spirit which it is the purpose of the first amendment to our Constitution to reserve from all official control. It was the compulsory aspect of what was going on in that case that bothered the Court. The Court noted that the school district was compelling the students to declare a belief and requiring the individual to communicate by word and sign. Remember, the Pledge was accompanied by a flag salute or a hand over the heart. ''The compulsory flag salute and Pledge requires affirmation of a belief and an attitude of mind,'' those further words from the Court's decision in the Barnette case.

The Court also said, ''If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox, in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein.''

□ 2045

Note what was going on in the Barnette case.

Listen to this list of things that the government cannot force us to believe in: politics, nationalism, religion, or other matters of opinion. They were dealing with the Pledge of Allegiance even before it had the words ''under God,'' and they said that the government cannot force you to say it. The government cannot force you to believe in a particular religion; the government cannot force you to believe in particular politics either.

So, fast forward to today when we are watching as a court throws out the words ''under God'' from the Pledge of Allegiance and ask yourselves why the rest of it can remain. If there is some element of compulsion, even though you are not required to recite the Pledge, just in being forced to witness others say it, then is it there to precisely the same degree, that kind of compulsion, to the rest of the Pledge, even if we were to excise the words ''under God,'' and does not the Barnette case say that there can be no such compulsion?

In this Newdow case, that is the name of the Ninth Circuit decision handed down today, the court said, ''The Pledge, as currently codified, is an impermissible government endorsement of religion,'' and it is so common in court opinions these days to cite authority. It is the reason we can call the cases decided by courts case law. It is not supposed to be the mental invention of the judges; it is supposed to be

an application of well-known principles of law to the facts at hand.

So having said, ''The Pledge, as currently codified, is an impermissible government endorsement of religion,'' the court cited some authority. What did they cite for authority? They cited Justice O'Connor's words in another case, and they cited Justice Kennedy's words in another case. Here is how they interpreted Justice Kennedy's words: Justice Kennedy agreed with us. That is what they are saying. Justice Kennedy agreed with us that ''The Pledge, as currently codified, is an impermissible government endorsement of religion,'' but Justice Kennedy does not agree with that. There is plenty of case law making it very clear that the language that they are quoting from Justice Kennedy was written for the opposite purpose.

Here is what Justice Kennedy said in his dissent, in his dissent in a case called Allegheny County v. Greater Pittsburgh ACLU. Now that case, by the way, involved holiday displays in the downtown area in Pittsburgh. On some public property they were displaying a menorah and they were displaying a nativity scene; and the ACLU, the American Civil Liberties Union, sued, and by a 5 to 4 majority, the Court said that could not go on because a menorah signified a particular religion, Judaism, and the nativity scene signified a particular set of religions, Christianity. So there were particular sects being promoted by the government, not just sort of general references to God and, for that reason, it was unconstitutional.

Justice Kennedy dissented from that case, and he would have allowed it. He was among the four members who would have allowed it; and yet he is being cited for authority in this case striking down the words ''under God'' in the Pledge of Allegiance. Why would they do that?

Here is what Justice Kennedy is quoted as having said, quoted by the Ninth Circuit in their decision today as having said: ''By statute, the Pledge of Allegiance to the flag describes the United States as 'one Nation under God.' To be sure, no one is obligated to recite this phrase, but it borders on sophistry to suggest that the reasonable atheist would not feel less than a full member of the political community every time his fellow Americans recited, as part of their expression of patriotism and love for country, a phrase he believed to be false.'' That is what they quote him as saying. And they say, therefore, he agrees with our decision that ''The Pledge, as currently codified, is an impermissible government endorsement of religion.''

But Justice Kennedy went on to say, in the immediately-following sentence, which the Ninth Circuit fails to quote, ''Likewise, our national motto, 'In God We Trust,' which is prominently engraved in the wall above the Speaker's dais in the Chamber of the House of Representatives,'' and Mr. Speaker, I would observe that you are sitting under the very model that Justice Kennedy is referring to in this decision, it says right over your chair, ''In God We Trust.'' He says it is ''prominently engraved in the wall above the Speaker's dais in the Chamber of the House of Representatives and is reproduced in every coin minted and every dollar printed by the Federal Government.''

He is saying that these things must have the same effect if the intent of the establishment clause is to protect individuals from mere feelings of exclusion; and it is his opinion that that is not what the establishment clause does. That is what Justice Kennedy was saying. So it stands Justice Kennedy on his head to cite him as authority for the proposition in Newdow that the Pledge, as currently codified, is an impermissible government endorsement of religion.

So I find it interesting that in this tradition of judges citing authority for their rulings, that we have cited the language of Justice Kennedy as well as the language of Justice O'Connor. But Justice O'Connor, likewise, does not support this proposition.

In this case of Allegheny County v. the Greater Pittsburgh ACLU, the majority opinion was written by Justice Blackmun. Justice Blackmun discussed, before he got to his result, a case called Marsh against Chambers in which legislative prayers were challenged. Now, Mr. Speaker, my colleagues may be in memory of what happened at the beginning of the day today and what happens at the beginning of every one of our sessions every day. We begin with our Chaplain saying a prayer here in the House Chamber, standing, more to the point, under the motto, ''In God We Trust.''

There was a lawsuit challenging legislative prayers; State legislatures do this as well. It went to the U.S. Supreme Court and the case that decided the question is called Marsh against Chambers. Now, we can guess what the result was in that case, because our prayers are still going on. Justice Kennedy, in the case of Allegheny County against the Greater Pittsburgh ACLU, the one that they decided about the nativity scene and the menorah, Justice Kennedy dissented in that case and he cited this Marsh case. And Justice Blackmun did not like his use of the Marsh case, did not like the reference that he made.

So here is what Blackmun said about Marsh and about Justice Kennedy. He said, Justice Kennedy argues that such practices as our national motto, ''In God We Trust'' and our Pledge of Allegiance with the phrase ''under God'' added in 1954 are in danger of invalidity if we were to say it is unconstitutional to have a nativity scene or it is unconstitutional to have a holiday menorah. Justice Blackmun said, that is silly. That is not what we mean. That is not what we are saying.

Here is a quote from Justice Blackmun: ''Our previous opinions have considered indicative the motto and the Pledge characterizing them as consistent with the proposition that government may not communicate an endorsement of religious belief.'' And he cites for that proposition the words of two justices in other cases, Justice O'Connor and Justice Brennan.

Now, Justice O'Connor is the other Justice that the Ninth Circuit was relying upon to reach today's result. So we now have on the record both Justice Kennedy and Justice O'Connor for the opposite proposition, and that is that the Pledge and our motto, ''In God We Trust,'' do not raise these establishment clause questions. That is certainly how I read those opinions, Mr. Speaker.

Justice Blackmun goes on to say, we need not return to the subject, because there is an obvious distinction between creche displays, creche meaning the nativity scene, there is an obvious distinction between creche displays and references to God in the motto and in the Pledge. So we have Justice Kennedy raising the specter of: boy, if we go this way and throw out a nativity scene, pretty soon it is going to be the motto and the Pledge, and then Justice Blackmun saying, nonsense. We have already considered those questions, and there is no need to consider them here further.

Justice Blackmun goes on to say: ''However history may affect the constitutionality of nonsectarian references to religion by the government, history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed.''

Why is that so important? Let us go back to the language of the first amendment. It is very short: ''Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.''

Well, the free exercise clause obviously would tend in the opposite direction of this case: ''Government shall make no law prohibiting the free exercise of religion.'' So one should be free to practice religion in America. That is what the Constitution guarantees. But this other portion, the establishment clause says: ''Congress shall make no law respecting an establishment of religion.'' Now, some people like to do a little bait and switch with the specific article, the definite article. They substitute ''the'' for ''an,'' and ''the'' is specific and ''an'' is general. I do not know if we are all grammarians here this evening, but it matters. ''A baseball game'' is different than ''the baseball game.''

''Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.'' What if it said instead: Congress shall make no law respecting the establishment of religion? Would that matter?

Mr. Speaker, I think it would matter a great deal, because if it is religion that we are concerned about rather than an establishment of religion, an instance, one of many, then I think we

have given some ammunition to those who say the real purpose of this clause in the first amendment is to say, no religion can be discussed. But if what the Constitution is enjoining us to do is not to make any law respecting particular religions, particular kinds of religions, then it is something else entirely different.

Mr. Speaker, I do not know that we can this evening, to everyone's satisfaction, resolve this basic question of whether the establishment clause in the first amendment should be better interpreted as barring the government from giving preferment to a particular religion, on the one hand, or rather as requiring the complete and total elimination of any reference to God in our public institutions on the other hand. But I think it is awfully clear that that is what is at stake here, because the court, the Ninth Circuit Court is troubled by the fact that there is the most conceivably abstract reference possible to God, not to even religion or to a specific religion, but simply to God.

I am put in mind, and this will escape almost all of my hearers, of a National Lampoon parity of ''Desiderata'' called ''Deteriorata.'' This was popular in the 1970s. And they sort of made fun of the well-known, at the time at least, ''Desiderata,'' and in ''Deteriorata'' they said, ''Therefore, make peace with your God, whatever you conceive him to be, Harry Thunderer or Cosmic Muffin.'' A little bit of humor that illustrates the point that one person's God is not another person's God is not another person's God. In fact, what God is, in the minds of physicists, it could be the entire universe as we know it. For animists, it could be the plants or the animals.

□ 2100

God is as general and as high on the ladder of abstraction as one can be, and it is very different, this reference to God, than a particular religion.

That is important, Mr. Speaker, because I think the court betrays its fundamental error in logic when it says, and I will find the precise language here, but it says essentially that for constitutional purposes there is no distinction between the words ''under God'' in the Pledge and ''under Jesus'' or ''under Vishnu'' or ''under Zeus.''

That is what the opinion says. And I think there is a world of difference. There is a world of difference, because one is as respectful as possible of the right that is guaranteed in the rest of the first amendment, the free exercise of one's particular religion. It does not give a preferment to any religion, which is what the establishment clause at a minimum is meant to guard against.

Mr. Speaker, here is precisely what the Ninth Circuit Court of Appeals said on this point:

''A profession that we are a nation under God is identical for establishment clause purposes to a profession that we are a nation under Jesus, a nation under Vishnu, a nation under Zeus, or a nation under no God, because none of these professions can be neutral with respect to religion.''

Of course, here is the rabbit in a hat. It is interchangeable for the Ninth Circuit in this opinion that we might be dealing with religion as a general noun, a class of things, the dictionary definition of religion, which could be almost anything, on the one hand; or a religion, a specific religion.

And again, that gets us back to the fundamental question of what the first amendment means. Does it mean that government shall make no law respecting an establishment of religion; or, in fact, forget the business about the definite article, but just religion? Maybe ''establishment'' should be read out of the first amendment: ''And government shall make no law respecting a religion.'' That would certainly be directly to the point made by the Ninth Circuit today.

It is worth drawing attention to what the Ninth Circuit believes here because not all the judges were in agreement. There was a two-person majority and a one-person dissent. And in a three-judge panel, of course, that is all it takes, is two judges.

Judge Fernandez, circuit judge in the Ninth Circuit Court of Appeals, said this: ''We are asked to hold that inclusion of the phrase 'under God' in this Nation's Pledge of Allegiance violates the religion clause of the Constitution of the United States. We should do no such thing. We should, instead, recognize that those clauses were not designed to drive religious expression out of public thought; they were written to avoid discrimination.

''We can run through the litany of tests and concepts which have floated to the surface from time to time. Were we to do so, the one that appeals most to me, the one I think to be correct, is the concept that what the religion clauses of the First Amendment require is neutrality; that those clauses are, in effect, an early kind of equal protection provision and assure that government will neither discriminate for nor discriminate against a religion or religions . . . when all is said and done, the danger that 'under God' in our Pledge of Allegiance will tend to bring about a theocracy or suppress somebody's beliefs is so minuscule as to be de minimis. The danger that that phrase presents to our First Amendment freedoms is picayune at most.

''Judges, including Supreme Court Justices, have recognized the lack of danger in that and similar expressions for decades, if not for centuries, as have presidents and members of our Congress.''

At this point, Judge Fernandez cites four preceding Supreme Court opinions and goes into some great detail with his authority. He refers to the case of the County of Allegheny, to which I made reference earlier, in which the majority said, ''Our previous opinions have considered in dicta the motto and the pledge, characterizing them as consistent with the proposition that government may not communicate an endorsement of religious belief.''

Now, the Seventh Circuit Court of Appeals decided a case very similar to this one, and the Seventh Circuit is, of course, a different jurisdiction of equal dignity with the Ninth Circuit Court of Appeals. And because there was no identical case previously decided by any precedent in the Ninth Circuit, the panel in this case was required to at least acknowledge it, and they did.

They said the only other court to consider this was the Seventh Circuit, and even though the Seventh Circuit decided it consistently with the Supreme Court dicta, we are going to go the other way. So they acknowledged they are blazing a new trail out there in the Ninth Circuit.

Again, whatever one feels about the decision, this takes us back to the question of the rule of law and predictability. When precedent does not matter, when we are always trying to move that ratchet one more notch, we are always trying to take the law in new directions and expand it and make sure it is a living organism and reflective of what is new and modern, there is not any predictability, and it becomes the rule of men and not law.

Judge Fernandez went on to say, ''such phrases as In God We Trust'' or ''under God'' have no tendency to establish a religion in this country or suppress anyone's exercise or non-exercise of religion, except in the fevered eye of persons who most fervently would like to drive all tincture of religion out of the public life of our polity. Those expressions have not caused any real harm of that sort over the years since 1791 and are not likely to do so in the future. As I see it, that is not because they are drained of meaning. Rather, as I have already indicated, it is because their tendency to establish religion (or affect its exercise) is exiguous. I recognize that some people may not feel good about hearing the phrases recited in their presence, but, then, others might not feel good if they are omitted. At any rate, the Constitution is a practical and balanced charter for the just governance of a free people in a vast territory. Thus, although we do feel good when we contemplate the effects of its inspiring phrasing and majestic promises, it is not primarily a feel-good prescription.

''In West Virginia Board of Education v. Barnette, for instance,'' and remember, the Barnett case which I discussed earlier is the one involving the Pledge of Allegiance and the flag salute, in which the court held that it is not constitutional to force people to do these things, to say these things, to recite the Pledge. If people do not believe that America is a country that stands for liberty and justice for all, then they do not have to recite the Pledge. That is what the court said there.

''In West Virginia Board of Education v. Barnett . . . '' Judge Fernandez says,

''the Supreme Court did not say that the Pledge could not be recited in the presence of Jehovah's Witness children; it merely said they did not have to recite it. That fully protected their constitutional rights by precluding the government from trenching upon 'the sphere of intellect and spirit.' As the court pointed out, their religiously based refusal 'to participate in the ceremony [would] not interfere with or deny the rights of others to do so. . . . We should not permit Newdow's feel-good concept to change that balance.''

So this is a different judge of the Ninth Circuit giving us a very different point of view from the minority, and citing, I think rather more correctly, the holding in Barnette.

''My reading of the stelliscript suggests that upon Newdow's theory of our Constitution,'' and Newdow, remember, is the plaintiff in this case, the father whose daughter goes to school and has to watch as others recite the Pledge of Allegiance, ''My reading of the stelliscript suggests that upon Newdow's theory of our Constitution, accepted by my colleagues today, we will soon find ourselves prohibited from using our album of patriotic songs in many public settings. 'God bless America' and 'America the Beautiful' will be gone for sure, and while use of the first and second stanzas of the Star-Spangled Banner will still be permissible, we will be precluded from straying into the third. And currency beware! Judges can accept those results if they limit themselves to elements and tests, while failing to look at the good sense and principles that animated those tests in the first place.''

So judge Fernandez is now giving us a view of where we might be headed if this decision holds and becomes law, the decision from which he dissented.

He says, ''What about God Bless America in a public setting?'' What about it? What if it is the Marine Corps band? What if it is on the steps of the Capitol? Is that it? Is it all over for God bless America on the Capitol steps, or performed anywhere by our people, our men and women in uniform?

Perhaps that is the sort of thing designed to scare people away from the results in the case at hand, which is not about God Bless America. But remember the decision in Allegheny, in which we had Justice Kennedy in his opinion dialogue with Justice Blackmon in the majority saying, Mr. Justice, if you go this way, if you say no creche, no menorah, then I think you are going to have to take a look at the Pledge of Allegiance and our motto in God We Trust, and you had the majority in that case say, Oh, pshaw, that is not what we mean. Do not worry about the Pledge or the motto, and here we are today, just as Justice Kennedy predicted, worrying about the Pledge.

So perhaps we ought not to dismiss out of hand what Judge Fernandez is telling us: All right, if we do what the Ninth Circuit wishes us to in the Newdow case today, then we had better be prepared to get rid of God Bless America, we had better be prepared to get rid of that motto In God We Trust, right over the Speaker pro tempore's head, and we had better be prepared to get it off of our currency, because the same principle must apply. That is what Judge Fernandez says.

So he says, ''Judges can accept those results,'' these extensions of the principle in Newdow, ''if they limit themselves to elements and tests, while failing to look at good sense and principles that animated those tests in the first place. But they do so'', judges would be doing so, ''at the price of removing a vestige of the awe we all must feel at the immenseness of the universe and our own small place within it, as well as the wonder we must feel at the good fortune of our country. That will cool the febrile nerves of a few at the cost of removing the healthy glow conferred upon many citizens when the forbidden verses or phrases are uttered, read, or seen.

''In short,'' he concludes, ''I cannot accept the eliding of the simple phrase ''under God'' from our Pledge of Allegiance, when it is obvious that its tendency to establish religion in this country or to interfere with the free exercise (or non-exercise) of religion is de minimis.''

And he drops a footnote at this point, because there are going to be constitutional scholars who are going to say, wait a moment, are you saying there is such a thing as a constitutional violation that is so small we will just ignore it? And he is saying, that is not what I mean at all. ''Lest I be misunderstood, I must emphasize that to decide this case it is not necessary to say, and I do not say, that there is such a thing as a de minimis constitutional violation. What I do say is that the de minimis tendency of the Pledge to establish a religion or to interfere with its free exercise is no constitutional violation at all.''

Mr. Speaker, I am sure that almost everyone in the country will end up having an opinion about this case, but I think it is very important that everyone in the country, as we enter into this debate, not assume that they know everything about it. They ought to take the time, as we have here this evening, to examine the facts.

We were, of course, defendants in this case. We have a real stake in it. But it matters, for example, that the plaintiff in this case specifically pleaded or specifically alleged that she, or was her father pleading that his daughter was not required to recite the Pledge of Allegiance. So this is not a case about someone being required to say the Pledge, which happens to include the words ''under God.''

That is an important fact to bear in mind. It may not affect Members' opinions one way or another in the end, but for some people the notion that someone might be coerced is very material, and those people should note that the Supreme Court dealt with that question 60 years ago. That is not an open question. We cannot be forced to say the Pledge in this country.

I pulled up the legislative history because what the court did today is throw out an act of this Congress. I thought it was instructive in reading the court's opinion that they said that the reason that Congress did what it did was very important. Let us take a look at Congress' motive, they said. What was the purpose in enacting the statute? That might tell us whether what Congress was really trying to do this on the sly by inserting those words was to promote religion in violation of the First Amendment.

They said, and I ought to be sure to quote the opinion directly to make sure that I do not mischaracterize it, but they said, in essence, that the legislative history in their mind was clear evidence of an unconstitutional purpose. Then they quoted a very, very small part of it.

The problem, they say, is that when the Congress did this in 1954, and Mr. Speaker, I will have it here in just a moment, that the purpose of the Congress was not establishing a religion.

□ 2115

That is the language that they quote. It rather befuddles one to understand why, therefore, they infer that was the purpose. Here is the legislative history that they quote: ''The sponsors of the 1954 act expressly disclaimed a religious purpose.'' So in those days, in 1954, when political correctness was not at large, they still did not get tripped up by the test that we are applying now in 2002. They said: ''This is not an act establishing a religion.'' The act's affirmation of ''a belief in the sovereignty of God and its recognition of 'the guidance of God' are endorsements by the government of religious beliefs,'' the court says. But the legislature, this Congress at the time that we passed the law, said that there was no such purpose.

The establishment clause they say is not limited to religion as an institution. And so they are again retreating to this abstract notion of all religion being the problem, not just an establishment, even though that is the plain word of the first amendment.

Here is what the legislative history says, Mr. Speaker. I have taken it from our official documents in May 1954. They say: ''By the addition of the phrase 'under God' to the Pledge the consciousness of the American people will be more alerted to the true meaning of our country and its form of government.'' That was their purpose. ''The consciousness of the American people will be more alerted to the true meaning of our country and its form of government.'' That, Mr. Speaker, is a secular purpose. In this full awareness we will, I believe, be strengthened for

the conflict now facing us and more determined to preserve our precious heritage. ''Fortify our youth in their allegiance to the flag by their dedication to one nation under God.''

So the purpose is to fortify our youth in their allegiance to the flag. Is that not a secular purpose? So it is a legislative history as important as the Ninth Circuit says it is, I think it pays to read it. They went on to say, ''It should be pointed out that the adoption of this legislation in no way runs contrary to the provisions of the first amendment to the Constitution. It is not an act establishing religion or one interfering with the free exercise of religion.''

So what they did in Congress at the time was look to what they thought was the law, the decisions of the Supreme Court interpreting the first amendment. ''The Supreme Court has clearly indicated that the references to the Almighty which run through our laws, our public rituals, and our ceremonies in no way flout the provisions of the first amendment.'' Then they cite the Supreme Court authority of the day.

So what has happened is between then and now, perhaps, the Constitution has changed. The language of the first amendment has not changed. It is the very same language. The Congress did the best it could at the time. They relied on the Supreme Court, which clearly indicated that ''the references to the Almighty which run through our laws, our public rituals, and our ceremonies in no way flout the provisions of the first amendment.'' They went on to say in 1954: ''In so construing the first amendment, the Court,'' referring to the Supreme Court, ''pointed out that if this recognition of the Almighty was not so, then an atheist,'' the plaintiff in this case, ''could object to the way in which the Court itself opens each of its sessions, namely, 'God save the United States and this honorable Court.' ''

Well, today, across the street at the United States Supreme Court that is how the Court opens its sessions. They still say as they did in 1954, ''God save the United States and this honorable Court.'' So these questions are all of a piece, the motto, Mr. Speaker, over your head; indeed, the fact that the great law givers of all time ring this Chamber, and that the central one who looks directly at you is Moses, all of these things are of a piece; and it is quite clear the slope that we are on.

The legislative history makes it very clear that to the extent that it was possible for human beings to do so in 1954, the drafters and the Members of Congress at the time went out of their way to make sure that they were following the guidance of the United States Supreme Court.

What has happened over the last several decades intervening makes it clear that whatever one's view about whether the law should be a living document on the one hand or whether it should be a text that means from age to age, whatever the society or perhaps the Court thinks it ought to mean, that that question looms very, very large. We may not ever know if that is the rule that we follow what the law is and we will have to wait until the oracles tell us.

Here in Congress as we seek to write laws consistent with the Constitution, we simply do not have sufficient guidance when all we have is the text of the Constitution and all of the Court's decisions interpreting it, because those can be changed and are very mutable, and precedence are only so good as the paper they are written on. But they can be overturned at will.

The fact that the Seventh Circuit has already disagreed with the Ninth Circuit and the Seventh Circuit came first and that that precedent was ignored here; the fact, Mr. Speaker, that the very remedies that the plaintiff were seeking here are all illegitimate remedies and the Ninth Circuit found that that was so, none of that seemed to slow them down. It is worth bringing to the Members' attention that what Newdow was asking for here is that the court should order the President of the United States to alter, modify or repeal the Pledge. So he is drafting the complaint. He has brought a lawsuit, and he wants the court to order the President to alter, modify or repeal the Pledge by removing the words ''under God.'' He asked for one other element of relief. He wanted the court to order the United States Congress immediately to act to remove the words ''under God'' from the Pledge.

Well, now, in our juris prudence in America you cannot do that. The courts cannot do that. The President is not an appropriate defendant in an action challenging the constitutionality of a Federal statute. Period. And in light of the speech and debate clause just as much part of the Constitution as is the first amendment, article 1, section 6, clause 1: ''The Federal courts lack jurisdiction to issue orders directing Congress to enact or amend legislation.''

The words that the plaintiff in this case is challenging included the Pledge of Allegiance were enacted into law by statute by this Congress; and therefore, no court may direct this Congress to deleted those words any more than it may order the President to take such action. An injunction against the President is not in order, and an injunction against the Congress is not in order. And that is all that the plaintiff was asking for, so there is nothing left of the case. And yet, even after acknowledging these things, the Ninth Circuit moved on.

The Ninth Circuit also just zipped right past the article 3 standing question even though that is jurisdictional, even though you must address standing in order to have a case to decide at all. And they skipped beyond the article 3 holding of the United States Supreme Court that ''the psychological consequence presumably produced by observation of conduct with which one disagrees is not an injury sufficient to confer standing under article 3 even though the disagreement is phrased in constitutional terms.''

That is a holding that the Ninth Circuit Court says is still good law, and they just breeze right past that as well.

Now, Mr. Speaker, we may find after an en banc court of the Ninth Circuit takes this case and rewrites it, that these mistakes are corrected. We may find even a different result in the case; but at a minimum I would expect that if the same result is reached, it will be reached in a much more legitimate manner than this.

But what are we to think in the meantime? The Ninth Circuit is a big circuit. It governs a lot of States. My whole State of California, 30 million people, Nevada, Arizona, Washington, Oregon, Montana, Alaska, Hawaii. Public school students in all of these States, what are they to do on the anniversary of September 11 next? Do they say the Pledge at all? Do they say it the old way? The new way? What are their teachers to do and what are their parents to do?

We do not know because we now find when judges make new law that none of us knows really what the law is.

Some of our constituents are already lighting up the phones saying, Congress has got to do something. But the truth is in our system when a court throws out an act of Congress on constitutional grounds there is nothing to be done about it. The Constitution does indeed trump acts of Congress; and the Court, not the Congress is the ultimate arbiter of the constitutionality of statutes. Now, I suppose we could reenact it in precisely the same way, but that would be something of a tedious, if not fatuous, merry-go-round. I do not think that would be serving our constituents well.

I think, rather, we can expect with the leadership of the President of the United States and the Attorney General that there will be a petition for rehearing en banc in this case, and that the Ninth Circuit itself will have a chance to reconsider the enormous impact they are having without perhaps giving just that ounce of good judgment that would have made the difference if they had taken into consideration what the Supreme Court has said about this.

The only things that the Supreme Court has said about the Pledge, albeit in dicta, are exactly the opposite from the result that was achieved in this case. The only thing that the Supreme Court has said about this question of whether observing something that one does not like being the source of injury, runs exactly the opposite way from the decision in this case.

I think if a court normally sets out to avoid constitutional questions and decide cases on other simpler grounds, statutory grounds, procedural grounds and so on, there were ample ways that

a court could have handled this Newdow litigation. Newdow was a pro se plaintiff. That means he represented himself without a lawyer although he has had some legal training apparently. He made a lot of mistakes in his pleadings. They were very sloppy. And the court below, even though it was lenient, the district court, the trial court, threw out his case.

The Ninth Circuit Court of Appeals came and resuscitated it. They had to put a lot of Band-aids on it because procedurally it was in bad shape. It took a nearly superhuman effort to put this case up on stilts so that we could get the constitutional question for decision. It was to all appearances, Mr. Speaker, something of a reach, and I think our country deserves better. But we shall see. We shall see how this is accepted by the public, what the court itself may do about it.

But at a time when so many people are working so hard to pay their taxes, at a time when the courts are as busy as they are, and most middle Americans know if they were to bring a lawsuit it might be 3 to 5 years before they could get a decision because of the backlog and the expense, is it not interesting that the people in San Francisco seem to have sufficient time on their hands so to finely perch this question of angels on the head of a pin, so that they can reach a constitutional question that was not procedurally put to them in a way that required its decision?

I think laying out a case in this way, Mr. Speaker, will it better inform the debate? And that while I recognize with 435 Members in the House we might have some diversity of opinion about the case, even here it is bound to occupy the minds of our constituents for some time to come.

I appreciate the indulgence of the Chamber in considering it at first blush because the opinion was just issued today, this evening.

□ 2130

PRESCRIPTION DRUG BENEFIT

The SPEAKER pro tempore (Mr. KERNS). Under the Speaker's announced policy of January 3, 2001, the gentleman from New Jersey (Mr. PALLONE) is recognized for 60 minutes.

Mr. PALLONE. Mr. Speaker, let me say to the gentleman from California that I listened very carefully to what he said in analyzing that Federal court opinion that came down today; and I do agree with him that the opinion does not make any rational sense and that the use of the term ''in God we trust'' does not in any way violate the Constitution.

I wanted to take to the floor this evening, however, as I have so many times in the last couple of months, and talk about the need to pass a prescription drug benefit and also to give a little status report, if I can, about where I think we are on this, because I am very concerned from some of the statements that I have been hearing today and some of the reports in the media, as well as some of the things I am hearing tonight, leading up possibly to Committee on Rules action or inaction, that there is a real possibility the Republicans will not bring up their prescription drug bill for a vote before we recess for July 4, for the Independence Day celebration.

I say that because for several months now I have been asking that the Republicans bring up this bill because I think that the issue of prescription drugs for seniors and the issue of increasing high drug prices is one of the major issues that the Congress needs to address.

When I go home to New Jersey, to my district in New Jersey, many seniors and even people in general, not just seniors, complain to me constantly about drug prices, about their inability to buy prescription drugs and the consequences that fall to their health because of their inability to buy the prescription drugs, the medicines that they need.

So I was rather happy a couple of months ago when the Republican leadership announced that they would bring a prescription drug bill to the floor before the Memorial Day recess, and I was disappointed when we went home for Memorial Day and that had not happened.

I was once again hopeful when after the Memorial Day recess in early June we heard the Republican leadership once again say they were going to bring a prescription drug bill to the floor before the July 4 recess.

Last week, we actually did have the Republican bill unveiled; and we had a 3-day and all-night marathon in the Committee on Energy and Commerce, where I serve, where the bill was discussed and the Democratic alternative was discussed. Although I think that the Democratic bill is the only really meaningful bill, and I will discuss that in a minute, I was at least happy to see that we did have the opportunity in committee to discuss medicines or prescription drugs for seniors.

So I would be extremely disappointed and very critical of the Republican leadership once again if we find out tonight or tomorrow that they still do not intend to bring this bill up. I am not surprised because I have said many times that the Republican bill is basically a sham. It does not provide any benefit for seniors. It has no real hope of providing any kind of prescription drug benefit for seniors. It does not even try to reduce price, the price of drugs, but at least if we had the opportunity to have this bill on the floor tomorrow or Friday we could then offer our Democratic substitute and see which side gets the most votes.

I am actually here tonight, Mr. Speaker, because I understand that within the next half hour or so we will be hearing from the Committee on Rules as to whether or not they will be considering the Republican bill tonight, either at 10:00 or 10:30 or 12 o'clock or possibly tomorrow morning. If we hear that they are not, then that is a very good indication that the bill will not come to the floor for a vote. So I am waiting here, Mr. Speaker, to see what the Committee on Rules is going to do, hoping that they will allow this bill to come up and we will have a debate on probably one of the most important issues facing this country.

I am still hopeful, although I have less and less reason I suppose to be hopeful, given some of the comments that have been in the media today.

Let me explain why the Republicans may not bring the bill up. The reason they may not be able to bring the bill up is because they do not have the votes. The talk this afternoon around the House of Representatives was that they were shy 20 or 30 votes on the Republican side; and, of course, they are getting practically none, if any, Democratic votes.

Some of the reasons that were articulated today in Congress Daily, in the lead story, says, House GOP still shy of majority to pass prescription bill, and it mentions about three or four reasons why different Members were having problems with the Republican bill, which I think go far to explain why the bill is a bad bill.

So I would like to mention some of these reasons. It says lawmakers, this is the Republicans now, variously want more money for home State hospitals and rural health care, more attention to drug costs rather than coverage and guarantees to protect local pharmacies. The GOP leadership aides conceded that these groups of Republicans, in the face of the very few Democrats expected to cross party lines on a vote for the GOP bill, have left the measure short of the 218 votes needed to pass it.

Let us talk about some of these issues that some of my Republican colleagues, rightfully so, believe are wrong or do not justify their voting for the Republican bill. Maybe before I do that I should say that I am very happy to see that there might be 20 or 30 colleagues on the other side of the aisle, on the Republican side, who would be willing to say to their leadership that they do not want to vote for this bill, because I have said many times, and again, I will give some third party documentation, that this bill is nothing more than a boon to the pharmaceutical drug industry. In other words, the reason why the Republicans have put forth a bad bill and one that will not work is because they are beholden to the brand-name drug industry.

If my colleagues doubt what I say, let me mention that last week when we had a markup in the Committee on Energy and Commerce of the Republican bill, last Wednesday, a week ago today, they actually had to adjourn, the chairman adjourned the markup, the committee markup at 5 o'clock, because the Republicans had to go to a fund-raiser that was primarily being underwritten by the prescription drug

use all kinds of gimmicks to try to delay the generic coming to market. That is what the gentlewoman is trying to eliminate. I know that the gentleman from Ohio (Mr. BROWN) has a bill, and some of that language is included in our Democratic substitute that would close those loopholes. Again, this is a pricing issue. Because if we bring generics to market, we reduce the cost of prescription drugs.

Mr. LARSON of Connecticut. Mr. Speaker, the gentlewoman from Missouri (Mrs. EMERSON) is absolutely right. I think what is also compelling about the Democratic initiative is the ability, and I think people understand this readily, to be able to leverage the great buying power that the Federal Government would have in terms of initiating a program under Medicare.

Currently, whether you are a large corporation, whether you are the Federal Government itself, or whether you are a large labor union, you have the opportunity to go directly to pharmaceutical companies and leverage deep discounts in order to make prescription drugs more affordable. Medicare is a Federal program. Medicare would provide us with an opportunity to have large numbers that will allow us to leverage and bring down the cost, just like every other western industrialized country in the world is able to do. This makes common sense.

I commend our colleagues on the other side of the aisle who understand at the heart of this issue is price and getting the cost down here and being able to have a program that is affordable, that is accessible, and will be ready available and, most importantly, workable for our seniors. Again, that is why I commend the gentleman from New Jersey (Mr. PALLONE) for his efforts.

Mr. PALLONE. Mr. Speaker, I am going to just mention one more Republican because I cannot praise them too much here. It is interesting to see that some are standing up to their leadership. This one is the gentleman from Pennsylvania (Mr. PETERSON) who said he absolutely would vote against the measure unless more money is included for rural hospitals. He said once pharmacy is a part of Medicare, there will be no extra cash any more.

What he is referencing is the problem for rural areas because, as the gentleman knows, just like with the HMOs that do not offer, do not have benefits, we do not have HMOs in a lot of rural areas, the same problem will exist here because you do not have a guaranteed Medicare benefit. It is unlikely in a lot of rural areas there would be any kind of private drug policy offered, which is what the Republicans are saying. The concern is that rural areas will be left out, and there will be no insurance policies for them to buy.

The other thing is with regard to the pharmacies, particularly in rural areas. What would happen with a private insurance plan, just like with HMOs, they will decide what vehicle to use to dispense the drugs. They may use a large chain or may decide to do it through mail order and not through the local pharmacy. There is a real problem with those in rural areas, our colleagues who are concerned about whether any benefit would be available at all because an insurance company would not sell in those areas. Or, secondly, if there is one, it will operate like an HMO and will exclude any kind of dispensing of medicine from the local pharmacy.

Of course, we in our bill do the opposite. We say this is a Medicare-guaranteed benefit, and you can go to any pharmacy or any outlet to buy the medicine.

Mr. Speaker, I yield to the gentleman from Connecticut (Mr. LARSON).

Mr. LARSON of Connecticut. Mr. Speaker, again, I thank the gentleman for pointing out the many Republicans on the other side who understand this.

□ 2215

This is an age-old battle between Democrats and Republicans and why I feel it is so important that we vote side by side on the differences between the proposals and commend those Republicans who have come forward with their own concepts and are focused on pricing, because they are among the few and the brave and the valiant who are willing to go against their own conventional wisdom and ideology.

Roosevelt said it best during the struggles to bring Social Security to the forefront. He was amazed at the time that Republicans seemed to be, as he said, frozen in the ice of their own indifference to what the policies they would perpetrate would do to the American public. Frozen in the ice of their indifference to what their proposals would do to a Nation that is crying out for relief. That is why their Members who are standing up and maybe not in total unison with us but standing up for what they know is right for senior citizens deserve a great deal of credit.

It is my sincere hope that the Rules Committee will provide an opportunity for all of us to have an opportunity to vote on the measures that we believe will best provide relief for those we are sworn to serve in this country.

Mr. PALLONE. I want to thank the gentleman for joining me tonight. We probably can find out as soon as we yield back our time what is the situation with the Rules Committee. But, again, I agree with you. We just want this to be brought up, we want to have a debate, we want to have an opportunity for the Democratic position to be considered side by side with the Republican.

And it is not, at least I do not think for most of us it is really an issue that is partisan or even ideological. I just think the problem is we know that Medicare works. We have seen it work. We know that before the 1960s when Medicare came into being that it was virtually impossible for senior citizens to buy any kind of insurance policy that was affordable, that would pay for their hospitalization or their doctor bills. That is why Medicare started, because the private sector did not provide that opportunity.

This has been a very good government program. It is a government program, so maybe some of our colleagues on the other side of the aisle have a problem with Medicare ideologically. I am sure some of them do. But you have to throw that aside and look at what is practical and what works for the American people. The Democrats are simply saying Medicare works; and the best way to provide this prescription drug benefit, really the only way in the system that we have, is for the government to expand Medicare to include prescription drugs, which is what we are advocating.

Again, I do not know whether it is the ideology or, maybe going back to what I said at the beginning, it is just the money from the prescription drug industry that prevents the Republican leadership from going ahead with a Medicare program and addressing the issue of price because that makes sense. I have to believe it is the money from the drug companies that is really behind the effort to stop a Medicare program.

CORPORATE GREED, THE PLEDGE OF ALLEGIANCE, AND COLORADO FIRES

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, the gentleman from Colorado (Mr. MCINNIS) is recognized for 60 minutes.

Mr. MCINNIS. Mr. Speaker, I have a number of subjects of which I wish to cover this evening. Of course, having the opportunity to come over and wait for my time allotment to speak to the Members here, you get to listen to the people that preceded you speaking. The gentleman from New Jersey (Mr. PALLONE) is a very capable individual and speaks very well. There is only one point I want to make clear about his conversations.

At the beginning of his remarks, he expressed some dismay that the Republican leadership may not be able to bring up the prescription care bill, the Medicare bill, this week. He was very discouraged by that. He talked about and gave some examples of people that needed prescription assistance and senior citizens and their trials and tribulations that they go through, of which of course we would all agree with.

What he did not point out was the fact that none of the Democrats want to help us. So there is a reason that that bill cannot come to the floor, and that is because we do not have bipartisan cooperation. The Republicans have asked the Democrats on a regular basis, pitch in and help us. Prescription care is a serious problem in this country. We have got to come up with some type of solution. We prefer to come up

with a bipartisan solution. Prescription care problems out there in our society do not happen to just Republicans. The ability or lack of ability to pay for prescription services does not just happen to Democrats. It happens to all people in our country. That is why it is necessary for bipartisan support.

But, unfortunately, this is an election year; and with November not very far away and with the Democrats vowing that they will make prescription care services their main issue to try and defeat the Republicans, they find within their own conferences no incentive to cooperate. This thing is being driven by politics, and that is exactly why we get criticism of the Republicans not bringing it up.

The reason is Republicans do not have the numbers. They need some help from the Democrats. But there is no way in an election year that the Democrats are going to help us with prescription care services. One, they do not want the issue resolved before November. They do not want the Republicans to get the credit for having solved the big problem in this country, so they will do whatever they can to resist any kind of cooperation. And while on one hand they will not cooperate, they turn around on the other hand and blame us for not bringing that bill to the floor.

So I would suggest to my good friends over on the Democratic side, come on, let us be a little less partisan about this. Help us. Work with us. That is what we are asking for.

But that is not the intent of my speaking to you this evening. I really want to cover three separate subjects. I want to talk, of course, about the outrageous decision made today by the Ninth Circuit in California about the fact that America now must hang its head in disgrace because our Pledge of Allegiance has been declared unconstitutional, unconstitutional by a Federal appeals court.

That is no low-level court. That is a very high court in our country. It has had the audacity to come out and take the most recognized symbol in the world and the Pledge of Allegiance to that symbol and to that country, in a time of war, in a time when every other country in the world encourages its children in its schools, in its institutions, in its areas of public domain, encourages their civilizations to engage in religious practice, that this court finds it necessary for the United States to see that its Pledge of Allegiance is unconstitutional because it mentions the name God. We will talk a little about that.

I want to talk about the fires in Colorado. In fact, I have got a poster. I want to talk a little about the fire damage in Colorado, the fires and what is going on. During those discussions, I am going to point out, so that you have some proportion of the damage in Colorado, Colorado is not burning as a State. The great majority, 99 and some percent, of Colorado is not on fire. 99.9 percent of the State of Colorado is open for tourism; and if you want the greatest deal of the summer, you go to Colorado, because there are a lot of deals out there. There are a lot of opportunities.

Colorado is a very gorgeous State. Of course, I am very proud of it. My family on my side and on my wife's side, we have multiple generations in Colorado. I could talk about Colorado all evening, but I do want to put it in some proportion, and we will be looking at this map to my left. I will give you a little idea of exactly what we are talking about.

But we are not going to move to that map yet because I want to also talk this evening about corporate greed, this WorldCom stuff, KMart, Global Crossing, Xerox Corporation, Tyco Corporation, and now maybe even our favorite, Martha Stewart. What is going on out there in the corporate world? What is going on with the integrity of these people? What are they doing to our society? What are they doing to that credibility gap which is a foundation of the economic cycle of this country, of the economic principles of this country?

It depends on integrity from people who manage these companies and people who oversee the management of the company, i.e., the board of directors. We are uncovering stone after stone after stone in corporate America, and what are we finding? We are finding corporate self-serving greed, not greed in a healthy capitalistic fashion but greed in a way that it is criminal.

I intend to spend some time on that this evening, too. I intend to talk very specifically about what I think some of the solutions are. When I think of what is going on out there, it makes me think of a four-letter word. That is what I think of when I think of corporate greed. I want to use a four-letter word, J-A-I-L, jail. That is exactly what I am thinking about. That is exactly where some of these corporate executives ought to be, and it is exactly where those corporate boards of directors ought to be. That four letter word, J-A-I-L.

I am not trying to jump into these remarks too early, but let me tell you something. If you were an employee with Kmart Corporation or you were an employee with Enron Corporation or Tyco Corporation, or let us go back to Kmart. Let us say you are just a sales clerk at Kmart, at one of their stores and you stole a candy bar. You stole a candy bar from Kmart, from your employer, you stuck it in your pocket, a candy bar, and walked out of the store with it. Up to this point in time, you would suffer more repercussions for stealing a candy bar as an employee of Kmart Corporation than will those executives of Kmart Corporation who loaned themselves millions and millions and millions of dollars and then took a corporate board action and forgave the loans to themselves and then filed bankruptcy on behalf of the corporation. Think about that. There are people that will get in more trouble stealing a candy bar or a magazine or a tool from one of these retailers than will the CEOs.

Let us take, for example, WorldCom. If you steal long distance services from WorldCom, let us say you steal $100 worth of long distance services from WorldCom Corporation. You are going to get in more trouble than the chief executive, Bernie Evers, got in trouble; and he got a $350 million loan from the board of directors, $350 million of which he will never be able to pay back.

It is unbelievable, and the American economic society is suffering as a result. We have got to bring the hammer down on these executives, and we have got to bring it down hard and heavy. We have got to make it so that every prosecutor in this country, every U.S. attorney in this country when they think of these chief executives, they think of that four letter word, J-A-I-L, jail.

Let me start back and let me talk about in a little more detail some of these subjects. First of all, let me talk about the flag. I, like many millions and millions and millions of Americans today, was stunned, stunned, that a Federal appeals court, that two judges could bring this country to its knees by saying that this country's Pledge of Allegiance, a pledge that every child in this country has said, that every school in this country and every school this country has ever had has been said within its four walls is unconstitutional because it has the words ''under God'' contained within its four corners.

You think about this decision. What is next? That ought to be the logical question. We have these liberal judges. By the way, you take the most liberal Member of this House Chamber, and these judges make those liberal Members of this House Chamber look like they are right-wing conservatives.

The Ninth Circuit is an island of its own as known in the legal circles. I practiced law. I was an attorney. The Ninth Circuit has always been known as kind of an island of its own, but, nonetheless, it is still a Federal appeals court. So you have to ask yourself, okay, somebody that wants to stir up trouble, what is the next logical thing for this court in California to declare unconstitutional?

□ 2230

Could it be the crosses at Arlington National Cemetery or the crosses at every military cemetery in this country? Is it unconstitutional because the cross is seen as a symbol of Christianity and we find it on Federal property; we find it on every grave of every military person and their spouses and, in some cases, their children, who have served this Nation? And now these judges, do we think that is logical? Of course it is logical. And of course it is something that now, something that

we never imagined any judge would go so far out of bounds of their judicial duties that they would, first of all, declare our Pledge of Allegiance as unconstitutional. Then the next step, logically, would be for them to go to our national cemeteries and start yanking crosses out of our servicemen's graves. What is next?

How interesting. I bet these judges, I bet these judges this week; let us see. July 1, coming next week. I bet on July 1, those judges that made that decision today that the word ''God'' in the Pledge of Allegiance is unconstitutional, I bet those judges on July 1 put their greedy little hands out and take their paycheck and take that American money that says ''In God We Trust'' on it. I bet they take that money, and I bet they stuff it in their pockets.

Now, I would say to these judges, if you are true to principle, you should refuse this cash. You should not take American money. It has ''In God We Trust'' on it. It is unconstitutional. You should uphold the judiciary of this fine land. You, after all, are the ones who made the earth-shattering decision that the Pledge of Allegiance in the United States was unconstitutional. So it should not be you who steps forward for the benefits of American cash, because after all, that has ''In God We Trust'' and that would be offensive to the decision that you made.

But, of course, they will not hear of that; and of course, they will take their money on July 1 as they snicker about the decision that they handed down to the American people today.

I studied law. I am a lawyer. Granted, since I have been in Congress, I have not practiced law. Granted, I am not a constitutional lawyer, although I studied the Constitution. I would not be considered as a judicial scholar, by any means. But what kind of scholar does one have to be to say to the judicial system in this country, back off? How far, how hard do you want to push this Nation? In a time of war, in a time when this Nation needs to be unified, what do we think are going to be the ramifications to the generation behind us, to the rest of the world that is looking at this country and sees that its own judges, its own judges declare our Pledge of Allegiance unconstitutional? Not only do they declare it unconstitutional, they issue a dictate that says that this Pledge of Allegiance may not be said, may not be said within the walls of our schools.

I mean, I hope that people understand; and I think the millions, the mass of millions of people in the United States of America understand the slap that was just struck across their face. The refusal, the rejection of the American principle of God and liberty, regardless of what one's God is, that God and liberty and freedom and strength were rejected today by some of the people in whom we put our highest confidence. These judges ought to resign in shame.

Now, I know, I know the arguments. Look, I used to be a cop, I heard the defense attorneys, and I know tomorrow the American Civil Liberties Union and some of these other people will stand up and talk about the bravery of these judges, to stand up against popular opinion, as if popular opinion is always wrong; to stand up against popular opinion and say, the Pledge of Allegiance was unconstitutional, and somehow they want a feather in their cap and a badge on their vest.

Mr. Speaker, there comes a time when we ought to consider the circumstances in our Nation. There comes a time when we have to say, why do we need to take this issue on? As if there is nothing more important in this world going on; as if this is the psychological blow that the American people need right now, and that is to tell them that when their children go to school, it is taboo for their children to say the Pledge of Allegiance; to the finest country in the history of the world, the strongest country on the face of the Earth. I do not mean just strong militarily. I mean strong as far as what it does for other countries; strong as far as what it does for the poor people in this world; strong as far as what it does for its contributions of inventions, of mechanical inventions, of medical inventions, of medicine, of prescriptive services. I mean think about this.

Mr. Speaker, do we know what these judges are? They are elitists. They are in an ivory tower out there in California, and they take for granted the fact of the hundreds of thousands of American soldiers who have died throughout the history of our country to keep this country free. I would like my colleagues to show me one soldier tomorrow that is going to say to us that their children, that children should not say the Pledge of Allegiance, that our Pledge of Allegiance is unconstitutional.

Now, I do take some reluctance in criticizing the judges' opinion. I think the judiciary has to have some flexibility. But by God, and I said that word just a minute ago, because I mean it. I hope He is not paying much attention; or He or She or whoever that God is, I hope they are not paying much attention as to what these judges in our country did today. I hope the patriotism that all of these hundreds of thousands of soldiers that are now dead and the patriotic cause for which they gave their lives, or maybe not their lives, but gave their career; or maybe not their career, but gave some time in their lives to go to bat for this country, I wonder what they are thinking today about why these judges did not go to bat for our country, why these judges have to stretch the law so far, so extreme. This is such a liberal interpretation of this that they would have the audacity or maybe the ignorance or maybe the stupidity to come to a Nation as great as this Nation, as a part of this Nation, which has given them everything they have, by the way; those judges have their jobs as a result of these soldiers, as a result of the citizens of this country.

The judiciary has the respect that it does because we do indoctrinate our kids at a young age, like every other country in the history of the world does. We educate them about what a great country it is. We do try and get an allegiance to this country built up early. Is that too much to ask? Is it too much for these judges to swallow that a country says to the citizens of this country, look, we have an allegiance to this country? We have an allegiance to our flag. We have to be willing to fight for the freedom and the principles and the Declaration of Independence. We need these things. Is the next thing they are going to throw out is the Declaration of Independence because it has ''God'' in it, and that those rights and those thoughts and those philosophies and that idealogy expressed in the Declaration of Independence should no longer be taught in the classroom because it has ''God'' in it? Give me a break. What is going on here?

Mr. Speaker, we cannot allow this to stand. Those judges, those judges should be isolated; and I will tell my colleagues what else. The other body, the leader of the other body who stood up today and agreed with me, and acknowledged that this decision was just pure nuts, ought to let the President judge and get some of these judicial balanced appointments in, get some people in that are balanced. I mean, this decision is so extreme, so radical, that tomorrow when all of America wakes up, and wait until our Americans overseas take a look at this. What do we think it is going to do to them? We talk about discouraging. I mean, we talk about depressing, that is, that your own court would take one of the things that we grew up with and say it is unconstitutional because they use the word ''God'' in it.

I am ashamed. As a lawyer, as an officer of the court, as a United States Congressman, and more importantly than any of that, as a father, as a citizen, I am ashamed, I am ashamed at what that court in California did today, a Federal court, Federal judges who found that the Pledge of Allegiance of the greatest country in the history of the world is unconstitutional.

Do not kid ourselves. Remember years and years ago when the court first came out and said we cannot have a Christmas declaration on Federal land, we cannot have a cross up there at Christmastime; remember when they came out and said, you cannot have prayer in school; when they came out and started ignoring the basic principles, started penetrating family. And people said, oh, it is just some crazy decision; it is not going to go anywhere. This decision, it is so crazy. But do we know what happens? These judicial judges, they kind of grow on themselves. Some of these judges have egos and they are elitists like we cannot believe.

In an ivory tower they begin to think more and more and bigger and bigger of themselves, and the next thing we know they give another judgment. So do not be surprised. There will be before too long, I am confident of it, some radical liberal will file in the courts that the crucifix, the cross used in our national cemeteries is unconstitutional because it is a symbol of Christianity or a symbol used related to God. Do not be surprised. Although they will use the money, spend the money for their own needs, but they come out and say every American coin, every American dollar that says ''In God We Trust'' ought to be declared unconstitutional, that our money is unconstitutional.

Mr. Speaker, back during the Cold War, I think it was Nikita Kruschev that said with America, all we have to do is be patient and give them enough rope, and they will hang themselves. Give them enough rope, and they will hang themselves. We do not have to go to battle with America. Just give me elitists. Give the elitists enough rope, and they will hang themselves. Give these elitists that declare our Pledge of Allegiance as unconstitutional, just give them enough authority and enough jurisprudence, and pretty soon they will divide their own country.

Many countries throughout the world are amused by this. These countries that hate us: Iraq, Iran, North Korea, think of these countries. They are overjoyed. They look and they see within the family, one of the most respected symbols of the family, of the American family, the family is split. They are probably as surprised as we are; but they are smirking, they are elated, they cannot believe their good luck that the American family is being split, not by outside members, but by members within the family itself, these elitist judges. Those judges should be ashamed of themselves.

Mr. Speaker, I did not think when I went to law school, I never thought throughout my time as practicing law, which I practiced for 10 years, I never thought when I represented the fine State of Colorado in the State House of Representatives, nor did I imagine that being on the House floor of the United States Congress, a privilege and an honor for me, that I would be standing in front of my colleagues talking about these judges in the way that I am, about the disgrace they have brought about to our country. I hope that the generations and generations of their families from now, assuming that this country survives over a long period of time, I hope that their families will look back someday upon the words of my record this evening and understand my anger and my disgrace directed towards them for the decision they made today.

Mr. Speaker, this is not emotionally driven. This is driven by my intense love and my intense belief that this country has to have a guiding light, and that guiding light is not only a supreme being that all of us may or may not believe in or the type of supreme being that one believes in, but a guiding light driven by a sense of patriotism, a guiding light driven by a flag, by a symbol, a guiding light driven by a President with integrity, a guiding light driven by a Pledge of Allegiance. What is wrong with singing a National Anthem? Mr. Speaker, that is probably next, for some reason. These are all tools, tools of protection of democracy; tools that make people come together as a team; tools that are used to excite us about our Nation, that are used to encourage us to rededicate time and time and time again our belief in this fine country. And yet tonight, a couple of judges at a Federal court trash it. I am stunned, disappointed, and even disappointed beyond the point of being angry, but I am ashamed of what these judges have done.

Let me move on to an entirely different subject, the subject of fire and the fires in the State of Colorado. First of all, I will tell my colleagues that my district consists primarily of all of the mountains of Colorado. There are a few mountains that are out of it, but most of the mountains in Colorado are in that district and will remain in that district after redistricting. Our district in Colorado, it is the third district, the highest district in elevation, highest place in the country when you take the elevation. I am pointing out a few of these things because we are having pretty serious problems with a drought out in Colorado.

□ 2245

We do have serious fires. We have had a horrible fire in Durango, Colorado. Yesterday we got a second fire in Durango, Colorado, just across the road; and it was from another origin, another cause. It was caused by an entirely different source. We have a terrible fire raging in Arizona. We had a terrible fire near Denver, still in the Third Congressional District, called the Hayman fires.

But these fires, the national press, all the pictures that we see in the national press would lead us to believe that Colorado has been hit by a bomb; that Colorado, somehow all the mountains are on fire, and that Colorado is a dangerous place to visit. I will tell the Members that on its face is inaccurate.

I have to my left, and I would like to go through this map, what this map does is shows Colorado fire damage. The black spots on this map will show Members where there has been fire damage.

Members have heard about the size of these fires. They are huge. We have heard about them. But when we put it in proportion to the entire State of Colorado, these are not the size areas we imagine by seeing all the pictures in the national press.

Here is that massive, massive fire called the Hayman fire near Denver, Colorado. That fire is about 70 percent contained, meaning that we are 70 percent around it. We are going to whip that fire. That fire got the best of us for a few days. But all the publicity Members heard, that is where that fire is. That fire does not have any national park in it. It has part of a national forest. We have closed part of that national forest down.

We have numerous national forests that are still open for the public that are not affected by this fire. We have four national parks that are not affected by this fire that are open for the public. We have thousands and thousands of tours and attractions, tourist attractions, that are not affected by this fire that are open.

If Members wanted to camp in this black spot, of which I would guess, of the people who visit in Colorado, probably less than one ten-thousandth of a percent of the visitors we have every year in our State, less than one ten-thousandth of a percent of the total visitors that come to our State every year would camp or be in these particular areas to visit. Members' visit or vacation to Colorado would not in all likelihood be in any of these black areas of Colorado.

Durango is down here in this black area. It probably is not a very accurate depiction. I am looking for a date. This is 3 days old. This map is 3 days old, so Durango would be down in this area about right over here where this little black mark is right here. That is the Durango fire. That black mark has grown. But Durango, the City of Durango, has not burned down.

In fact, if Members want to go visit a community, right after the New York City disaster what a lot of us in this country said would help New York was to go visit New York. What would help Durango, Colorado, what would help Colorado, is to go visit Colorado, go have a vacation over there.

There are lots of things that can be done, and we can help the State and help Durango. Durango needs our help. Why? Not because the city has burned. It has not burned at all. It needs our help because the perception out there is that we ought to cancel our vacations to Colorado.

In fact, one of our State newspapers ran an article to say, hey, come back next year. That on its face is an absurd statement. As I said, 99 and some percent of this State is unaffected by those black marks, and the majority of those black marks up near Glenwood Springs, for example, in Glenwood Springs, I do not think, and I am from there, I was born and raised there so I know the fire pattern very well, I do not think one campground in Glenwood springs was closed as a result of this fire, or is closed as a result of this fire. I might be off by one. But there is so much area around Glenwood Springs.

This is the flattop region. Look at all this area. There are hundreds and hundreds of thousands of square miles, or, excuse me, hundreds and hundreds, millions of acres and hundreds of thousands of square miles, I guess would be

Mr. LINDER: Committee on Rules. House Resolution 465. Resolution providing for consideration of the bill (H.R. 4954) to amend title XVIII of the Social Security Act to provide for a voluntary program for prescription drug coverage under the Medicare Program, to modernize and reform payments and the regulatory structure of the Medicare Program, and for other purposes (Rept. 107–553). Referred to the House Calendar.

TIME LIMITATION OF REFERRED BILL

Pursuant to clause 2 of rule XII the following action was taken by the Speaker:

H.R. 4984. Referral to the Committee on Ways and Means extended for a period ending not later than June 28, 2002.

H.R. 4985. Referral to the Committee on Ways and Means extended for a period ending not later than June 28, 2002.

H.R. 4986. Referral to the Committee on Ways and Means extended for a period ending not later than June 28, 2002.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. MCINNIS (for himself and Mr. HAYWORTH):

H.R. 5017. A bill to amend the Temporary Emergency Wildfire Suppression Act to facilitate the ability of the Secretary of the Interior and the Secretary of Agriculture to enter into reciprocal agreements with foreign countries for the sharing of personnel to fight wildfires; to the Committee on Agriculture, and in addition to the Committees on Resources, International Relations, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. NEY (for himself and Mr. HOYER):

H.R. 5018. A bill to direct the Capitol Police Board to take steps to promote the retention of current officers and members of the Capitol Police and the recruitment of new officers and members of the Capitol Police, and for other purposes; to the Committee on House Administration. considered and passed.

By Mr. RANGEL (for himself, Mr. DINGELL, Mr. HOLDEN, Mr. MALONEY of Connecticut, Mr. ROSS, Mr. SHOWS, Mr. BROWN of Ohio, Mr. STARK, Mr. WAXMAN, Mr. PALLONE, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Mr. BACA, Mr. BAIRD, Mr. BALDACCI, Ms. BALDWIN, Mr. BARCIA, Mr. BARRETT, Mr. BECERRA, Ms. BERKLEY, Mr. BERRY, Mr. BLUMENAUER, Mr. BONIOR, Mr. BORSKI, Mr. BOSWELL, Mr. BOUCHER, Mrs. CAPPS, Mr. CAPUANO, Mr. CARDIN, Ms. CARSON of Indiana, Mrs. CHRISTENSEN, Mr. CLAY, Mr. CONYERS, Mr. COYNE, Mr. CROWLEY, Mr. CUMMINGS, Mr. DAVIS of Illinois, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DEUTSCH, Mr. DOYLE, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mr. FILNER, Mr. FRANK, Mr. FROST, Mr. GEPHARDT, Mr. GONZALEZ, Mr. GORDON, Mr. GREEN of Texas, Mr. HASTINGS of Florida, Mr. HILLIARD, Mr. HINCHEY, Mr. HINOJOSA, Mr. HONDA, Mr. HOYER, Mr. ISRAEL, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Mr. JOHN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KANJORSKI, Ms. KAPTUR, Mr. KENNEDY of Rhode Island, Mr. KILDEE, Ms. KILPATRICK, Mr. KLECZKA, Mr. LAFALCE, Mr. LAMPSON, Mr. LANGEVIN, Mr. LANTOS, Mr. LARSON of Connecticut, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mrs. LOWEY, Mr. LYNCH, Mrs. MALONEY of New York, Mr. MARKEY, Mr. MASCARA, Mr. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCARTHY of Missouri, Ms. MCCOLLUM, Mr. MCDERMOTT, Mr. MCGOVERN, Ms. MCKINNEY, Mr. MCNULTY, Mr. MEEHAN, Mrs. MEEK of Florida, Mr. MEEKS of New York, Mr. GEORGE MILLER of California, Mr. MURTHA, Mr. NADLER, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OBERSTAR, Mr. OLVER, Mr. ORTIZ, Mr. OWENS, Mr. PASTOR, Ms. PELOSI, Mr. PHELPS, Mr. RAHALL, Mr. REYES, Ms. RIVERS, Mr. RODRIGUEZ, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. SANDLIN, Mr. SAWYER, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCOTT, Mr. SERRANO, Ms. SLAUGHTER, Ms. SOLIS, Mr. STRICKLAND, Mr. STUPAK, Mr. THOMPSON of Mississippi, Mrs. THURMAN, Mrs. JONES of Ohio, Mr. TURNER, Mr. UDALL of New Mexico, Mr. UNDERWOOD, Mr. VISCLOSKY, Ms. WATSON, Mr. WEINER, Mr. WEXLER, Ms. WOOLSEY, Mr. WYNN, Mrs. NAPOLITANO, and Ms. MILLENDER-MCDONALD):

H.R. 5019. A bill to amend titles XVIII and XIX of the Social Security Act to provide for a voluntary Medicare prescription medicine benefit, to provide greater access to affordable pharmaceuticals, to revise and improve payments to providers of services under the Medicare Program, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. YOUNG of Alaska (for himself, Mr. QUINN, Mr. FERGUSON, Mr. KENNEDY of Minnesota, and Mr. FRELINGHUYSEN):

H.R. 5020. A bill to authorize the Surface Transportation Board to direct the continued operation of certain commuter rail passenger transportation operations in emergency situations, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. BEREUTER:

H.R. 5021. A bill to authorize the Secretary of the Interior to grant an easement to facilitate access to the Lewis and Clark Interpretive Center in Nebraska City, Nebraska; to the Committee on Resources.

By Mr. FLAKE (for himself, Mr. DELAHUNT, Mrs. EMERSON, Mr. MCGOVERN, Mr. SHAYS, Ms. BALDWIN, Mr. TOWNS, Mr. OTTER, Mr. PAUL, Mr. STENHOLM, Mr. BERMAN, Mr. LYNCH, Mr. ROEMER, Mr. LAMPSON, Mr. ABERCROMBIE, Mr. DOOLEY of California, Ms. SOLIS, Mr. MORAN of Kansas, Mr. TANNER, Mr. JOHNSON of Illinois, Mr. THOMPSON of California, Mr. FARR of California, Mr. KIND, Mr. BERRY, Mr. NETHERCUTT, Mr. ROSS, Mr. CLAY, Mr. SNYDER, Mr. RANGEL, Mr. KLECZKA, and Mr. BOOZMAN):

H.R. 5022. A bill to allow travel between the United States and Cuba; to the Committee on International Relations.

By Mr. MARKEY:

H.R. 5023. A bill to establish a task force to evaluate and make recommendations with respect to the security of sealed sources of radioactive materials, and for other purposes; to the Committee on Energy and Commerce.

By Mr. OBERSTAR (for himself, Mr. CLEMENT, Ms. BROWN of Florida, Mr. BALDACCI, Mr. CUMMINGS, Ms. NORTON, Mr. PASCRELL, Mr. SANDLIN, Mr. MASCARA, Mr. BAIRD, Mr. BLUMENAUER, Mr. FILNER, Mr. NADLER, Mr. HOLDEN, Mr. DEFAZIO, Mr. LAMPSON, Mr. BORSKI, Mr. HONDA, Mr. COSTELLO, Mr. GREEN of Texas, Mr. HOLT, and Mr. ISRAEL):

H.R. 5024. A bill to direct the Secretary of Transportation to make a loan guarantee available to Amtrak; to the Committee on Transportation and Infrastructure.

By Mr. PALLONE:

H.R. 5025. A bill to enhance the criminal penalties for illegal trafficking of archaeological resources, and for other purposes; to the Committee on the Judiciary, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. PAUL:

H.R. 5026. A bill to amend the Internal Revenue Code of 1986 to provide for a nonrefundable tax credit for law enforcement officers who purchase armor vests, and for other purposes; to the Committee on Ways and Means.

By Mr. PAUL:

H.R. 5027. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for police officers and professional firefighters, and to exclude from income certain benefits received by public safety volunteers; to the Committee on Ways and Means.

By Mr. PETERSON of Minnesota:

H.R. 5028. A bill to amend the Small Business Act to prohibit the Small Business Administration from selling loans made by the Administration under the Disaster Loan program; to the Committee on Small Business.

By Mrs. TAUSCHER:

H.R. 5029. A bill to provide that for taxable years beginning before 1980 the Federal income tax deductibility of flight training expenses shall be determined without regard to whether such expenses were reimbursed through certain veterans educational assistance allowances; to the Committee on Ways and Means.

By Mr. YOUNG of Alaska (for himself and Mr. HANSEN):

H.R. 5030. A bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to clarify the definition of ''essential fish habitat'', and for other purposes; to the Committee on Resources.

By Mr. PICKERING:

H.J. Res. 102. A joint resolution proposing an amendment to the Constitution of the United States to guarantee the right to recite the Pledge of Allegiance to the Flag; to the Committee on the Judiciary.

By Mr. GILCHREST (for himself, Mr. JONES of North Carolina, and Mr. SAXTON):

H. Con. Res. 427. Concurrent resolution expressing the sense of the Congress regarding the imposition of trade sanctions on nations that are undermining the effectiveness of conservation and management measures for Atlantic marlin adopted by the International Commission for the Conservation of Atlantic Tunas and that are threatening the continued viability of United States commercial and recreational fisheries; to the Committee on Resources.

By Mr. HILLEARY:

H. Con. Res. 428. Concurrent resolution expressing the sense of the Congress that recitation of the Pledge of Allegiance in schools is consitutional under the First Amendment

Weberman from the Michael-Ann Russell Jewish Community Center for their tireless efforts in making this rally a giant success. The event included a variety of speakers from different religious denominations, parochial schools, youth groups and community organizations.

The rally provided an opportunity for folks to voice their support for the State of Israel and gave them specific information on the different ways that they can help both of our countries fight the international war on terrorism.

I want to especially thank those organizers of the Interfaith Solidarity with Israel rally for uniting our community in its support for this embattled country.

AMERICA'S SENIORS WANT GUARANTEED ACCESS TO MEDICINES

(Mrs. CHRISTENSEN asked and was given permission to address the House for 1 minute.)

Mrs. CHRISTENSEN. Mr. Speaker, left to the Republican sham prescription drug bill, our parents, including individuals with disabilities, will find themselves at the mercy of private HMOs having to search for a plan. America's seniors want guaranteed access to the medicines their doctors prescribe at prices they can afford, and they depend on that guarantee for help and for life.

The only bill on the floor today guarantees no prescription drug benefit. The plan the Republicans are trying to force on this country does nothing to curb soaring drug prices, not enough to restore provider payments and does everything to benefit private insurance companies.

Our plan, the Dingell bill, honors our responsibilities to this Nation's seniors, gives them coverage for any drug their doctor prescribes, and guarantees that beneficiaries always have coverage, with lower monthly premiums and a lower out-of-pocket maximum. Our plan beats theirs any day and in any way. That is why we are being denied a chance to offer it.

That is not fair to us, their colleagues, and it disrespects those who sent us here; but it is most unfair to the seniors and their families who need real help with medication now.

ENERGY INDEPENDENCE THROUGH FUEL CELLS

(Mrs. BIGGERT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BIGGERT. Mr. Speaker, I rise this morning to highlight the promise and the potential of fuel cells in hydrogen to help us gain greater energy independence in a way that is safe, clean and renewable.

Often called minipower plants, fuel cells could hold the key to energy independence for America. In an article entitled ''Squeaky Clean,'' the magazine The Economist referred to fuel cells as the next big thing, and the most promising fuel cells operate on hydrogen, which the magazine Physics Today referred to as the fuel of the future.

We know their potential. Zero emissions. Water and heat are the only byproducts, and when both heat and electricity are used, fuel cells can obtain more than 80 percent efficiency.

Researchers at our national science labs, corporations, universities and small businesses are working hard to help us realize the potential of fuel cells.

America has the ingenuity and the expertise to meet our future energy demands, and fuel cells can help us to do so in an environmentally responsible way that sets a standard for the world.

WOMEN AND PRESCRIPTION DRUGS

(Ms. SOLIS asked and was given permission to address the House for 1 minute.)

Ms. SOLIS. Mr. Speaker, women in this country need a Medicare drug benefit now. In the State of California, 56 percent of Medicare recipients are women. These elderly women have on the average spent about 10 percent of the cost for prescription drugs there, but this year alone their costs went up about 20 percent; and for people from my district particularly, this is a very, very extreme hardship.

Most are on fixed incomes and cannot afford those costs, and they believe the plan that is being proposed by the Republicans today will actually make their lives worse. I know that because their plan will help to benefit HMOs and insurance companies and it is a farce. They are saying that our current drug benefit program is a Soviet-style form of government. That cannot be farther from the truth.

When I go into my senior citizen centers, the first thing people ask me is, HILDA SOLIS, you are my representative, why is there not a better benefit program so I can pay for my treatment that I need to control my diabetes, to get my insulin, to pay for the things that I need to survive?

Let us do the right thing today. Let us vote for a Democratic substitute that is fair for all people.

ASTONISHMENT AND OUTRAGE AT RULING OF NINTH CIRCUIT COURT OF APPEALS

(Mr. GIBBONS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GIBBONS. Mr. Speaker, today I rise to express my astonishment and outrage at the ruling of the Ninth Circuit Court of Appeals, which declared the Pledge of Allegiance to be unconstitutional. Mr. Speaker, what could this court be thinking? Under their reasoning, our money would be unconstitutional, the Presidential oath would be unconstitutional, and yes, this very Chamber, the House of Representatives, would be unconstitutional.

To call the Pledge of Allegiance unconstitutional is the highest embarrassment for our judicial system, and this ruling undermines everything our Nation stands for, principles set back in 1776, as well as the Declaration of Independence, which by the way includes the word God as well.

Mr. Speaker, is the very document that announced our Nation's independence also unconstitutional? Next week we will be celebrating our Nation's independence, and I hope every American will remember and celebrate our Nation's traditions, including expressing our unity as one Nation under God, indivisible, with liberty and justice for all, and may God bless America.

REPUBLICANS DENYING OUR SENIORS RELIEF THEY NEED

(Mr. DOGGETT asked and was given permission to address the House for 1 minute.)

Mr. DOGGETT. Mr. Speaker, today Republicans refuse to permit consideration of a prescription drug plan for our seniors on the very same day that one of their leaders condemns the basic Medicare program as a Soviet-style program. The Republicans have no prescription drug plan, only a scheme to privatize Medicare and to protect prescription drug manufacturers. They want to turn seniors over to HMOs with no guaranteed deductible, no guaranteed premium, and no guaranteed benefit. Some plan.

The House Republican leadership has once again pledged its allegiance to the pharmaceutical manufacturers who are the price gougers that forcing our seniors to pay the highest prices of any people in the entire world. Little wonder that these same manufacturers are already on the airwaves across America paying millions for ads to defend their Republican House partners who are trying today to deny our seniors the relief they so very desperately need.

□ 1115

LIBERAL COURTS ERR AGAIN

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, our liberal friends in the Federal courts have erred again. The 14th amendment says that no State, and I quote, ''shall deprive any person of life, liberty, or property without due process of law.'' Yet late last year the Supreme Court ruled that this guaranteed doctors the right to impale partially-born babies in the skull with scissors and extract them dead from their mother's birth canals.

The first amendment says America cannot have an official State church,

like England has, and I quote, ''Congress shall make no law respecting an establishment of religion.'' Yet a Federal judge in my district has recently ruled that the Ten Commandments have to be taken down from the county courthouse wall where they have stood for 82 years.

The first amendment says, ''Congress shall make no law prohibiting the free exercise of religion.'' Yet, despite this, the 9th Circuit court ruled yesterday that in school children are not allowed to recite the Pledge of Allegiance any more, even though they have been doing it since 1892.

Mr. Speaker, the judicial branch of government is out of control. They are making a mockery of our Constitution. The Congress and the President must stand up to the radical activist judges and make things right again.

HOUSE DIVIDED ON PRESCRIPTION DRUG PLAN

(Mr. CROWLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CROWLEY. Mr. Speaker, 9 months ago I stood on this floor and talked about the attack upon my great city, the City of New York. Never before in my 4 years in this Congress had I felt this House and this country more united than at that moment.

The pundits began to speak, and they began to ask questions like, how long would it last; how long would this House stay united; and would it be the Democrats or the Republicans who would blink first? Unfortunately, it has been the Republicans.

Today, they offer a prescription drug plan without giving the opportunity for this side of the aisle to present our plan, without having a fair vote up and down on both. They know the Democratic side would win. This bill, our bill, would win the day.

It appears in the middle of the night that there was an election held, that there are now 436 Members of Congress. Robert Ingram, I do not know which State he is from, but he has already proven himself to be a great fund-raiser for the Republican side of the aisle. He has raised $250,000 from GlaxoSmithKline, apparently his former company; from Pfizer, $150,000; from Merck, $150,000. The money is where this bill follows, and the American people are going to know about it.

This House has been brought asunder not by the Democrats but by the Republicans today, by their actions. It is intolerable, and the American people should know about it and know fully what happens today.

PRAISING MANCOR CAROLINA

(Mr. JOE WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, I rise to commemorate the 50th anniversary of Mancor Carolina, located in Lugoff, in Kershaw County, South Carolina.

In 1987, Mancor opened a manufacturing business with 45 employees, serving customers such as Dana Corporation and Mack Trucks.

In 1998, Dilip Teppara became Vice President and General Manager of Mancor Carolina. During the last 4 years, under Mr. Teppara's leadership, Mancor has more than doubled its sales; and the company has grown to nearly 175 employees.

Mancor Carolina is now a major supplier to companies such as Dana in Lugoff, Freightliner in Gaffney, John Deere in Augusta, Komatsu in Newberry, Caterpillar, and Mack Trucks in Winnsboro. Mancor is one of the largest private employers in Kershaw County, and the company is undergoing a multimillion dollar expansion which will create new jobs for the community.

I want to commend Mr. Poul Hansen, Mr. Preben Ostberg, and Mr. Art Church for their vision in making Mancor Carolina a world-class manufacturing company. Most importantly, though, the success of Mancor Carolina is due to its employees and their families. Mancor would not be where it is today without their commitment, sacrifice, and dedication.

KEEP MEDICARE PUBLIC

(Mr. BROWN of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Speaker, 37 years ago, the majority Republicans voted against the creation of Medicare, which has turned out to be probably the single best program the U.S. government has ever sponsored.

Republican leader Newt Gingrich said that Medicare should wither on the vine. The Republicans, in the late 1990s, proceeded to cut $250 billion from Medicare. Today, our Republican leader in the Committee on Rules labeled Medicare a Soviet-style program. In my 10 years in Congress, the only people I have found that are hostile to Medicare, that do not like the Medicare program, are my Republican friends on that side of the aisle.

Today, we have a choice. We have a choice between a Medicare prescription drug plan written for America's seniors or a private insurance plan written, the Republican's private insurance plan, written by and for the drug companies, which will privatize Medicare.

Let us keep Medicare public, let us pass a prescription drug benefit that works for seniors, not for the drug companies.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2003

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 461 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 461

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 5010) making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. After general debate the bill shall be considered for amendment under the five-minute rule. Points of order against provisions in the bill for failure to comply with clause 2 of rule XXI are waived. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. That upon the adoption of this resolution it shall be in order, any rule of the House to the contrary notwithstanding, to consider concurrent resolutions providing for adjournment of the House and Senate during the month of July.

The SPEAKER pro tempore (Mr. LATOURETTE). The gentlewoman from North Carolina (Mrs. MYRICK) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST); pending which I yield myself such time as I may consume. During consideration of the resolution, all time yielded is for purposes of debate only.

Yesterday, the Committee on Rules met and granted an open rule for H.R. 5010, the fiscal year 2003 Department of Defense Appropriations Act. The rule provides for 1 hour of general debate equally divided between the chairman and ranking minority member of the Committee on Appropriations.

This is a fair and open rule for a very important bill. It cannot get any better than that. The rule allows any Member to offer any amendment to the bill, as long as their amendment complies with the normal rules of the House.

The defense appropriations bill provides the tools and the resources for our military to wage an aggressive war against terrorism while defending our Nation against an ever-changing military threat. In our global campaign against global terror, our military must have every resource, every tool, every weapon and every advantage they need for the missions to come.

the children, spouses and parents they left behind. Let us never forget those who returned, many disabled. If we can remember these worthy veterans on Memorial Day, we ought to honor them on Election Day. Let's do all in our power to put more upcoming Ed Conroy's in City Hall, on the County Council, in our State House, and in the Congress. We have the opportunity to do so with elections coming up in the Fall. They served us so well in war—and they would do as well in preserving the peace.

Our very own heroes—Bill Hickey in World War II, Ed Conroy in Korea, and Captain Jim Graham, Butch Joeckel, and John Clements in Vietnam—they represent the best that America has to offer. They are object lessons themselves. They made history. Hopefully, our young people will be inspired by their example.

If America is to remain great, it may indeed depend on how well we continue to inspire our youth to excel. Our noted Sons of Prince George's County have shown the way.

Thank you—and God Bless America.

IN RESPONSE TO THE NINTH CIRCUIT COURT OF APPEALS' RULING ON THE PLEDGE OF ALLEGIANCE

HON. ADAM H. PUTNAM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 26, 2002

Mr. PUTNAM. Mr. Speaker, I am fortunate to have many veterans residing in my district. When I heard of the appalling actions of the Ninth Circuit Court of Appeals—ruling that the Pledge of Allegiance was unconstitutional—my thoughts turned to them. We are a nation standing strong today because those heroes pledged their allegiance to America with their lives, their tears and their sacred honor. What must our troops in the field today think?

Our Country came into being through a Declaration of Independence that acknowledged that we are endowed by our Creator with the unalienable rights of life, liberty and the pursuit of happiness. This is clearly an acknowledgement in the very founding document of this Nation that we are indeed ''one Nation under God.''

When I conclude a constituent letter with ''God bless America'' is my action unconstitutional? Should that be banned, too? I stand with the tradition that allows the President to put his hand on the Bible, pledge to protect and defend the Constitution and conclude his oath with the words of George Washington, ''So help me God.''

It is sad that at a time when our country is at war and Americans have a renewed sense of patriotism—and what allegiance to America costs—this court is driving a wedge between us with their absurd ruling. It is my fervent hope that a common sense reading of the Constitution will eventually prevail and that liberal judges will end their war on religion in America.

As countless American leaders of all political stripes have said before me, God Bless America.

NINTH CIRCUIT COURT OF APPEALS' RULING

HON. CHARLES W. ''CHIP'' PICKERING

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 26, 2002

Mr. PICKERING. Mr. Speaker, today the latest in a string of absurd court decisions was handed down from a Federal Appeals Court in San Francisco. This court decided that the Pledge of Allegiance was unconstitutional and cannot be recited in schools.

This is an unfortunate assault on America's tradition of recognizing the role of God in our country's life and as a foundation of our liberties.

This most outrageous decision cannot and will not stand. Our forefathers authored the 1st Amendment to protect Americans from a ''national church or national doctrine'' not from the Pledge of Allegiance. For far too often the most liberal Members of our courts have abused the 1st Amendment to remove any acknowledgment of God or a higher being from the Federal Government and our daily life.

I would simply remind my colleagues that we sit in a chamber that has the words ''In God We Trust'' engraved on the wall. From the beginning of our Republic a higher being has been acknowledged by this government and the Pledge of Allegiance simply is consistent with that history and tradition.

It is hardly comparable to note that the Pledge of Allegiance is relative to the establishment of a national religion, church or doctrine.

The court in San Francisco is the most overturned appeals court in the Nation. I am confident that this decision will also be overturned, but to ensure that the Pledge of Allegiance continues to be observed I am introducing legislation to amend the Constitution to ensure the Pledge of Allegiance is constitutionally protected speech.

A RISING NATION, UNDER GOD THIS FOURTH OF JULY

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 26, 2002

Mr. RAHALL. Mr. Speaker, listen again to the words we will hear this Fourth of July: ''We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.''

Given the recent Federal Court ruling about the constitutionality of our pledge of allegiance, will the day come when a Federal Court of these United States will not allow our Declaration of Independence to be read or posted on the walls of our schoolrooms across this land? I pray not.

We must always be mindful that the moral fiber of this Nation was built not upon the law of man, but rather upon the law of God.

''The longer I live, the more convincing proofs I see of this truth,'' said Benjamin Franklin, ''that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice—is it probable that an empire can rise without his aid?''

Throughout our Nation's history we have faced many challenges, fought many battles. But from troubled times, we've gained greater victories. To the American, trouble but fuels our soul. Ignites our spirit. Trouble forges our future's strength. September 11th's legacy will be no different.

This Fourth of July, let us pause to give thanks to the almighty—to remember, reclaim, and rejoice in our national spirit born of revolution, our national quest.

In President Jefferson's first inaugural address, he called us ''A rising nation, spread over a wide and fruitful land, traversing all the seas with the rich productions of their industry . . . advancing rapidly to destinies beyond the reach of mortal eye.''

Mountaineers are always free. We live Jefferson's words. The spirits of Flood ravaged West Virginians fan the flames of future's hope.

''The God who gave us reason,'' Jefferson said, ''did not ask us to forego its use.'' And truly America has taken his words to heart. We pursue life, liberty and happiness in this great Nation with great passion.

And so it should be.

Next January, our Nation will celebrate the 200th Anniversary of Jefferson's legacy, the Lewis and Clark Expedition, a national quest that has inspired us ever since. Freedom paves the path of our national quest.

As we face new economic realities in West Virginia, we seek not only new industries, but also new economies. From new infrastructure to new technologies, we are working to build a new and brighter West Virginia.

As we face the war on terrorism, we grieve for the terrible toll it has already taken, the lives of West Virginia's precious sons and daughters. Let us remember that their sacrifice was for our quest not to falter or to fail, but rather to set sail and soar.

The rights for which our founding fathers and mothers so valiantly pledged their lives, fortunes and sacred honors—and might I add they did so, and I quote, ''with a firm reliance on the protection of divine Providence,''—require the same from us in times of peace—and in times of war.

Jefferson's last letter, which was read on July 4th 1826 in Washington, DC, the day he would pass from this earth—concluded, ''For ourselves, let the annual return of this day forever refresh our recollections of these rights and an undiminished devotion to them.''

Our national quest shall endure. We remain a rising nation. The Fourth of July is our constant reminder, and the good Lord, our constant strength, despite what any court, judge, or jurisdiction of this government says to the contrary.

IN HONOR OF VINCENT J. BILARDO, JR.

HON. KAREN McCARTHY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 26, 2002

Ms. McCARTHY of Missouri. Mr. Speaker, I rise today to pay tribute to an outstanding individual and dedicated public servant from the State of Missouri. On July 26th, Vincent J. Bilardo, Jr. will be ending his current assignment from the U.S. Army Corps of Engineers

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, WEDNESDAY, JUNE 26, 2002 *No. 87*

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JACK REED, a Senator from the State of Rhode Island.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, we cherish our freedom but remember that freedom is not free. This week, as we prepare for the Fourth of July celebration, we remember that freedom cost the signers of the Declaration of Independence a great deal. On that hallowed document, 56 men placed their names beneath the declaration and pledged their lives, their fortunes, and their sacred honor. And they did, indeed, pay the price for freedom.

Of the 56 men, few were long in service: Five were captured and tortured before they died; twelve had their homes ransacked, looted, occupied by the enemy, or burned; two lost their sons in the Army; one had two sons captured; 9 of the 56 men died during the war from its hardships. They served in Congress without pay and they loaned their money to fight the war and were never reimbursed.

Thank You, Lord, for great leaders in every generation. We are grateful for the men and women of this Senate as they commit their lives and sacred honors for our beloved Nation and the cause of freedom. ''Long may our land be bright, with freedom's holy light!'' Amen.

PLEDGE OF ALLEGIANCE

The Honorable JACK REED led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 26, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JACK REED, a Senator from the State of Rhode Island, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. REED thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

Mr. REID. Thank you very much, Mr. President.

MEASURE PLACED ON THE CALENDAR—H.R. 3971

Mr. REID. Mr. President, I understand H.R. 3971 is at the desk and due for its second reading.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. REID. I ask that H.R. 3971 be read for a second time, but then I would object to any further proceedings at this time.

The ACTING PRESIDENT pro tempore. The clerk will read the title of the bill for the second time.

The legislative clerk read as follows:

A bill (H.R. 3971) to provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover.

The ACTING PRESIDENT pro tempore. Objection to further proceeding on the bill having been heard, the bill will be placed on the calendar.

SCHEDULE

Mr. REID. Mr. President, the Senate will be in a period of morning business, which the Chair will announce shortly, with the first 30 minutes under the control of the majority leader, and our first speaker, Senator KENNEDY, will be his designee, and the second 30 minutes under the control of the Republican leader. There will be additional time for morning business—probably 20, 25 minutes—and that will be equally divided in the usual form. At 11 a.m. the Senate will resume the Department of Defense authorization bill.

Last night the majority leader filed a cloture motion. Therefore, all first-degree amendments must be filed prior to 1 p.m. today. Any amendments that have already been filed do not need to be refiled.

The two managers of the bill have a number of amendments they hope to have approved, because they have been cleared on both sides, at or around 11 o'clock. At that time, the two managers will announce how they wish to proceed on the legislation.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 11 a.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Massachusetts.

Mr. KENNEDY. Thank you, Mr. President.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

We assess that Iraq can account for Lieutenant Commander Speicher, but that Baghdad is concealing information about his fate. Lieutenant Commander Speicher probably survived the loss of his aircraft, and if he survived, he almost certainly was captured by the Iraqis.

We know, because there is a lot of information to indicate, that he could have survived the ejection from the aircraft and that there is all kinds of intelligence information about what may or may not have happened to him afterwards. We also know that the Iraqis know the answer. They could return Speicher one way or the other, dead or alive, or give us information that would indicate one way or the other.

I don't know if Commander Scott Speicher is alive, but I do know there is no information that he is dead. A lot of information suggests he may be alive. I want to again re-encapsulate this because it is very important. In spite of all the information we had at our disposal up until the last 2 or 3 years, from the early nineties, crossing two administrations, the previous Bush administration and the Clinton administration—in spite of the fact that information was in the DPMO office and in the intelligence office and the Navy, in spite of all of that information that showed an overwhelming amount of evidence that he may have survived, they still declared him KIA and refused to change the status.

When I asked to change the status, I was declared a troublemaker in the secret conversations and documents to which I was not privy. I don't care because the issue is not me. If we can find out that Scott Speicher is alive and could come home to his family, I would like to join my colleague in Jacksonville for that homecoming. But we owe nothing less to the Speicher family than that. All the men and women who serve in uniform in our Nation's military deserve nothing less than that—that the U.S. Government finds out what happens.

We realize we are dealing with a nation and a leader who isn't exactly willing to cooperate and is not the greatest humanitarian the world has ever seen. I don't blame the U.S. Government for that. I do blame the U.S. Government for not sharing this with me. I was not a member of the Intelligence Committee, so I was basically kept from getting the information, frankly, by the chairman of the committee. I wasn't able to get it.

Finally, after raising enough ruckus, I began to challenge the intelligence reports and documents and evidence we were getting, and I was able to get before the committee—even though I am not a member—and ask some questions, and then, subsequently, all this information began to come out. It is amazing.

We know the Iraqis do hold prisoners. They released an Iranian pilot in 1998 who had been held for 18 years. So it is not unprecedented. I hope sincerely that we will move forward. I think the Senator's bill will help. I just caution one thing, which is that we don't turn this thing into a 90-day reporting period and get off focus. The main focus should be, let's find him, or find out what happened to him. And let's do it quickly so that the Senator's legislation will be over with quickly because, hopefully, in the first 90 days we will get the answers. I hope it will not be a series of 90-day reports in succession as we see years and years go by.

If Scott Speicher is alive, the thought of him languishing in some prison cell somewhere in Iraq—God knows what is going on—is a horrible thing to even think about. If he is dead, then Saddam Hussein should tell us what happened to him.

I want to make it clear, before I conclude, that the current intelligence community, starting in the previous administration and then into this one, Admiral Wilson of DIA, and others have been very helpful and very responsive in helping us to get the answers. We have had a number of occasions where we could do that. So I am optimistic and I know the Senator's legislation will help.

NINTH CIRCUIT COURT OF APPEALS RULING

Before I yield the floor, this has an impact here. I want my colleagues to know this because here we are talking now about a missing pilot who was shot down in 1991 in the Persian Gulf war, fighting for his country, for the flag, fighting for this Nation under God, the flag we salute every single day, ''one nation under God.'' I want to announce to my colleagues a decision that just came down from the Ninth Circuit Court—the infamous Ninth Circuit court. Listen to this article on the ruling:

A federal appeals court ruled Wednesday that the Pledge of Allegiance is an unconstitutional endorsement of religion and cannot be recited in schools.

That is the wording of the Ninth Circuit Court.

The 9th U.S. Circuit Court of Appeals overturned a 1954 act of Congress inserting the phrase ''under God'' after the words ''one nation'' in the pledge. The court said the phrase violates the so-called Establishment Clause in the Constitution that requires a separation of church and state.

I will be very brief in deference to my colleague. But they further said:

A profession that we are a nation ''under God'' is identical, for Establishment Clause purposes, to a profession that we are a nation ''under Jesus,'' a nation ''under Vishnu,'' a nation ''under Zeus,'' or a nation ''under no god,'' because none of these professions can be neutral with respect to religion,'' Judged Alfred T. Goodwin wrote for the three-judge panel.

I wonder what Scott Speicher would have to say about that. Unbelievable.

I sponsored, in 1999, at the request of a constituent of mine, legislation to require the Senate—which ironically was not doing it—to cite the Pledge of Allegiance before convening every day. Until 1999, we never recited the Pledge of Allegiance. A constituent was watching C–SPAN one day and said: What in the world is going on? Why don't you guys salute the flag?

I said: I don't know; let's find out.

We implemented it. The House of Representatives recites the Pledge every day. We had a unanimous resolution that passed the Congress. I wish to recite from the resolution because it shows we ought to be pretty outraged by that judicial decision:

Whereas the Flag of the United States of America is our Nation's most revered and preeminent symbol. . . .

And it goes on to talk about the flag and it even talks about the Pledge.

Here we are talking about a Naval officer who may or may not be alive in Iraq who is basically not looked for by his own Government for 10 years, and now we get an appeals court decision in the Ninth Circuit that says we have to take ''under God'' out of the Pledge of Allegiance to the flag of the United States of America.

Frankly, to Judge Goodwin: May God bless us all and pray for us.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, we are going to wind up the debate on our amendment having to do with Scott Speicher, but since the distinguished Senator has told me of two events, I want to comment.

First, the Senator from New Hampshire told me that certain bureaucrats label him a troublemaker. If that is the case, I like that kind of troublemaker.

Second, the Senator from New Hampshire referred to a recent decision by a Federal district court of appeals, of which I was not aware, to take the words ''under God'' out of the Pledge of Allegiance.

I have faith in our judicial system. Senator BYRD, the distinguished senior Senator from West Virginia, reminds all of us to carry around a copy of the Constitution and a copy of the Declaration of Independence. I remind my colleagues the second paragraph of the Declaration of Independence has these immortal words:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Whether it be the judicial system that would correct a decision by a court of appeals which absolutely stuns me or whether it would be the checks and balances found in this Constitution of the United States, to which constitutional amendments can be initiated by this body, then I have the confidence to know that the constitutional system will work under this time-tested document.

I thank the Senator from New Hampshire for bringing that to our attention.

Mr. President, I know of no further debate on the Scott Speicher amendment. I ask the Presiding Officer to put the question.

The PRESIDING OFFICER. The Senator from Nevada.

Committees on Armed Services of the Senate and House of Representatives of—

''(A) an exercise of authority under paragraph (2)(A) of subsection (a) to reduce the 3-year minimum period of required service on active duty in a grade in the case of an officer to whom such paragraph applies before the officer is retired in such grade under such subsection without having satisfied that 3-year service requirement; and

''(B) an exercise of authority under paragraph (5) of subsection (d) to reduce the 3-year minimum period of service in grade required under paragraph (3)(A) of such subsection in the case of an officer to whom such paragraph applies before the officer is credited with satisfactory service in such grade under subsection (d) without having satisfied that 3-year service requirement.

''(2) The requirement for a notification under paragraph (1) is satisfied in the case of an officer to whom subsection (c) applies if the notification is included in the certification submitted with respect to such officer under paragraph (1) of such subsection.

''(3) The notification requirement under paragraph (1) does not apply to an officer being retired in the grade of lieutenant colonel or colonel or, in the case of the Navy, commander or captain.''.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Mississippi.

The amendment (No. 4111) was agreed to.

Mr. ALLARD. I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent the proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I ask unanimous consent Senator NELSON be recognized as in morning business and that we then return immediately to the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Florida.

THE PLEDGE

Mr. NELSON of Florida. Mr. President, a few minutes ago, late-breaking news was called to our attention. As a matter of fact, it was while we were debating the Scott Speicher amendment, which was adopted unanimously on this Defense authorization bill. Sadly, I have confirmed that that news is accurate. A Reuters statement says:

A Federal appeals court found the U.S. Pledge of Allegiance unconstitutional on Wednesday, saying it was illegal to ask U.S. schoolchildren to vow fealty to one Nation under God.

The Ninth Circuit Court of Appeals in San Francisco overturned a 1954 act of Congress that added ''under God'' to the pledge, saying the words violated the basic constitutional tenet of separation of church and state.

It is with a heavy heart that I would have to take the floor—I imagine I am just the first of many—to call to the attention of the Senate, and indeed to call to the attention of the courts, that I think there is substantial legal justification. There is a huge difference between separation of church and state—which we all support—and the separation of the state and of God. There is a huge difference.

The opening ceremony of the U.S. Senate each morning that we go into session is a very solemn occasion. Overlooking this Chamber are the words inscribed in gold, above the middle entrance into this Chamber, above the two stately columns—inscribed in gold: ''In God We Trust.''

The opening ceremony, for those who have not participated in it, is a most solemn occasion about which the historian of this Chamber, one of our own, the distinguished senior Senator from West Virginia—who has been in Congress, if not over a half a century, certainly close to it, Senator BYRD—has taken it upon himself to educate the freshman Senators as to the dignity, the decorum, and the solemnity of the opening ceremony.

When the opening bells ring and those two doors to the left of the rostrum open, in walks the Presiding Officer accompanied by the Senate Chaplain or the especially designated Chaplain for the day.

As the Presiding Officer walks in and starts to mount the rostrum, the Presiding Officer steps up three of the four steps but does not ascend on the fourth step, which is the level of the Presiding Officer's desk and chair. Rather, the Presiding Officer remains on the third step as the Chaplain ascends to the higher level, the level of the rostrum.

This is the symbolic act. It is a symbolic act of raising the dignity of the position of the Chaplain of the Senate, or the designated Chaplain of the Senate for the day, recognizing and elevating the deity, or the representative of divine providence to that position. We do that each day in the Senate.

Mr. JOHNSON. Mr. President, will the Senator yield for a question?

Mr. NELSON of Florida. I am happy to yield to the distinguished Senator from South Dakota.

Mr. JOHNSON. I share the shock and dismay expressed by my colleague, my friend from Florida, over the ruling of the Ninth Circuit Court relative to the Pledge of Allegiance in our schools.

Without having read the decision, other than what has been released within the hour through the media, it would appear that ruling of the three-judge panel of the Ninth Circuit—the Senator will concur that this is only one of our appellate circuits—applies only to the States of that circuit.

Certainly, it would be my hope that this matter would be appealed to the U.S. Supreme Court, and that the Supreme Court would not accept this decision and, hopefully, in my view, overrule the Ninth Circuit Court of Appeals.

Is that the progression of events that my friend and colleague from Florida hopes will be the next step that this particular controversy might take?

Mr. NELSON of Florida. Indeed, under our constitutional system—that is part of what I wanted to point out, and I pointed out to the Senate earlier today—we have a mechanism of checks and balances. The check and balance here is the right of appeal from this court of appeals in San Francisco to the U.S. Supreme Court.

I have the confidence that the Supreme Court's nine Justices representing the entire Nation would understand the difference between separation of church and state as being the difference between the separation of the state and God.

As I was saying, the dignity of this institution is started off each day under the watchful words inscribed in gold above the center door, ''In God We Trust,'' with an opening ceremony in which the position of the Chaplain is actually elevated above the Presiding Officer until the Chaplain delivers the opening prayer which opens the business of the Senate.

Furthermore, I point out to our colleagues that as part of our constitutional heritage—including the Constitution—one of the most important documents in our governmental archives is the Declaration of Independence. I call to the attention of the Senate the words of the second paragraph:

We hold these truths to be self-evident, that men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Then I point out that there are similar words at the end of the Declaration:

And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

I have the confidence to know that when there is a judicial opinion that I think so violates the national understanding and national sense of the proper perspective of a state and divine providence as opposed to the issue that we all support, the separation of church and state so that anyone can worship as they wish if at all, then I think that distinction needs to be clearly made as well as it needs to be reminded of all of the historical significance of our reliance upon divine providence that is a part of the very fabric of this Nation, of this Government, and of the documents upon which this Government was founded.

I see the great Senator from Connecticut standing and I am anxious to hear what he has to say. Should all else fail, even in a judicial interpretation, there is another check and balance given to us by this document; that is, the will of this Nation can be expressed by the amending or an addition to this document, the Constitution. We can start right here in this legislative body by the process of adding to the Constitution, amending the Constitution

by the legislative branch's initiative of proposing a constitutional amendment.

I have great confidence in the system—that this judicial decision by the Ninth Circuit Court of Appeals is not going to stand.

I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from Connecticut is recognized.

Mr. LIEBERMAN. I thank the Chair.

Madam President, I rise to join my friend and colleague from Florida, Senator NELSON, in expressing dismay, outrage, and amazement at the news today of the decision by the Ninth Circuit Court declaring the recitation of the Pledge of Allegiance unconstitutional.

I say to my friends from Florida and friends in the Chamber, when my staff members told me this, I, frankly, thought they were joking. This is a decision that offends our national morality, that rejects the most universally shared values of our country, that diminishes our unity, and that attempts to undercut our strength at a time after September 11 when we need the strength, unity, and our shared belief in God which has historically brought the American people together, and does so today.

There may have been a more senseless, ridiculous decision issued by a court somewhere at some time, but I have never heard of it. I find the decision by this court hard to believe.

I remember a day, I say to my friends, a decade or so ago when the Supreme Court issued a ruling saying that it was unconstitutional for a clergymen—in that case, it was a Rabbi—to give an invocation at a high school graduation in Rhode Island. I couldn't believe that decision. In some sense this decision is its progeny. It offends the very basis of our rights as Americans.

My friend from Florida read from the Declaration of Independence. According to their decision of the Ninth Circuit Court, the reading of the Declaration of Independence is unconstitutional.

If that isn't turning logic and morality on its head, I do not know what is, because the paragraph is the first statement by the Founders of our independence and the first declaration of the basis for our rights that have so distinguished our history in the 226 years since.

First paragraph:

> When in the Course of human events . . . and to assume among the powers of Earth, the separate and equal station to which the Laws of Nature and Nature's God entitle them.

Right there is the basis of the assertion of independence—the rights that we have under ''the Laws of Nature and Nature's God.''

And then the second paragraph, famous to every schoolchild and American citizen:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

So that the premise of the rights that have distinguished America for the 226 years since, that were embraced in the Constitution as an expression of the declaration, all come from God, not from the Framers and the Founders, as gifted as they were, not from the philosophers of the enlightenment who affected their judgments, but were the endowment of our Creator.

And that judgment has framed our history in two ways. It has been the basis of our rights because it is from our shared belief in God, and the foundation place it has in our system of government, as stated right here in the first statement of the first Americans, the Declaration of Independence, that we are all children of the same God. That means we all have the rights.

It also has meant that we feel a deep sense of unity with one another. I remember, after the terrible events of September 11, how struck I was by the classically American reaction that not only at that moment when we were so shaken by the horror of inhumanity of what had happened did we go to our houses of worship to ask for strength and purpose and comfort, we went to each other's houses of worship—that is the American way—and gained strength and purpose from it.

Mr. WARNER. Madam President, will the Senator yield?

We are privileged to serve on the Armed Services Committee.

When I first heard of this, I thought to myself about the hundreds and hundreds and hundreds of thousands of men and women who have worn the uniform of our country and have gone beyond our shores to fight for freedom. All of them were proud to stand in their schoolhouses and on their military bases, or whatever the case may be, and pledge allegiance to the flag of the United States of America.

Madam President, I join my friends in expressing our grave concern over this opinion.

Mr. LIEBERMAN. I thank my friend from Virginia.

I want to say a few words more.

One is that your statement reminds me, my dad served in World War II. My dad passed away 18 years ago. One of the treasured possessions of his that I have is a small Bible that he was given with a written statement in it from President Roosevelt. All who served in defense of our liberty in World War II got similar Bibles—and to carry it with them as a source of strength.

It has been my honor, each time I have been sworn in as a Senator up there, to put my hand on that Bible. It meant a lot to me personally.

But under the twisted logic of this decision, it was unconstitutional for the U.S. military, the Pentagon, to give my dad, and the generations of others since him, a Bible as a source of strength.

Mr. WARNER. Madam President, I have to say to my friend, my father served in World War I as a doctor in the trenches. He was wounded and highly decorated. And he carried, in his tunic, throughout every hour of the day, his prayer book which his mother had given him. And he noted in it every single battle and engagement he was in which he tended to the sick and the wounded and those who died.

Mr. LIEBERMAN. I appreciate my friend from Virginia sharing that moving story.

I will conclude in a moment because I know——

Mr. REID. Will the Senator yield for a question?

Mr. LIEBERMAN. Of course I will yield to my friend from Nevada.

Mr. REID. I know the Senator from Connecticut had a distinguished legal career prior to coming here. I believe the Senator was attorney general of the State of Connecticut; is that right?

Mr. LIEBERMAN. That is correct.

Mr. REID. I practiced law many years prior to coming back here and tried lots and lots of cases. We had a rule that when a judge ruled contrary to the interests of your client, you were not to comment on the judge.

I say to my friend, I am not constrained in this instance. I can say anything I want about the judge who wrote that opinion. And I say to my friend from Connecticut, that judge, who is no youngster, was appointed. He graduated from law school in 1951 and was appointed by President Nixon to be a member of the Ninth Circuit Court of Appeals.

I say to my friend, it is things like that that take away from what I think is a great institution; that is, the people who serve in the bar of the United States, lawyers.

This is just so meaningless, so senseless, so illogical. I cannot imagine that a judge, who has graduated and been a lawyer for 50 years, more than 50 years—does the Senator from Connecticut have any idea how, logically, you could come up with an opinion such as this? I read the highlights of the opinion. It is, for me, illogical, irrational. Can the Senator figure any rationality to this opinion?

Mr. LIEBERMAN. I thank my friend from Nevada.

In my opinion, having seen a precis of the decision, it offends all logic. The facts of the circumstances are that students, by previous court decisions, are allowed, if they are offended by a part of the pledge that says we are ''one nation under God,'' to not say the pledge or, in fact, to leave the room.

Secondly, this decision is the most extreme and ridiculous expression of what I take to be a fundamental misunderstanding of the religion clauses of the Constitution, which, to me, promised—if you will allow me to put it this way—freedom of religion, not freedom from religion. They protect the American people against the establishment of an official religion but have always, in the best of times, acknowledged the reality that our very rights, our very

existence comes from an acknowledgment of the authority and goodness of Almighty God, and that people of faith, throughout the 226 years since then, in our history, are the ones who repeatedly have led movements that have made the ideals of the Declaration and the Constitution real—the abolitionists, the suffragettes, all those who worked, beginning in the 19th century, and then in the 20th century, on social welfare, child labor legislation, and, of course, the civil rights movement of the 20th century.

So I do not see any logic. In fact, I think this decision offends logic. It will outrage the public. And if there is anything positive that comes out of it, it will unify this most religious and tolerant of people.

We have found a way in this country, that is unique in world history, to express our shared faith in God, and to do so in a way that has not excluded anyone. I was privileged to benefit from that and feel that in a most personal and validating and inspiring way in the election of 2000.

So I thank the Senator from Nevada and the Senator from Virginia. I thank the Senator from Florida for initiating this discussion. I agree with him, this decision will be appealed. I hope and trust it will be overturned. But if, may I say, God forbid, it is not overturned, then we will join to amend the Constitution to make clear that in this one Nation of ours—because we are one Nation under God—we are one Nation because of our faith in God, that the American people, children, forever forward will be able to stand and recite the pledge.

Mr. NELSON of Florida. Will the Senator yield?

Mr. REID. If my two friends would allow me to propound a unanimous consent request, we waited for 2 days to do this. As soon as I complete this, the Senator from Connecticut will regain the floor.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR THURSDAY, JUNE 27, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business tonight, it adjourn until 9:30 a.m. tomorrow, Thursday, June 27; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and the Senate be in a period of morning business until 10:30 a.m., with Senators permitted to speak for up to 10 minutes each, with the first half of the time under the control of the Republican leader or his designee, and the second half of the time under the control of the majority leader or his designee; that at 10:30 a.m. the Senate resume consideration of the Department of Defense authorization bill and vote on cloture on the bill; and, further, Senators have until 10 a.m. tomorrow to file second-degree amendments to the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECITATION OF THE PLEDGE OF ALLEGIANCE

Mr. REID. Mr. President, Senators are encouraged by both the majority leader and the Republican leader to be in the Senate Chamber promptly at 9:30 following the prayer that will be given by the Chaplain. They will recite the Pledge of Allegiance, based upon what occurred in the Ninth Circuit today, which has been a disappointment to the entire Senate.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 9:34 p.m., adjourned until Thursday, June 27, 2002, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 26, 2002:

THE JUDICIARY

RICHARD A. GRIFFIN, OF MICHIGAN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT, VICE DAMON J. KEITH, RETIRED.

DANIEL L. HOVLAND, OF NORTH DAKOTA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NORTH DAKOTA, VICE PATRICK A. CONMY, RETIRED.

THOMAS W. PHILLIPS, OF TENNESSEE, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE, VICE JAMES H. JARVIS II, RETIRED.

LINDA R. READE, OF IOWA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF IOWA, VICE MICHAEL J. MELLOY, ELEVATED.

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

ROXIE T. MERRITT, 6309
THOMAS P. VANLEUNEN JR., 4835
JACQUELINE C. YOST, 3025

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

TRECI D. DIMAS, 7555
LEYDA J. HILERA, 2823
RITA L. JOHNSTON, 7944
YOUNG O. KIM, 9058
DAVID G. SIMPSON, 8388

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

STEPHEN W. BARTLETT, 6293
TELFORD G. BOYER II, 3475
THOMAS F. GLASS, 5219
ANTHONY S. HANKINS, 2021
JAMES M. TUNG, 2755

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

DAVID R. ARNOLD, 4337
ELLEN S. BRISTOW, 3006
MAUREEN M. CAHILL, 1542
MARGARET R. W. REED, 6104
LORI F. TURLEY, 2788

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

VICTOR G. ADDISON JR., 7166
JOSE F. H. ATANGAN, 0512
JEFFREY S. BEST, 9459
LAWRENCE J. GORDON, 6547
FREDRICK M. TETTELBACH II, 5746
ZDENKA S. WILLIS, 7071

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

ROBERT J. FORD, 8895
KIRK N. HARNESS, 0658
WILLIAM E. LEIGHER, 0427
BOB R. NICHOLSON, 8972
SCOTT A. STEPHENSON, 9158
PAUL W. THRASHER, 2201
EDWIN F. WILLIAMSON, 9604

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

DAVID A. BELTON, 8941
HERBERT R. DUFF, 0303
JOHN G. FAHLING, 5079
MICHAEL L. FAIR, 9248
ROBERT J. FIEGL JR., 5099
FRANK W. NICHOLS, 5300
WILLIAM PAPPAS, 9762
JAMES A. THOMPSON JR., 5830

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

JEFFREY A. BENDER, 6645
EDGAR D. BUCLATIN, 6092
CHRISTOPHER A. DOUR, 3043
DONALD A. SEWELL, 4411
JOHN M. WALLACH, 8692
DAVID E. WERNER, 1804

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

ALEXANDER P BUTTERFIELD, 7006
THOMAS R CROMPTON JR., 4474
MARTIN J DEWING, 9789
TIMOTHY L DUVALL, 0926
JAMES V HARDY, 2680
NORMAN R HAYES, 0003
THOMAS P MEEK, 8051
CRAIG W PRUDEN, 4536
DANIEL J SMITH, 9000
PETER F SMITH, 7692
ELIZABETH L TRAIN, 8546

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

TERRY J BENEDICT, 6933
RICHARD D BERKEY, 0947
ROBERT E CONNOLLY, 8463
JOHN C DAVIDSON, 8711
REID S DAVIS, 9324
ALBERT J GRECCO, 8409
JAMES G GREEN, 9634
JAMES R HUSS, 1251
DAVID C JOHNSON, 2667
STEPHEN D METZ, 4928

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, WEDNESDAY, JUNE 26, 2002 *No. 87—Part II*

Senate

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

(Continued)

AMENDMENTS NOS. 4007 AND 4046

Mr. REED. Madam President, I rise to reiterate my support for Senator LEVIN's second-degree amendment. Senator WARNER's amendment directs that any savings from inflation should be used in one of two ways: for the research and development of missile defense or for combating terrorism. However, Senator WARNER's amendment does not choose which area is more worthy of attention, and therefore it risks compromising both.

Our job in deciding the budget is about making hard choices. Senator LEVIN's amendment simply sets priorities and it states that combating terrorism should be this administration's top priority.

I do not think this is a difficult decision. We must remember that this amendment only authorizes funding for fiscal year 2003. And in the next 18 months, the citizens of the United States are going to be anxious, and even afraid, of a car bomb, an explosion in a harbor, an explosion in a mall, a dirty bomb, a biological attack. I think the way to protect Americans is clear: put resources into counterterrorism.

The senior Senator from Virginia has been assured by the Office of Management and Budget that there will be over $800 million in inflation savings at the midsession review. At that time, the President will have a choice. He can invest $800 million more into a missile defense program that has already been robustly funded at $6.8 billion or the President can invest the funds in the $1 billion of counterterrorism requirements that the military has asked for and not received.

The Levin amendment expresses the views of Congress, and I believe the views of the American people, that resources directed toward the most immediate need, the most immediate threat, fighting terrorism, will best protect the United States and its citizens.

Mr. KERRY. Madam President, I would just like to take a moment to express my thanks to Senator LEVIN and Senator WARNER for working with me to clear this amendment in such a timely fashion. I think special thanks should also go to Senator CARNAHAN, a member of both the Senate Committee on Small Business and Entrepreneurship and the Senate Armed Services Committee for her support of this amendment. Senator CARNAHAN's work was vital to this amendment's acceptance by the Armed Services Committee, and I thank her for her assistance as well as for her continuing interest and advocacy for America's small business Federal contractors. I would also like to thank Senator BOND for his help on the Republican side. Concern for our Nation's Federal contractors remains an important area of bipartisan interest on the Small Business and Entrepreneurship Committee, and I am pleased to have his support on this amendment.

Briefly, our amendment requires the Secretary of the Army to conduct a study on the impact the creation of an Army Contracting Agency will have on small business participation in Army procurement, especially at the local level where many small businesses provide support services to Army installations. When we first received word of Secretary of the Army Thomas E. White's plan to consolidate army procurement activities into a central location, I was very concerned about its possible affects on small businesses. And despite briefings from Army personnel and assurances that small business participation will not be negatively affected, I remain concerned as do my colleagues. This is a critical time for our armed forces, and I do not wish to cause any confusion in the procurement process that could affect our military preparedness. Therefore, we are taking a ''wait and see'' approach to the Army's plan.

Our amendment will help monitor the situation at the Army by requiring them to keep track of small business participation in their procurement, especially at the local level. The amendment requires the Army to track any changes in the use of bundled contracts, sometimes called consolidated contracts, as a result of this new procurement agency, as well as track small business access to procurement personnel.

Let me be clear. Removing contracting authority from Army installations and centralizing it will result in less small business participation, but steps can be taken to overcome this. These steps must be proactive and represent a real commitment to maintaining small business access to procurement opportunities. And while I do not believe Congress should dictate every detail of how the Army chooses to structure itself for procurement purposes, Congress must be concerned about the consequences of that structure.

I look forward to working with the Secretary to ensure that an appropriate level of small business participation in Army procurement is maintained.

Once again, I would like to thank Senator BOND and Senator CARNAHAN for their support on this issue, as well as Senator LEVIN and Senator WARNER for accepting this amendment.

Mr. WARNER. Madam President, I am pleased that Chairman LEVIN and I have been able to come to agreement on my amendment to restore $814 million that the President can allocate to ballistic missile defense and to activities of the Department of Defense to counter terrorism and on Chairman LEVIN's second-degree amendment.

Prior to their approval, I would like to offer some clarifying remarks concerning the intent and effect of these two amendments.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Armed Services Committee in a colloquy regarding the extending authorization of pilot programs for revitalizing Department of Defense laboratories. I seek to clarify the congressional intent of Section 241 of the bill before the Senate.

Mr. LEVIN. Section 241 is part of the Senate's continuing efforts to improve the Department's labs and test centers. This pilot program expands and authorizes a number of innovative business practice and personnel demonstrations that are very important to developing the technological superiority that our military needs. The legislation will extend the time period for the pilot program authority for three years. This extension is consistent with the Department of Defense's legislative proposals that the Armed Services Committee received. I would like to thank Senator LANDRIEU, chair of the Emerging Threats and Capabilities Subcommittee, for taking the lead in developing this legislation.

Ms. MIKULSKI. The language stipulates that not more than one partnership may be established as a limited liability corporation, or LLC. Has that site been designated?

Mr. LEVIN. If he choose to establish an LLC as part of the program, the Secretary of Defense will designate its location from among the DoD organizations participating in the pilot program.

Ms. MIKUKSKI. I understand that the Aberdeen Test Center in Maryland has invested great effort into pursuing this opportunity. I also note that the Secretary of the Army has approved Aberdeen's LLC program as one of the new initiatives under the Army's Business Initiative Council to improve efficiency in business operations and processes.

Mr. LEVIN. I am familiar with the Aberdeen proposal and this legislation could be used to implement their plans, if the Secretary of Defense designates it.

Ms. MIKULSKI. How will the membership from the private and academic sectors be determined?

Mr. LEVIN. A competitive process will be used to select participants in any of the partnerships established by the legislation.

Ms. MIKULSKI. The legislative language permits the members of the LLC to ''contribute funds to the corporation, accept contribution of funds for the corporation, and provide materials, services, and use of facilities for research, technology, and infrastructure of the corporation,'' if doing so will improve the efficiency of the performance of research, test, and evaluation functions of the Department of Defense.

Mr. LEVIN. Yes, you are correct. The committee believes that innovative partnerships, better business practices, and the continuation and expansion of the innovative personnel demonstrations authorized in this and other programs are all important for the revitalization of the Department's labs and test centers.

Ms. MIKULSKI. I thank the chairman for his support on this important issue.

Mr. SMITH of New Hampshire. Madam President, I support the Hutchison-Bingaman amendment and am pleased to cosponsor it.

The purpose of my addressing the issue is two fold: One, to impress upon my fellow Members that if Congress intends to have input into the BRAC process, the only real time to do this is during the current session. While ''BRAC 2005'' leads people to believe that we have several years before we have to worry about this, the truth is that the criteria must be published prior to the end of 2003, and hence we should provide our input in 2002; two, this legislation, sponsored by Senator KAY BAILEY HUTCHINSON sets up criteria that must be met before consideration in closing a military facility. We are not eliminating the ability of DoD to run the process, we are pursuing legislation that will clarify the process. To bring the process out into the open allowing us all to see how a decision was derived and these are decisions that affects thousands of people and cost many millions or billions of dollars.

It is time to bring—businesslike competitive accounting into the consideration process when dealing with issues of BRAC. The Hutchison legislation will accomplish that by simply establishing some minimal, measurable, and articulated standards to be used in making major decisions. Some of these issues are: environmental costs, costs of Federal and State environmental compliance laws; costs and effects of relocating critical infrastructure; anticipated savings vs. actual savings; current or potential public or private partnerships in support of Department activities; capacity of State and localities to respond positively to economic, and this bill requires the SecDef to publish the formula to which different criteria will be weighed by the DOD in making its recommendations for closure of realignment of military installations.

Not only do I support this move on its stand alone merit of bringing accountability and transparency to major defense and economic decisions, I also support it as a Senator who has had personal experience with the secretive BRAC process as it affects my own constituents and friends.

The Portsmouth Naval Shipyard is a national asset to the defense industry and naval service. It has a long history of supporting the U.S. Navy, yet despite this long history, it has appeared on the DoD BRAC his list. Having seen the work this facility and its people contribute I will continue to support and work to enhance PNSY's capabilities. Its outstanding work performance, value to the Navy, and value to the America people are critical in ensuring national defense, and continue to examine innovative roles PNSY can perform in addition to its critical job of keeping America's nuclear submarines at sea.

If the Secretary of Defense chooses to examine facilities across the country, he may do so and I encourage his attempts at streamlining DoD and enhancing its financial practices—to make sure the taxpayers get the most for their hard-earned dollars. However, clearly defined standards of accountability, and the decisionmaking process itself, should be open to congressional scrutiny and openness.

NINTH CIRCUIT COURT OF APPEALS DECISION

Mr. LIEBERMAN. Madam President, I yield the floor to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Madam President, I wanted to ask this of my friend from Connecticut, who I think has variously served in so many different role models to the Senate, variously described as the Senator who is the conscience of the Senate, certainly as a former attorney general of his State, someone who understands the legal ramifications of arguments such as this.

In my earlier comments today, I had said that I thought there was in law, and the development of law, and the development of the Constitution, which you and I both quoted from, the Declaration, a clear distinction, as the distinguished Senator has noted, of the freedom of religion. And that part of that body of law that would make up that freedom, that religious freedom, would be a freedom to worship as one would want, if at all, and that that is a right we jealously protect, just as we protect the other freedoms—freedom of speech, freedom of the press, freedom of assembly, and so forth—and that when you look at this freedom, there is a distinct difference, as the case law has developed, of the separation of church and state which would embody that idea that we don't cram religion down anybody's throat, that we leave it up to them individually to express their own beliefs, if they want to at all, and to believe as they want to, if at all. That is the concept of separation of church and state, as distinguished from there not being necessarily a separation of the state and of God.

Quite to the contrary, on these historical documents, as I pointed out in that statement above the center door, in the fact that we elevate the Chaplain in the opening prayer, in the very formal and dignified opening ceremonies of the Senate, that the Chaplain is elevated on the top level and the Presiding Officer, while the Chaplain offers the prayer, is on a lower level, the fact that we have minted in our coins, ''In God we trust.''

I would ask the distinguished Senator from the great State of Connecticut if he would share with us his commentary about that separation of those two concepts.

Mr. LIEBERMAN. I thank my friend from Florida.

We have worked our way along a jurisprudential path that has taken us in our time to a result that I believe was totally unintended by the Framers of the Constitution, by the writers of the Declaration of Independence, by the drafters of the Bill of Rights particularly. This decision today is the most extreme and senseless expression of it.

We believe in the separation of church and state. We believe in freedom of religion. We believe in every individual's freedom to observe and worship as he or she is moved in his or her heart to do so. We have always respected nonbelievers. But we have asked that the great majority of Americans who may approach the altar from different paths, nonetheless worship the same God, that we not be deprived of our rights to do so, and to do so in a public context that does not diminish the rights of any one of us but enlarges and strengthens the rights of the whole. That has been the gift of this country.

I heard it once described, I read it once described by someone, as America's civic religion, nondenominational, deistic, God centered, inclusive, and tolerant. There is a great book that had a profound effect on me, written by Father Neuhaus, which was called ''The Naked Public Square.'' It commented on some of the earlier generation of decisions that had put the expressions of this civic religion, this shared faith in God, out of our public places and said we would suffer from that because the vacuum doesn't remain for long; other forces, less humane, less moral, less unifying, tend to fill the public square.

I always believed this pledge, with this simple statement that was added under President Eisenhower, that we pledge our loyalty to this one Nation under God, was beyond question, beyond rebuke. It is the baseline, most accessible statement of the source of this country's values and strengths.

To my way of thinking, it obviously in no way compromises the most important freedom of religion, which is the most important aspect of the religion clause—the freedom of religion. It doesn't compromise any single American's ability to worship God or not to worship God as they choose. It certainly does not establish religion in the sense that the Framers clearly intended because they came from a country that had an official religion and discriminated against them because of their religion. In this sense, the American people have not lost their way. I think a lot of our judges have in their decisions. This one is so far out, so offensive, that I hope it draws a reaction that is unifying and constructive.

Again, I say to my friend from Florida, my expectation is that this decision will be appealed. My hope is that the Supreme Court will overturn this decision. If they do not, then we will all join as one, I would guess, to offer a constitutional amendment.

Mr. NELSON of Florida. Will the Senator further yield?

Mr. LIEBERMAN. Yes, I will.

Mr. NELSON of Florida. I would hope also, as he has accurately outlined the legal course of appeal, that there would be a rush to the judicial chambers to stay that ruling, as it applies to the Ninth Circuit, because under existing law that would mean people could not pledge allegiance anywhere in that circuit, which includes the great State of California, and others in the immediate vicinity. I would certainly hope there would be a stay of that ruling until it would come up to the U.S. Supreme Court so that they could render their decision.

Then, as the Senator says, God forbid that they should rule that it were constitutional; then we could start our process here of adding to the Constitution that would allow that.

I just want to associate my thoughts with those articulated so eloquently by the Senator from Connecticut, who comes from a different faith perspective than mine but with whom we are joined in the historical development of this Nation to which, as he pointed out, so many people fled from a country of established religion, and, indeed, even documented in the Mayflower Compact, and then memorialized in the Declaration of Independence, that there was something different about this country. It was not going to have a state-sponsored religion; rather, it was going to be an enclave, an oasis, a place to which people of all faiths could come, and those with no faith, and within the protection of the laws they could believe and express their beliefs as they so chose.

As a result, we have this wonderful, and sometimes messy, experience of democracy. Sometimes we make mistakes, but we have the ability under this document to correct those mistakes, because of all the checks and balances that are inherent within this document.

So I appreciate very much the Senator's comments. They will mean a lot to the rest of us.

Mr. LIEBERMAN. I thank my friend from Florida very much for his leadership and eloquence. I will yield to the Senator from Nevada in a moment.

Mr. WARNER. Before the Senator yields the floor, I would like to associate myself with this colloquy, before we close this extraordinary chapter of Senate history.

I say to my colleagues, let us not wait for the Supreme Court to act. Why don't we go ahead and formulate this amendment, put it together, have it in place, presumably with all 100 U.S. Senators, and they can take judicial cognizance of what is about to happen. I think that might not be a bad idea. The Senators have initiated it, so let us join and we will start the recruiting today.

Mr. LIEBERMAN. I accept the challenge and the opportunity. We will work on that together.

A final thought on Senator NELSON's comments. This decision is so twisted. We both referred to the Declaration of Independence. There it is stated that the rights we enjoy as Americans are the endowment of our Creator or are a gift from God. So this court has interpreted the rights that we have to mean that we cannot join to pledge our allegiance to the one nation under God, whose endowment was the source of the rights. It is just a twisted piece of logic that is offensive to our values and, I believe, also to our minds.

I thank my colleagues. I am delighted to see my friend and colleague from Nevada. I yield the floor to him at this time.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Madam President, I thank my colleagues for coming to the floor so quickly to respond to what I believe to be an outrageous judicial decision by the Ninth Circuit Court of Appeals.

Let me read from the Declaration of Independence:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights.

The fact that our Founders referred to a Creator means that they understood that we were a Nation founded under God.

In the judicial decision, which I have with me—Mr. Newdow's daughter was the subject of this decision—it says:

> Mr. Newdow does not allege that his daughter's teacher or the school district requires his daughter to participate in reciting the Pledge of Allegiance. Rather, he claims that his daughter is injured when she is compelled to ''watch and listen'' as her state-employed teacher and her state-run school leads her classmates in a ritual proclaiming that there is a God and that ours is ''one nation under God.''

It goes on further to say in a footnote that:

> Compelling the students to recite the pledge was held to be a first amendment violation in the West Virginia Board of Education v. Barnette in 1943.

That has been clear. They were not alleging that she was forced to recite the pledge; she was just injured for having to sit there and listen to the Pledge of Allegiance.

I think that our courts are completely out of control. If we study the history of our country, the founding principles of our country, we read about the proceedings of the Continental Congress. We read that our Founders would actually stop in the middle of a session when they would be in a logjam, and that they would get down on their knees right by their desks and pray together—pray for divine guidance for the decisions they were about to make.

Does anybody really believe that our Founders, when they were drafting the Bill of Rights and the first amendment, where it says that ''Congress shall make no law,'' forbidding the establishment of a state-run religion, that this

Ninth Circuit Court decision is what they meant? No, our founding fathers explicitly ensured the free exercise of religion. Do we think that the Founders believed that a Pledge of Allegiance saying that our Nation is ''under God,'' or that we see up here ''in God we trust,'' or that we see on our money ''in God we trust,'' that was a State-established religion?

The beautiful thing about our Creator is that he gave us the freedom to worship him or not. In America, we have the freedom to worship or not, according to what our conscience tells us.

But to somehow say that having a child listen to the Pledge of Allegiance is establishing a religion and impeding on an individuals free exercise of religion, is outrageous.

Let me read from part of the dissenting opinion of the circuit, according to Judge Fernandez:

> Such phrases as ''in God we trust'' or ''under God'' have no tendency to establish a religion in this country, or to suppress anyone's exercise or non-exercise of religion, except in the fevered eye of persons who most fervently would like to drive all tincture of religion out of public life or our polity. Those expressions have not caused any real harm of that sort over the years since 1791, and are not likely to do so in the future.

I think it is up to this body to take it upon itself to correct what the Ninth Circuit has done. I agree with the senior Senator from Virginia that we need to reestablish in this country what this document—the Constitution of the United States—really says and really was about. Part of that is studying the history of the founding of this country.

What did the Founders intend when they wrote this document? Based on their practices, they did not want the state to say this is how you will practice a religion. The Baptists are not going to be our official religion, nor the Methodists, who came from Europe, where they had an official state religion. They, our Founders, wanted the free exercise to practice their religion, not according to how the state dictated, but to recognize that individuals have rights given by our Creator to worship as they, as individuals, see fit, as they were given by our Creator. To say that these Founders would have somehow said that it would be against the Constitution they were writing to recognize the rights given to an individual by the Creator is outrageous.

So I hope that all Americans will be as outraged as I am by this decision. I think they are going to be. I was on an aircraft carrier this last weekend talking to a lot of the sailors that sacrifice so much for this country. It was during the middle of a training session on the U.S.S. *Constellation* that I was visiting with them. Like we in Congress do, they take an oath to defend the Constitution. I would have liked to have heard what their opinions would have been regarding this judicial decision.

As my father taught me when I was a young man, there are no atheists in foxholes.

Any time our young men and women go in to battle, God is there to comfort them. We have chaplains in our military to counsel people because we recognize that during times of battle and war, people need spiritual guidance, not to establish a religion, but to understand that we have a Creator who has blessed this country and that we need His guidance.

In conclusion, Madam President, I believe this country needs to reestablish that we are one nation under God. Madam President, you experienced that in New York City on September 11. We saw the people of your state and the rest of the people in the United States turn to God for guidance. We saw posters everywhere: ''One nation under God,'' ''United we stand, under God.''

This country recognizes its history, and because we have been established under God, and remain under God, we have been blessed. If we abandon that now and allow the courts to abandon that, I believe this country will be in trouble. We simply cannot allow that to happen.

Madam President, I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Madam President, I wanted to come to the floor to share with our colleagues my intent to bring a resolution to the floor this afternoon expressing our strong disagreement with the decision the Senator from Nevada has just addressed.

I will soon propound a unanimous consent request to bring the resolution to the floor and to have a rollcall vote and then to allow Senators to express themselves once the vote has been cast. Just as soon as we can get agreement to set the time—I would like to do it within the next 15 or 20 minutes, if we can reach an agreement with the managers of the bill.

Madam President, I have not had the opportunity to hear all of what the Senator from Nevada said, but this decision is nuts. This decision is just nuts. We ought to recognize that there are those who differ with the overwhelming sentiment expressed by Americans of all stripes, of all regions of the country, young and old.

We added the language, ''under God'' in 1954. Then-President Dwight Eisenhower said:

> In this way, we are reaffirming the transcendence of religious faith in America's heritage and future; in this way, we shall constantly strengthen those spiritual weapons which forever will be our country's most powerful resource in peace and war.

I agree with President Eisenhower. I agree with the overwhelming number of people who have already expressed themselves in the hours since this decision.

The resolution we are propounding this afternoon really will state two things: First, our strong disagreement with the decision; and, second, it will authorize the legal counsel of the Senate to intervene on behalf of the Senate in the Supreme Court when the case comes before the Court. This is not unprecedented; we have done it before.

I hope overwhelming support will be demonstrated on both sides of the aisle. I hope we can do this quickly. I think we need to send a clear message that the Congress disagrees, the Congress is going to intervene, the Congress is going to do all it can to live up to the expectations of the American people.

We have been drawn together to face a tremendous tragedy in the last 9 months. In part, that healing process has come by our belief in the Supreme Being and our belief in the faith that comes in the strength that we draw from our faith.

I hope our colleagues will support the resolution. I hope we can address it within the next few minutes. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I commend our distinguished leader, and the Republican leader will soon come to the floor and join him on this matter. We had a marvelous little debate here. The distinguished Senator from Connecticut, the distinguished Senator from Florida, my distinguished colleague from Nevada, and I suggested that this body take action and take it fast. And here we are, ready to act.

I respectfully and humbly ask that my name be added as a cosponsor behind my colleague from Connecticut and my colleague from Florida, wherever they might be on the roster, and those rallying to the cause.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Madam President, I simply wish to respond to the Senator from Virginia and thank him for his kind words and tell him I will be happy to add his name as a cosponsor to the resolution.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I have listened with some interest to what has been discussed on the floor with respect to the Ninth Circuit Court opinion. I have great respect for courts in this country, but it raises the question: Is there one ounce of common sense left when you hear a decision announced today that suggests that the Pledge of Allegiance somehow is in contravention to the principles of the Constitution of the United States?

I do not understand for a moment how a majority of that court could have made this ruling. Some people need their collective heads examined when we hear opinions such as this.

We had a celebration on the 200th birthday of the writing of the Constitution in that room in Philadelphia. Fifty-five people went back to that celebration. I was selected to be 1 of the 55. Two hundred years before, 55 white men were in that room in the hot summer of Philadelphia, and they wrote the Constitution. Two hundred

years later, 55 of us went back—men, women, minorities—and we had a ceremony and a celebration of the 200th birthday of the writing of that wonderful document.

As my colleague from West Virginia, I think the resident scholar on the Constitution, knows, in that room sits the chair where George Washington sat as he presided over the Constitutional Convention, and Ben Franklin sat on one side, and Mason, and Madison. They debated during that summer the provisions of a constitution for this country.

I sat in that room that day and thought to myself: What a remarkable thing it was for a man from a town of 300 people in a farming community in southwestern North Dakota to be able to sit in that room and celebrate with 54 of my colleagues the 200th birthday of the writing of the Constitution.

I do not know the Constitution as my colleague, Senator BYRD, does. I have read it many times and studied it as best I can, but I guarantee you, there is not any way to creatively read that document that allows a court to say that somehow the Pledge of Allegiance abridges that document called the U.S. Constitution.

As my colleague said, that is just plain nuts. I do not for the life of me understand where common sense has gone. Is there not a shred of common sense left when we hear these kinds of decisions coming out of a court, in this case the Ninth Circuit Court of Appeals?

I am very pleased my colleague from South Dakota, the majority leader, will bring a resolution to the floor. I will ask to be a cosponsor and to speak on that resolution. We ought to not waste a minute in saying to that court, in responding to that opinion that says that is not what the Constitution says, it is not the way the Constitution is written, and there is not any creative way for a group of people to make that judgment.

I am very pleased the Senate will this afternoon apparently have a record vote to say: No; absolutely not; there is not any way on Earth we can agree with what this court has determined.

Madam President, I know the Senator from West Virginia is waiting to speak, and I will be anxious to hear his words of wisdom because he, in my judgment, knows more about the Constitution than anybody else in the Senate. He carries it with him every day, all day. He has studied it more than any other Member of the Senate. I know that document is revered by all of us, but perhaps revered by none of us quite as much as it is by the Senator from West Virginia. Let's hope we find ways in this country not to have to turn on the news and discover the next news cycle, the next opinion of a majority of a court that defies all common sense and something that requires us this afternoon to respond to, to restore some faith with the American people that there are some people at least who are able to read that Constitution and read what it says and understand what it says.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, it would be my suggestion that this judge go back and read the Declaration of Independence. I wonder if he can hold that Declaration to be unconstitutional—the Declaration of Independence.

This is what it says:

> When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Let that judge read further, ''We hold these truths to be self-evident, that all men are created equal, that they are endowed,''—by whom?—''by their Creator.''

It is in the Declaration of Independence, ''by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.''

Let that same judge go a little further and read in this same Declaration of Independence, in case he has not read it lately, and let him declare it unconstitutional, the reference to ''the Supreme Judge of the World.'' Who is this ''Supreme Judge of the World?'' Certainly, not some atheist. Nor is it a judge who sits on the Ninth Circuit and whose name is Goodwin.

The final words of the Declaration state, ''with a firm Reliance on the Protection of divine Providence.'' Let atheists find something to bring before that judge in this Declaration of Independence. Let that atheist lawyer do that. Let that judge sit in his black robe and address the court and the Constitution and the people of the United States as to whether or not the words I have quoted from the Declaration of Independence are unconstitutional.

Here are these words printed in the Declaration of Independence, ''with a firm reliance on the protection of divine Providence.'' That judge should not be a judge in my opinion—and I can say this: I hope his name never comes before this Senate, while I am a Member of it, for any promotion. He will be remembered. Let him declare this Declaration of Independence unconstitutional. Do the words I have quoted offend the Constitution?

I am the only Member of Congress today, bar none, in either body, who was a Member of the House on June 7, 1954, when the words ''under God'' were included in the Pledge of Allegiance. Coincidentally, may I say, on that same day, June 7, one year later, 1955, the House of Representatives voted to inscribe the words ''in God we trust'' on the currency and coin of the United States. Some of the coins already bore the inscription, but on that day, June 7, 1955, the House of Representatives, of which I was a member, voted to make that the national motto and to have it inscribed on the currency and the coin.

Let that judge's name ever come before this Senate while I am a Member, and he will be blackballed—if Senators know what ''blackballed'' means—fast. I say the sooner we can pass a resolution—and I want my name to be third because I am the only Member of Congress—let him who would challenge that stand—in either body today who was in Congress on the day we voted to include the words ''under God'' in the Pledge of Allegiance.

That same judge ought to go back and read the Mayflower Compact.

Mr. REID. Will the Senator yield for a unanimous consent request?

Mr. BYRD. Yes.

Mr. REID. Madam President, I ask unanimous consent that when the resolution is presented, Senator BYRD's name appear third following the two leaders.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Madam President, I thank the distinguished Democratic whip.

That is all I have to say for now. I hope the Senate will waste no time in throwing this back in the face of this stupid judge.

Think of the history of this country, the men and the women who have shed their blood for this country. The men who founded this country, who wrote the Constitution in Philadelphia, George Washington, James Madison, Benjamin Franklin—what would they say if they were living today?

A country that was founded by men and women who believed in a higher power—we do not all have to be Baptists, we do not all have to be Methodists, we do not all have to be Christians. But the people by and large who founded this country, who hewed the forests, who dredged the rivers, who built the bridges and who created a country from sea to shining sea believed in a higher power.

What is this country coming to? What is it coming to? ''Blessed is the Nation whose God is the Lord.'' He can be your Lord. He can be mine. What are we coming to when we cannot speak God's name? Let them put me in jail. I will read that Bible right here on this desk. I have done it before. I will do it again. I have recited the pledge and so has every other Member of this body time and time again. Come, Judge Goodwin of the Ninth Circuit, put us in jail.

I say the people of America are not going to stand for this. I, for one, am not going to stand for this country's being ruled by a bunch of atheists. If they do not like it, let them leave. They do not have to worship my God, but I will worship my God and no atheist and no court is going to tell me I

cannot do so whether at a school commencement or anywhere else. I say let's let the people speak.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I say to my friend from West Virginia, the distinguished senior Senator, the distinguished Member of this body, I have had the good fortune that two of my sons have been law clerks for the chief judge of the Ninth Circuit. In fact, one of my sons was his administrative assistant. He was a judge from Nevada, served in the very prestigious Ninth Circuit.

I have had calls from my sons today. They are embarrassed about what has taken place in that Ninth Circuit. They said: Dad, don't worry about it because the court will meet en banc and reverse it.

These are the two most liberal members of the court. They come up at random. It was by chance Goodwin and Reinhardt were thrown together, but they have done the mischief they have done to embarrass every lawyer in America, every judge in America except those two, and the people of this country are repulsed.

I have great faith that court will reverse itself when they sit en banc. If they do not, I applaud the majority leader, whom I now understand has the support of the Republican leader, to move forward expeditiously tonight to let the world know the Senate is not going to stand idly by while these people—I had a little dialogue with Senator LIEBERMAN on the floor today, with his experience as attorney general, being the legal scholar that I believe he is, who said without question that what they did was illogical.

I agree with what the Senator from West Virginia said—it is stupid.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, this is, indeed, a shocking culmination of a decade-long trend of liberal activist courts that have been misreading the first amendment of the Constitution. The first amendment protects the free exercise of religion. That is what it says. It says Congress shall make no law respecting the establishment of a religion nor prohibiting the free exercise thereof. There is no word in the Constitution, the document ratified by the people of the United States, about a wall of separation. There is nothing in the Constitution that says we cannot have any reference in public life in America to a higher being.

As the Senator from West Virginia has eloquently stated, our founding documents make multiple references to God.

Indeed, the Declaration says we are created with certain inalienable rights. We did not create ourselves but were, indeed, created by a higher being. That is a strong part of our belief as a nation.

Our courts have been on the wrong track for a long time. They have consistently gotten this thing wrong. Not all the courts, but the Federal courts to a large degree. Particularly the Ninth Circuit is out of the main stream, in my view. This trend has been there for some time. It is not part of the American tradition. In America, we need to respect people's religion. We need to give people a full chance to express their faith wherever they may choose. We should not put down or laugh or demean somebody else's religious belief. That is a cornerstone of our country.

Madison was passionate that no State had the right to mandate somebody's religious faith. However, the entire trend of this country and the whole understanding of what we are about is that we have the free exercise of religion. We are entitled to exercise that faith in a public way. It has been part of our public life since the founding of our country. Somehow, the courts have gotten the idea that they should reverse this.

Some say this is just one court and they are out of step. It is deeper than that. We have been affirming judges who have shared these philosophies without looking into it very closely. We have allowed judges to carry on a more activist view of what they think life is about.

We had a recent decision of the Supreme Court, that is activist, when the author of the opinion declared that evolving standards call us to not execute a retarded person. I am not for executing retarded persons. I am willing to support a law to that effect. What is that saying? This justice and a majority on the Supreme Court were saying that they could change the law if they thought somebody was ''evolving'' and changing their views about life in general.

Who reflects the American people in the changed views? It is the legislative branch. Federal judges are given lifetime appointments. They hold office for the rest of their life. They are required to discipline themselves. If they love the law, if they love the Constitution, as all in this country must do, they must discipline themselves and simply enforce that law. This trend has been unhealthy. We have allowed it to continue unchallenged. It is afoot in our law schools. They teach you cannot have any reference to faith.

Right on the wall we have ''In God We Trust.'' The anteroom has a picture of a woman on the wall holding a Bible in her hand. There are three words engraved on the sides of the wall: One is ''government,'' one is ''philosophy,'' and one is ''religion.'' That is the nature of the founding of our country. We never doubted that religion played a part in American life. What we did not want was the Government to dictate to someone how they ought to worship. We have never done that. I defend anyone who thinks they are being forced to do anything with which they disagree.

Life is complex. We work together and live together in harmony. If someone does not like the Declaration of Independence, if someone does not like the Constitution, they do not have to read them. If someone does not believe in the Pledge, they do not have to recite it. That is clear constitutional law.

This is a big mistake by the court. I hope this Senate will take action to express the views of the people of the United States. I hope we will not hear talk that this is something that will be dismissed. It is a serious, pernicious, antireligious trend. There is a tendency and a trend in America by the courts to eliminate from public life any reference to a higher being and anybody who reads the newspapers or reads court opinions knows that is true.

The Ninth Circuit is the worst. One year 27 out of 28 cases were reversed. They have consistently been reversed more than any other circuit in America.

The New York Times, in writing about the Ninth Circuit, says a majority of the Supreme Court of the United States considers the Ninth Circuit to be a rogue circuit.

I have been the most outspoken Member of this Senate in the years I have been here, over 5 years, in expressing my concern about some of these trends in the court, particularly in the Ninth Circuit. I have talked about the issues in the Ninth Circuit. We have to do better. I encouraged President Clinton and I encourage President Bush to send nominees to that circuit who will bring it back into the mainstream of American law.

I hope on full rehearing en banc, the court will reverse the opinion. I am not absolutely sure it will, because there are others on that court I have no doubt will join in this opinion. Then it will go to the Supreme Court of the United States. They are going to have to wrestle with this a little bit more. They have not yet fully thought through their position on the free expression of religious faith in American life.

It is a difficult thing. We have to cherish our freedom of religion, our freedom to practice religion, as well as our freedom not to have someone coerce any American into any religious belief. That is so much a part of our life that so much distinguished America from nations that want to have a government founded strictly on their view of faith. That is unhealthy.

I hope we can adopt an expression in this Senate of our disapproval of this decision, but, at the same time, we do not need to treat it lightly. We need to go back to the grassroots, the initial heritage of faith in America. We need to look at some of these decisions of the court that have gone beyond prohibiting the establishment of a religion, to prohibiting any expression of religious faith at all.

I remember Judge Griffin Bell, a great judge on the Fifth Circuit Court of Appeals, President Carter's Attorney

General. He was speaking to an Alabama Bar Association meeting when President Reagan was in office, not long after he left as Attorney General. The bar members asked: Judge Bell, what do you think about this litmus test that President Reagan is supposed to be applying to judges? I will never forget, he walked up to the microphone and said: We need a litmus test for judges. We don't need anybody on the Supreme Court who does not believe in prayer at football games.

This is where we are. We have the courts of the United States prepared to send in the 82nd Airborne to some high school that allows a voluntary prayer to be said before the ball game starts—an expression that there is something more important than who is the biggest, meanest, and toughest out on the football field.

I think we have a serious problem with the understanding of the first amendment. I am glad this body is taking it seriously. Hopefully, we can do something about it, but it is going to take a longtime effort.

I yield the floor.

EXPRESSION OF SUPPORT FOR THE PLEDGE OF ALLEGIANCE

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I indicated a few minutes ago that it was our intention, after consultation with the Republican leader and our colleagues, to offer a resolution immediately on the matter of the Ninth Circuit Court decision. That is our intention at this point.

I will propound a unanimous consent request that allows us to go to a vote. I know a number of other Senators wish to be heard, but I think it would be appropriate for scheduling purposes for us to have the vote and then accommodate other Senators who wish to be heard. We will certainly allow the floor to be available for purposes of additional comment by our colleagues.

Let me ask Senators to vote from their desks on this particular vote. I think it would be appropriate, given the strength of feeling we have on the issue, that we draw a distinction between this and other votes. I ask Senators to vote from their desks.

I also note as we have already announced through our cloakrooms, every Senator will be listed as a cosponsor unless they ask to be removed from that list. So Senators will automatically be listed as a cosponsor. We have had so many requests on both sides of the aisle, it was our view it would be appropriate for us to do that.

I also ask unanimous consent that the resolution be submitted and stated for the record, prior to the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. I ask unanimous consent the Senate proceed to the consideration of the resolution at the desk earlier introduced by myself and Senator LOTT regarding the Pledge of Allegiance, that no amendments or motions be in order, the Senate immediately vote on passage of the resolution, that any statements thereon appear in the RECORD as though read.

Mr. LOTT. Reserving the right to object only for parliamentary inquiry, is it the majority leader's intent to put the vote immediately?

If I could, under my reservation, then just make a couple of points.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. LOTT. Mr. President, I certainly support this effort. I have no intent at all of objecting. I am very pleased the Senate is going to act so quickly on this matter.

Senator DASCHLE and I have been talking about it the last few minutes. We have developed what I think is very good language to address this outrageous decision by the Ninth Circuit Court of Appeals.

Just as the Supreme Court has recognized that elected officials may invoke God's blessing on their work as we do here every day, and as in the House Chamber they have over the Speaker's chair, ''In God We Trust,'' for our children to be allowed to invoke God's blessing on our country in the Pledge of Allegiance is certainly something we want to do.

If there is ever a time when we need this additional blessing, perhaps it is now more than ever in our lifetimes. I have seen that and felt that as I have gone around, not only my own State but this country. So I think it is essential the Senate speak immediately in clarification. I hope the Ninth Circuit will have an en banc panel that will reverse this decision; failing that, that the Supreme Court will act on it expeditiously.

In our resolved clause, we state that we disapprove of the decision by the Ninth Circuit and that we authorize and instruct the Senate legal counsel to seek to intervene in the case to defend the constitutionality of the Pledge of Allegiance.

Beyond that, to further make it clear, the Senate should consider a recodification of the language that was passed in 1954. There was no uncertainty or ambiguity about what was done in 1954. The Congress, in fact the American people, spoke through their Congress. We should make it clear once again.

I commend you, Senator DASCHLE, for moving this matter forward aggressively. For the Senate to have this vote is absolutely the right thing to do. I know the American people agree with that decision.

I withdraw my reservation.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. I compliment the Senator on his remarks. I appreciate very much his cooperation in the last couple of hours.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution.

The assistant legislative clerk read as follows:

A resolution (S. Res. 292) expressing support for the Pledge of Allegiance.

Whereas, this country was founded on religious freedom by founders, many of whom were deeply religious;

Whereas, the First Amendment to the Constitution embodies principles intended to guarantee freedom of religion both through the free exercise thereof and by prohibiting the government establishing a religion;

Whereas, the Pledge of Allegiance was written by Francis Bellamy, a Baptist Minister, and first published in the September 8, 1892, issue of the Youth's Companion;

Whereas, Congress in 1954 added the words ''under God'' to the Pledge of Allegiance;

Whereas, the Pledge of Allegiance has for almost 50 years included references to the U.S. flag, the country, to our country having been established as a union ''under God'' and to this country being dedicated to securing ''liberty and justice for all;''

Whereas, the Congress in 1954 believed it as acting constitutionally when it revised the Pledge of Allegiance;

Whereas, this Senate of the 107th Congress believes that the Pledge of Allegiance is not an unconstitutional expression of patriotism;

Whereas, patriotic songs, engravings on U.S. legal tender, engravings on federal buildings also contain general references to ''God'';

Whereas, in accordance with decisions of the U.S. Supreme Court, public school students cannot be forced to recite the Pledge of Allegiance without violating their First Amendment rights;

Whereas, the Congress expects that the U.S. of Appeals for the Ninth Circuit will rehear the case of Newdow v. U.S. Congress, en branc;

Resolved, That the Senate strongly disapproves of the ninth circuit decision in Newdow v. U.S. Congress; and that the Senate authorizes and instructs the Senate Legal Counsel to seek to intervene in the case to defend the constitutionality of the Pledge of Allegiance.

Mr. DASCHLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

Mr. DASCHLE. Again, I ask Senators to vote from their desks.

The PRESIDING OFFICER. The question is on agreeing to the resolution. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 163 Leg.]

YEAS—99

Akaka	Biden	Bunning
Allard	Bingaman	Burns
Allen	Bond	Byrd
Baucus	Boxer	Campbell
Bayh	Breaux	Cantwell
Bennett	Brownback	Carnahan

Carper	Gregg	Murray
Chafee	Hagel	Nelson (FL)
Cleland	Harkin	Nelson (NE)
Clinton	Hatch	Nickles
Cochran	Hollings	Reed
Collins	Hutchinson	Reid
Conrad	Hutchison	Roberts
Corzine	Inhofe	Rockefeller
Craig	Inouye	Santorum
Crapo	Jeffords	Sarbanes
Daschle	Johnson	Schumer
Dayton	Kennedy	Sessions
DeWine	Kerry	Shelby
Dodd	Kohl	Smith (NH)
Domenici	Kyl	Smith (OR)
Dorgan	Landrieu	Snowe
Durbin	Leahy	Specter
Edwards	Levin	Stabenow
Ensign	Lieberman	Stevens
Enzi	Lincoln	Thomas
Feingold	Lott	Thompson
Feinstein	Lugar	Thurmond
Fitzgerald	McCain	Torricelli
Frist	McConnell	Voinovich
Graham	Mikulski	Warner
Gramm	Miller	Wellstone
Grassley	Murkowski	Wyden

NOT VOTING—1

Helms

The resolution (S. Res. 292) was agreed to.

The preamble was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DASCHLE. Mr. President, this was the last vote of the evening.

Under the normal rules of the Senate, of course, it is the custom of the Senate each morning to pledge allegiance to the flag. We will be coming into session tomorrow morning at 9:30. It would be my suggestion—not my original suggestion, I hasten to add—that we as Senators be here at 9:30 to pledge allegiance to the flag. I encourage Senators to be present at their desks at 9:30 to accommodate that suggestion.

(Applause, Senators rising.)

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I think the distinguished majority leader has made an excellent suggestion. I also wish to express my appreciation to him for bringing up S. Res. 292 and doing so in a bipartisan fashion. I also express my appreciation to the staff of the Senate Judiciary Committee who worked so very hard to move on this resolution as quickly as they did. I appreciate the distinguished majority leader requesting that we have such a resolution. He is absolutely right. I have to assume that the Ninth Circuit will now hear this case en banc, and I have to hope the decision will not be upheld.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I simply want to respond to the distinguished Senator from Vermont and, as always, thank him for his kind words and support for the resolution and, as always, his willingness to be helpful. I am also pleased with the unanimity with which the Senate has expressed itself this afternoon. It was the right thing to do. It was important that we did it in a timely manner.

Again, let me reiterate my thanks to the distinguished Republican leader for the tremendous cooperation he has shown in allowing the Senate to move as quickly as it has. It sends as clear and unequivocal a message as I believe we are capable of sending.

We strongly disagree with the decision made today. We will authorize our Senate legal counsel to intercede on behalf of our position before the court. That is the right thing to do. I am very pleased we were able to say it as strongly as we have on a bipartisan basis that we have today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, over the weekend I had the experience and the pleasure of narrating Aaron Copeland's ''Lincoln Portrait'' in a presentation by an orchestra back home in Utah. I had not done that before.

Aaron Copeland took some of Abraham Lincoln's most stirring words and accompanied them with music, and it is a great opportunity for those of us who don't have as much musical ability as some others to participate in that kind of a presentation.

I was interested that one of the things in the ''Lincoln Portrait'' by Aaron Copeland is a quotation from the Gettysburg Address, when Abraham Lincoln prophesied that this Nation, under God, shall have a new birth of freedom, and that government of the people and by the people and for the people shall not perish from the Earth. If the Ninth Circuit Court position is upheld and made universal, that means that Aaron Copeland's tribute to the memory of Abraham Lincoln will have to be censored and that we will no longer allow our schoolchildren to learn the Gettysburg Address.

Indeed, if this position is upheld, we will no longer be able to teach our children the Declaration of Independence because Thomas Jefferson referred to our rights as having been endowed by the Creator.

The Ninth Circuit makes it very clear that they do not believe any public official should speak of the Creator in a way that implies that he exists or, if you prefer, that she exists.

The word ''God'' is sufficiently universal and nonspecific as to allow those who use it to ascribe any quality, any gender, any doctrine, any position that those people might wish to ascribe to it. It is inconceivable to me that the Ninth Circuit should suggest that the generic term ''God'' is somehow endorsement of a specific religion.

It is interesting that the vote we have just taken takes place under words carved in marble, literally carved in marble and gilded in gold here in the Senate Chamber, that say: ''In God we trust.'' I would hope that the judges on the Ninth Circuit would not attempt to send U.S. marshals into the Chamber of the Senate with jackhammers in an effort to remove that marble from above our entryway. It has been there since the Chamber was built. I hope it remains there as long as the Chamber remains, the judges on the Ninth Circuit to the contrary notwithstanding.

As I walked over to come to this vote, I came under the flags of the 50 States. They are displayed in the walkway in the tunnel that comes between the Senate Office Building and the Capitol. I noticed that on two of those flags, Florida and Georgia, there are the same words that we have here in the Chamber, ''in God we trust.''

I wonder if the justices of the Ninth Circuit wish to order the State legislatures of those two States to change the State flags in their effort to see to it that we remove any reference whatsoever to God from our public discourse. Oh, I understand that they do not wish to remove all references to God. It will still clearly be fine for the people in Hollywood and on television to curse people in the name of God. It will only be illegal for someone to bless people in the name of God. The use of the name of deity in oaths of blasphemy are protected under the first amendment. It is just the use of the name of God in expressions of belief that these judges wish to strike down—an inconsistency which I hope will enter into their hearts and make them realize how foolish their decision is.

Finally, my mind goes back to the experience in the Middle Ages when Galileo—who said that the Earth revolves around the Sun rather than the Sun revolving around the Earth—was forced by the legal structure of his time to recant. And in order to save his life he did so. He stood there and proclaimed aloud that the Sun revolved around the Earth, and then as he stepped away from the place where he had made that public recantation, he muttered—speaking of the Earth going around the Sun—''nonetheless, it still revolves.''

Regardless of what the courts may say, the American people still trust in God. As long as they do, it will remain our national motto because it is a correct statement of how we feel, and it belongs in the Pledge of Allegiance to our flag.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I would like to say a few words about the resolution. Before I do, I know Senator LANDRIEU would like to speak and perhaps others. Perhaps I could offer a unanimous consent agreement that directly following me—does Senator BURNS wish to speak?

Mr. BURNS. Yes.

Mrs. FEINSTEIN. That Senator BURNS, and then Senator LANDRIEU, and Senator ALLEN have 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Reserving the right to object, was that a unanimous consent request?

The PRESIDING OFFICER. Yes.

Mr. LEVIN. I would like some indication of approximately how long each

Senator plans on speaking. I have no desire to limit them, but I would like to get an idea.

Mrs. FEINSTEIN. Not very long for me.

Ms. LANDRIEU. Five minutes.

Mr. LEVIN. If it is 5 minutes each, that is fine.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I rise as a Senator from California, a member of the Judiciary Committee, and one who has been trying to hold together the Ninth Circuit. I find this decision, at best, very embarrassing—embarrassing because perhaps the court doesn't know, but our coins have contained ''in God we trust'' for a century and a half. This was put into action by the Congress in 1954, almost 50 years ago. So we have had reference to God on our coins for a century and a half and reference to God in the Pledge of Allegiance for over a half century. In 30 years of public life, I have never had an objection from anyone about either.

When I heard about this decision, knowing how Senator BURNS has felt about the Ninth Circuit, I quickly looked to see who the judges were. I found that one is a Nixon judge, one is a Carter judge, and the dissenting judge was a George Bush, Sr., judge.

I can only say that I would be hopeful that the full Ninth Circuit would take up this matter and straighten it out, and, if they do not, that it goes rapidly on appeal to the Supreme Court of the United States, and that the Supreme Court of the United States straightens it out.

From the beginning of our country, God has always played a role. All you have to do is look at some of the remaining churches in the Thirteen Colonies to know that God has always played a role in the foundation and the continuation of our Nation. For the Ninth Circuit to suddenly say that it is unconstitutional for the Pledge of Allegiance to make reference that we are one nation under God is incomprehensible to many of us. So our remedy must rest with the remainder of the Ninth Circuit.

For me, it is going to be interesting to see whether they will measure up to this challenge or whether they will let a three-judge panel speak for them. I strongly urge that, if they feel as strongly as the Members of this Senate do, they sit en banc and take a look at this matter. If not, it certainly should go to the Supreme Court.

I can only say this Senator is embarrassed.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Mr. President, words cannot express the outrage I felt when I heard this decision. There will be those of us who will express it in different words than probably lawyers will. A couple of weeks ago we were visited and addressed by the Prime Minister of Australia, John Howard, when he related his feelings because he was in this country on September 11 of last year. He said that, since then, this country has reacted in a way that reestablishes or reconfirms the very values on which this country is based.

Then we have a circuit court that comes down with a decision such as this. It is absolutely unbelievable. Can our children no longer sing ''God Bless America,'' or even ''America the Beautiful,'' or all the stanzas to our National Anthem?

Do you want to take a look at the dollar bill? On the back of it is the symbol of this country, the eagle, and, of course, the eternal eye. This is a value-based society, and to say those who are sheltered from being removed from office, unless the crime is really something, but just for an opinion such as this, I find that unbelievable.

We are a nation founded upon the acknowledgement of a Creator. It has been that way since day one, or even when the flame of freedom was ignited in the men and women way back in the 1700s. Men and women have died, given their lives, on the field of battle to protect it, just as they have another symbol of this country called our flag.

It doesn't make a lot of sense. Of course, there are a lot of things that do not make sense in this world. I always refer to this place as 17 square miles of logic-free environment. Nonetheless, whenever you jump across the street, we find another logic that I fail to understand. So I will stand here and tell America that those values—this being one of them—that those men and women did not die in vain. And it did not take very long for this body, that represents constituencies across the width and breath of our country, to react to it. That has to tell you something about who we are and what we are and how we got here.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. I thank the Chair. Mr. President, I wish to add my voice to all of those who have risen in the last several hours to express my feelings and the feelings of people from Louisiana about this unfortunate ruling.

It is clear to most of us at least that we believe God is infallible, but clearly these judges are not. This case and this decision are very disappointing to many of us, and I am sure around the Nation it has caused a great deal of anxiety, anguish, disappointment, and anger.

We remember all too well the Dred Scott decision that relegated African Americans to a status as property, and the Plessy v. Ferguson decision that disgracefully upheld the Jim Crow laws of this Nation. In these cases the American judiciary unfortunately demonstrated its ability to be just plain wrong, and today is another one of those occasions.

A wonderful aspect, however, about our democracy is that when we make mistakes, those mistakes can be corrected, and there are a variety of ways that can happen today.

I thank Senator DASCHLE, our leader, and Senator LOTT for so quickly assembling a resolution in which we all have joined as coauthors stating our position in the Senate that reflects, I believe, the overwhelming views of the American people. The force of that resolution will have a very positive impact.

I also understand the entire Circuit Court will hear this case en banc, and I am almost certain, or at least very hopeful, that this decision will be reversed and this wrong righted.

There have been many beautiful things read into the RECORD that remind us of our heritage, that remind us of why this country is so great, is so wonderful, is so unique, and so special; from the eloquent remarks of the Senator from West Virginia to the Senators who have recently spoken.

I thought it might be appropriate at this time to read into the RECORD for this occasion a wonderful quote from Abraham Lincoln—one of our greatest Presidents, if not our greatest on what he had to say about our relationship to God and our Creator as a nation and as a collective people. It was on the occasion of the first Presidential resolution to set aside at least 1 day for a national day of prayer and fasting. This was established many years ago in 1863.

In this statement, Abraham Lincoln calls for our Nation to come together in prayer and to acknowledge God and to acknowledge a Supreme Being and our Creator. He said:

> We have been the recipients of the choicest bounties of Heaven. We have been preserved, these many years, in peace and prosperity. We have grown in numbers, wealth and power, as no other nation has ever grown. But we have forgotten God. We have forgotten the gracious hand which preserved us in peace, and multiplied and enriched and strengthened us; and we have vainly imagined, in the deceitfulness of our hearts, that all these blessings were produced by some superior wisdom and virtue of our own. Intoxicated with unbroken success, we have become too self-sufficient to feel the necessity of redeeming and preserving grace, too proud to pray to the God that made us.

It behooves us then, to humble ourselves before the offended Power, to confess our national sins, and to pray for clemency and forgiveness.

This is just one of the many writings—hundreds, thousands—by Presidents, Senators, Congressmen, Governors, council members, mayors, elected officials, leaders of this great country that we call America acknowledging that we as a nation stand under God, acknowledging His presence, although we worship Him in different ways, we may call Him by different names, and we strongly support the rights of those in our society to not acknowledge His presence. But we collectively as a nation will in no way back down in acknowledging His presence and His divine creation.

Madam President, I wanted to submit my thoughts on this issue for the

RECORD and also say that I am introducing a proposed constitutional amendment to address this issue in the event that the court decisions do not unfold the way I suspect they will. I send to the desk a joint resolution.

The PRESIDING OFFICER (Ms. CANTWELL). The measure will be received and appropriately referred.

Ms. LANDRIEU. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Madam President, I associate myself with the remarks of the Senator from Louisiana, Ms. LANDRIEU, and I commend her for her resolution. With her consent, I would like to add my name to her resolution in the event the Ninth Circuit and the Supreme Court continue this errant miscarriage of justice.

Madam President, we often talk about ''miscarriages of justice,'' but today I talk about an instance in which proper administration of justice was dragged into a dark alley and mugged.

Many of us are outraged to learn today that a divided three-judge panel of the Ninth Circuit Court of Appeals believed it knew better than the properly exercised wisdom of the people and their duly elected representatives in striking down the Pledge of Allegiance and stating that the Pledge of Allegiance is unconstitutional. These judges ignored the very basis of our democracy and representative Government. They have ignored, right before Independence Day, the spirit of our country that Mr. Jefferson, in the Declaration of Independence, proclaimed to the British monarchy, which had an established religion, that our rights are God-given rights.

He stated in the Declaration of Independence that we are endowed by our Creator ''with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.'' All of this came from the Virginia Declaration of Rights which expressed the same sentiments.

Let's understand, if these judges do not understand, with their judicial activist decisions such as this, the judges are to interpret the laws, they are not to write the laws. The laws on the Pledge of Allegiance and the laws for the recitation of the Pledge of Allegiance in our schools are passed by State legislatures all across our country. They are reflecting the will, the desire, and the value of the people in their States and in their communities.

Let's also understand that these activist judges, like the two involved in this majority decision of the Ninth Circuit, often cite the first 10 words of the Establishment Clause, which says:

Congress shall make no law respecting an establishment of religion . . .

But they too often forget the six words that follow:

or prohibiting the free exercise thereof.

To understand the history of religious freedom in this country, one must understand that this country, in the very beginning, starting with the Virginia Company, which was a commercial venture—it still was a crown colony, as were all the colonies, and as such it was associated with the Church of England or the Anglican Church. People were compelled to pay taxes to that church whether they wanted to go to that church or not.

The concept of the statute of religious freedom first started in Virginia with Thomas Jefferson. He drafted the Virginia Statute for Religious Freedom. It is on his gravestone as one of his three most proud accomplishments, along with the founding of the University of Virginia, and drafting the Declaration of Independence.

The statute of religious freedom was a novel idea. It was a radical idea because what you had in the 1700s and before then were monarchies, theocracies in effect, where the monarchs were ruling because of bloodlines not because of merit or popular will. They also had a single church and that church was given that exclusive monopoly in that they would then say that those monarchs were ruling by divine guidance and divine right. In all of these monarchies, the idea that people could believe as they saw fit and not be compelled to join a church or be compelled to support a church was a very radical idea and upsetting to the tyrannical monarchs because that upset their whole justification for being in power in the first place.

The Virginia Statute for Religious Freedom actually took 7 years to pass in the Virginia General Assembly. Good ideas still sometimes take a long time. Mr. Jefferson was the Minister to France when James Madison finally got this Statute through the Virginia General Assembly.

The Virginia Statute for Religious Freedom states very clearly, in article I, section 16, of the Virginia Constitution, ''That religion, or the duty which we owe our Creator and the manner of discharging it, can be directed by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; . . . '' and so forth. It goes on to say that people's rights and individual's rights should not be enhanced nor should they be diminished due to their religious beliefs.

Now the purpose of the Establishment Clause, which was then put into the Federal Constitution in the First Amendment of the Bill of Rights, was not to expunge religion or matters of faith from all aspects of public life. The Pledge of Allegiance should remain in our schools and other public functions, but it should be voluntary. The Commonwealth of Virginia has such a law but it is voluntary. If a student does not want to recite the Pledge of Allegiance, he or she is not compelled to do so. One needs to respect that individual conscience.

The way it is in the law, whether in this case in the Ninth Circuit or elsewhere, is that it allows, in accordance with the founding documents of our Nation, the ability of the majority to express their values and their wisdom. If somebody somehow does not want to recite it, they are not compelled to do so.

So the Establishment Clause, as well as our Bill of Rights, and our Declaration of Independence, are all modeled on the Virginia Statute for Religious Freedom, and the Virginia Declaration of Rights.

The Virginia Statute for Religious Freedom, as drafted by Mr. Jefferson and then carried forward by James Madison and adopted in 1786, counsels against the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men who have assumed dominion over the faith of others.

The Virginia Declaration of Rights holds that all men are equally entitled to the free exercise of religion according to the dictates of their conscience. Minimal reference is made to a nondenominational creator or natural rights or God and that is consistent with the values and the desires of the people. This is in step, and the laws are, fortunately, in this regard, in step with our society and the views of the people, as they have been throughout our history.

It is my hope, and it is not without basis, that this decision of the Ninth Circuit will be handily reversed by the Supreme Court of the United States.

I remind the Senate that the Ninth Circuit Court of Appeals has by far the most dismal reversal rate in the Supreme Court of any court of appeals in our land. In recent years, the reversal rate has hovered around 80 percent compared to about 50 percent for the next highest circuit, which is the Eighth Circuit. In one recent session of the Supreme Court alone, an astonishing 28 out of 29 decisions of the Ninth Circuit Court were overturned. That is 97 percent. What ruling from the Ninth Circuit will come next? Are they going to white out passages of the Declaration of Independence? Will it be improper to recite on public grounds the Declaration of Independence because it refers to our Creator giving us unalienable rights? Will the Ninth Circuit order currency and our coinage to knock out the insidious message of ''In God We Trust''? Will they say that all coins have to be destroyed and melted down? Will they imprison school choirs and have the school directors imprisoned because the children are singing ''God Bless America''? Who knows what is next out of the Ninth Circuit.

At some point, though, a proper respect for the rights of the people, their desires, and also common sense and reason must be guiding our courts, especially this particular circuit court, and today's activist, offensive decision.

Today's action by the Ninth Circuit is hit-and-run jurisprudence. It is smug judicial activism at its rankest. It is

outrageously out-of-touch with the desires and values of the American people. It is striking down the basic concept that laws made by Congress or by State legislatures, unless they are clearly unconstitutional, ought to be respected.

I am proud today, only days before the 226th anniversary of our Nation's birth, of our Declaration of Independence, where we ceded from the monarchy of Britain, that we are going to stand for what is right. We are going to stand by our flag and the principles of freedom and justice and with our Pledge of Allegiance.

I thank my colleagues for their united, bipartisan stand for what is right about America and what is right for our schools and our youngsters, and that is stating the Pledge of Allegiance to our flag.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWNBACK. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Madam President, I rise today to discuss this recent Federal court of appeals ruling on the Pledge of Allegiance and to express with my colleagues the universal outrage of the court's ruling today, and the delight with how we have joined together so quickly, and I express this on behalf of all Americans that we believe ''In God We Trust.'' We believe that this is a nation under God. We believe in what is placed on the mantel above the Senate Chamber, ''In God We Trust.'' Our very Constitution itself signs off using the word, ''Lord.''

Can we declare the Constitution unconstitutional? I guess it would be a legitimate question to ask the Ninth Circuit Court of Appeals. Is the Constitution unconstitutional? Our Declaration of Independence refers to God multiple times including saying that our certain unalienable rights are endowed by our Creator.

George Washington's Farewell Address, which is read in the House and Senate each year, refers to God and faith and religion. Abraham Lincoln's Gettysburg Address uses the word ''God,'' proclaiming that this Nation under God shall have a new birth of freedom. Booker T. Washington repeatedly referred to God when speaking. Even Elizabeth Cady Stanton and Sojourner Truth referred to God in their writings and speeches. Will it now be unconstitutional to teach American history to our children, to require them to read some of the words of the great men and women of our Nation because they mention God? Will those have to be stricken from all of the speeches of Lincoln and Washington and Martin Luther King? Will it have to be taken out of the Declaration of Independence? According to the Ninth Circuit Court of Appeals, this could indeed be so. After all, if saying the Pledge of Allegiance violates the establishment clause of our Constitution, how can these others not do so as well?

What about our money—I think we are in a real problem here—which has the motto ''In God We Trust'' on it, or the fact that every day we open Congress with a prayer, maintain full-time Chaplains on each side of the Capitol Building, and in the very Chamber in which we stand today it twice says ''God''. Do we have to get the putty out and fill them in?

Consider the very founding of our Nation. At that time, the brave men and women trusted in God and believed we owed our success to him. In fact, the first act of the first Continental Congress was a public prayer. As Sam Adams noted then in support of the idea, he was no bigot and could hear a prayer from any gentleman of piety and virtue who at the same time was a friend of his country. And so on September 7, 1774, the first official prayer before the Continental Congress took place when an Episcopal clergyman read aloud Psalm 35 from the Book of Common Prayer—a now unconstitutional act that he performed in 1774, the first Continental Congress.

In 1779, the Congress urged the Nation ''humbly to approach the throne of almighty God,'' to ask ''that he would establish the independence of these United States upon the basis of religion and virtue.''

Just 2 years later, Congress passed ''The Congressional Decree of 1781'':

> Whereas, it hath pleased Almighty God, the father of mercies, remarkably to assist and support the United States of America in their important struggle for liberty, against the long continued efforts of a powerful nation: it is the duty of all ranks to observe and thankfully acknowledge the interpositions of his Providence in their behalf. Through the whole of the context, from its first rise to this time, the influence of Divine Providence may be clearly perceived in many signal instances, of which we mention but a few.

An unconstitutional act?

The founders also inscribed on the seal of our nation the Latin phrase, ''Annuit Ceoptis''—translated as ''God favors our undertakings.''

This belief infused those courageous risk-takers then when they faced an unimaginable and seemingly insurmountable undertaking—and it inspires many of us today, especially as we face an unimaginable and seemingly insurmountable undertaking in challenging terrorists around the world.

Indeed, according to the 9th Circuit, it would be illegal to teach children about President Bush's address to Congress following the terrorist attacks.

That's not just sad, it is an injustice to our children, our nation and our government. It cries out for logic and commonsense—but clearly this Court has neither. Although I am not surprised—it turns out that in recent years, more than 80 percent of the rulings by the 9th Circuit have been overturned. Just a few years ago the 9th managed to compile an 1–28 record at the Supreme Court—that is, the Supreme Court reviewed 29 cases from the 9th Circuit Court and reversed a stunning 28 of them.

Although I must admit that I can't just criticize the 9th Circuit, as, interestingly enough, we can make an accurate and strong argument that the Establishment Clause is clearly misinterpreted by the entire legal system today. The concept of a ''wall of separation'' is actually from a letter Thomas Jefferson wrote in 1802 that was completely unnoticed until a mistaken transcription of the original letter was cited by the Supreme Court in 1879 in Reynolds v. United States. The focus in 1879 was not on ''separation'' but on the term ''legislative powers''—yet the transcriber had written that wrong; The original, in Jefferson's neat handwriting, said ''legitimate power.'' This metaphor again remained unused and virtually unknown until Justice Black drew it from obscurity in 1947—again using the erroneous translation.

So it is clear that our nation, perhaps even from the beginning, needs commonsense, reasonable judges—judges who will defend our principles, ideals and way of life. Judges who understand the risks and sacrifices made both by those who founded our nation and fought for its principles—and by those who continue to do so today.

It is why today I thank Frank Bellamy, who wrote this beautiful poem that our Pledge was based upon in 1892 when he lived in my home state of Kansas in the small town of Cherryvale. And why I thank those sincere leaders who in 1954 sought to reaffirm, as the Declaration of Independence first declared, our ''firm Reliance on the Protection of divine Providence.''

On a side note, Madam President, we have people every day who seek to emulate the model after the United States, thankfully. It is a great country. It is a country that stood for so much freedom for people around the world, people such as Mi-Hwa Rhyu and Sol-Hee Rhyu, a mother and daughter captured by police in Asia today, North Korean refugees seeking to flee North Korea and get to someplace like the United States, to be free and be able to live in a nation that honors God. They are now being detained and probably sent back to a country that does not honor God—North Korea—that does not believe, to suffer an ill fate there.

Yet people yearn to be free, to come into a place that says, ''In God we trust.'' And they are willing to risk their lives to come into a place such as this. Countries seek to emulate our great land.

Why, why, why will we seek to remove the foundation of all those basic beliefs that we have? I tell our schoolchildren not only is it wrong but unconstitutional to say ''under God'' or ''in God.''

I pledge allegiance to the flag of the United States of America, and to the

Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

I yield the floor.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Madam President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Madam President, we have been discussing with some passion this afternoon, the ruling of the Ninth Circuit Court of Appeals on the Pledge of Allegiance, their ruling that the Pledge of Allegiance violates the Constitution of the United States. I think it is important for us to note that this is not a total surprise, although it has been a surprise. It should not have been a total surprise, let me say, because we have had a number of decisions by courts in America that have lost sight of the balance contained in the first amendment and have rendered opinions that go beyond the intent of the Framers of the Constitution.

When we say go beyond the intent of the Framers, that is really not quite strong enough. The Constitution starts off saying:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

We, the people, ordain and establish this Constitution—the one that we have, not one somebody would like it to be, not one that they wish it would be, but the one that we ordained, passed, the one that was ratified by the people of the United States.

Over the years, we have amended that Constitution, as we have chosen to do so, from time to time. That is the way it should be amended. What the Constitution does not give is the power to judges to amend the Constitution. Some judges say: We will just redefine the Constitution. We are just matching it up with modern, enlightened standards. They may have meant that back then, but we want to reinterpret it today in the light of the standards and values that we have.

And whose standards and values are they? It is the standards and values of the judge.

I was very troubled about this recent ruling, the way it occurred, involving the death penalty law with regard to retarded individuals. The Court seemed to say that they had divined, somehow, that the American people had evolved in their thinking and, therefore, the laws their legislatures had passed were not valid anymore; that they could not execute people who were retarded.

However you feel about that, that is a dangerous philosophy, but it is a philosophy afoot in America today. It is a philosophy, I think, that is dangerous to liberty. If you care about the Constitution, really respect the Constitution, as Professor Van Alstyne, of Duke University, one time said: If you respect the document, you will enforce it, the good and bad parts. You will enforce the parts you do not agree with, if you love, respect, and revere the Constitution.

The way to erode the power of the Constitution to protect our liberties is to start playing around with the meaning of words, just redefining those words, and they come to mean whatever a judge says they do. That is a particularly pernicious thing because, you see, judges are not accountable. Federal judges are not accountable to the public. They are given a lifetime appointment.

The one thing we have is a moment in time to review their record, to make sure they are committed to follow the Constitution. We vote on them in the Senate, they are confirmed or not, and they go on to serve, and then they are there forever.

I think from a point of view of a democracy, our judges must show self-restraint. That is what President Bush has talked about in his judicial nominees—finding judges who follow the law, for the layman. Not make up law, not expand law, not make it say what they think the American people want it to say today—even though they may be correct. They may not be correct. They do not have the power to do that. It is an antidemocratic act when an unelected, lifetime-appointed judge simply takes a political view and imposes that through the reinterpretation of words.

I remember Hodding Carter, President Carter's aide, was on ''Meet The Press.'' He used to be on there regularly. One time he said: We liberals have gotten to the point where we want the courts to do for us that which we can no longer win at the ballot box.

I think that touched a nerve, really. I think that is too close to what I think is a problem in the legal system today.

I don't expect the courts to carry out my political agenda. I want them just to enforce the law. I will be satisfied with that. As one professor testified with regard to the Bush nominees: If you appoint a nominee who says he is going to be faithful and in fact he is consistently faithful to the meaning of the words in the statutes and the Constitution, then what do we have to fear of that? How does that threaten us?

What does threaten us is if a judge goes beyond that. I have been a big critic of the Ninth Circuit. I have spoken in this body more on this subject than any other Senator.

I have been shocked by the rate of reversals they have had.

Senator BROWNBACK from Kansas had something to say about that.

There was a Law Review article published recently that went into even more detail. The University of Oregon Law Review discussed this particularly troublesome trend.

They said:

> Another interesting phenomenon is that the Supreme Court unanimously agrees——

That means the U.S. Supreme Court, across the political spectrum, unanimously agrees that the Ninth Circuit was wrong 17 times during the 1996–1997 term. This is a fairly remarkable record considering that the rest of the circuits combined logged in with only 20 unanimous votes, 7 of which were affirmative.

We have liberals and conservatives on the U.S. Supreme Court, and 13 of these cases were unanimous reversals of the Ninth Circuit.

This article goes on to say that only 13 unanimous reversals were found throughout the rest of the United States but 17 in the Ninth Circuit.

So that is the problem for us. We need to be concerned about it.

I opposed two judges I sincerely believed were good people but who clearly—I had concluded clearly—had activist tendencies. And I was particularly concerned when President Clinton pushed those nominees because they were going to this circuit that has been out of step.

We have to understand why we need to confirm judges who will consistently follow the law, whether they like it or not. That is what President Bush campaigned on; that is what he promised to do. That is what he has been submitting—men and women of the highest possible integrity, and high legal ability. These men and women are clear in their record as being people who just follow the law, whether they like it or not. That is what we expect out of a judge. It is important or it undermines democracy otherwise.

I wanted to mention that.

I also want to discuss just briefly the trouble we are having throughout the court system of America. The U.S. Supreme Court is not blameless in this issue. Somehow they have got it in their heads that virtually any expression of religious faith in a public activity violates the Constitution. We have problems with valedictorians making speeches out of their own hearts. They cannot say certain things because we have gotten to that point, as I mentioned earlier.

That was criticized by Judge Griffin Bell, former Attorney of the United States under President Carter. Judge Bell said we ought to have a litmus test. Nobody ought to serve on the Court who doesn't believe in prayer at football games.

How did we get to this point? How did we get to the point that a voluntary prayer—you don't have to bow your head. There is no requirement that anybody has to do anything before football games. We take a minute, and somebody says a little prayer that acknowledges something more important than who is the toughest football player on the field. I don't think there is anything wrong with that. I don't believe that violates anybody's right.

Just as I believe I should respect somebody who has a different faith than mine, just as I am required to respect the person who believes in no God whatsoever, and to have a decent respect for the opinions of others who would say to me: If we want to have a little prayer and everybody wants to have a little prayer, it is not going to bother me. I don't believe in God anyway. Let them have it.

It is a part of our culture. It is not legitimate, in my view, for the Supreme Court or its subsidiary courts to come in and declare that it is in violation of the Constitution. After all, what does the Constitution say? The first amendment is the only reference to religion.

It says Congress shall make no law respecting the establishment of a religion or prohibit the free exercise thereof. That is what the Constitution says. There is nothing in the Constitution about a law of separation between church and state.

Thomas Jefferson wrote a letter to the Baptist Association not long before he died in which he expressed an opinion that there ought to be a wall of separation. What he meant by that, who knows? But judges have seized on that and rendered these opinions, many of them citing that quote as if it is somehow part of the Constitution. But the American people didn't ratify that. They ratified the Constitution. That is the law of the land. What he wrote in a letter before he died is of no benefit in interpreting the Constitution—or a minuscule benefit, if any.

In fact, Thomas Jefferson wasn't even at the Constitutional Convention when they were drafting the Constitution. He was off in France.

We are off base here. Somehow, under the idea that we have raised the establishment clause higher than all reason dictates that it be raised, we are saying anything that expresses religious faith publicly is somehow an establishment of a religion. But everybody who knows the history of the deal understands that Virginia had an established church, and England had the established Church of England—the Anglican Church, the Episcopal Church. Other countries had the Catholic Church as the established church. We didn't establish a church. No church was going to be given preferential treatment over another one.

That is what the Constitution was all about. That cannot be denied, in my view.

Congress shall pass no law respecting the establishment of a religion.

That is what the Founding Fathers wanted to prohibit. They didn't want to prohibit nor want to go back and strike the language from the Declaration of Independence, for Heaven's sake.

For 150 years, we never had a problem with this. We rolled on—no problem. We have chaplains. We have thanksgiving days. We have all kinds of things occurring that reflect an acknowledgment in general terms of religious beliefs, and of a higher being.

The Supreme Court said some things over the years. In recent years—during the last 50 or 70 years—they have been inconsistent about it. I think that has given some circuits, like the Ninth Circuit, and some judges the opportunity to perhaps run with some liberty to go further than I hope the Supreme Court wants them to go. But the Supreme Court has some fault here. We have had a long period of these kinds of opinions that go beyond reason, in my view.

For example, in Lynch v. Donnelly, the U.S. Supreme Court in 1984 recognized ''an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789.''

And it adds, ''Our history is replete with official references to the value and invocation of Divine guidance in the deliberation and pronouncements of the Founding Fathers and contemporary leaders.''

We just have to be relaxed here, and be natural in our understanding of what we mean by not establishing a religion.

We also do not need to forget the free exercise clause of the first amendment that we shall not be denied the free exercise of our religion. That is of equal value with nonestablishment of religion.

Other things are important.

Engraved on the top of the Washington Monument are the words ''Praise be to God.''

I suppose the judges out there that rendered the opinion are going to have to take a chisel up there and go after it.

The Tomb of the Unknown Soldier: At that tomb are these words engraved: ''Here rests in honored glory an American soldier known but to God.'' Is somebody going to take the chisel to that?

Let me mention this final quote. It shows how, in the middle of this past century, we were not so far out of sync about what the first amendment really means.

Justice William O. Douglas, whom many would recognize as perhaps the most liberal member ever to serve on the Court—certainly one of the most, maybe, radical members of the Court; his background was quite unusual, but he was a brilliant man—he wrote many interesting opinions. This one, writing for the majority on the Court, in 1952, in Zorach v. Clauson, he stated this:

> The First Amendment . . . does not say that in every and all respects there should be a separation of Church and State. . . . Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly. . . . Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; ''so help me God'' in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment.

If that were the way we were going to interpret it. He is exactly correct.

So my concern is that we would be in error if we simply stood up and said that the Ninth Circuit made a mistake and somehow it is all going to get corrected. There are Members of this body who have advocated aggressively for these kinds of opinions. There are Members of this body who have fought hard to confirm the kind of judges who render these rulings.

In fact, this ruling, I assume, is going to be compatible with the views, probably, of a majority of law professors in America today—maybe not, hopefully not—but a whole lot of them because that is what a lot of the people think.

We have had a radicalized version of the establishment clause that is being taught, that has been adopted, and in significant part adopted by the Supreme Court. So they have a problem now, as I see it. They are going to have to deal with this.

They say a schoolchild cannot say a prayer, cannot express religious faith through a prayer that nobody has to listen to, but we can chisel on a wall of the Senate: ''In God we trust.''

They are saying we can have paid chaplains in this Senate and in the Armed Forces by the taxpayers of the United States, but nonmandatory, free expressions of faith all over the country they strike down in many different ways.

So I think they have a problem. I hope this Supreme Court will reevaluate what they have done. I hope they will go back to the 1940s and 1950s, and all the century and a half of the founding of this country, and follow that history of jurisprudence. If they do so, they can get us out of this thicket.

What we simply need to do is to respect other people's religion. If a group of kids want to have a little prayer, so be it. Let's let them have it. It does not hurt me. I do not think it hurts anybody else. That is the way I was raised: to respect people's faith, and not to denigrate someone else's faith when they do not agree with you.

I hope that as we go through this whole debate, this resolution will have some impact. I doubt it will have much. But I hope in the course of responding to this opinion, which is, unfortunately, too consistent with some of the rulings of courts in America, that we will once again reattach ourselves to the great historic principles of America that venerate respect and further and nourish religious faith, not attempt to eliminate it from public life, but, at the same time, not allow anybody to impose their will on somebody else.

I think we can reach that balance. I think we can show courtesy to one another. I hope we will be able to do so. If we do, America will be better off for it. It is time for us to get to the bottom of it, confront the issues honestly, and head on, and maybe we can make some improvements.

Mrs. CLINTON. Mr. President, I am surprised and offended by the decision of the Appeals Court of the Ninth Circuit and hope that it will be promptly

appealed and overturned. I believe that the Court has misinterpreted the intent of the Framers of the Constitution and has sought to undermine one of the bedrock values of our democracy, that we are indeed ''one nation under God,'' as embodied in the Pledge of Allegiance to the flag of the United States of America.

While our men and women in uniform are battling overseas and defending us here at home to preserve the freedom that we all cherish for our country and its citizens, we should never forget the blessings of Divine Providence that undergird our Nation. That includes the freedom to recite the pledge of allegiance in our Nation's schools. I can only imagine how they will feel about this decision as they risk their lives for our values.

And the children of America, who share a bond with each other and with our Nation by reciting the pledge each day, what effect will a decision like this have on them? It will cause them to wonder about the ways in which our beliefs can be stretched, our heritage can be assaulted. It is the wrong decision, and it is an unfair decision, especially unfair to those who defend our Nation, and to the young people who will inherit our Nation's future.

Ours is a Nation founded by people of faith. People of faith have helped lead some of the most significant movements of social justice throughout our history: to end slavery, to win civil rights for all Americans. No one is required to have faith, and our Government does not impose faith on its citizens. But ours is the most faith-filled nation on Earth, and there is no moral or constitutional argument why our Pledge of Allegiance cannot acknowledge our commonly held belief that ours is one nation, under God, indivisible, with liberty and justice for all.

I am honored to support S. 292, the Pledge of Allegiance resolution, and I hope that the rule of law will be upheld by an ultimate rejection of this wrongheaded decision of the Ninth Circuit Court of Appeals.

Mr. SMITH of New Hampshire. Mr. President, I am outraged with the decision by the 9th U.S. Circuit Court of Appeals that the Pledge of Allegiance is unconstitutional because it contains the words ''Under God.''

The pledge is part of the fabric of our society, a wonderful tradition that is observed in thousands of schools each day by millions of school children.

For two activist judges to decide for thousands of schools and thousands of parents that their children can't recite the pledge is the height of liberal intolerance and arrogance.

The Declaration of Independence talks about our Creator. Our coins and dollars have ''In God We Trust'' imprinted on them. Our public officials take their oath on the Bible. The Ten Commandments is posted in the U.S. Supreme Court. The House and Senate start off each day with the Pledge of Allegiance. If it's good enough for Senators to say the pledge each day, it's good enough for America's school children to do the same.

There are countless more examples of religion in American public life. The First Congress enacted the Northwest Ordinance, which provided that ''religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.'' President George Washington offered a prayer at his First Inaugural Address. Many of our nation's Founding Fathers and Framers of our Constitution commented publicly and privately about the values and importance of religion in American public life. Our armed services provide chaplains, priests and rabbis. The U.S. House of Representatives and the U.S. Senate begin each day with an opening prayer. For this court to single out the pledge for including the phrase ''One Nation, Under God,'' is simply incredible.

Nobody's forcing school children to recite the pledge. What we want, and what millions of parents want, is to simply give American children the chance to pledge allegiance to our Flag and to everything that it represents: patriotism, sacrifice, courage, justice, perseverance. The list goes on.

Now, more than ever, we should encourage our young people to learn and respect the patriotic values embodied in our Flag, the symbol of our country, and in the Pledge of Allegiance.

Mr. HOLLINGS. Mr. President, the judges who today declared the Pledge of Allegiance unconstitutional because of the words ''under God'' threw out reason and common sense and misread the Constitution. What we are left with is an absurd result.

The first amendment of the Constitution allows for not only freedom of religion, but freedom to exercise religion. It is ludicrous that we can't say ''under God.'' Using these judges' twisted logic, ''In God We Trust'' couldn't be on coins, and we would have to edit the Declaration of Independence because it says that all men are ''endowed by their Creator.''

When reason, common sense, and the correct interpretation of the Constitution return, this opinion will be reversed.

I thank the Chair and yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NELSON of Florida). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MILLER). Without objection, it is so ordered.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003—Continued

AMENDMENT NO. 4111, AS MODIFIED

Mr. REID. Mr. President, I ask unanimous consent the previously agreed to Lott amendment, No. 4111, be modified with the changes that are now at the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4111), as modified, is as follows:

On page 100, between lines 3 and 4, insert the following:

SEC. 503. REINSTATEMENT OF AUTHORITY TO REDUCE SERVICE REQUIREMENT FOR RETIREMENT IN GRADES ABOVE O-4

(a) OFFICERS ON ACTIVE DUTY.—Subsection (a)(2)(A) of section 1370 of title 10, United States Code, is amended—

(1) by striking ''may authorize'' and all that follows and inserting ''may, in the case of retirements effective during the period beginning on September 1, 2002, and ending on December 31, 2004, authorize—''; and

(2) by adding at the end the following:

''(1) the Deputy Under Secretary of Defense for Personnel and Readiness to reduce such 3-year period of required service to a period not less than two years for retirements in grades above colonel or, in the case of the Navy, captain; and

''(2) the Secretary of a military department or the Assistant Secretary of a military department having responsibility for manpower and reserve affairs to reduce such 3-year period to a period of required service not less than two years for retirements in grades of lieutenant colonel and colonel or, in the case of the Navy, commander and captain.''.

(b) RESERVE OFFICERS.—Subsection (d)(5) of such section is amended—

(1) in the first sentence—

(A) by striking ''may authorize'' and all that follows and inserting ''may, in the case of retirements effective during the period beginning on September 1, 2002, and ending on December 31, 2004, authorize—''; and

(B) by adding at the end the following:

''(A) the Deputy Under Secretary of Defense for Personnel and Readiness to reduce such 3-year period of required service to a period not less than two years for retirements in grades above colonel or, in the case of the Navy, captain; and

''(B) the Secretary of a military department or the Assistant Secretary of a military department having responsibility for manpower and reserve affairs to reduce such 3-year period of required service to a period not less than two years for retirements in grades of lieutenant colonel and colonel or, in the case of the Navy, commander and captain.'';

(2) by designating the second sentence as paragraph (6) and realigning such paragraph, as so redesignated 2 ems from the left margin; and

(3) in paragraph (6), as so redesignated, by striking ''this paragraph'' and inserting ''paragraph (5)''.

(c) ADVANCE NOTICE TO THE PRESIDENT AND CONGRESS.—Such section is further amended by adding at the end the following new subsection:

''(e) ADVANCE NOTICE TO CONGRESS.—(1) The Secretary of Defense shall notify the Committees on Armed Services of the Senate and House of Representatives of—

''(A) an exercise of authority under paragraph (2)(A) of subsection (a) to reduce the 3-year minimum period of required service on

S. 2681. A bill to provide for safe equestrian helmets, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. THOMPSON:

S. 2682. A bill to provide for reliquidation and payment of antidumping duties on certain entries of televisions; to the Committee on Finance.

By Mr. HUTCHINSON:

S. 2683. A bill to amend the Internal Revenue Code of 1986 to clarify that church employees are eligible for the exclusion for qualified tuition reduction programs of charitable educational organizations; to the Committee on Finance.

By Mrs. CLINTON:

S. 2684. A bill to amend the Atomic Energy Act of 1954 to establish a task force to identify legislative and administrative action that can be taken to ensure the security of sealed sources of radioactive material, and for other purposes; to the Committee on Environment and Public Works.

By Mr. ROCKEFELLER:

S. 2685. A bill to amend the Black Lung Benefits Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GRASSLEY (for himself and Mr. LEVIN):

S. 2686. A bill to strengthen national security by providing whistleblower protections to certain employees at airports, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MURKOWSKI:

S. 2687. A bill to facilitate the extension of the Alaska Railroad for national defense purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. LANDRIEU (for herself and Mr. ALLEN):

S.J. Res. 39. A joint resolution proposing an amendment to the Constitution of the United States relative to the reference to God in the Pledge of Allegiance and on United States currency; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DASCHLE (for himself, Mr. LOTT, Mr. BYRD, Mr. LEAHY, Mr. WARNER, Mr. REID, Mr. BINGAMAN, Mr. JOHNSON, Mr. DEWINE, Mr. MCCAIN, Mr. AKAKA, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BIDEN, Mr. BOND, Mrs. BOXER, Mr. BREAUX, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. CAMPBELL, Ms. CANTWELL, Mrs. CARNAHAN, Mr. CARPER, Mr. CHAFEE, Mr. CLELAND, Mrs. CLINTON, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. CORZINE, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. EDWARDS, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FITZGERALD, Mr. FRIST, Mr. GRAHAM, Mr. GRAMM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mr. HELMS, Mr. HOLLINGS, Mr. HUTCHINSON, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Mr. MCCONNELL, Ms. MIKULSKI, Mr. MILLER, Mr. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. NICKLES, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SANTORUM, Mr. SARBANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire, Mr. SMITH of Oregon, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. THURMOND, Mr. TORRICELLI, Mr. VOINOVICH, Mr. WELLSTONE, and Mr. WYDEN):

S. Res. 292. A resolution expressing support for the Pledge of Allegiance; considered and agreed to.

By Mr. CAMPBELL (for himself, Mr. DODD, Mr. FEINGOLD, Mrs. CLINTON, and Mr. WELLSTONE):

S. Con. Res. 124. A concurrent resolution condemning the use of torture and other forms of cruel, inhumane, or degrading treatment or punishment in the United States and other countries, and expressing support for victims of those practices; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 351

At the request of Ms. COLLINS, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 351, a bill to amend the Solid Waste Disposal Act to reduce the quantity of mercury in the environment by limiting use of mercury fever thermometers and improving collection, recycling, and disposal of mercury, and for other purposes.

S. 367

At the request of Mrs. BOXER, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 367, a bill to prohibit the application of certain restrictive eligibility requirements to foreign nongovernmental organizations with respect to the provision of assistance under part I of the Foreign Assistance Act of 1961.

S. 556

At the request of Mr. JEFFORDS, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 556, a bill to amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes.

S. 611

At the request of Ms. MIKULSKI, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 611, a bill to amend title II of the Social Security Act to provide that the reduction in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 917

At the request of Ms. COLLINS, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 917, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 1132

At the request of Mr. CRAPO, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1132, a bill to amend the Federal Food, Drug, and Cosmetic Act relating to the distribution chain of prescription drugs.

S. 1379

At the request of Mr. KENNEDY, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 1379, a bill to amend the Public Health Service Act to establish an Office of Rare Diseases at the National Institutes of Health, and for other purposes.

S. 1394

At the request of Mr. ENSIGN, the names of the Senator from Nevada (Mr. REID) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 1394, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 1523

At the request of Mrs. FEINSTEIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1523, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 2108

At the request of Ms. STABENOW, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2108, a bill to amend the Agriculture and Consumer Protection Act of 1973 to assist the neediest of senior citizens by modifying the eligibility criteria for supplemental foods provided under the commodity supplemental food program to take into account the extraordinarily high out-of-pocket medical expenses that senior citizens pay, and for other purposes.

S. 2194

At the request of Mr. MCCONNELL, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 2194, a bill to hold accountable the Palestine Liberation Organization and the Palestinian Authority, and for other purposes.

S. 2268

At the request of Mr. MILLER, the names of the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 2268, a bill to amend the Act establishing the Department of Commerce to protect manufacturers and sellers in the firearms and ammunition industry from restrictions on interstate or foreign commerce.

S. 2317

At the request of Mr. DURBIN, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 2317, a bill to provide for fire safety standards for cigarettes, and for other purposes.

The extension will allow materials to be shipped to Alaska by sea to be transferred to the railroad and carried all the way to the vicinity of the defense project by rail. This is preferential to being loaded, unloaded, loaded on long-distance trucks, unloaded, and loaded again when they move to the actual work site.

The bill provides for the Secretary of the Interior, working with other agencies as appropriate and necessary, to identify and acquire all of the lands necessary for this modest rail line extension of approximately 80 miles. Where those lands are held by other entities, there will be a fair exchange for lands held elsewhere. Once the entire route has been acquired, the lands will be transferred to the Alaska Railroad under the same circumstances that have been used previously under the Alaska Railroad Transfer Act.

This is a very important step toward ensuring the most economical possible approach to this major project, and I urge my colleagues support.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2687

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This act may be cited as the ''National Defense Rail Connection Act of 2002.''

SEC. 2. FINDINGS.

(a) A comprehensive rail transportation network is a key element of an integrated transportation system for the North American continent, and federal leadership is required to address the needs of a reliable, safe, and secure rail network, and to connect all areas of the United States for national defense and economic development, as previously done for the interstate highway system, the Federal aviation network, and the transcontinental railroad;

(b) The creation and use of joint use corridors for rail transportation, fiber optics, pipelines, and utilities are an efficient and appropriate approach to optimizing the nation's interconnectivity and national security;

(c) Government assistance and encouragement in the development of the transcontinental rail system successfully led to the growth of economically strong and socially stable communities throughout the western United States;

(d) Government assistance and encouragement in the development of the Alaska Railroad between Seward, Alaska and Fairbanks, Alaska successfully led to the growth of economically strong and socially stable communities along the route, which today provide homes for over 70% of Alaska's total population;

(e) While Alaska and the remainder of the continental United States has been connected by highway and air transportation, no rail connection exists despite the fact that Alaska is accessible by land routes and is a logical destination for the North American rail system:

(f) Rail transportation in otherwise isolated areas is an appropriate means of providing controlled access, reducing overall impacts to environmentally sensitive areas over other methods of land-based access;

(g) Because Congress originally authorized 1,000 miles of rail line to be built in Alaska, and because the system today covers only approximately half that distance, substantially limiting its beneficial effect on the economy of Alaska and the nation, it is appropriate to support the expansion of the Alaska system to ensure the originally planned benefits are achieved;

(h) Alaska has an abundance of natural resources, both material and aesthetic, access to which would significantly increase Alaska's contribution to the national economy;

(i) Alaska contains many key national defense installations, including sites chosen for the construction of the first phase of the National Missile Defense system, the cost of which could be significantly reduced if rail transportation were available for the movement of materials necessary for construction and for the secure movement of launch vehicles, fuel and other operational supplies;

(j) The 106th Congress recognized the potential benefits of establishing a rail connection to Alaska by enacting legislation to authorize a U.S. -Canada bilateral commission to study the feasibility of linking the rail system in Alaska to the nearest appropriate point in Canada of the North American rail network; and

(k) In support of pending bilateral activities between the United States and Canada, it is appropriate for the United States to undertake activities relating to elements within the United States.

SEC. 3. IDENTIFICATION OF NATIONAL DEFENSE RAILROAD-UTILITY CORRIDOR.

(a) Within one year from the date of enactment of this Act, the Secretary of the Interior, in consultation with the Secretary of Transportation, the State of Alaska and the Alaska Railroad Corporation, shall identify a proposed national defense railroad-utility corridor linking the existing corridor of the Alaska Railroad to the vicinity of the proposed National Missile Defense facilities at Fort Greely, Alaska. The corridor shall be at least 500 feet wide and shall also identify land for such terminals, stations, maintenance facilities, switching yards, and material sites as are considered necessary.

(b) The identification of the corridor under paragraph (a) shall include information providing a complete legal description for and noting the current ownership of the proposed corridor and associated land.

(c) In identifying the corridor under paragraph (a), the Secretary shall consider, at a minimum, the following factors:

(a) The proximity of national defense installations and national defense considerations;

(2) The location of and access to natural resources that could contribute to economic development of the region;

(3) Grade and alignment standards that are commensurate with rail and utility construction standards and that minimize the prospect of at-grade railroad and highway crossings;

(4) Availability of construction materials;

(5) Safety;

(6) Effects on and service to adjacent communities and potential intermodal transportation connections;

(7) Environmental concerns;

(8) Use of public land to the maximum degree possible;

(9) Minimization of probable construction costs;

(10) An estimate of probable construction costs and methods of financing such costs through a combination of private, state, and federal sources; and

(11) Appropriate utility elements for the corridor, including but not limited to petroleum product pipelines, fiber-optic telecommunication facilities, and electrical power transmission lines, and

(12) Prior and established traditional uses.

(d) the Secretary may, as part of the corridor identification, include issues related to the further extension of such corridor to a connection with the nearest appropriate terminus of the North American rail network in Canada.

SEC. 4. NEGOTIATION AND LAND TRANSFER.

(a) The Secretary of the Interior shall—

(1) upon completion of the corridor identification in Sec. 3, negotiate the acquisition of any lands in the corridor which are not federally owned through an exchange for lands of equal or greater value held by the federal government elsewhere in Alaska; and

(2) upon completion of the acquisition of lands under paragraph (1), the Secretary shall convey to the Alaska Railroad Corporation, subject to valid existing rights, title to the lands identified under Section 3 as necessary to complete the national defense railroad-utility corridor, on condition that the Alaska Railroad Corporation construct in the corridor an extension of the railroad system to the vicinity of the proposed national missile defense installation at Fort Greely, Alaska, together with such other utilities, including but not limited to fiber-optic transmission lines and electrical transmission lines, as it considers necessary and appropriate. The Federal interest in lands conveyed to the Alaska Railroad Corporation under this Act shall be the same as in lands conveyed pursuant to the Alaska Railroad Transfer Act (45 USC 1201 et seq.).

SEC. 5. APPLICABILITY OF OTHER LAWS.

Actions authorized in this Act shall proceed immediately and to conclusion not withstanding the land-use planning provisions of Section 202 of the Federal Land Policy and Management Act of 1976, P.L. 94–579.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 292—EXPRESSING SUPPORT FOR THE PLEDGE OF ALLEGIANCE

Mr. DASCHLE (for himself, Mr. LOTT, Mr. BYRD, Mr. LEAHY, Mr. WARNER, Mr. REID, Mr. BINGAMAN, Mr. JOHNSON, Mr. DEWINE, Mr. MCCAIN, Mr. AKAKA, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BIDEN, Mr. BOND, Mrs. BOXER, Mr. BREAUX, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. CAMPBELL, Ms. CANTWELL, Mrs. CARNAHAN, Mr. CARPER, Mr. CHAFEE, Mr. CLELAND, Mrs. CLINTON, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. CORZINE, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. EDWARDS, Mr. ENSIGN, Mr. FEINGOLD, Mrs. FEINSTEIN Mr. FITZGERALD, Mr. FRIST, Mr. GRAHAM, Mr. GRAMM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mr. HELMS, Mr. HOLLINGS, Mr. HUTCHINSON, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN Mr. LUGAR, Mr. MCCONNELL, Ms. MIKULSKI Mr. MILLER, Mr. MURKOWSKI, Mrs. MURRAY Mr. NELSON

of Florida, Mr. NELSON of Nebraska, Mr. NICKLES, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SANTORIUM, Mr. SARBANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire, Mr. SMITH of Oregon, Ms. SNOWE Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. THURMOND, Mr. TORRICELLI, Mr. VOINOVICH, Mr. WELLSTONE, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 292

Whereas, this country was founded in religious freedom by founders, many of whom were deeply religious;

Whereas, the First Amendment to the Constitution embodies principles intended to guarantee freedom of religion both through the free exercise thereof and by prohibiting the government establishing a religion;

Whereas, the Pledge of Allegiance was written by Francis Bellamy, a Baptist Minister, and first published in the September 8, 1892, issue of the Youth's Companion;

Whereas, Congress in 1954 added the words ''under God'' to the Pledge of Allegiance;

Whereas, the Pledge of Allegiance has for almost 50 years included references to the U.S. flag, the country, to our country having been established as a union ''under God'' and to this country being dedicated to securing ''liberty and justice for all,''

Whereas, the Congress in 1954 believed it was acting constitutionally when it revised the Pledge of Allegiance;

Whereas, this Senate of the 107th Congress believes that the Pledge of Allegiance is not an unconstitutional expression of patriotism;

Whereas, patriotic songs, engravings on U.S. legal tender, engravings on federal buildings also contain general references to ''God'';

Whereas, in accordance with decisions of the U.S. Supreme Court, public school students cannot be forced to recite the Pledge of Allegiance without violating their First Amendment rights;

Whereas, the Congress expects that the U.S. Court of Appeals for the Ninth Circuit will rehear the case of the *Newdow v. U.S. Congress*, en banc;

Resolved, That The Senate Strongly Disapproves of the Ninth Circuit Decision in Newdow v. U.S. Congress; and that the Senate authorizes and instructs the Senate Legal Counsel to seek to intervene in the case to defend the constitutionality of the Pledge of Allegiance.

SENATE CONCURRENT RESOLUTION 124—CONDEMNING THE USE OF TORTURE AND OTHER FORMS OF CRUEL, INHUMANE, OR DEGRADING TREATMENT OR PUNISHMENT IN THE UNITED STATES AND OTHER COUNTRIES, AND EXPRESSING SUPPORT FOR VICTIMS OF THOSE PRACTICES

Mr. CAMPBELL (for himself, Mr. DODD, Mr. FEINGOLD, Mrs. CLINTON, and Mr. WELLSTONE) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 124

Whereas the Eighth Amendment to the United States Constitution prohibits ''cruel and unusual punishments'' and torture is prohibited by law throughout the United States without exception;

Whereas the prohibition against torture in international agreements is absolute, unqualified, and non-derogable under any circumstance, even during a state of war or national emergency;

Whereas an important component of the concept of comprehensive security in a free society is the fundamental service provided by law enforcement personnel to protect the basic human rights of individuals in society;

Whereas individuals require and deserve protection by law enforcement personnel and need the confidence in knowing that such personnel are not themselves agents of torture or other forms of cruel, inhumane, or degrading treatment or punishment, including extortion or other unlawful acts;

Whereas individuals who are incarcerated should be treated with respect in accordance with the inherent dignity of the human person;

Whereas there is a growing commitment by governments to eradicate torture and other forms of cruel, inhumane, or degrading treatment or punishment, to provide in law and practice procedural and substantive safeguards and remedies to combat such practices, to assist the victims of such practices, and to cooperate with relevant international organizations and nongovernmental organizations with the goal of eradicating such practices;

Whereas torture and other forms of cruel, inhumane, or degrading treatment or punishment continues in many countries despite international commitments to take effective legislative, administrative, judicial and other measures to prevent and punish such practices;

Whereas the rape of prisoners by prison officials or other prisoners, tolerated for the purpose of intimidation and abuse, is a particularly egregious form of torture;

Whereas incommunicado detention facilitates the use of torture and other forms of cruel, inhumane, or degrading treatment or punishment, and may constitute, in and of itself, a form of such practices;

Whereas the use of racial profiling to stop, search, investigate, arrest, or convict an individual who is a minority severely erodes the confidence of a society in law enforcement personnel and may make minorities especially vulnerable to torture and other forms of cruel, inhumane, or degrading treatment or punishment;

Whereas the use of confessions and other evidence obtained through torture or other forms of cruel, inhumane, or degrading treatment or punishment in legal proceedings runs counter to efforts to eradicate such practices;

Whereas more than 500,000 individuals who are survivors of torture live in the United States;

Whereas the victims of torture and other forms of cruel, inhumane, or degrading treatment or punishment and their families often suffer devastating effects and therefore require extensive medical and psychological treatment;

Whereas medical personnel and torture treatment centers play a critical role in the identification, treatment, and rehabilitation of victims of torture and other forms of cruel, inhumane, or degrading treatment or punishment; and

Whereas each year the United Nations designates June 26 as an International Day in Support of Victims of Torture: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) condemns the use of torture and other forms of cruel, inhumane, or degrading treatment or punishment in the United States and other countries;

(2) recognizes the United Nations International Day in Support of the Victims of Torture and expresses support for all victims of torture and other forms of cruel, inhumane, or degrading treatment or punishment who are struggling to overcome the physical scars and psychological effects of such practices;

(3) encourages the training of law enforcement personnel and others who are involved in the custody, interrogation, or treatment of any individual who is arrested, detained, or imprisoned, in the prevention of torture and other forms of cruel, inhumane, or degrading treatment or punishment, in order to reduce and eradicate such practices; and

(4) encourages the Secretary of State to seek, at relevant international fora, the adoption of a commitment—

(A) to treat confessions and other evidence obtained through torture or other forms of cruel, inhumane, or degrading treatment or punishment, as inadmissible in any legal proceeding; and

(B) to prohibit, in law and in practice, incommunicado detention.

Mr. CAMPBELL. Mr. President, I am joined by Senators DODD, FEINGOLD, CLINTON, and WELLSTONE in introducing today a resolution condemning the use of torture and other forms of cruel, inhumane, or degrading treatment or punishment in the United States and other countries, and expressing support for the victims of torture. An identical version is being introduced by Congressman CHRISTOPHER H. SMITH, who co-chairs the Commission on Security and Cooperation in Europe, which I am privileged to chair.

Torture is prohibited by a raft of international agreements, including documents of the 55-nation Organization for Security and Cooperation in Europe. It remains, however, a serious problem in many countries. In the worst cases, torture occurs not merely from rogue elements in the police or a lack of appropriate training among law enforcement personnel, but is systematically used by the controlling regime to target political opposition members; racial, ethnic, linguistic or religious minorities; and others.

In some countries, medical professionals who treat the victims of torture have become, themselves, victims of torture in government's efforts to document this abuse and to hold perpetrators accountable. The U.S. Congress can continue to play a leadership role by signaling our unwavering condemnation of such egregious practices.

Torture is, in effect, prohibited by several articles of the U.S. Constitution. Nevertheless, some commentators have suggested that torture might be an acceptable tool in the war on terrorism. I believe we should answer that proposition with a resounding ''no''. To repeat: torture is unconstitutional. Moreover, as many trained law enforcement officials note, it is also a lousy way to get reliable information. People subjected to torture will often say anything to end the torture. Finally, it makes no sense to wage war to defend our great democracy and use methods that denigrate the very values we seek to protect. Torture is unacceptable, period.

In all, he wrote 16 books of poems, two novels, three collections of short stories, four volumes of editorial and documentary-type fiction, 20 plays, children's poetry, musicals and operas, 3 autobiographies, a dozen radio and television scripts and dozens of magazine articles. He also edited seven anthologies.

He continued throughout his life to write and edit literary works up until his death on May 22, 1967 when he succumbed to cancer. Later, his residence at 20 East 127th Street in Harlem was given landmark status by the New York City Preservation Commission. His block of East 127th Street was renamed ''Langston Hughes Place.''

We are inspired by the words of Langston Hughes; ''We build our temples for tomorrow, as strong as we know how and we stand on the top of the mountain, free within ourselves.'' Hughes was a notable figure in America's history and his voice will live on throughout future generations.

BURMA

HON. JOSEPH R. PITTS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. PITTS. Mr. Speaker, I am deeply disturbed by the horrifying reports of increasing repression in Burma. Accounts detail ongoing massacres, torture, burning of villages and churches, and forced labor of villagers by Burma's military regime in the Karen state and throughout the country. Despite the regime's promises of change and liberalization, Burma's military dictatorship has shown more of the same terrible treatment of the people—recently a dozen innocent civilians, including children and babies were massacred.

I have in my office graphic photos showing the April 28, 2002, massacre in Burma's Dooplaya district. The photos show the bodies of victims stacked neatly after their murder. The regime's soldiers shot and killed Naw Daw Bah, a two-year-old girl, and Naw Play and Naw Ble Po, two five-year-old girls. Nine others were shot, but fortunately escaped, including a six-year old boy who played dead until the military left the site. These first-person accounts, plus the photos, provide incontrovertible evidence of the State Peace and Development Council's (SPDC) horrifying human rights abuses and crimes against humanity as they continue their attempt to subjugate the entire country through whatever means they see necessary.

Mr. Speaker, what possible threat do babies and two and five-year-old little girls present to military men with arms?

Numerous reports from eyewitnesses and credible human rights organizations reveal that this latest massacre is but one example of an ongoing campaign of terror by Burma's military regime against its own people. The SPDC has burned down scores of villages and forcibly relocated villagers to areas near military bases to be forced laborers. During attacks on villages, the military also has burned down places of worship and tortured and killed ministers and monks. The military regime drove thousands of Karen and other ethnic villagers into hiding in the jungle—these internally displaced people have tried to flee to Thailand to Join the 120,000 plus living in refugee camps. In Burma's Shan state, hundreds, if not thousands, of women have been raped by Burma's SPDC in its quest to dominate those who struggle for freedom and democracy.

Shockingly, Burma's military regime operates with impunity. Amnesty International, in its most recent report on Burma, says, ''No attempt appears to have been made by the SPDC [regime] to hold members of the tatmadaw [military] accountable for violations which they committed, and villagers do not have recourse to any complaint mechanism or other means of redress.''

Mr. Speaker, no one should be forced to live like a hunted animal always on the run, in fear for its life. It is time that the international community wake and take action against the horrors occurring in Burma. While the military regime woos diplomats, business guests, and others in downtown Rangoon, Burma's people are fleeing in fear of intensifying and acute repression. Our government and the international community must press the SPDC to immediately cease its campaign of terror against the people of Burma. I urge my colleagues to join in solidarity with the Burmese people by raising their voices for freedom.

IN GOD WE TRUST THREATENED BY PLEDGE SUIT

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. ROTHMAN. Mr. Speaker, as we are all aware, the Ninth Circuit Court of Appeals recently held that the Pledge of Allegiance is unconstitutional because the phrase ''under God,'' combined with daily recitation of the Pledge, violates the establishment clause of the Constitution. Following their victory, the plaintiffs vowed to challenge the motto, ''In God We Trust,'' which appears on American currency. Fair Lawn, New Jersey Mayor and numismatic expert David L. Ganz recently published an article in the Numismatic News that analyzes why ''In God We Trust'' was chosen as the national motto, and why it should remain on our currency. With the chair's permission, I would like to submit this article, entitled ''In God We Trust Threatened by Pledge Suit,'' for the RECORD. I also urge the members of this body to support the current Pledge of Allegiance and the continued use of ''In God We Trust'' on our nation's currency.

[From the Numismatic News, July 16, 2002]

'IN GOD WE TRUST' THREATENED BY PLEDGE SUIT—UNDER THE GLASS

(By David L. Ganz)

Front-page news and accompanying legislative denunciations have greeted the decision of the United States Court of Appeals for the 9th Circuit that the nation, ''under God,'' indivisible, in the Pledge of Allegiance is unconstitutional. The successful plaintiffs have separately pledged to initiate an attack on the national motto, ''In God we Trust'' to remove it from U.S. currency.

Although the motto has been attacked several times in other appellate courts—the Supreme Court has never explicitly ruled on it—there is some question as to what success this might have, and the consequences to coin and paper money design.

Involved is the case of Newdow v. U.S. Congress, 00–16423 (9th Cir. June 26, 2002), which was decided by the appellate court that covers California and much of the American West, comprising 20 percent of the nation's population and about a third of its area and natural resources.

Newdow, an avowed athiest, brought the suit because his young daughter attends a public elementary school in the Elk Grove Unified School District in California. In accordance with state law and a school district rule, teachers begin each school day by leading their students in a recitation of the Pledge of Allegiance.

Young Miss Newdow is not required to say the pledge; that was decided some 60 years ago when the case of West Virginia v. Barnette, a 1943 decision in which the U.S. Supreme Court prohibited compulsory flag salutes. Her father's objection was that she was intimidated by listening to it, at all.

On June 22, 1942, Congress first codified the Pledge in Public Law 642 as ''I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all.'' (The codification is found in 36 U.S.C. §1972.)

A dozen years later, on June 14, 1954, Congress amended Section 1972 to add the words ''under God'' after the word ''Nation'' (Pub. L. No. 396, Ch. 297 68 Stat. 249 (1954) (''1954 Act'')). The Pledge is currently codified as ''I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all'' (4 U.S.C. §4 (1998)).

The following year, 1955, largely at the instigation of Matt Rothert, later president of the American Numismatic Association, Congress amended the U.S. Code to require the national motto to be placed on all coins and currency. (Earlier, Congress took action to place the motto on the two-cent piece (1864), and on some gold coins (1908)).

There is some utility in reviewing what the Pledge of Allegiance is, and for that matter, the history of the national motto, ''In God we Trust,'' where the ''we'' is not capitalized and all other letters are.

Francis Bellamy, a Baptist minister with socialist leanings, wrote the original version of the Pledge of Allegiance Sept. 8, 1892, for a popular family magazine, *The Youth's Companion*, *a Reader's Digest*-like periodical of the era.

The original pledge language was ''I pledge allegiance to my Flag and to the Republic for which it stands, one nation, indivisible, with liberty and justice for all.''

A generation later, in 1923 the pledge was adopted by the first National Flag Conference in Washington, where some participants expressed concerns that use of the words ''my flag'' might create confusion for immigrants, still thinking of their home countries. So the wording was changed to ''the Flag of the United States of America.'' In 1954, Congress after a campaign by the Knights of Columbus added the words, ''under God,'' to the Pledge. The Pledge was now both a patriotic oath and a public prayer.

Legislation approved July 11, 1955, made the appearance of ''In God we Trust'' mandatory on all coins and paper currency of the United States. By Act of July 30, 1956, ''In God we Trust'' became the national motto of the United States.

Several courts have been asked to construe whether or not the motto was unconstitutional and a violation of the First Amendment to the Constitution—freedom of religion arguments being raised.

In a 10th circuit Court of Appeals case arising in Colorado, Gaylor v. US, 74 F.3d 214 (10th Cir. 1996), the Court quoted a number of Supreme Court precedents and concluded

that, ''The motto's primary effect is not to advance religion; instead, it is a form of 'ceremonial deism' which through historical usage and ubiquity cannot be reasonably understood to convey government approval of religious belief.''

As neat a package as that creates for concluding the controversy, that is simply not the history of the motto ''In God we Trust'' or how it found its way onto American coinage. That story goes back to the bleak days of the Civil War, when the nation's constitutional mettle was being tested on the battlefields that left hundreds of thousands of Americans dead.

From the records of the Treasury Department, it appears that the first suggestion of the recognition of the deity on the coins of the United States was contained in a letter addressed to the Secretary of the Treasury, Hon. S.P. Chase, by the Rev. M.R. Watkinson, Minister of the Gospel, Ridleyville, Pa., under date of Nov. 13, 1861.

''One fact touching our currency has hitherto been seriously overlooked, I mean the recognition of the Almighty God in some form in our coins,'' Watkinson wrote to Secretary Chase.

''You are probably a Christian. What if our Republic were now shattered beyond reconstruction? Would not the antiquaries of succeeding centuries rightly reason from our past that we were a heathen nation? What I propose is that instead of the goddess of liberty we shall have next inside the 13 stars a ring inscribed with the words 'perpetual union'; within this ring the all-seeing eye, crowned with a halo; beneath this eye the American flag, bearing in its field stars equal to the number of the States united; in the folds of the bars the words 'God, liberty, law.'

''This would make a beautiful coin, to which no possible citizens could object. This would relieve us from the ignominy of heathenism. This would place us openly under the Divine protection we have personally claimed.

''From my heart I have felt our national shame in disowning God as not the least of our present national disasters. To you first I address a subject that must be agitated,'' he concluded.

A week later, on Nov. 20, 1861, Chase wrote to James Pollock, the director of the Mint, ''No nation can be strong except in the strength of God, or safe except in His defense. The trust of our people in God should be declared on our national coins.''

He concluded with a mandate: ''You will cause a device to be prepared without unnecessary delay with a motto expressing in the fewest and terset words possible this national recognition.''

In December 1863, the director of the Mint submitted to the secretary of the Treasury for approval designs for new one-, two- and three-cent pieces, on which it was proposed that one of the following mottoes should appear: ''Our country; our God''; ''God, our Trust.'' (Patterns for the two-cent pieces of this are found in Pollack 370–383.)

Dec. 9, 1863, saw this reply from Chase: ''I approve your mottoes, only suggesting that on that with the Washington obverse the motto should begin with the word 'Our' so as to read: 'Our God and our country.' And on that with the shield, it should be changed so as to read: 'In God we trust.' ''

The Act of April 22, 1864, created the two-cent piece and Secretary Chase exercised his rights to make sure the motto was in the design. By 1866 it had been added to the gold $5, $10 and $20, and the silver dollar, half dollar, quarter and nickel.

As Augustus Saint-Gaudens designed the new gold coinage of 1907 at the instigation of his friend President Theodore Roosevelt, the motto was removed for the reason that ''Teddy'' thought it blasphemous. Congress responded by legislatively directing its continuation.

Where all this leads in the 21st century remains an unknown—but an interesting hypothesis can be derived. The 9th Circuit's ''Pledge of Allegiance'' case will be appealed to the U.S. Supreme Court, and likely as not, the ''In God we Trust'' elimination suit will progress in the U.S. district court.

As Justice William O. Douglas noted in a concurring opinion in the 1962 Supreme Court case Engel v. Vitale, 370 U.S. 421 (1962), ''Our Crier has from the beginning announced the convening of the Court and then added 'God save the United States and this Honorable Court.' That utterance is a supplication, a prayer in which we, the judges, are free to join.''

Justice Douglas, one of the most liberal in first amendment views, saw little the matter with it. Indeed, he said, ''What New York does on the opening of its public schools is what each House of Congress does at the opening of each day's business.''

The 9th Circuit, by contrast, says ''The Pledge, as currently codified, is an impermissible government endorsement of religion because it sends a message to unbelievers 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.' ''

An earlier 9th Circuit case in 1970 which dealt with a direct attack on the motto on the coinage was briefly discussed in a footnote of the lengthy opinion. ''In Aronow v. United States, 432 F.2d 242 (9th Cir. 1970), this court, without reaching the question of standing, upheld the inscription of the phrase 'In God We Trust' on our coins and currency. But cf. Wooley v. Maryland, 430 U.S. 705, 722 (1977) (Rehnquist, J., dissenting) (stating that the majority's holding leads logically to the conclusion that 'In God We Trust' is an unconstitutional affirmation of belief).''

Nothwithstanding Justice Rehnquist's dissent, a more contemporary analysis of his views are more apparent in later cases since his becoming Chief Justice, and they suggest strongly that he has no issue with the pledge or the national motto on coinage.

Most likely, the next several months will see a hardening of positions and a wending process in which the lawsuit, and appeals, move toward highest court resolution. That could come in 2003 or 2004, in time for it to have impact on the next presidential election.

For now, until a stay is issued, the pledge is out in California and the 9th Circuit; God remains on our coinage, so long as we trust.

HONORING WESTERN NEW YORK GROUND ZERO VOLUNTEERS

HON. THOMAS M. REYNOLDS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. REYNOLDS. Mr. Speaker, during his State of the Union Address, President George W. Bush said, ''none of us would ever wish the evil that was done on September the 11th. Yet after America was attacked, it was as if our entire country looked into a mirror and saw our better selves. We were reminded that we are citizens, with obligations to each other, to our country, and to history. We began to think less of the goods we can accumulate, and more about the good we can do.''

In Western New York, as in communities across this great nation, we witnessed first hand our better selves: as Americans from all backgrounds and walks of life came together to show their love of country and of their neighbor. We saw it in countless acts of selflessness and heroism; from those brave patriots aboard United Airlines Flight 93 to our police and firefighters, medical and emergency crews, and countless volunteers—who showed us and the world the true strength of America's heart and America's character.

One such group of volunteers will be honored for their work at Ground Zero during a Liberty Day Awards Ceremony on Thursday, August 1, 2002. These dedicated and courageous men and women left their jobs, their homes, and their families to give of themselves in relief and recovery efforts, and I ask that this Congress join me in saluting their hard work, their commitment, and their patriotism. They are:

Mr. Wesley Rehwaldt, Mr. Woody Seufert, Mr. David Albone, Ms. Karen Russo, Ms. Ann Riegle, Mr. Scott Schmidt, Mr. Jesse Babcock, Mr. Harold Suitor; Mr. Marc Lussier, Ms. Ann Riester, Mr. James Riester, Mr. William Drexler, Mr. Russell Genco, Mr. H.T. Braunscheidel, Mr. Fred Drahms, Ms. Connie Kearns, Mr. Darren Burdick, Ms. Margaret Blake, Mr. Scott Blake, Mr. Chad Shepherd, Ms. Wendi Walker, Ms. Amanda Sparks, Ms. Sherri Reichel, Mr. Michael Owens, Mr. Chris Lane, Mr. Anthony Kostyo, Mr. Thomas FitzRandolph, Mr. Kevin Dilliot, Mr. Charles Huntington, Mr. Mark Gilson, and Mr. Mark Gerstung.

Also, Mr. Mark Maefs, Mr. Ray Catanesi, Mr. Kevin Baker, Mr. Ross Johnson, Jr., Mr. James Carbin, Jr., Mr. Dan Hosie, Mr. Scott Then, Mr. Robert Jasper, Jr., Mr. Robert Jasper, Sr., Mr. Wayne N. Seguin, Mr. Wayne E. Seguin, Mr. Samuel Ricotta, Mr. Richard Bilson, Mr. Richard Silvaroll, Mr. Michael Kiff, Mr. Herbert Meyer, Mr. Chris Hillman, Ms. Victoria Baker, Mr. Ralph Salvagni, Mr. Richard Wayner, Mr. Robert Conn, Mr. James Volkosh and Mr. Barry Kobrin.

TRIBUTE TO GLENN J. WINUK

HON. PETER T. KING

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 26, 2002

Mr. KING. Mr. Speaker, I rise today to honor the memory of Glenn J. Winuk, a heroic citizen who sacrificed his life on September 11th to save the lives of others. Glenn served the Jericho community for 19 years as an attorney, an EMT, and commissioner of the Jericho Fire District.

Immediately after the World Trade Center Towers were attacked on September 11th, Glenn, a partner in the law firm of Holland & Knight LLP, helped evacuate tenants of his office building at 195 Broadway, about a block away from Ground Zero. He then identified himself as a rescue professional to other rescue workers on the scene, borrowed a mask, gloves, and First Response medic bag to assist others as the South Tower fell minutes later. His remains were recovered, medic bag by his side on Wednesday, March 30th, 2002.

Glenn Winuk was an attorney, but his real passion was firefighting. His passion and bravery were displayed on many occasions, such

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, THURSDAY, JUNE 27, 2002 No. 88

House of Representatives

The House met at 10 a.m.

The Reverend Frederick J. Huscher, Chaplain, Riverside County Sheriff's Department, Riverside, California, offered the following prayer:

O gracious and loving Lord, quiet our restless mind so that our hearts may speak honestly in prayer and our spirits may listen carefully to Your counsel and instruction. As sovereign Lord, You have placed into our simple hands the overwhelming responsibility to mold the course of this great Nation. Lest pride cause us to forget that we are but Your appointed servants, cause us to strive shoulder to shoulder to maintain the noble heritage that we are a free Nation under God by Your divine will and grace. May Your Spirit direct our hearts and mind to seek only what is right and pure for the people of this land, to make decisions which protect our freedoms and promote the well-being of Your people. O God, we honor You as the Lord of this Nation. May our ministry glorify Your name and be a blessing to this land. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. WALDEN of Oregon. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. WALDEN of Oregon. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently, a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 348, nays 59, answered ''present'' 1, not voting 26, as follows:

[Roll No. 267]

YEAS—348

Abercrombie
Ackerman
Akin
Andrews
Armey
Baca
Bachus
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Biggert
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Boozman
Boswell
Boucher
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Castle
Chabot
Chambliss
Clayton
Clement
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
Engel
Eshoo
Etheridge
Evans
Everett
Farr
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Issa
Istook
Jackson (IL)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Lantos
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McHugh
McInnis
McIntyre
McKeon
McKinney
Meehan
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Mink
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Norwood
Ortiz
Osborne
Ose
Otter
Pallone
Pascrell
Paul
Payne
Pelosi
Pence
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Rangel
Regula
Rehberg
Reyes
Reynolds
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sanders
Sawyer
Saxton
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Spratt
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tanner
Tauscher
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Turner
Upton
Velazquez
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Weiner
Weldon (FL)
Weldon (PA)
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Young (FL)

Mollohan
Moran (KS)
Morella
Murtha
Myrick
Nadler
Napolitano
Nethercutt
Ney
Norwood
Nussle
Ortiz
Ose
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Pombo
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reynolds
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ryan (WI)
Ryun (KS)
Sabo
Sanchez
Sawyer
Saxton
Schaffer
Schakowsky
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spratt
Stearns
Stenholm
Strickland
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Toomey
Turner
Udall (CO)
Udall (NM)
Upton
Visclosky
Walden
Walsh
Wamp
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NOT VOTING—32

Barcia
Clay
Ehrlich
Fattah
Fletcher
Gephardt
Hastings (FL)
Hinchey
Hoekstra
Hooley
Hunter
Hyde
Israel
Kanjorski
Keller
LaFalce
Meek (FL)
Moore
Northup
Oberstar
Platts
Reyes
Riley
Roukema
Rush
Tauzin
Traficant
Vitter
Watkins (OK)
Wu
Wynn
Young (AK)

□ 1054

Mr. HINOJOSA, Ms. MCCOLLUM and Mr. OXLEY changed their vote from ''aye'' to ''no''.

So the motion to adjourn was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. ISRAEL. Mr. Speaker, I was absent from votes this morning so that I could be in New York to be with my children as they go away for the summer. I missed two votes. Were I here I would have voted as follows:

Rollcall Vote 267, on Approving the Journal: ''yea''; and

Rollcall Vote 268, that the House Adjourn: ''no.''

SUPPORTING THE PLEDGE OF ALLEGIANCE

(Mr. FOLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FOLEY. Mr. Speaker, in the dark hours after September 11 there was one thing that brought a Nation together, young and old, rich and poor, black and white, Hispanics, and that was the Pledge of Allegiance to the flag of this great Nation. As men and women were toiling to rescue victims in Washington, Pennsylvania and New York, our hearts and minds turned to God to ask for devine guidance as we struggled with this difficult time.

In my morning run this morning I visited the Jefferson, Lincoln and Roosevelt memorials to bear witness to the inscriptions of their most memorable speeches to this Nation, each citing God's divine guidance in creating the Nation.

Now, judges of the Ninth Circuit of the left coast of the United States have decided that this Pledge of Allegiance is unconstitutional. The ACLU may be applauding a ruling, but their victory will be short-lived. One Nation under God, indivisible, with liberty and justice for all; behind me ''In God We Trust,'' in a Nation God guides us in a country where free people worship.

I reject the court's ruling. I urge Congress to immediately undertake a constitutional amendment, and I salute every man and woman in uniform who serves this Nation being guided by God's love and inspiration.

RETURN LUDWIG KOONS

(Mr. LAMPSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAMPSON. Mr. Speaker, again I rise to talk about international child abduction and the case of Ludwig Koons who is being kept illegally in Rome, Italy. The injustice that is being done to this family is outrageous and an example of what thousands of American parents and children face each day.

Ludwig Koons was born in New York and was abducted from his family residence to Rome by his mother, Ilona Staller. Mr. Koons was awarded custody in the United States, but the Italian courts have refused to accept any American jurisdiction. The father has been deemed the fit parent by the courts and by U.S. and by Italian psychologists who have stated that Ludwig is in grave danger and must be returned to his father. Yet he remains captive in Italy, being held by the Italian government and by his mother who is a porn star who lives in a pornographic compound.

Mr. Speaker, every day Members of this body and this administration speak about family values. Family values. I can think of no better way to demonstrate our commitment to family values than to return Ludwig Koons to his father now. We must bring our children home.

AMERICA IS ONE NATION UNDER GOD

(Mr. REHBERG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REHBERG. Mr. Speaker, one Nation under God. These four solemn words form the very backbone of our great democracy. In one short breath these patriotic words in the Pledge of Allegiance from which they are proudly spoken have guided the American experiment in democracy for generations.

Yesterday, through a gross example of misguided judicial activism, two Federal judges stripped these words from the American vocabulary. It is bizarre decisions like this that have given the Ninth Circuit the dubious distinction of being the most overturned court in the Nation. In one year alone, 26 of the Ninth Circuit's 27 rulings were thrown out.

This decision further brings the light the desperate need for the other body to quick blocking President Bush's judicial nominees and supply our courts with qualified judges that will interpret, not rewrite, the Constitution. I hope the Senate is listening.

Mr. Speaker, I do pledge allegiance to the flag; and I am proud to say that, despite the beliefs of the Ninth Circuit, this is still one Nation under God.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). The Chair would remind all Members to not urge action by the other body.

□ 1100

INSURANCE PROTECTION ACT

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, my silence today reflects the fact that the Republicans gagged me by presenting to this House an Insurance Protection Act that takes away the rights of my mother and your mother and your father to be able to have a real guaranteed prescription drug benefit through Medicare that initially was signed by the President of the United States, Lyndon Baines Johnson, in 1965. I am gagged today, but I will not remain silent because I live in America; and I will fight this fight to get a real Medicare drug benefit for the American people. We will fight and we will win.

HONORING BAKER PRICE FALLS

(Mrs. MYRICK asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MYRICK. Mr. Speaker, I want to honor a truly amazing young man from my district in North Carolina. Baker Price Falls spent his life serving others and serving the Lord. He would have turned 26 today, but sadly he passed away this year from leukemia. He spent his life doing missions work. Whether he was working in the inner city of Philadelphia or D.C. or doing

□ 1419

Mr. FRANK changed his vote from ''nay'' to ''yea.''

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEWIS of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill, H.R. 5010, just passed, and that I may include tabular and extraneous material at the appropriate place in the RECORD.

The SPEAKER pro tempore (Mr. SHIMKUS). Is there objection to the request of the gentleman from California?

There was no objection.

COMMENDING MEMBERS AND STAFF OF COMMITTEE ON APPROPRIATIONS

(Mr. LEWIS of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of California. Mr. Speaker, I would like to clarify the Committee's intent regarding the ''SPY–1 Solid State Radar.'' the Committee intends that the entire amount contained in the President's budget under the Sea Based Midcourse for Sea Based Solid State Radar development be used for the development of the S-Band SPY–1E radar.

Mr. Speaker, I did not take the time earlier for we were about to pass the first appropriations bill of the year in record time. There was a small little train wreck that got in the way of that record time; and, thus, I will take a moment that I would have taken earlier to express my appreciation for those who made this success possible.

Both the gentleman from Florida (Mr. YOUNG) and the gentleman from Wisconsin (Mr. OBEY) have been very, very helpful in the work of Committee on Appropriations this year as it deals with national defense. I want to take a moment to especially express my appreciation to the gentleman from Pennsylvania (Mr. MURTHA), my partner in this business, for we never would have been able to accomplish the level of bipartisan support we had in the House as demonstrated by the vote without his assistance.

Beyond that, we were both blessed with very, very fine staff on both sides of the aisle who do a fine job. Kevin Roper on my side and Greg Dahlberg on the other side help lead a team of staff people who worked endless hours, weekends, night and day to make sure this bill is not just successful but that it is done in a highly professional manner, and for that we very much appreciate their work.

PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 463 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 463

Resolved, That it shall be in order at any time on the legislative day of Thursday, June 27, 2002, for the Speaker to entertain motions that the House suspend the rules relating to the resolution (H. Res. 459) expressing the sense of the House of Representatives that Newdow v. U.S. Congress was erroneously decided, and for other purposes.

The SPEAKER pro tempore. The gentleman from Georgia (Mr. LINDER) is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I consume.

H. Res. 463 provides that it shall be in order at any time on the legislative day of Thursday, June 27, 2002, for the Speaker to entertain motions that the House suspend the rules relating to the resolution, H. Res. 459, expressing the sense of the House of Representatives that Newdow versus U.S. Congress was erroneously decided.

Yesterday was a sad day for the millions and millions of Americans who understand and appreciate the significance of the Pledge of Allegiance.

Incredibly, the Ninth Circuit Court of Appeals decided to overturn a 1954 act of Congress, which added the phrase ''under God'' to the Pledge of Allegiance, ruling that these two words violated the Constitution's Establishment Clause which requires the separation of church and state.

This fatally-flawed ruling, taken to its logical endpoint, would indicate that our currency, which contains the phrase ''In God We Trust,'' is unconstitutional. Clearly, that is not true, but, in the meantime, the Ninth Circuit has issued this inexplicable ruling.

This decision, if not overturned by the U.S. Supreme Court, will force a number of Western States to remove this important phrase from the Pledge of Allegiance.

I am proud to stand with my colleagues today on both sides of the aisle as we fight to protect our American heritage. In bringing the underlying legislation, H. Res. 459, to the floor, we are reaffirming our commitment to bedrock values and beliefs that have made the United States of America the greatest country on Earth. I firmly believe that the Pledge of Allegiance should continue to include the entire phrase ''One Nation Under God.''

I want to thank the chairman of the House Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for his leadership in bringing this important legislation to the House floor so quickly, given that the Ninth Circuit's ruling was handed down only yesterday afternoon.

I urge my colleagues and fellow Americans getting ready to celebrate the birth of our country next week to remember the spirit that made us a great Nation.

The phrase ''One Nation Under God'' reflects a spiritual belief that was so important to our forefathers, a belief in God that was instrumental to the founding of our country. I believe we, as members of Congress, we have a duty and an obligation to express our vigorous disagreement with this ruling, rather than simply allow it to stand unchallenged.

On a personal note, Mr. Speaker, in 1976, in the Georgia legislature, my friend, Tommy Tolbert, and I provided an amendment to the education bill that required every class in Georgia to make available at some point during every day the Pledge of Allegiance for the students in those classes throughout Georgia; and now some clown from the Ninth Circus, as it has been called, decides that the Congress did not know what it was doing in 1954.

I urge my colleagues to join me in supporting this rule and then supporting the underlying legislation which will allow the House to go on record in regard to this out-of-touch ruling.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank my colleague, the gentleman from Georgia (Mr. LINDER), for yielding me the customary time.

Mr. Speaker, this rule provides for the consideration of H. Res. 459 under suspension of the rules. The underlying resolution expresses the sense of this House that Newdow versus U.S. Congress was erroneously decided.

Mr. Speaker, I urge my colleagues to support this rule and to support the underlying resolution.

Yesterday, a three-judge panel of the Ninth Circuit Courts of Appeals ruled that the Pledge of Allegiance is unconstitutional. It is difficult to describe that decision as anything but just plain dumb.

I strongly support the separation of church and State, and I strongly support the provision in the first amendment that prohibits government from establishing State-sponsored religion. The first amendment protects American citizens from government interference in their spiritual lives. It allows people to worship as they wish, and it allows them to refuse to worship at all.

The Pledge of Allegiance hardly rises to the level of a mandated national religion. The phrase ''One Nation Under God'' is similar to ''In God We Trust'' on our currency or ''God Bless America'' sung at high school graduations or even sung on the floor of this House. These invocations of God have more to do with tradition and heritage than

with the government forcing people to believe or practice a certain type of faith.

Every day in the well of this House a Member leads us in the Pledge of Allegiance. I had the honor of leading the Pledge of Allegiance just last week. The Pledge is a way for all of us come together, regardless of party or ideology, and express our love for this Nation and our commitment to our democracy. But we also have the right not to say the Pledge at all.

As the Supreme Court ruled in 1963, it is unconstitutional to force people to say the Pledge. And the resolution before us states that the United States Congress recognizes the right of those who do not share the beliefs expressed in the Pledge to refrain from its recitation.

But here come a panel of the often-overturned Ninth Circuit, interestingly enough led by an appointee of the Nixon administration, charging into a nonexistent breach, issuing a divisive and unnecessary ruling. There are so many important issues facing our Nation, and I can say honestly that I have never had a constituent rush up to me in Worcester or Attleboro or Fall River to demand that we remove ''under God'' from the Pledge of Allegiance.

Indeed, yesterday's ruling only serves to trivialize the very real issues of church/state separation that deserve a full and fair hearing before all the branches of government. But the Constitution also protects the right of American citizens to have their day in court. That is what the plaintiff in this case has done; and because of the structure of our government, Congress cannot overturn that decision. We can only express our disapproval, which this resolution does in very clear and appropriate terms.

It will be up to the full Ninth Circuit and possibly the Supreme Court itself to toss this ruling into the dustbin of history where it belongs. In the meantime, Congress has the right to call yesterday's decision what it was, a big fat mistake. I urge my colleagues to support the rule and to support the resolution.

Mr. Speaker, I enter into the RECORD today's editorials from the New York Times, the Washington Post and the Los Angeles Times on this issue, as follows:

[From the New York Times, June 27, 2002]

''ONE NATION UNDER GOD''

Half a century ago, at the height of anti-Communist fervor, Congress added the words, ''under God'' to the Pledge of Allegiance. It was a petty attempt to link patriotism with religious piety, to distinguish us from the godless Soviets. But after millions of repetitions over the years, the phrase has become part of the backdrop of American life, just like the words ''In God We Trust'' on our coins and ''God bless America'' uttered by presidents at the end of important speeches.

Yesterday, the United States Court of Appeals for the Ninth Circuit in California ruled 2 to 1 that those words in the pledge violate the First Amendment, which says that ''Congress shall make no law respecting an establishment of religion.'' The majority sided with Michael Newdow, who had complained that his daughter is injured when forced to listen to public school teachers lead students daily in a pledge that includes the assertion that there is a God.

This is a well-meaning ruling, but it lacks common sense. A generic two-word reference to God tucked inside a rote civic exercise is not a prayer. Mr. Newdow's daughter is not required to say either the words ''under God'' or even the pledge itself, as the Supreme Court made clear in a 1943 case involving Jehovah's Witnesses. In the pantheon of real First Amendment concerns, this one is off the radar screen.

The practical impact of the ruling is inviting a political backlash for a matter that does not rise to a constitutional violation. We wish the words had not been added back in 1954. But just the way removing a well-lodged foreign body from an organism may sometimes be more damaging than letting it stay put, removing those words would cause more harm than leaving them in. By late afternoon yesterday, virtually every politician in Washington was rallying loudly behind the pledge in its current form.

Most important, the ruling trivializes the critical constitutional issue of separation of church and state. There are important battles to be fought virtually every year over issues of prayer in school and use of government funds to support religious activities. Yesterday's decision is almost certain to be overturned on appeal. But the sort of rigid overreaction that characterized it will not make genuine defense of the First Amendment any easier.

[From the Washington Post, June 27, 2002]

ONE NATION UNDER BLANK

In the many battles over how high the church-state wall should be, there has always been a certain category of official invocations of God that has gone untouched. Legislative prayer has been upheld by the Supreme Court, for example. Court sessions begin by asking that ''God save this honorable court.'' America's national motto says ''In God We Trust.'' And the Pledge of Allegiance, since 1954, has described this country as ''One nation under God, indivisible.'' At least it did until yesterday—when a panel of the 9th U.S. Circuit Court of Appeals struck down the words ''under God'' as an establishment of religion in violation of the First Amendment.

If the court were writing a parody, rather than deciding an actual case, it could hardly have produced a more provocative holding than striking down the Pledge of Allegiance while this country is at war. We believe in strict separation between church and state, but the pledge is hardly a particular danger spot crying out for judicial policing. And having a court strike it down can only serve to generate unnecessary political battles and create a fundraising bonanza for the many groups who will rush to its defense. Oh, yes, it can also invite a reversal, and that could mean establishing a precedent that sanctions a broader range of official religious expression than the pledge itself.

All of this might be justified if there were any real question as to the constitutionality of the 1954 law that added God to the pledge. But while the Supreme Court has never specifically considered the question, the justices have left little doubt how they would do so. Even former justice William Brennan—a fierce high-waller—once wrote ''I would suggest that such practices as the designation of 'In God We Trust' as our national motto, or the references to God contained in the Pledge of Allegiance to the flag can best be understood . . . as a form a 'ceremonial deism' protected from Establishment Clause scrutiny chiefly because they have lost through rote repetition any significant religious content.'' Other justices have likewise presumed the answer to the question, and no court of appeals should blithely generate a political firestorm—one that was already beginning yesterday—just to find out whether they meant what they said.

As Judge Ferdinand Fernandez pointed out in dissent, the establishment clause tolerates quite a few instances of ''ceremonial deism'': Is it okay to sing ''God Bless American'' or ''America the Beautiful'' at official events? Is American currency unconstitutional? The answer must be, as Judge Fernandez argues, that in certain expressions ''it is obvious that [the] tendency to establish religion in this country or to interfere with the free exercise (or non-exercise) of religion is de minimis.'' Amen.

[From the Los Angeles Times, June 27, 2002]

A GODFORSAKEN RULING

A panel of the U.S. 9th Circuit Court of Appeals has ruled 2 to 1 that the Pledge of Allegiance—you know, ''I pledge allegiance to the flag of the United States of America . . .''—is unconstitutional. And the reason? Because of that phrase ''under God'' inserted by Congress 48 years ago.

The court said an atheist or holder of non-Judeo-Christian beliefs could see these words as an endorsement of monotheism, even though students can opt out.

''A profession that we are a nation 'under God' is identical, for establishment clause purposes, to a profession that we are a nation 'under Jesus,' a nation 'under Vishnu,' a nation 'under Zeus' or a nation 'under no god' because none of these professions can be neutral with respect to religion,'' wrote Judge Alfred Goodwin.

It's a fundamentally silly ruling, which deserves to be tossed out, as was the initial suit by a Sacramento atheist. For now, erasing the pledge applies only to 9th Circuit states—California, Alaska, Arizona, Hawaii, Idaho, Montana, Nevada, Oregon and Washington. Implementation of the ruling is suspended pending appeals.

The original 1892 pledge didn't contain the phrase ''under God,'' which was added after a vigorous debate during a period of loyalty oaths and Red-baiting. The Cold War insertion of the phrase in 1954 clearly was driven as much by ideology as religion. That said, for all the overheated and dire predictions voiced then, the ''under God'' phrase has in no way led to establishment of an official state religion. Further, the U.S. Supreme Court ruled in 1943 that it was unconstitutional to force pledge recitations. Thus the 9th Circuit decision is a cure without an ailment.

In fact, references to the Almighty have long been an integral part of everyday American life—honest to God. That's not too surprising for a nation initially organized by Europeans fleeing persecution for practicing their beliefs in God. The pledge (''one nation under God, indivisible, with liberty and justice for all'') is recited daily by millions, with few, if any, enforcement problems over which words someone mumbles or skips.

When taking office, many government officials, including judges, take an oath invoking God. Court witnesses swear to tell the truth ''so help me God.'' In fact, the Supreme Court, where this case should go with Godspeed, opens sessions with a reference to God.

And what about that oppressive song ''God Bless America'' that the entire Congress sang on government property after Sept. 11? Then there's the problem of U.S. currency,

which may now be unconstitutional because it says, ''In God We Trust.'' The appeal should come swiftly. God willing, it will.

Mr. Speaker, I reserve the balance of my time.

Mr. LINDER. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Speaker, today I rise in strong support of this rule and the underlying resolution. Also, I rise today in outrage and indignation over yet the latest manifestation of an ongoing assault on the rights of Americans who cherish their beliefs and their commitment to God.

This is not just about the Pledge of Allegiance, although forcing people to excise God from this voluntary oath is bad enough. A liberal left coalition has been trying to do their best for decades to neuter American traditions that is based on God, beliefs and traditions that Americans have held dear for two centuries.

We see it in the attack on the rights of the Boy Scouts to have God in their scout oaths and have a high moral standard. We see it in our schools when they preempt Christmas programs and instead make them holiday programs. We see it at city halls when all of a sudden a manger scene or some recognition of Hanukkah are left out during those holy months. We see it when the courthouse takes down the Ten Commandments; and we see it when the National Endowment for the Arts subsidizes art works, supposed, so-called art work that attacks Christianity but then passes when it comes to religious works.

□ 1430

Yes, getting God out of the Pledge of Allegiance is bad; but it is part of an attempt, an overall attempt to use the judicial system to attack our fundamental liberties, especially the liberties of those of us who believe in God.

This is one reason why many of us are so concerned about who controls the United States Senate, because it will be the United States Senate who controls who is on the Supreme Court. No one has ever been forced to pray or to acknowledge God, but the liberal coalition that is involved in taking this Pledge and eliminating God from the Pledge are using our courts to attack the freedom of those who do believe in God and attack our rights to our expression.

Today, those of us who believe in God, those of us who cherish liberty need to unite to make sure that those who would use our court system, especially on to the Supreme Court, are defeated in their attempts to neuter America of its traditional recognition of God. I for one stand for liberty, and together we will keep God in our Pledge of Allegiance; and we will defeat this war to sever America and Americans from our religious traditions, and we will protect our people's precious rights to have their faith in God and to express it; and at the same time, we will protect those who do not believe in God.

This is, as I say, a fundamental attack by atheists as part of a liberal left coalition to attack the rights of us who do believe in God to express that, and we need to unite with believers and nonbelievers together for human liberty, which is what America is all about.

Mr. MCGOVERN. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Pennsylvania (Mr. HOLDEN).

Mr. HOLDEN. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in strong support of the rule and of the underlying resolution. I, like all of my colleagues and the entire American people, are outraged at the Ninth Circuit Court of Appeals, who have declared the Pledge of Allegiance unconstitutional because of the words ''under God.''

Mr. Speaker, patriotism is at an all-time high in rise since September 11 as we stand united behind our Commander in Chief and as we stand behind those brave men and women who wear the uniform daily and are fighting the war on terrorism in Afghanistan and across the world.

This decision could not have come at a worse time. This decision was ill advised. It was ridiculous, and we need to send a clear message that we are going to stand as a Congress to see that the words ''under God'' stay in the Pledge of Allegiance, or what will be next?

Mr. Speaker, above the Chair's head, ''In God We Trust.'' Will that be the next thing to be attacked? Our currency, ''In God We Trust.'' Will that be the next to be attacked? We need to stand united and send a clear message that we are not going to adhere to this ridiculous decision, and I hope it will be overturned as quickly as possible.

Mr. LINDER. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Mississippi (Mr. PICKERING).

Mr. PICKERING. Mr. Speaker, I rise to proudly support the rule and this resolution. One Nation under God, indivisible. If we look in this great Chamber, behind the Speaker, ''In God We Trust.'' My colleagues may not be able to see, but right in front of me, lining this Chamber, there are historical figures. The most central historical figure is Moses, the 10 Commandants. If we look to the symbol of our Nation, the eagle, under the eagle are the words ''e pluribus unum,'' ''for many there is one.''

This Pledge has united school children across our country for generation after generation. It is a uniting force, indivisible. It is not a force of division in our country. It recognizes that our country under God, our liberty under God, our unity under God.

We need to make sure that this out-of-control court is put back in place and that our traditions and our expressions are maintained, whatever it takes.

The dissenting judge in this case says, In God we trust or under God have no tendency to establish a religion in this country or to suppress anyone's exercise or nonexercise of religion except in the fevered eye of persons who most fervently would like to drive all tincture of religion out of the public life. The dissenting judge goes on to say that by this logic ''America the Beautiful,'' ''God Bless America,'' ''The Star Spangled Banner,'' our currency would be wiped away.

We must stop it now. We must stop it today, and we must reestablish that our country is one Nation under God, indivisible, with liberty and justice for all.

Mr. MCGOVERN. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Speaker, I thank my colleague for yielding me the time.

Mr. Speaker, I rise in strong support of this rule, this resolution, and the Pledge of Allegiance. Yesterday, a Federal court ruled that the recitation of the Pledge is unconstitutional and all because it contains the words ''under God.'' Mr. Speaker, I strongly oppose this ruling, and I know that I speak for my constituents when I say that the court should reverse itself or the Supreme Court should overrule it. If they do not, then this Congress should act to protect the Pledge of Allegiance.

For decades, Americans have said the Pledge of Allegiance as a way to show their respect and love for this country. We say it every day we are in session here on the floor of the people's House. The pledge is a statement reaffirming our belief in our country and the values for which it stands. Now more than ever those values, liberty, justice, equality, are so needed.

I urge my colleagues to support this resolution and to support the Pledge.

Mr. LINDER. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from Illinois (Mr. HYDE), my friend.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, we ought to thank the court. It brought us together, Democrats and Republicans, in unanimity, something that is seldom seen around here.

Actually, though, the court's decision embarrasses us. We have been living in a dream world. Back in the Mayflower Compact in 1620, first sentence, ''in the name of God, amen.''

If we go on through that to the Declaration of Independence, ''We hold these truths to be self-evident, that all men are created equal and are endowed by their creator, with certain inalienable rights, among which are life, liberty and the pursuit of happiness.'' Our human rights are the endowment from the Creator. That is a fundamental premise of America, and it is in our birth certificate, the Declaration of Independence.

The Treaty of Paris, which resolved the Revolutionary War, mentions God.

Abraham Lincoln on November 19, 1863, in a cold, windy little cemetery in Pennsylvania asked a very haunting question, whether this Nation, conceived in liberty and dedicated to the proposition that all men are created equal, can long endure, and the end of that greatest speech in American literature, he says that we here highly resolve but that these dead shall not have died in vain and that this Nation, under God, shall have a new birth of freedom and that government of the people, by the people and for the people shall not perish from the Earth.

So we are embarrassed by the decision. We have been barking up the wrong tree. We thought it was a good thing to acknowledge the fatherhood of God, to acknowledge our debt to Providence and to do so in a public way. The Supreme Court in 1892, in a case called Church of the Holy Trinity versus the U.S. said, ''This is a religious Nation.'' That same court in 1951, in a case called Zorach said, We are a religious people whose institutions presuppose a supreme being.

So this decision by these three judges, two of the three judges in the Ninth Circuit, is based on a total lack of respect, if not knowledge, of American history, of American culture, of American tradition. It is an embarrassment; and we as a coequal branch of government ought to rise up and say no, no, it is wrong, and acknowledge, continue to acknowledge the primacy of the supreme being who has blessed this country for more than 225 years.

Mr. MCGOVERN. Mr. Speaker, I yield 3 minutes to the gentlewoman from Ohio (Mrs. JONES).

Mrs. JONES of Ohio. Mr. Speaker, I thank the gentleman for yielding me the time.

I rise here in support of this resolution. I am a graduate of Cleveland public schools, and I can remember as a little girl at Miles Standish Elementary School learning the Pledge of Allegiance to the flag and it being so important to me. In third grade, we learned French, and we even learned how to say the Pledge of Allegiance in French in that third grade class; and here I stand 53 years old, and I am still able to remember that I said: Je jure fidelite au drapeau des Etats -Unis d'Amerique et a la Republique qu'il represente, une Nation sous Dieu, and so forth. We learned it in French and it was very important to me as I thought about it.

I too am embarrassed by the Ninth Circuit Court. I am embarrassed that this court would take a pledge, when we make allegiance to our country, and try and take it out of context and move on; but I am even more disappointed today in the United States Supreme Court, because I come from the great city of Cleveland.

Today this United States Supreme Court made the decision that vouchers were not unconstitutional, that vouchers in the establishment clause could be used to pay for religious education with public dollars. I was very interested in the decision. It said that parents have a choice to where they send their children, that the dollars go to the parents, and so, therefore, it is not a violation of the establishment clause.

The dissenting justices, who I agree with, said but it is clear based on the facts in this case that 96.6 percent of the students of the Cleveland public schools go to religious institutions and there are very few other options other than religious institutions for these children to go to.

Many of my colleagues know that before I came to this body I served as a judge, and I was very proud to be a judge, and I am very proud of the profession of judges that I sat with and that I served with. But I have to say that these two decisions yesterday, decision in regard to the Pledge of Allegiance to the United States of America and today's decision by the U.S. Supreme Court with regard to vouchers has disappointed me.

The last thing I would say, Mr. Speaker, is as we talk about the importance of this Pledge of Allegiance to the United States, lest we not remember that portion which says with liberty and justice for all, let us make sure that all get liberty and justice.

Mr. LINDER. Mr. Speaker, I am pleased to yield such time as he might consume to the gentleman from California (Mr. CUNNINGHAM).

Mr. CUNNINGHAM. Mr. Speaker, George Washington was quoted as saying, ''An atheist is a person with no invisible means of support,'' and I think that that person that brought this lawsuit forward, I do not think, I know, he has got the right to feel like he does; but it is also our right to detest that particular point of view.

We stand here today, I do not care if someone is a Christian, Muslim, Jew, I think to denounce that decision that was made in Ninth Circuit Court, and I would tell my colleagues, there was a time in my own life, I was raised in a Christian family, had to go to church every Sunday. When I got out on my own, I could not say that I actually knew that there was a God at one time.

On May 10, 1972, over the skies of Vietnam, my aircraft was hit with a surface-to-air missile and the airplane started going out of control, and it actually rolled upside down; and like many people, the only time I would ever ask for God's help was when I was in trouble. I remember thinking, God, get me out of this, I do not want to be a prisoner of war or die. The airplane righted itself as I took the stick and put it to the left side, and I remember thinking, God did not have anything to do with this, it was just my superior flying skills that righted this airplane; but about that time, the airplane went back upside down, and I remember thinking, God, I did not mean it, get me out of here.

I will tell the people that are atheist or do not support this resolution, all they have to do is get on their knees and say a prayer and I do not care what religion they are, somebody is going to listen.

□ 1445

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentleman of the Committee on Rules for yielding me this time and also for the very fine presentation that he made today. I think he clarified the debate that will be framed even more as we move into general debate.

I would like to just briefly, though there is much that I can say from the patriotic perspective and my love for this country, but more importantly the great honor I take in saying the Pledge to the United States of America every day, and would encourage the young people of America to take as much pride in pledging loyalty to their Nation. But I do want to speak to the appropriateness of the resolution as it is constructed, and that is a disagreement with the context and the decision of the particular court.

I am very much respectful of the independence of the three branches of government, the executive, the judiciary and the legislative; and so it is appropriate that the context is such that we express disagreement, but I will expand more in terms of debate and discussion on the language that is in this court opinion that suggests that our children will be put in untenable positions of choosing between participation in an exercise with religious context or protesting. That is not accurate.

In fact, what actually occurs is the right of freedom of religion and speech. The speaker has freedom of speech under the first amendment, and the individual who chooses not to say the Pledge of Allegiance has the freedom of religion. Therefore, I am unsure of the line of analysis that the court has made to suggest that one is protesting and that it is untenable. That individual is expressing their freedom of religion by their decision as to not express themselves through the Pledge of Allegiance to the United States of America.

I would hope that as this decision makes its way through to the Supreme Court we will once and for all understand the context of the first amendment, that is the freedom of expression, the freedom of religion, and the choice to do so.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume, and I would close by urging my colleagues to support this rule and support the underlying resolution.

Mr. Speaker, I yield back the balance of my time.

Mr. LINDER. Mr. Speaker, I yield myself such time as I may consume, and I urge my colleagues to support this resolution and to support the underlying bill.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

SENSE OF HOUSE THAT NEWDOW V. U.S. CONGRESS WAS ERRONEOUSLY DECIDED

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 459) expressing the sense of the House of Representatives that Newdow v. U.S. Congress was erroneously decided, and for other purposes.

The Clerk read as follows:

H. RES 459

Whereas on June 26, 2002, the Ninth Circuit Court of Appeals held that the Pledge of Allegiance is an unconstitutional endorsement of religion, stating that it ''impermissibly takes a position with respect to the purely religious question of the existence and identity of God,'' and places children in the ''untenable position of choosing between participating in an exercise with religious content or protesting.''

Whereas the Pledge of Allegiance is not a prayer or a religious practice, the recitation of the pledge is not a religious exercise.

Whereas the Pledge of Allegiance is the verbal expression of support for the United States of America, and its effect is to instill support for the United States of America.

Whereas the United States Congress recognizes the right of those who do not share the beliefs expressed in the Pledge to refrain from its recitation.

Whereas this ruling is contrary to the vast weight of Supreme Court authority recognizing that the mere mention of God in a public setting is not contrary to any reasonable reading of the First Amendment. The Pledge of Allegiance is a recognition of the fact that many people believe in God and the value that our culture has traditionally placed on the role of religion in our founding and our culture. The Supreme Court has recognized that governmental entities may, consistent with the First Amendment, recognize the religious heritage of America.

Whereas the notion that a belief in God permeated the Founding of our Nation was well recognized by Justice Brennan, who wrote in School District of Abington Township v. Schempp, 374 U.S. 203, 304 (1963) (Brennan, J., concurring), that ''[t]he reference to divinity in the revised pledge of allegiance . . . may merely recognize the historical fact that our nation was believed to have been founded 'under God.' Thus reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg Address, which contains an allusion to the same historical fact.''

Whereas this ruling treats any religious reference as inherently evil and is an attempt to remove such references from the public arena.

Now, therefore, be it resolved by the House of Representatives, That it is the sense of the House of Representatives that—

(1) the Pledge of Allegiance, including the phrase ''One Nation, under God,'' reflects the historical fact that a belief in God permeated the Founding and development of our Nation; and

(2) The Ninth Circuit's ruling is inconsistent with the U.S. Supreme Court's First Amendment jurisprudence that the Pledge of Allegiance and similar expressions are not unconstitutional expressions of religious belief; and

(3) The phrase ''One Nation, under God,'' should remain in the Pledge of Allegiance and

(4) the Ninth Circuit Court of appeals should agree to rehear this ruling en banc in order to reverse this constitutionally infirm and historically incorrect ruling.

The SPEAKER pro tempore (Mr. SHIMKUS). Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on House Resolution 459, the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, yesterday, the Ninth Circuit Court of Appeals in San Francisco topped itself, not an easy accomplishment for the court of appeals with the dubious record of being most likely to be reversed by the U.S. Supreme Court. It did so by ruling in Newdow v. U.S. Congress that the voluntary recitation of the Pledge of Allegiance by public school students is an unconstitutional endorsement of religion and, thus, a violation of the first amendment's establishment clause.

Immediately following this decision, I introduced House Resolution 459, expressing the sense of the House that the Newdow case was erroneously decided by the Ninth Circuit and the court should agree to rehear this ruling en banc.

The Ninth Circuit ruling treated the word God as a poison pill. Rarely has any court, even the notoriously liberal Ninth Circuit, shown such disdain for the will of the people, an act of Congress and our American traditions. What is next, a court ruling taking ''In God We Trust'' off the money, which the dissenting judge expressed his concern about? Or how about banning the performance of God Bless America from 4th of July celebrations at local courthouses and in parks next week?

Any fourth grader knows that the Pledge of Allegiance is not a prayer or a religious practice. Therefore, its recitation is not a religious exercise. Rather, as my resolution states, it is a verbal expression of support for the United States of America, and its effect is to instill support for the United States of America.

In truth, yesterday's ruling is the latest in a string of rulings by misguided courts misinterpreting the Constitution's establishment clause. Under West Virginia Board of Education v. Barnette, cited by the Supreme Court in 1943 and which is still good law, individuals cannot be compelled to recite the Pledge of Allegiance, and in this case children were not compelled to say the Pledge.

We recognize the right of those who do not share the beliefs expressed in the Pledge not to participate, but this ruling treats the mere reference to religion as inherently evil and coercive. It is simply a barefaced attempt to remove all religious references from the public arena by those who disagree. In effect, it is a heckler's veto.

Our Nation's founders based their claim of independence upon the laws of nature and nature's God. The Founders of our Nation declared all men to be endowed with inalienable rights by their creator and urged their revolution relying upon the protection of divine providence. Thus, God is referred to or alluded to four times in the Declaration of Independence and countless times in other documents.

In the years since the ratification of the Constitution, beginning with President George Washington's administration, religious services have been conducted in government buildings, including the halls of Congress. The Supreme Court begins each session with ''God Save the United States and this Honorable Court.'' The Supreme Court has upheld the offering of a prayer by a publicly-funded chaplain to open legislative sessions. Lower Federal courts continue to uphold the constitutionality of the Federal Government's Christmas holiday as well as the placement of In God We Trust on our currency. If the Pledge of Allegiance is unconstitutional, then certainly these traditions and even the Declaration of Independence are as well.

The fact of the matter is that these statements of patriotism reflect the love Americans feel for their country and recognizes the fact that our Nation was founded by brave men who stood on the principle that all men possess inalienable rights endowed not by man but by God. This view continues to be shared by most Americans today.

In this time of profound challenges facing our Nation, the last thing our citizens need is two irresponsible judges using the Pledge of Allegiance to promote what can only be characterized as an effort to purge the public arena of all religious references.

Yesterday's ruling is dumb. It is an insult to the brave men that founded our Nation and preserved it for over 200 years, and we in Congress should do whatever it takes to void this laughable ruling.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I believe the reasoning in the majority opinion in this case is sound. It outlines how the phrase ''under God'' is in violation of all of the differing standards developed by the Supreme Court over the last 50 years to evaluate challenges under the establishment clause of the first amendment to our Constitution.

Nevertheless, Mr. Speaker, I tend to agree with the dissent in this case; and the operative language that persuaded

me is language on page 9132, which says, ''But, legal world abstractions and ruminations aside, when all is said and done, the danger that ''under God'' in our Pledge of Allegiance will tend to bring about a theocracy or suppress somebody's beliefs is so minuscule as to be de minimis. The danger that phrase presents to our first amendment's freedoms is picayune at most. Judges, including Supreme Court Justices, have recognized the lack of danger in that and similar expressions for decades, if not for centuries.''

But whatever we think of the decision, Mr. Speaker, the only thing worse than the decision is the spectacle of the Members of the United States House of Representatives putting aside discussions of prescription drug benefits under Medicare to take up and pass this resolution. When we were sworn in, we promised to uphold the Constitution, and it is important to acknowledge that any court ruling based on constitutional rights will be unpopular. If the issue were popular, the litigant would vindicate his rights using the normal democratic process. Obviously, the fact that the litigant had to rely on constitutional rights means that he was in the minority.

This is the way it always is with constitutional rights. An individual does not need a constitutional right of freedom of speech to say something popular. They only need it when the majority has the legislative and police power to stop them from expressing their views, and the decision will obviously not be politically popular.

In that light, Mr. Speaker, what Members of Congress think of the decision is irrelevant. If the judicial branch finds the Pledge to be unconstitutional, which I do not believe it will ultimately do, no bill we can pass will change that.

Mr. Speaker, because the decision is based on constitutional rights, it will always be unpopular, and what we think about the decision is irrelevant, and because we have important business to address, I would hope that this resolution will be defeated.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas (Mr. DELAY), the majority whip.

Mr. DELAY. Mr. Speaker, I appreciate the gentleman yielding me this time.

I just want to answer the last speaker. That kind of attitude that thinks that when a judge speaks that that is the law of the land, well, it does not work that way by the Constitution. There are checks and balances in our Constitution, and what Congress does is relevant to what the judiciary does.

Congress is going to stand up in this particular case and fight the judiciary of this country and stop them from running amuck. There is accountability built into the Constitution, as long as this Congress understands that they have a responsibility to defend the Constitution against a runaway judiciary.

It appears that this Ninth Circuit Court of Appeals has experienced another short-circuit. This court went way too far, and we know that. This Congress is committed to righting that court's wrongs, starting right here, right now, today.

Now, according to this absurd logic, the following could be in danger of being outlawed:

The four mentions of God in the Declaration of Independence that made our country free; the oath that each President takes to uphold the Constitution, which holds our Nation together; the words etched right here above the Speaker in this august institution that helps govern our Nation; the phrase that begins with each U.S. Supreme Court session, ''God Save the United States;'' the oath of witnesses to tell the truth in courts that protect us; our own currency that keeps our Nation prosperous; and the singing of God bless America on the steps of this Capitol that signaled yesterday our resolve.

So as my colleagues can see, this absurd decision was made by a court run amuck; and I urge all our Members, of all political stripes, to send a very clear message and put the stars and stripes, along with the words ''God Bless America'' as the banner for their .gov websites.

As upset as we all are, once again we must summon the best in us to defend this one Nation, under God, indivisible, with liberty and justice for all. This Congress is not going to let anyone strip our Nation of our proud heritage; not now, not ever.

□ 1500

Mr. SCOTT. Mr. Speaker, I yield 30 seconds to myself.

Mr. Speaker, on constitutional issues, the judicial branch and the Supreme Court is the law of the land, even if those decisions are unpopular.

If we had to wait for school integration to be popular in America, people in many States would still be going to segregated schools. It is important that we note that the Supreme Court is the law of the land on constitutional issues.

Mr. Speaker, I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I indicated earlier today that I adhere to the loyalty Pledge that is taken by all of us to pledge allegiance to the United States of America and find comfort in the fact that since 1954, we have been able to say ''one nation under God, indivisible.'' I say it without hesitation, and I support this resolution.

Allow me, however, to track an understanding for the American people. I think that is important. It is likewise important to acknowledge the status and the position as it relates to the laws of the land that the courts have. My colleague from Virginia is absolutely correct. When we look to the courts, we look to them to establish a body of law; and, of course, the Congress has a responsibility as an equal in the lineage of hierarchy in this Nation, judicial, legislative and executive, to speak its will and its mind.

What I consider the resolution today is a Congress speaking its will and its mind. It is speaking to the American people. It is saying all is well. It is suggesting to them its interruption of the utilization of the Pledge of Allegiance, something that is done most mornings in our schools around the Nation, most times at ceremonial activities, and certainly after September 11, recognizing the privilege we have in this country to pledge allegiance to the flag of the United States of America.

But allow me to take the first amendment again and refer us to it as I read from the Constitution of the United States which says ''Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for a redress of grievances.''

Mr. Speaker, I believe the first amendment is the first amendment because the Founding Fathers thought this had to be one of the highest tenets of our democracy. Why? Because our country was founded on those who were fleeing from persecution.

I would take issue, and I have the right now as I am debating on this floor, I have a right to take issue, I have a right to make a statement of what I believe in, is that in pledging allegiance to the flag or not pledging allegiance to the flag, Americans are exercising their freedom of religion. It is not classified or should not be classified as forcing someone to protest. An individual is absolutely within their right to exercise their freedom of religion.

I disagree with the decision of this particular court, but I do believe it has the right to move forward through the judicial process to express its view as well.

Let me share the dissent of the court that I think is accurate. Judge Ferdinand Fernandez pointed out in dissent: ''The establishment clause tolerates quite a few instances of ceremonial deism. Is it okay to sing 'God Bless America' or 'America The Beautiful' at official events? Is American currency unconstitutional?''

The answer must be, as Judge Ferdinand Fernandez argues, that in certain expressions it is obvious that the tendency to establish religion in this country ought to interfere with the free exercise or nonexercise of religion is de minimus.

My point is to take that a step further and suggest that the first amendment allows one to exercise their religious faith. In not saying the Pledge of

Allegiance, it is exercised. It is not a protest. I say it. I willingly say it. I believe it should be said. I do not believe it is unconstitutional. I believe this resolution is intact and appropriate because it allows an equal, independent branch of government to express its viewpoint on a decision that is made. We all have to adhere to the procedures of this lands, the democracy as it works; and that is a republic, three branches of government. We will watch this case as it goes forward. I proudly rise to support this resolution because I believe the interpretation is accurate.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I am a little bit disturbed that what the gentleman from Virginia (Mr. SCOTT) seemed to have said was that Congress should never question a court decision that is based on constitutional grounds. Had he and I been in Congress before the Civil War when the Supreme Court decided the Dred Scott case, I am sure both of us would be asking the House of Representatives to go on record opposing that decision as being misguided. We are doing something similar to that today.

Mr. Speaker, I yield 1 minute to the gentleman from Ohio (Mr. CHABOT).

Mr. Speaker, as chairman of the Subcommittee on the Constitution, I rise in strong support of this resolution and against the court's decision. The Ninth Circuit Court of Appeals' ruling that the Pledge of Allegiance is an unconstitutional endorsement of religion is a complete misinterpretation of constitutional law. I would hope that this outrageous decision by this three-judge panel will be quickly overturned by the full Ninth Circuit Court or, if necessary, by the United States Supreme Court.

Incredibly, while Americans are pulling together following the horrific events of September 11, a panel of liberal Federal judges has chosen to challenge the time-honored Pledge of Allegiance. Like most Americans, I reject the court's unconscionable decision and stand resolutely with my colleagues today as we vote overwhelmingly to oppose this attack on an American symbol that we all hold dear.

Mr. Speaker, for all of the veterans who risked their lives for our country, for all the servicemen and servicewomen who serve today, and for all of our children who recite the Pledge every morning with respect and admiration, I urge my colleagues to support this resolution and condemn the court's decision.

Mr. SCOTT. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I indicated my support for this resolution because I believe this is an appropriate comment time by the House. Let me also suggest to Members, however, that what happens with this kind of approach, and I am at this moment thinking of this because it is of such concern to me, my colleague from Ohio mentioned this, and the distinguished chairman mentioned the Dred Scott case, and none of us would claim to be in the House at that time in the 1800s. Maybe we are looking quite young at this point, but I would join him in asking for a commentary on that case.

Likewise, some of us are going to be asking for a comment on the question dealing with the constitutionality of vouchers. We happen to believe that that fosters segregation, as opposed to opening the doors of opportunity. What this does, in fact, is I hope out of the spirit of bipartisanship, and I certainly hope the distinguished majority whip was not suggesting that this issue is liberal or conservative, we are all over the lot on this particular legislative initiative. I support it, but I am going to be looking for bipartisan support when it comes to discussing what I think is an untimely decision on the voucher issue, and certainly an untimely issue as I review it, dealing with the question of drug testing. What we are trying to do here is improve the constitutional rights and freedoms of Americans, not diminish them.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. HYDE), the former chairman of the Committee on the Judiciary.

Mr. HYDE. Mr. Speaker, I just want to comment on what has been said by the gentleman from Virginia (Mr. SCOTT) and the gentlewoman from Texas (Ms. JACKSON-LEE).

I could not disagree more. What they are saying is because this is de minimis, because that was in the dissenting view, therefore, it is okay to let it go. That is a way of standing on two stools. That is a way of having it both ways because it is not important.

Well, I do not think that it is unimportant. I do not think that it is trivial. I think acknowledging the primacy of almighty God is of transcendent importance, and I guess de minimis is in the minds of the analysts; but I could not disagree more. In addition to the Dred Scott case, Plessy v. Ferguson, there is a whole line of cases that I am sure the gentleman from Virginia (Mr. SCOTT), my distinguished learned friend, would disagree with and not invest them with a dignity because they come from the Court.

And, lastly, I point out to my dear friend, the gentlewoman from Houston, Texas (Ms. JACKSON-LEE), that the first amendment has two parts: the establishment and the free exercise.

Mr. SCOTT. Mr. Speaker, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, if the distinguished gentleman from Illinois (Mr. HYDE) would listen, the chairman, he has misinterpreted my entire remarks. I quoted from the dissent, and what I said was out of the dissent of Judge Fernandez, I believe, that any commentary about God is de minimis in terms of saying that someone is practicing religion. I support the fact that saying ''under God'' is not violating religious freedom.

Mr. HYDE. Mr. Speaker, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Speaker, it is ''de minimis'' that offends me.

Ms. JACKSON-LEE of Texas. It is in the court's ruling.

Mr. HYDE. Mr. Speaker, I understand the court's ruling, and it was in the editorial in the Washington Post; but I disagree.

Ms. JACKSON-LEE of Texas. It is in the dissent.

Mr. HYDE. I disagree.

Ms. JACKSON-LEE of Texas. Mr. Speaker, in reclaiming my time, if the gentleman from Illinois (Mr. HYDE) disagrees, would he please indicate that he is disagreeing because he does not like the term ''de minimis'' used by the judge who is supporting his position, because I am supporting the position that we have a right to comment on it and am supporting the resolution. Please make sure that is clarified.

Mr. HYDE. Mr. Speaker, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Illinois.

Mr. HYDE. I object to ''de minimis'' from whatever source.

Ms. JACKSON-LEE of Texas. I will cite that to the Washington Post.

Mr. SCOTT. Mr. Speaker, how much time remains on both sides?

The SPEAKER pro tempore (Mr. SHIMKUS). Both sides have exactly 10½ minutes remaining.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. GEKAS).

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding me this time.

The game is just beginning. We are in the first inning of what may turn out to be a long game in trying to overturn this decision by the Ninth Circuit. We must remember that this was only a three-judge panel, not representing necessarily the total views of all the Ninth Circuit. In that regard, we have directed that a letter be sent to the presiding judge of the Ninth Circuit to ask that they reconsider the decision rendered by the three-judge panel, which is within our right to ask and which is within the right of the Ninth Circuit to reconsider. So now we stretch out the possibilities that we have to overturn this decision. If they do the right thing and overturn their own panel, the game has ended. If not, then the game stretches on to the Supreme Court, which will undoubtedly undertake this case.

We will be guided when we see it go to the Supreme Court with the fact that another circuit has found just the opposite of what the Ninth Circuit may be leading to draw, and so we are strengthened by the resolve that when

it goes to the Supreme Court we will have precedent on the other side of the issue and we will have in front of the Supreme Court in the final innings of this game the undoubted wholesome fulsome support of the American people.

The Supreme Court of the United States cannot, cannot, discount the popular will of the people of the United States in this regard. So my ultimate position in all of this is that this will not stand even if we have to then undertake a constitutional amendment if the Supreme Court should disappoint us in this particular issue; and if that happens, all the more reason why we can say this will not stand because Americans stand together.

Mr. SCOTT. Mr. Speaker, prior to yielding to the gentleman from Maryland (Mr. HOYER), the gentleman from Illinois (Mr. HYDE), chairman of the committee, indicated what would happen if we had taken a position on Plessy v. Ferguson or Dred Scott. The litigants in those cases, Mr. Speaker, lost and I suspect that the Congress might have even approved of that.

Mr. Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. HOYER).

□ 1515

Mr. HOYER. I thank the gentleman for yielding me this time.

Mr. Speaker, our Nation's greatness derives not only from our commitment to tolerance and a profound belief in the separation of church and state but also from the fact that we have always been, and hopefully will always be, a Nation of faith.

Our Declaration of Independence which we celebrate 1 week from today avowed, and I quote, ''firm reliance on the protection of divine providence.'' Every one of our 43 Presidents has said a prayer or invoked God during their inaugural address. And our Pledge of Allegiance has included the phrase ''one Nation under God'' since 1954, harkening back to, 100 years prior to that, the remarks of President Lincoln in his Gettysburg address.

Yesterday, the Ninth Circuit Court of Appeals held that the acknowledgment of a power greater than ourselves or the state was somehow unconstitutional, notwithstanding the language of Thomas Jefferson in the Declaration of Independence that we hold these truths to be self-evident that all men are created equal and endowed, not by the state, not by the majority, but by their creator with certain unalienable rights, and among these are life, liberty and the pursuit of happiness. That is what we acknowledge when we say ''in God we trust.'' That is what we acknowledge when we say ''one Nation under God, indivisible with liberty and justice for all.''

I adamantly disagree with this misguided decision which runs counter to our cultural and historical traditions. I have high hopes that upon reflection that either the Ninth Circuit itself or the Supreme Court will reverse this erroneous and harmful decision.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Indiana (Mr. PENCE), a member of the Committee on the Judiciary.

Mr. PENCE. Mr. Speaker, I thank the gentleman for yielding me this time.

Like most Americans, Mr. Speaker, I believe in this country, I believe in God, and I believe in the power and importance of allegiance to our flag. So I rise today in strong support of the resolution. Like millions of Americans, I was shocked and appalled by the Ninth Circuit's ruling that references to God in the Pledge of Allegiance are unconstitutional.

Mr. Speaker, we opened this House in prayer to God today. The walls of this temple of democracy bear His name. But we are told that it is unconstitutional for our children to name God as they acknowledge their fealty to that very same Nation.

Sadly, this decision is part of a 35-year history by radical secularists who would twist the freedom of religion into freedom from religion. We must reject this course of judiciary decisions. We must pass the resolution and reaffirm a right understanding.

I pledge myself to fight every decision by the judiciary, including this one, that seeks to drive expressions of faith, the Ten Commandments, and voluntary prayer out of schools and out of every corner of American life, so help me God.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. Mr. Speaker, I rise to support this resolution. I want to particularly commend the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman, for bringing this resolution to the floor in a speedy fashion.

The American people are crying out for action. Here we are in the midst of a war. Our homeland has been attacked. The faith that many Americans have had has been rekindled. And now we are faced with this overreaching, inappropriate act of a court that is misinterpreting our Constitution.

There will be a lot of talk about the power of the judiciary versus the power of the legislative branch. But I would just like to remind all of our colleagues that the Constitution begins with ''we the people'' and that it has really vested in the American people the authority to make decisions, and they ultimately decide what will happen.

I believe that today the American people are clearly crying out, ''Overturn this decision.''

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. FRELINGHUYSEN).

Mr. FRELINGHUYSEN. Mr. Speaker, I rise in opposition to this ruling which found our Pledge of Allegiance unconstitutional. The Pledge of Allegiance is a sacred oath all Americans take to uphold the values of freedom and independence for which so many veterans have fought and died. It is an outrage that today as our brave men and women are overseas defending our great country against the threat of terrorism, these words that represent the very core of the American values come under attack.

I ask my colleagues and the American people again to show our independence and protest the Ninth Circuit Court of Appeals decision by joining together as ''one Nation under God'' to recite the Pledge of Allegiance on that day we celebrate soon, 226 years of independence, on July 4. I ask all Americans to stop what they are doing on that day this July 4 and with hand over heart recite the Pledge that has reminded millions of schoolchildren each and every day of why America is the greatest Nation on the face of the Earth.

Mr. SCOTT. Mr. Speaker, I yield 2½ minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Speaker, I thank the gentleman for yielding me this time.

Let me say at the outset that when the vote is put on this resolution, I intend to vote ''present.'' I have had a discussion with the gentleman from Virginia (Mr. SCOTT) earlier today about whether I agree or disagree with the court's opinion, the majority opinion, a 2–1 opinion, a part of the court; and I told him I thought I agreed more with the dissent in the case than I do with the majority.

But that is almost a side issue here. The real issue is what the gentleman from Pennsylvania (Mr. GEKAS) started to say, I think, was that the process is still continuing. Three people have entered a decision, a 2–1 decision. That decision no doubt will be reviewed by the entire circuit court and no doubt ultimately be reviewed by the United States Supreme Court. And while I recognize that this body has a prerogative to express an opinion about anything it wants to express an opinion about, I just do not think that I want to be a party to joining in the collective expression of an opinion of the legislative side of government to the judicial side of government on this issue, particularly when the case is still pending before the court and we do not know its ultimate disposition.

I have strong opinions about this issue. I think the Bill of Rights' first amendment and other amendments in the Bill of Rights was intended to protect those who are in the minority. Obviously, people who do not believe in some God are in the minority; but they are entitled to have their rights protected, too, and not to be in a coercive setting, so I can certainly understand the decision, although I do not necessarily agree with it. I just think at this juncture this body should not be expressing itself on this issue.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding time, and I commend Chairman SENSENBRENNER for bringing this measure to the floor at this time.

Mr. Speaker, I rise in strong support of H. Res. 459, expressing the sense of Congress that Newdow v. U.S. Congress was erroneously decided by the Ninth Circuit Court of Appeals. The Federal court's decision is truly an insult to our Nation, a disgrace and an absurdity of justice. Moreover, it defies the basic principles of reason and good judgment. It is particularly outrageous that such a ruling was made at a time when our Nation's dedicated men and women are fighting an ongoing war against global terrorism, the very epitome of evil. What kind of message does this court's ruling send to our enemies? What message does it send to our patriotic military personnel out there on the front lines?

Accordingly, I urge the court to rehear the ruling with all due speed and overturn this egregious injustice perpetrated against the very principles upon which our great Nation was founded.

Mr. SENSENBRENNER. Mr. Speaker, I yield 30 seconds to the gentleman from Georgia (Mr. KINGSTON).

Mr. KINGSTON. Mr. Speaker, I thank the gentleman for yielding me this time.

I just want to, I guess, me-too-it as much as possible on this. I think it is incredible that at a time when our Nation is at war, when we have suffered one of the greatest domestic tragedies in our history, that a court would be so out of touch with America that they would say this is what we need at this point in time, reversing all the other court decisions.

I certainly stand in strong support of this resolution. I just want to say when I was in Afghanistan back in January, one of the proudest things I saw were all the young men and women on the USS *Theodore Roosevelt* saluting the flag which Rudy Giuliani had flown over the rubble of the World Trade Center. I am glad that they also said the Pledge and that they know that we are one Nation under God.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Mississippi (Mr. PICKERING), the cosponsor with me of this resolution.

Mr. PICKERING. Mr. Speaker, I rise proudly as a cosponsor of this resolution. For over a generation now, our courts have taken the wrong path, eliminating prayer from schools, eliminating Christmas from our courthouses. They are saying today in our courts that access to child pornography is a constitutionally guaranteed right, and today they are saying that saying the Pledge of Allegiance is unconstitutional.

Something is wrong. They are trying to drive God from the public square, and this is their fallacy. We believe that our creator endows all men with the right to life, liberty and the pursuit of happiness. History shows that every godless state every time trampled on the rights of life, liberty and the pursuit of happiness. Under God and through our creator, we have our rights. We must never forget that. We must protect it so those who disagree with us will have their rights protected as well.

I urge my colleagues to continue standing for the expression of our freedom under God.

Mr. SCOTT. Mr. Speaker, I yield the balance of my time to the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

The SPEAKER pro tempore (Mr. SHIMKUS). The gentleman from Michigan is recognized for 5½ minutes.

Mr. CONYERS. Mr. Speaker, I would like to begin by commending the chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER), and the manager of this measure, the gentleman from Virginia (Mr. SCOTT), for the excellent way that they have conducted it. It has been a fair and, I think, revealing discussion that is so important. I cannot help but also note that the former chairman of the Committee on the Judiciary, the gentleman from Illinois (Mr. HYDE), has considered this an issue of great importance, as has our colleague, the gentleman from North Carolina (Mr. WATT), and the gentlewoman from Texas (Ms. JACKSON-LEE). This is important.

This radical secularist decision was rendered by Judge Alfred T. Goodwin, appointed by past President, Richard Milhouse Nixon. And so for all of you who are leading the attack on the left, I do not know this judge and I do not know what his position was, but he passed muster in the Senate, he was reviewed and favorably considered by a sitting Republican President, and I think that it is very important that no one question the right of the Members of the House of Representatives to express their opinion on this decision or any other decision.

What I fear is that it may be intended by some for political gain. But that is not a new feature in the course of our discourse in the House of Representatives. Or some who may be trying to discredit the judiciary in general for the work of two people on the Ninth Circuit.

□ 1530

Certainly, the three-judge panel of the Ninth Circuit Court of Appeals appears to have presented a ruling that runs counter to the existing precedent regarding the establishment clause, and as someone with great respect for our Pledge of Allegiance, I do not believe its recitation substantively infringes on freedom of religion.

Now, interestingly enough, just hours ago the United States Supreme Court ruled in a 5–4 decision that taxpayer funds can be used in voucher programs to support parochial schools. This ruling has been regarded generally as the worst church-state ruling in the last 50 years. Do we have any resolution on that one?

The Supreme Court today upheld the random drug testing of high school children, even those not suspected of wrongdoing. It is hard to imagine an opinion more objectionable from a privacy standpoint, but do we have anyone calling for a resolution of a program on that?

And then I have colleagues who come to the floor claiming that this is a shocking sign of some fundamental defect in the judiciary. Now, unlike Bush v. Gore, this decision can be appealed, and where there is a strong probability that it will be overturned. This has been observed as just the first step in a judicial process that usually and ultimately gets it right. From Plessy v. Ferguson to Brown v. the Board of Education, to the issue of executing mentally impaired prisoners, the courts who may have originally lost their way ultimately find it again.

But lost in today's debate and in the resolution before us is the value of our judicial system, the crown jewel of our democracy.

Our Founders, in their wisdom, created a system of checks and balances. Independent judges with lifetime tenure were given the tremendous responsibility of interpreting the Constitution. So it is no surprise over the years that the judiciary has ultimately been the greatest protector of our rights and our liberties. The fact that one panel of the Ninth Circuit that has rendered this opinion should do nothing, I hope, to diminish from Members our general, overarching respect for the judiciary.

All of this might be justified if there was any real question as to the constitutionality of the 1954 law that added God to the pledge. But while the Supreme Court has never specifically considered the question, the justices have left little doubt how they would do so. Even former Justice William Brennan—a fierce high-waller—once wrote ''I would suggest that such practices as the designation of 'In God We Trust' as our national motto, or the references to God contained in the Pledge of Allegiance to the flag can best be understood . . . as a form a 'ceremonial deism' protected from Establishment Clause scrutiny chiefly because they have lost through rote repetition any significant religious content.'' Other justices have likewise presumed the answer to the question and no court of appeals should blithely generate a political firestorm—one that was already beginning yesterday—just to find out whether they meant what they said.

Half a century ago, at the height of anti-Communist fervor, Congress added the words ''under God'' to the Pledge of Allegiance. It was a petty attempt to link patriotism with religious piety, to distinguish us from the godless Soviets. But after millions of repetitions over the years, the phrase has become part of the backdrop of American life, just like the words ''In God We Trust'' on our coins and ''God Bless America'' uttered by Presidents at the end of important speeches.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, I agree with my distinguished ranking member, the gentleman from Michigan (Mr. CONYERS), that the Congress should not pass resolutions like this every time some of us disagree with a court decision. However, this court decision was so out of bounds in terms of basic American values as well as judicial precedent that I think that we would be remiss in our responsibilities as representatives in an equal branch of government not to express the fact that we strongly disagree with what the two judges that struck down the Pledge of Allegiance decided yesterday. So that is why this resolution is here before us.

If we look at the consequences of this decision becoming law, they are just mind-boggling. We have heard about the currency being placed at risk. Maybe we ought to pay those two in rubles or euros or something that does not have the offensive motto ''In God We Trust'' on it.

The Declaration of Independence refers to God either directly or indirectly in four separate places, and the signers of the Declaration of Independence called upon divine providence to support the revolution against the English crown. What if that is unconstitutional? Would Queen Elizabeth come back here to reclaim her sovereignty? I do not think so.

But I think that it is important that while the Court has a chance to change its mind rather than writing something in that can only be overturned by a constitutional amendment, that we express ourselves, and that is exactly what we are doing in this resolution.

Mr. Speaker, I could not believe the contorted logic that the two judges that were in the majority in the Newdow case used yesterday. They said that because all of the other kids except Mr. Newdow's daughter got up and recited the Pledge of Allegiance, they were coercing her to do the same. Now, that is ridiculous.

The Court, since 1943, has said, you cannot compel everybody to say the Pledge of Allegiance, and those who voluntarily do not wish to participate are perfectly and legally able to sit down and not do so. But to use the logical extension of the Court's contorted thinking, it gives every heckler and every dissident a veto over what the majority would like to do and to do it in a way that does not coerce somebody who is not in the majority from doing something against their own principles or their own beliefs. This resolution tells the court that they were wrong, that they should review and reverse.

Mr. BARR of Georgia. Mr. Speaker, I rise today to support passage of H. Res. 459, ''Expressing the Sense of the House of Representatives that Newdow v. U.S. Congress was Erroneously Decided.''

The Pledge of Allegiance is as much of a child's school day, as English, Math, or even recess. Yesterday, two activists jurists sitting on the 9th Circuit Court of Appeals in California robbed children in its nine states and two territories of the privilege of following the tradition in which their parents and grandparents proudly took part.

I am fully aware of the significance of the 1st Amendment's Establishment Clause, and I wholeheartedly believe in its purpose—to prevent establishment of a state-sponsored religion—which was at the heart of our fight for independence against the English crown. However, jurists who interpret this vital clause of the Bill of Rights to prohibit even references to God, as in the Pledge of Allegiance, are way off base. If this decision is allowed to stand, can we next assume the 9th Circuit will require the San Francisco mint to cease producing U.S. currency with the motto, ''In God We Trust?'' Or perhaps, we can look forward to these distinguished jurists prohibiting the singing of our National Anthem at government sponsored events?

The Supreme Court has already established that a person cannot be compelled to recite the Pledge of Allegiance. However, this opinion cites dicta from concurring Supreme Court opinion, which has absolutely no controlling authority, stating that the Pledge of Allegiance, ''constitutes a government endorsement of religion because it sends a message to unbelievers, 'that they are outsiders of the political community, and an accompanying message to adherents that they are insider, favored by the political community.' ''

Nothing could be further from the truth, which is why the Supreme Court has rejected this argument. These ceremonial references to ''God'' neither endorse religion, nor coerce anyone into adhering to a specific religion. The inclusion of phrases like ''Under God'' or ''In God We Trust'' is solely a reference to America's long-standing reverence for our creator, and to the freedom and liberties that have been bestowed upon us.

Thankfully, not all the judges of the 9th Circuit are as irrational as the authors of this opinion. Judge Fernandez, writing in his dissent, stated that, ''what religion clause of the 1st Amendment require is neutrality; that those clauses are, in effect, an early kind of equal protection provision and assure that government will neither discriminate for nor against a religion or religions.'' This rationale is precisely what was intended when the Bill of Rights was adopted and I am confident the full 9th Circuit, or if necessary the Supreme Court, will recognize this on appeal.

This point also underscores the necessity of pushing politics aside and confirming federal judges who understand the Constitution and will use common sense and rationality in reaching decisions.

Mr. Speaker, this is a nation ''under God.'' It always has been. If the Republic is to endure, it must always remain so. I believe that Francis Scott Key stated it best, when he penned our national anthem in 1814, while observing the valiant defense of Fort McHenry:

''Oh! thus be it ever, when freemen shall stand
Between their loved homes and the war's desolation!
Blest with victory and peace, may the heaven-rescued land
Praise the Power that hath made and preserved us a nation.
Then conquer we must, for our cause it is just,
And this be our motto: ''In God is our trust.''

A handful of judges in ivory towers may not understand this; but our Founding Fathers did, and the overwhelming majority of Americans do. I urge you to vote ''aye'' on H. Res. 459.

Mr. TRAFICANT. Mr. Speaker, today, I am deeply saddened to hear that a court in California has ruled that the Pledge of Allegiance is unconstitutional.

After September 11, America turned to prayer. Churches, community groups, colleges, all of America prayed for the victims, their families, and our great Nation. On the sides of buildings and in car windows and even on the roofs of houses the words ''God Bless America'' could be seen in every city and every town across the country. People everywhere donned red white and blue ribbons in support of our military forces and preachers everywhere called our great Nation to prayer. Every morning a moment of silent prayer was offered up for the victims of this great tragedy, wayward souls who had not set foot in a church in years found themselves on their knees praying for America.

And now, now after that great outpouring of faith, a court in San Francisco has decided that the Pledge of Allegiance is unconstitutional because it mentions God. ''One Nation, under God with Liberty and Justice for all.'' Beam me up! I ask, what is next? Will we remove ''In God we Trust'' from our currency and from the House chamber? Will we deny members of Congress the right to recite the Pledge of Allegiance every morning? The courts started their assault on God by banning school prayer. The courts then banned the public display of the Christmas nativity scene. The courts banned students from writing papers about Jesus. Even in my home state of Ohio, the courts have ruled that our state motto ''With God All Things Are Possible'' is unconstitutional! Unbelievable. I am continually amazed at the utter stupidity of the American political system that continues to rationalize, debate, and deny the importance of God and why our founders placed in it our Constitution. The founders never intended to separate God from our schools; the founders simply intended to ensure that there would not be one State-sponsored religion, period. My colleagues know it, I know it, and the American people know it. I think that these judges should be tied to a chain link fence and flogged with a copy of the Constitution! They are so concerned with pleasing the FBI, the CIA, and the IRS so they won't lose their lifetime appointments, that God has become background music in a doctor's office!

I would like to commend my colleagues in both the House and the Senate for supporting God and supporting the Pledge of Allegiance. I also commend our President for taking a strong stand on religion and for fighting for our country's religious freedoms. Freedoms that are taken for granted every single day, but all it takes is one voice. One atheist who does not believe that God has a place in our schools, and those simple freedoms are taken away. I urge this Congress to take whatever steps and means are necessary to invite and allow God back into our schoolrooms.

Mr. GREEN to Texas. Mr. Speaker, today I introduce a constitutional amendment that would protect the rest of the nation from the erroneous and ill-timed decision by the 9th Circuit Court of Appeals that the Pledge of Allegiance violates the First Amendment's stricture against the establishment of a state religion.

The 9th Circuit, while arguing that this ruling is a logical extension of previous United

States Supreme Court decisions, is seeking to protect citizens from the advance of a nonexistent theocracy. Religion and government have existed side-by-side in our nation for over 200 years, and we still have yet to establish an official religion for America.

Writing for the majority, Judge Alfred Goodwin asserts that the ''profession that we are a nation 'under God' is identical * * * to a profession that we are a nation 'under Jesus,' a nation 'under Vishnu,' a nation 'under Zeus,' or a nation 'under no god,' because none of these professions can be neutral with respect to religion.''

I disagree, and echo the thoughts of Judge Ferdinand Fernandez, who contended that there is only a ''minuscule'' risk that the use of the phrase ''under God'' would ''bring about a theocracy or suppress someone's beliefs.'' According to his colleagues, he wrote, '' 'God Bless America' and 'America the Beautiful' will be gone [from public places] for sure, and . . . currency beware!''

Newspapers across the country were quick to respond, with the Lost Angeles Times, the San Francisco Chronicle, The Sun Jose Mercury-News, and The San Diego Union-Journal all attacking the decision of the California-based court. They were not alone, though, as nationally prominent papers known for their dedication to the First Amendment like The New York Times and The Washington Post also weighed in with their criticism of the court.

As for the timing of the issuance of this decision, the 9th Circuit chose a time when our nation is still actively engaged in the war against terror, with our troops still present in Afghanistan, searching for al-Qaeda and Taliban operatives, providing logistical assistance and training to Philippine troops in their pursuit of the al-Qaeda ally organization Abu Sayyaf, and with the wounds of September 11 still fresh in the memory of all Americans.

I ask my colleagues to join me as cosponsors of this important legislation, and I hope that it will receive speedy consideration by this House.

Mr. CRANE. Mr. Speaker, I rise in strong support of this Resolution, which recognizes that the outrageous decision rendered by a three-judge panel in San Francisco yesterday has no basis in law. I am referring, of course, to the Ninth Circuit Court of Appeals decision yesterday to declare the Pledge of Allegiance unconstitutional.

Mr. Speaker, I have read the Court's opinion, which argues that the inclusion of the words ''under God'' in the Pledge of Allegiance violates the religious clauses of the Constitution of the United States. Specifically, we are told it violates the Establishment Clause, which reads as follows: ''Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.''

Putting the pieces together, this means that the Ninth Circuit has determined that phrases such as ''under God,'' or ''In God We Trust'' tend to establish a religion, or to suppress anyone's exercise of religion.'' This conclusion is absurd on its face.

The phrase ''under God'' when read in the Pledge of Allegiance, acknowledges that our rights are derived from our Creator. That is principle upon which our country was founded. How this qualifies as an attempt to suppress anyone's exercise of religion, or how it tends to establish a religion, I'll never know. And while I will not force anybody to believe what I believe, neither will I sit still while the ability of my fellow citizens to practice religion is trampled upon by a court that failed U.S. history 101.

I am saddened by this ruling, but what is most unfortunate is that I am not surprised by it. I saw this coming from a mile away, Mr. Speaker. It is the logical conclusion to a judicial philosophy promulgated over the past 30 years by the politically correct.

Mr. Speaker, I pray this travesty of justice will wake the Daschle-led Senate up so that they might fulfill their Constitutional obligation and confirm President Bush's nominees.

Mr. CUNNINGHAM. Mr. Speaker, I rise today to join my colleagues in condemning the Ninth Circuit Court's ruling striking down the Pledge of Allegiance as unconstitutional. This decision is unpatriotic—particularly at this time when our nation is at war. We should be embracing symbols of national unity like our pledge of allegiance, but instead the Ninth Circuit Court is attacking them.

The argument against the pledge is above all, unreasonable. By declaring the inclusion of the phrase ''under God'' as unconstitutional, the ruling implies that any mention of ''God'' is equally inappropriate. Remember—the Declaration of Independence and the Constitution refer to ''the Lord'' and ''Creator'', our currency reads ''In God We Trust'', and even the oaths we take as Congressional members speak of ''God''. These references are embedded in the very foundation of our country and national identity—if we stand by and allow this change to the pledge, what will be next? Where do we draw the line?

Mr. Speaker, this court decision will only lessen the already declining respect for our national symbols and for the liberties for which they stand. Yet devaluing an American symbol is unfortunately something that America has been seen before. As you know, in 1989 the US Supreme Court ruled that desecration of an American flag was a permissible and constitutional right. Nevertheless, public disrespect for such a well-known symbol only weakens the sense of a united people. When we do not protect our flag and the god-granted liberties it represents, decisions such as the one declared yesterday will certainly continue.

It is just as essential for Congress to pass House Resolution 459 today as it is to pass the flag burning amendment. We must send a strong message to the courts of America: we value our liberties. We take pride in symbols of national unity. We will fight to protect the pledge and the flag to which we profess our allegiance.

Mr. OXLEY. Mr. Speaker, I stand in strong support of H. Res. 459, which I am proud to cosponsor. I am deeply troubled, but sadly not surprised, that the action of this San Francisco-based court compels us to consider this resolution today.

Mr. Speaker, the Pledge of Allegiance is one of the first things that children learn to recite in school. Adults still place their hands over their hearts when they say it. This simple thirty-one-word affirmation of our great country encompasses the affection and devotion of Americans young and old toward their flag and their nation.

Two years ago, in a court decision equally as absurd as this Newdow decision, a three-judge panel of the Sixth U.S. Circuit Court of Appeals struck down Ohio's official state motto, ''With God All Things Are Possible.'' The Court sided with the American Civil Liberties Union in declaring that the motto expresses a ''particular affinity toward Christianity,'' in violation of the Establishment clause.

Mr. Speaker the Ohio motto decision was ultimately overturned, just as this outrageous decision will be overturned. Our Pledge of Allegiance, along with our Biblically based national motto ''In God We Trust,'' stands as a testament to the undeniable religious foundation of our country. ''In God We Trust'' has been upheld in the courts time and again as a proper reflection of our nation's enduring faith.

It's too often overlooked that the First Amendment's Establishment clause—''Congress shall make no law respecting an establishment of religion''—is followed by the phrase ''or prohibiting the free exercise thereof.'' My constituents are tired of having their free religious exercise attacked by fringe groups in the name of separation of church and state. The Ninth Circuit Court's action is nothing more than political correctness run rampant.

When President Eisenhower approved the addition of the words ''under God'' to the Pledge of Allegiance in 1954, he said, ''In this way we are reaffirming the transcendence of religious faith in America's heritage and future; in this way we shall constantly strengthen those spiritual weapons which forever will be our country's most powerful resource in peace and war.'' During this time of war, when people across the nation gather in their homes and places of worship to pray for the safety of our men and women in uniform, the Ninth Circuit's assault on our nation's faith-based foundation cannot stand. It flies in the face of common sense, and blatantly ignores a plethora of court precedents.

When we pledge allegiance to our flag, we are not saluting a mere piece of cloth. Our flag is the most visible symbol of our nation—a unifying force in our nation of nearly 300 million. Since the Supreme Court invalidated state flag protection laws in 1989, the legislatures in each of the 50 states have passed resolutions petitioning Congress to propose a flag protection amendment to the Constitution. People across the nation—and across the political spectrum—support the right of everyone to affirm the religious foundation of our country through our Pledge.

My hometown of Findlay, Ohio, is known as Flag City USA. Major downtown thoroughfares are lined with flags in a patriotic salute to the greatness of America. Nearby Arlington, Ohio, which I am also privileged to represent enjoys the designation Flag Village USA. The messages I am receiving from Findlay, Arlington and throughout my district are clear: we are one nation under God, despite this ludicrous court action. I know that my constituents and all Americans are saying the Pledge of Allegiance a little louder and with even more pride.

Mr. KLECZKA. Mr. Speaker, I strongly oppose yesterday's 9th U.S. Circuit Court of Appeals decision holding that the use of ''under God'' in the Pledge of Allegiance is unconstitutional.

The case in question originated from a lawsuit filed by a parent who felt that the use of the phrase ''under God'' impinged on his daughter's First Amendment rights since he

believed that it constituted a sanction of religion in the public school she attends.

This decision was clearly erroneous and I find it abhorrent, as do the vast majority of Americans. It was based upon a total lack of respect if not knowledge of the traditions, the values, and the history of our nation. From the very beginning, as the Declaration of Independence points out, our founding fathers established this land based on the idea that individuals were endowed not by man, but by ''their Creator with certain unalienable Rights.''

The Pledge of Allegiance is a revered expression of patriotism recited by millions of citizens every day. When it is spoken, it instills support for the United States and reflects the love that Americans feel for their country. The Pledge does not violate the separation between church and state since it is not a religious statement, but a verbal expression of Americans' affection for our country.

As the dissenting judge pointed out, similar brief references such as the ''In God We Trust'' that appears on our currency and the opening call of the Supreme Court, ''God save the United States and this honorable court'' have always been accepted. I am hopeful that the 9th Circuit Court as a whole reverses the decision of this three judge panel or that the Supreme Court takes up the case and overturns this badly mistaken ruling.

This morning we were proud to recite the Pledge of Allegiance on the House floor as we do each day. I am a co-author of the resolution before us, H. Res. 459, that expresses the opinion of Congress that the court's judgment was in error. The measure calls for ''under God'' to remain in the Pledge, and for the decision to be reversed. I urge my colleagues to support this measure.

Mr. SHAYS. Mr. Speaker, I rise in strong support of H. Res. 459, Expressing the Sense of the House of Representatives that Newdow v. U.S. Congress was Erroneously Decided.

''One Nation, under God,'' reflects the fact that a belief in God permeated the founding and development of our Nation.

The Pledge of Allegiance is not a prayer of part of a religious service. It is a statement of our commitment as citizens to our great Nation and the role God played in it.

Yesterday, the Ninth U.S. Circuit Court of Appeals confused the issue of separation of church and state with the foundation on which our nation was built. ''We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.'' So reads our Declaration of Independence.

As a new nation we claimed our freedom from any monarch in the Declaration of Independence and inherently in the U.S. Constitution because of ''certain unalienable rights'' guaranteed to us by our Creator.

President Abraham Lincoln, in his second inaugural address, spoke of God 13 times, not in an effort to unite church and state but to unite our Nation at the conclusion of one of the most devastating periods in U.S. history, the War Between the States.

Speaking of the Northern blue and Southern grey, this is what Abraham Lincoln said: ''Both read the same Bible, and pray to the same God; and each invokes his aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces; but let us judge not, that we be not judged. The prayers of both could not be answered—that of neither has been answered fully.''

Abraham Lincoln continued, ''With malice toward none; with charity for all; with firmness in the right as God gives us to see the right.''

Today, we as Americans need to seek the right as God gives us to see this right, and continue to ask God's blessing on our great Nation, whose 226th year of freedom we celebrate next week.

Mr. CHAMBLISS. Mr. Speaker, I rise today in support of House Resolution 459, Expressing the Sense of the House of Representatives that Newdow v. U.S. Congress was Erroneously Decided.

I do this on behalf of all Georgians who share my outrage with the Ninth Circuit ruling that our ''Pledge of Allegiance'' is unconstitutional.

For many years, liberals have been unsuccessful in achieving their objectives through the consent of the governed and have turned to activist judges who are willing to distort the Constitution and erase from all public forums any mention of religion and our country's rich religious heritage. Mr. Speaker, the First Amendment guarantees us freedom of religion.

Is it any wonder that this year alone, the Ninth Circuit Court has been overruled 12 times by the Supreme Court. But in a larger sense, this ruling is further evidence that our nation is facing a judicial crisis. Liberal special interests are working tirelessly to prohibit the confirmation of President Bush's judicial nominees in order to further pack the courts with liberal judges who will promote their liberal agenda thus guaranteeing that ruling such as this will become the norm.

Mr. Speaker, I urge my colleagues to pass this resolution, I urge the Department of Justice to immediately appeal this decision and work to have it overturned. I urge confirmation of the President's judicial nominees. To date, only 28% of the President's circuit court nominees have been confirmed. The ruling yesterday in San Francisco demonstrates that the time has run out for holding up the President's nominees. We need the President's judges. We need them now.

Mr. UDALL of Colorado. Mr. Speaker, I support this resolution—not because I necessarily agree that the recent decisions it addresses is ''inconsistent with the U.S. Supreme Court's First Amendment jurisprudence'' as the resolution says, but because I do agree that ''the Ninth Circuit Court of Appeals should agree to rehear'' the matter.

I am not a lawyer, and have not had a chance to carefully review the decision. So, I am not prepared to conclude that its author—a long-serving judge originally appointed by President Nixon—was clearly wrong as a matter of law. However, it is my understanding that another appeals court, in a similar case, has ruled differently. So, I definitely think the issue needs to be resolved, either through reconsideration or by the Supreme Court.

I also strongly agree with the part of the resolution which states that ''the United States Congress recognizes the right of those who do not share the beliefs expressed in the Pledge to refrain from its recitation.''

I am proud to recite the Pledge of Allegiance because I personally agree that, as the resolution states, ''the Pledge of Allegiance is not a prayer or a religious practice'' and its recitation ''is not a religious exercise'' but instead ''the verbal expression of support for the United States of America.'' However, I think it is not a good idea for the Congress to attempt to define what constitutes a religious practice or a prayer. So, I am uncomfortable with the parts of the resolution dealing with those points. The resolution is only an expression of opinion, of course, but still I would have preferred if those clauses had been omitted.

Similarly, I am not sure it is correct to say, as the resolution does, that the court's decision ''treats any religious reference as inherently evil and is an attempt to remove such references from the public arena.'' That seems to me to be a bit of a stretch, especially since under our legal system the courts rule only on cases brought to them, and—unlike the political branches of the government—do not have complete control over their agenda.

On balance, however, and for the reasons I have outlined, I am generally in agreement with the resolution, and so I will vote for it.

Mr. CRENSHAW. Mr. Speaker, yesterday, the Ninth Circuit Court of Appeals held that the Pledge of Allegiance is an unconstitutional endorsement of religion. The Court stated that the Pledge ''impermissibly takes a position with respect to the purely religious question of the existence and identity of God.'' Furthermore, the Court concluded that the Pledge places children in the ''untenable position of choosing between participating in an exercise with religious content or protesting.''

I vehemently disagree with the Court and rise in strong support of H. Res. 459, a resolution expressing the sense of the House of Representatives that this case was erroneously decided. The Court's ruling is contrary to the vast weight of Supreme Court authority recognizing that the mere mention of God in a public setting is not contrary to any reasonable reading of the First Amendment.

The Pledge of Allegiance is not a religious service or a prayer, but it is a statement of historical beliefs. The Pledge represents everything that unites us. It is a reminder of the ideals that we all share—patriotism, loyalty, and love of country. While I firmly believe in the separation of church and state, I also believe that the Constitution was not designed to drive religious expression out of public sight.

Our people are part of a culture where many believe in God and value the fact that religion played an important role in the founding of this great nation. The United States Ninth Circuit Court of Appeals is firmly out of touch with what is good and right in America and with the vast majority of this country's people and I trust that this fundamentally flawed decision will be quickly overturned.

Mr. Speaker, it is with great pride that I added my name as a cosponsor to this resolution and I urge my colleagues to join me and send a strong message to all Americans that they should be proud of the religious heritage of America by supporting H. Res. 459.

Mr. TERRY. Mr. Speaker, I rise in support of H. Res. 459 to firmly denounce yesterday's outrageous court ruling that the Pledge of Allegiance ''is an unconstitutional endorsement of religion and cannot be recited in schools.''

The Pledge of Allegiance is an American tradition that instills patriotism, gratitude, and respect in our children. Many of us grew up pledging allegiance to the flag each morning in

our school rooms—an honor I want my children to experience. Many of us also have family and friends who fought in foreign wars under the red, white, and blue of Old Glory. The Pledge of Allegiance affirms the strength, unity, sacrifice, and a commitment symbolized by the flag under which they fought and bled.

The late Red Skelton ended his now-famous patriotic commentary on the Pledge of Allegiance by saying ''since I was a small boy, two states have been added to our country, and two words have been added to the Pledge of Allegiance: Under God. Wouldn't it be a pity if someone said that is a prayer, and that would be eliminated from schools, too?'' If allowed to stand, the Ninth Circuit Court of Appeals' ruling would make this fear a reality. Generations of school children would be denied their right as Americans to publicly express gratitude to those who aided to secure the blessings of freedom.

We were all inspired by the firemen who risked their lives to stand atop the smoking, 70-story debris of the World Trade Towers to unfurl the American flag and recite the Pledge of Allegiance in its honor. In the face of such selfless bravery, it is more evident than ever that we are indeed a nation ''under God.''

The First Amendment to the United States Constitution affirms that ''Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .'' Our nation's founding fathers sought to ensure freedom of religion, not freedom from religion, as the two Ninth Circuit Federal judges have erroneously and dangerously concluded. I agree with the dissenting Judge Fernandez, who wrote that ''such phrases as 'in God we trust,' or 'under God,' have no tendency to establish a religion in this country or to suppress anyone's exercise, or non-exercise, of religion,'' except in the eyes of those who ''most fervently would like to drive all tincture of religion out of the public life.''

I urge my colleagues to join me in supporting H. Res. 459 to ensure that generations of children can pledge allegiance to our flag and understand the sacrifices, values, and patriotism that have made our country great.

Mr. CASTLE. Mr. Speaker, I rise today in strong support of H. Res 459 expressing the Sense of the House of Representatives that the 9th Circuit court of Appeals exercised poor judgment in deciding 2 to 1 that the phrase ''under God'' in the Pledge of Allegiance violated the Establishment Clause of the First Amendment. Today, the House of Representatives joins the Senator, which voted unanimously, to object publicly to this decision.

Because our Constitution only grants the Supreme Court the power to make a final interpretation of the Constitution, Congress cannot overturn this decision. However, it is entirely appropriate for Congress to express its collective opinion about this 9th Circuit decision. I hope the Supreme Court is listening as it will likely hear the appeal on this case.

The Pledge of Allegiance is not a prayer. It is an expression of support for our nation just as ''In God We Trust'' is on our currency or singing the song ''God Bless America.'' These phrases are a form of ceremonial deism, not an establishment of religion. Anyone who thinks the Pledge of Allegiance will lead us to abandon democracy and establish a theocracy is wrong. I hope they will come to realize that attempt to extinguish the phrase ''God'' from the public forum is really an attempt to extinguish an important element of our nation history.

Finally, it is worthwhile to note that the important principle of separation of church and state is already preserved. Under current law, student are not required to recite the Pledge of Allegiance. It is part of their freedom of speech to refrain from recruiting it. Lets not forget that it is also the freedom of speech of other students to recite the Pledge of Allegiance. I respect that the Supreme Court will ultimately make its own independent judgment. However, I sincerely hope that it will reverse the 9th Circuit decision.

Mr. CARDIN. Mr. Speaker, I rise today in strong support of H. Res. 459, expressing the sense of the House of Representatives that the decision of the U.S. Court of Appeals for the Ninth Circuit in the case of Newdow v. U.S. Congress was wrongly decided. I believe that students should be able to continue to recite the full Pledge of Allegiance, including the phrase ''under God,'' if they so chose, as the Pledge is a central part of the heritage of the United States.

Mr. Speaker, the day after the terrorist attacks of September 11, 2001, I took the floor of the House to remind members about the history and importance of our flag to the United States. On September 12, 2001, I stated:

> Mr. Speaker, it was 187 years ago this very evening that in Baltimore, Maryland, at Fort McHenry, this Nation, this young Nation, won its second war of independence. It was the beginning of the end of the War of 1812. Francis Scott Key on this very evening 187 years ago wrote his inspirational poem that became our National Anthem.
>
> In that third verse, he wrote some words that are helpful for us this evening:
>
> From the terror of flight or the gloom of the grave.
> And the Star-Spangled Banner in triumph doth wave.
>
> We survived the attack by a hostile power and became the strongest Nation in the world, and we will survive this attack on our democratic principles, and we will grow even stronger.

Mr. Speaker, the Pledge of Allegiance is a simple, eloquent statement of American values. For more than four decades, school children have recited it in classrooms across the country. Students pledge allegiance not only to the flag, but to the nation and our values and principles.

I was heartened to see Americans all across our great nation pause for the Pledge on June 14, Flag Day. The Supreme Court, Mr. Speaker, regularly opens its proceedings with the injunction ''God save the United States and this Honorable Court.'' Congress opens its business for the day with a prayer and the Pledge of Allegiance, as do many of our state legislatures. We should continue this fine tradition in our public institutions of government, as well as our schools.

At this most trying time for our nation, when American values and our democracy are under attack from terrorist both at home and abroad. Congress should send a clear message to the nation that we believe the Pledge of Allegiance continues to unite us.

Mr. Speaker, I urge passage of this resolution.

Mrs. ROUKEMA. Mr. Speaker, I am shocked and appalled by the U.S. Court of Appeals for the Ninth Circuit's ruling of the Pledge of Allegiance as unconstitutional. This outrageous decision allows a tiny minority to impose its atheistic views on the vast majority of Americans of all faiths. At the same time, it has no legal foundation.

The Pledge of Allegiance is based on the same fundamental legal principles that established our Nation under the Constitution.

This nation has experienced a tremendous rise in patriotism and we continue to take every opportunity to express our pride in this country. Yet we have now been told that the Pledge of Allegiance is a biased statement and an injury to hear that we are ''one Nation, under God.'' How ridiculous!

I am strongly opposed to this court decision and urge all Americans to join me in expressing contempt for this ruling.

This case must be appealed to the U.S. Supreme Court in an expedited fashion.

Mr. OTTER. Mr. Speaker, today I rise in support of the resolution introduced by my colleague, representative BOB RILEY opposing the ruling of the 9th circuit court that the Pledge of Allegiance is unconstitutional. This is just the kind of ridiculous decision we in the West have come to expect from the 9th Circuit. In an attempt to impose political correctness on society at the expense of freedom, these judges have ignored the real intent of the framers of the Constitution. The First Amendment says nothing about separating church and state. What it does is prohibit the government from establishing a state religion or laws prohibiting free exercise of religion. What's next? Are they going to declare U.S. currency unconstitutional because it bears the words ''In God We Trust?'' Religious freedom is the one common unifying quality that makes us a peace loving, God-fearing nation. We are all Americans, and the Pledge of Allegiance stands as a testament to the citizens of this Nation, and their commitment to each other as Americans.

Mr. SMITH of Texas. Mr. Speaker, the Ninth Circuit Court of Appeals ruling yesterday treats the reference of God as one would treat profanity. Religious references in public discourse are wrongly under attack.

The Constitution guarantees us that government will not 'establish' a religion, but it also provides every American—even students—the right to freely express their views. We are 'one nation under God' and we have the right to say it.

I urge my colleagues to support this resolution.

Mr. HORN. Mr. Speaker, yesterday, the Ninth U.S. Circuit Court of Appeals ruled in a 2–1 decision that the words ''under God'' as recited in the Pledge of Allegiance were unconstitutional. The case was brought before the panel of three judges by Michael A. Newdow, a self-described atheist who protested the requirement of the pledge at his second-grader's school in the Elk Grove Unified School District in Sacramento, California. His case had previously been dismissed by the U.S. District Court.

Writing for the majority, Judge Alfred T. Goodwin found that Newdow had standing as a parent to ''challenge a practice that interferes with his right to direct the religious education of his daughter.'' Following the precedent establish by the Supreme Court in related school prayer cases, the Court ultimately decided that the 1954 Act, which placed the

words ''under God'' in the Pledge was unconstitutional because it violated the Establishment Clause of the First Amendment. The ruling will affect nine states in the western United States: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

This decision will not be implemented for several months, and an appeal to the Supreme Court will likely be the next step. I urge Attorney General Ashcroft to take steps to begin these proceedings as soon as possible.

Congress already is protesting this decision as well. The day the decision was announced, members of the House of Representatives gathered on the steps of the Capitol building and proudly recited that Pledge of Allegiance. In addition, on Thursday, June 27, H. Res. 459 was introduced on the House floor. This legislation expresses the view of Congress that Newdow v. U.S. Congress was erroneously decided. If necessary, I would support a constitutional amendment protecting the right to recite the pledge in schools and other public settings.

As cited in H. Res. 459, the Pledge of Alliance, including the phrase ''One Nation, under God,'' reflects the historical fact that a belief in God permeated the founding and development of our Nation. This is evident in many other cultural elements, including our currency and many patriotic songs, such as ''God Bless America.'' In this time of uncertainty, it is important to remember and uphold the symbols of our Nation, which honor our heritage and draw us together as one people.

Mr. GILMAN. Mr. Speaker, I rise in response to the U.S. 9th Circuit Court of Appeals' declaration that the Pledge of Allegiance is unconstitutional because it contains the words ''under God'' which were added by Congress in 1954.

The Federal Court's decision is an insult to our Nation and a disgrace and an absurdity of justice. It is an obvious misinterpretation of the Constitution, one which violates the basic principles of reason and good judgment.

The ruling, if allowed to stand, means schoolchildren in the nine western states covered by the Court (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington) can no longer recite the Pledge.

Accordingly, I urge the Attorney General to expeditiously appeal this decision to the Supreme Court. Each day that this unbelievable finding stands is another day that the Federal judiciary should hide its head in embarrassment.

Mr. SIMPSON. Mr. Speaker, I rise today to condemn the absurd logic of the Ninth Circuit Court of Appeals in its decision regarding the Pledge of Allegiance and renew my call for much needed reform to stop the unchecked abuses of this court.

We in the West have long known the Ninth Circuit is a court out of touch with reality. Yesterday's ruling, however, marks a new low for this court and is an affront to the principles on which our nation was founded.

The Ninth Circuit, without question, is the most overturned appeals court in the nation. The 1996–1997 session alone saw 95 percent of its cases reviewed by the Supreme Court overturned—and the wholesale rejection of this court's decision continues to this day.

I call upon my colleagues in the House to support legislation I put forward last year that would split the Ninth Circuit into two courts and put an end to this cycle of wasteful and irresponsible rulings. My constituents deserve better, the people of the nation deserve better, and the constitution deserves better.

Mr. Speaker, yesterday the 9th Circuit Court of Appeals ruled that the Pledge of Allegiance is unconstitutional. This is an outrage to me, to Congress, to the man on the street, and to the children who will be told they can no longer say the pledge in school! I am livid over the court's brainless decision. I pledge to support every effort to overturn this horrible decision.

The court's decision stating that the words ''under God'' amounts to a government endorsement of religion shows just how out of step these liberal judges are with the American people. They state that saying God is akin to saying Jesus, Vishnu, or Zeus. This is blatantly nearsighted because the term God refers to God in the concept that is personal to every single person and does not refer to any certain idea of deity. Furthermore, the Pledge of Allegiance is not a prayer or a religious practice and thus the recitation of the pledge is not a religious exercise but rather it is an expression of support and loyalty for the United States. In Justice Brennan's concurring opinion in School District of Abington Township v. Schempp, 374 U.S. 203, 304 (1963) he stated, ''the reference to divinity in the revised pledge of allegiance . . . may merely recognize the historical fact that our Nation was believed to have been founded 'under God.' Thus reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg Address, which contains an allusion to the same historical fact.'' And Justice Blackmun writing for the Court in County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, 109 S. Ct. 3086, 3106 (1989) stated. ''Our previous opinions have considered in dicta the motto and the Pledge characterizing them as consistent with the proposition that government may not communicate an endorsement of religious belief.''

Even before Congress added ''under God'' in 1954 to the pledge, the Supreme Court had ruled no one could be forced to recite the pledge. The court's decision yesterday said simply having to hear it every day violates the First Amendment ban on the establishment of religion. However, as Judge Fernandez points out in his dissenting opinion, ''in West Virginia Board of Education v. Barnette the Supreme Court did not say that the Pledge could not be recited in the presence of Jehovah's Witness children; it merely said that they did not have to recite it. That fully protected their constitutional rights by precluding the government from trenching upon 'the sphere of intellect and spirit. As the Court pointed out, their religiously based refusal' to participate in the ceremony would not interfere with or deny rights of others to do so.''

Essentially this court has with this opinion developed the idea of a coercive environment. However, the law doesn't normally condition ones behavior on how it will affect others around them. Instead, we are told to avert our eyes and turn our heads away from something we find objectionable. In Cohen v. California, the Court found that epithets on the back of a war protestor's jacket, worn in public places, was constitutionally protected speech—the rights of unwilling viewers do not outweigh the speaker's. With this decision, the court gives any statement which may appear to be religious, no matter how innocuous, less protection than any other speech. Religion should be a more highly protected value, not a less protected value. At the very least it deserves equal protection.

If this case is allowed to stand what will be next? Our national motto ''In God We Trust'' which is emblazoned on our money and above the Speaker of the House's chair? Or the singing of songs such as ''God Bless America'' or ''America the Beautiful'' in public? Or how about congressional prayers or the president's periodic invocation of the deity? Or maybe even the crosses at Arlington National Cemetery and our national military cemeteries across the country?

The Pledge, like the National Anthem, is one of few remaining vestiges of the old idea of civic inculcation. It reminds us that despite the fact that we are all from diverse ethnic, religious, and racial backgrounds we remain a part of the same republic. The key to our unity is a shared commitment to the republican ideas of liberty and justice. The sanctioning of our oath under God is not merely an assertion of religious belief, but an appeal for divine blessing of this rather strange and mysterious grand experiment. Out Pledge, National Anthem, national motto and civic prayers help remind our citizens that there are more spiritual ties that bind us than natural affinities that divide us.

Mr. NETHERCUTT. Mr. Speaker, I rise in support of House Resolution 459, to express the sense of Congress that the decision made in Newdow v. U.S. Congress was erroneous.

Yesterday, the Ninth Circuit Court of Appeals, the Federal Court that has jurisdiction over my constituents in Eastern Washington, ruled that our nation's Pledge of Allegiance is unconstitutional. The Ninth Circuit has a long history of bad rulings, and has had more decisions overturned by the Supreme Court than any other circuit. This decision once again proves that the Ninth Circuit needs a commonsense judge from the Eastern District of Washington to bring a voice of reason to the federal appellate bench.

The Pledge of Allegiance, recited by Americans of every age, is an affirmation of our principles of democracy, justice and individual liberty. The declaration of our being ''one nation under God'' is at the heart and soul of America and her distinguished history.

This case and decision should serve as a strong reminder to the U.S. Senate that it should fulfill its responsibilities to confirm President Bush's judicial nominees.

Mr. Speaker, the ruling in Newdow v. U.S. Congress eliminates a constitutionally protected ''genuine choice'' by disallowing students across the Nation from proclaiming their love for these United States through the Pledge of Allegiance. To do so is wrong. We must encourage our Nation's youth to believe in whatever religion they choose, for those beliefs set guiding principles that turn our youth into the outstanding leaders of tomorrow.

Mr. UNDERWOOD. Mr. Speaker, I rise today in support of House Resolution 459 expressing the sense of the House of Representatives that the court ruling in Newdow v. U.S. Congress as erroneously decided. By supporting this resolution we recognize the meaning of the Pledge of Allegiance and embrace the significance of its recitation by our nation's schoolchildren.

Since arriving in Congress in 1993, I have had the privilege of leading this House in the

Pledge of Allegiance several times upon convening at the beginning of the day. It is an honor to express my support for the principles and ideals of freedom, democracy, liberty and justice, the very foundation of this great nation, the nation that our flag and pledge celebrates.

The ruling by the U.S. Court of Appeals for the 9th Circuit in this case is unfortunate in that it fails to recognize the meaning that the Pledge of Allegiance has in our lives, its purpose in protection the principles of our democracy, and its remembering of the sacrifice made by our nation's veterans in defense of this nation and in support of all for which we stand and in which we believe.

Under the logic of this ruling the people of Guam won't be able to sing the Guam Hymn. Our hymn, which is sung daily in Guam's schools not only acknowledges God, it asks for His protection as in 'Yu'os prutehi islan Guam.

For our elders, for our children, and for generations to come, may the pledge continue to stand strong for all Americans and may it remain the words by which we pledge allegiance to the ideals of liberty and justice for all and recognize that we are indeed one nation, under God.

Mr. BLUMENAUER. Mr. Speaker, at a time when meaningful debate is at a minimum in this Congress, it is embarrassing that this resolution has been brought to the floor in this manner. Issues of great consequence to this nation, like reducing prescription drug costs, protecting investors and ensuring corporate accountability, and producing a budget that allows us to meet our military needs and protect Social Security, are being short-changed.

The Ninth Circuit Court of Appeals decided yesterday the case of Newdow v. U.S. Congress on the Pledge of Allegiance. One day later, we by-pass the committee process and rush this resolution to the floor. In my personal opinion, the Court's decision is an over-reaction to language that has been part of the civic and governmental life of the United States since this nation's founding. Every American responds in our own ways to the invocation of God on our currency, in solemn oaths and other customary circumstances. Our individual liberties have not been threatened by these expressions, including the words ''under God'' in the Pledge of Allegiance. However, I would hope we would allow this decision to work its way through the judicial process rather than engage in political grandstanding.

I refuse to dignify this trivialization of the legislative process and I vote ''present.''

Mr. POMEROY. Mr. Speaker, I am pleased to state my strong support for H. Res. 459. Yesterday, a three-judge panel of the U.S. Court of Appeals for the 9th Circuit ruled 2 to 1 that the Pledge of Allegiance is unconstitutional because it describes the United States as ''one Nation, under God.'' This decision is absurd, and it flies in the face of reason and a 7th Circuit decision upholding the Pledge.

Immediate action must be taken against the court's latest decision. I call upon the Administration to ask the full 9th Circuit to reconsider the case or take the matter directly to the Supreme Court. The phrase ''under God'' was added to the Pledge at the height of the Cold War. The American values in force when this phrase was added are still shared today, as we rebuild as a nation from the tragedy that impacted our lives on September 11, 2002. That is why I stand in support of House Resolution 459.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and agree to the resolution, H. Res. 459.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently, a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 416, nays 3, answered ''present'' 11, not voting 5, as follows:

[Roll No. 273]

YEAS—416

Abercrombie
Aderholt
Akin
Allen
Andrews
Armey
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clayton
Clement
Clyburn
Coble
Collins
Combest
Condit
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Grucci
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McGovern
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stearns
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—3

Honda
Scott
Stark

ANSWERED ''PRESENT''—11

Ackerman
Blumenauer
Capuano
Frank
Gutierrez
Hastings (FL)
McDermott
Nadler
Oberstar
Velazquez
Watt (NC)

NOT VOTING—5

Berman
Greenwood
LaFalce
Roukema
Traficant

□ 1616

Mr. GUTIERREZ changed his vote from ''yea'' to ''present.''

Mr. NADLER and Mr. MCDERMOTT changed their vote from ''nay'' to ''present.''

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. GREENWOOD. Mr. Speaker, on rollcall No. 273 I was unavoidably detained by duties related to my investigation of Worldcom in a interview room without audible vote notification bells. Had I been present, I would have voted ''yea.''

PROVIDING FOR CONSIDERATION OF H.R. 5011, MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2003

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 462 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 462

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 5011) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. After general debate the bill shall be considered for amendment under the five-minute rule. Points of order against provisions of the bill for failure to comply with clause 2 of rule XXI are waived. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. House Resolution 421 is laid on the table.

The SPEAKER pro tempore (Mr. ISAKSON). The gentlewoman from North Carolina (Mrs. MYRICK) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), and I believe this is the first time we have done a rule together, welcome, pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

On Wednesday, the Committee on Rules met and granted an open rule for the Military Construction Appropriations Act for the fiscal year 2003. H.R. 5011 recognizes the dedication and commitment of our troops by providing for their most basic needs, improved military facilities, including housing and medical.

Mr. Speaker, we must honor the most basic commitments we have made to the men and women of our Armed Forces. We must ensure reasonable quality of life to recruit and retain the best and the brightest to America's fighting forces. Most importantly, we must do all in our power to ensure a strong, able, dedicated American military, so that this Nation will be ever vigilant and ever prepared.

H.R. 5011 provides nearly $1.2 billion for barracks and $151 million for hospital and medical facilities for troops and their families. It also provides $2.9 billion to operate and maintain existing housing units and $1.3 billion for new housing units.

Military families also have a tremendous need for quality child care, especially single parents and families in which one or both parents may face lengthy deployments. To help meet this need, the bill provides $18 million for child development centers.

Mr. Speaker, this is a fair and an open rule for consideration of the fiscal year 2003 military construction appropriations bill. I urge my colleagues to support the rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume, and I thank the gentlewoman from North Carolina (Mrs. MYRICK) for yielding me the customary 30 minutes.

Mr. Speaker, we have before us a fair and open rule for H.R. 5011, the military construction appropriations for fiscal year 2003. The rule provides for 1 hour of general debate, waives all points of order against consideration of the bill, allows for all germane amendments to be offered with priority accorded to those preprinted in the CONGRESSIONAL RECORD, and provides for one motion to recommit with or without instructions.

This is a fair rule, and I urge my colleagues to vote for it.

I would like to express my appreciation for the work of the gentleman from Ohio (Mr. HOBSON), the chairman, and the gentleman from Massachusetts (Mr. OLVER), the ranking member of the Subcommittee on Military Construction, along with the gentleman from Florida (Mr. YOUNG), the Committee on Appropriations chairman, and the gentleman from Wisconsin (Mr. OBEY), the ranking member, for continuing the tradition of strong bipartisan support in the drafting of the military construction appropriations bill.

This is a very difficult year for the Committee on Appropriations, and I commend the gentleman from Ohio (Mr. HOBSON) and the gentleman from Massachusetts (Mr. OLVER) for bringing to this House a very fine bill, given the limited amount of funds allocated for military construction needs.

Mr. Speaker, the President's fiscal year 2003 request for military construction was $1.6 billion, or 15 percent below the fiscal year 2002 enacted levels. However, included in the defense emergency response fund as part of the defense appropriations bill was approximately $594 million worth of military construction projects. These projects were subsequently transferred over to the jurisdiction of the military construction request, resulting in the bill before us today. This combined request for military construction, therefore, now contains $542 million more than the President requested but still remains $522 million below last year's enacted levels.

Mr. Speaker, I believe it is incumbent upon all of us, the administration and Congress alike, to ensure that our forces have appropriate operational and training facilities, maintenance and production facilities, and research and development facilities. Yet each of these categories face significant reductions in funding in this bill.

According to the Pentagon, 68 percent of the Department's facilities have serious deficiencies that might impede mission readiness or they are so deteriorated that they cannot support mission requirements. The current reductions in funding for construction in these facility categories mean that the rates at which buildings are renovated or replaced has just increased from 83 years to 150 years.

Mr. Speaker, I keep hearing that we are engaged in a long-term struggle against a global enemy. So I find it difficult to believe that while we can find the funds to increase the defense budget by $48 billion, we cannot find the funds to bring our operational facilities up to standard.

Mr. Speaker, I firmly believe that our uniformed men and women and their families deserve decent housing and accommodations, both here at home and abroad. We need to ensure that all personnel in all branches of service have a quality place to live and work, both at home and abroad; and I commend the committee for continuing to provide increased funding for dormitories in overseas construction; but again, through no fault of the committee, the funding provided does not come near to meeting the need. According to the Department of Defense, 180,000 of the 300,000 units of military housing are substandard. Mr. Speaker, this is a national scandal.

We also need to ensure that security is improved around all our military bases, installations and other sites both in the United States, its territories and abroad. I know that this is a

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, THURSDAY, JUNE 27, 2002 *No. 88*

Senate

The Senate met at 9:31 a.m. and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer to Almighty God, the supreme Judge of the world, will be led by the Senate Chaplain, the Rev. Dr. Lloyd J. Ogilvie. Dr. Ogilvie, please.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Creator, Sustainer and Providential source of all our blessings. We praise you for the freedom of religion in America guaranteed by the Bill of Rights and the Constitution. There is no separation between God and State. With gratitude we declare our motto ''In God we trust.'' Though that trust may be expressed in different religions, we do proclaim You as ultimate Sovereign of our Nation. Our Founders declared their trust in You and in each stage of our development You have guided us through peril and prosperity, peace and war. Thank You for Your faithfulness to respond to our confession of trust in You.

It is with reverence that in a moment we will repeat the words of commitment to trust You which are part of our Pledge of Allegiance to our flag: ''One Nation under God, indivisible.''

Help us to savor these words this morning. May we never lose a profound sense of awe and wonder over the privilege You have given us to live in this religiously free land. Renew our sense of accountability to You, and never take for granted the freedom we enjoy or the accountability we have to You. As we declare our convictions in the Pledge, we affirm that patriotism is an essential expression of our trust in You.

Specifically for today and its pressing agenda and challenges we affirm we are one Senate united under You to lead a nation that is free to say confidently, ''In God We Trust.''

God our Sovereign, we continue the work of this busy week with the words and music of the Fourth of July celebration sounding in our souls. We pray together today, remembering the first prayer of dependence prayed for the delegates to the Continental Congress in 1774 that eventually led to the Declaration of Independence in 1776.

Now before the fireworks begin, work in us the fire of that same dependence on You that has been the secret of truly great leaders throughout our history. We pray for the women and men of this Senate. Enlarge their hearts until they are big enough to contain the gift of Your Spirit; expand their minds until they are capable of thinking Your thoughts; deepen their mutual trust so that they can work harmoniously for what is best for this Nation. You know all the legislation to be debated and voted on before recess. Grant the Senators an unprecedented dependence on You, an unreserved desire to seek Your will, and an unlimited supply of Your supernatural strength.

With renewed dependence on You and renewed interdependence on one another as fellow patriots, help us to be willing, in the spirit of our Founders, to stake our reliance on You and pledge our lives, fortunes, and sacred honor for the next stage of Your strategy for America: God bless America! Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore [Mr. BYRD] led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

THANKING THE CHAPLAIN

Mr. DASCHLE. Mr. President, I know I speak for all of our colleagues in thanking Chaplain Ogilvie for his wonderful prayer this morning. He spoke for all of us. We are one nation under God, and we reaffirm that today as Americans—not as Republicans or as Democrats—and we do so proudly.

SCHEDULE

Mr. DASCHLE. Mr. President, there will be a vote on cloture at 10:30 this morning. The time between now and then will be divided equally between the Republican leader or his designee, who will have the first half of the time, and the Democratic leader or his designee for the second half. Senators should be aware that within the next 50 minutes, we will have a cloture vote, and we will proceed in an effort to try to complete work on the Defense bill today.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each. The first half of the time shall be under the control of the Republican leader or his designee; the second half of the time shall be under the control of the majority leader or his designee.

Who seeks recognition?

Mr. NICKLES. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, THURSDAY, JUNE 27, 2002 *No. 88—Part II*

Senate

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

(Continued)

AMENDMENT NO. 4060

Mr. WYDEN. Mr. President, I call up amendment No. 4060 that I offer on behalf of myself and Senator SMITH of Oregon.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. WYDEN], for himself and Mr. SMITH of Oregon, proposes an amendment numbered 4060.

Mr. WYDEN. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To authorize with an offset, $4,800,000 for personnel and procurement for the Oregon Army National Guard for purposes of Search and Rescue (SAR) and Medical Evacuation (MEDEVAC) missions in adverse weather conditions)

At the end of subtitle A of title X, add the following:

SEC. 1010. AVAILABILITY OF AMOUNTS FOR OREGON ARMY NATIONAL GUARD FOR SEARCH AND RESCUE AND MEDICAL EVACUATION MISSIONS IN ADVERSE WEATHER CONDITIONS.

(a) INCREASE IN AUTHORIZATION OF APPROPRIATIONS FOR ARMY PROCUREMENT.—The amount authorized to be appropriated by section 101(1) for procurement for the Army for aircraft is hereby increased by $3,000,000.

(b) AVAILABILITY.—Of the amount authorized to be appropriated by section 101(1) for procurement for the Army for aircraft, as increased by subsection (a), $3,000,000 shall be available for the upgrade of three UH–60L Blackhawk helicopters of the Oregon Army National Guard to the capabilities of UH–60Q Search and Rescue model helicopters, including Star Safire FLIR, Breeze-Eastern External Rescue Hoist, and Air Methods COTS Medical Systems upgrades, in order to improve the utility of such UH–60L Blackhawk helicopters in search and rescue and medical evacuation missions in adverse weather conditions.

(c) INCREASE IN AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PERSONNEL.—The amount authorized to be appropriated by section 421 for military personnel is hereby increased by $1,800,000.

(d) AVAILABILITY.—Of the amount authorized to be appropriated by section 421 for military personnel, as increased by subsection (d), $1,800,000 shall be available for up to 26 additional personnel for the Oregon Army National Guard.

(e) OFFSET.—The amount authorized to be appropriated by section 301(a)(1) for operation and maintenance for the Army is hereby reduced by $4,800,000, with the amount of the reduction to be allocated to Base Operations Support (Servicewide Support).

Mr. WYDEN. Mr. President, the Pacific Northwest must have a search and rescue capability. The vast expanses of Federal land in our part of the country mean our citizens constantly face the risk of disasters and accidents, far from help. Local communities, many of them with tiny populations, do not have the resources to provide search and rescue services to the extraordinarily large surrounding wilderness areas.

The amendment I offer this afternoon on behalf of myself and Senator SMITH is a compromise. It would not have been our first choice. In an effort to work with our colleagues and appeal to our colleagues on a bipartisan basis, we offer this compromise to preserve a search and rescue capability in our region. Without this capability, the Pacific Northwest faces the certain loss of lives for disasters, fires, and accidents that are unique to our region.

This amendment authorizes a total of $4.8 million to the Oregon National Guard to upgrade three Blackhawk helicopters of the National Oregon Guard to the capabilities of the UH–60Q search and rescue helicopters similar to upgrades in the past. It would increase the authorization for military personnel by $1.8 million to ensure the Oregon Guard can respond to emergencies that require rapid medical attention.

Particularly during this season we are concerned about the host of possibilities that can strike our local communities, tragedies we have already seen won in recent difficulties in our region. We cannot afford to play Russian roulette with the safety, health, and security of our citizens.

I urge my colleagues to support the Wyden-Smith amendment that we have worked on with both the majority and the minority for many days.

I reserve my time to speak later in the debate.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. I thank my colleague for being a partner in this cause to preserve in the Pacific Northwest a search and rescue capability.

Mr. President, I rise today to introduce an amendment with Senator WYDEN to preserve a truly invaluable search and rescue capability in the Pacific Northwest.

On May 30, all eyes in Oregon and across the nation watched as brave Oregonians put themselves in harms way to rescue climbers on Mt. Hood.

The rescuers included members of the Oregon National Guard, the Portland Mountain Rescue, and the Air Force Reserve 939th Air Rescue Wing, whose members have been lauded for scores of rescues on Mt. Hood and the Oregon Coast, not to mention rescues in our neighboring state of Washington. In fact this rescue wing volunteers for these types of rescues.

Recently, nine climbers were swept into a 20-foot deep crevasse on Mt. Hood. Tragically, three of the climbers did not survive, but the skills of the rescuers ensured that others would survive.

This rescue highlighted the skills of the Rescue Wing and the importance Oregonians place on the Wing's capabilities in the region. While adverse wind conditions most likely sent one of the helicopters into an inevitable crash, the highly skilled pilot of the 939th ensured that the crew survived and that all on the ground were unharmed.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Thompson	Voinovich	Wyden
Thurmond	Warner	
Torricelli	Wellstone	

NAYS—2

Byrd	Feingold

NOT VOTING—1

Helms

The bill (S. 2514), as amended, was passed.

The PRESIDING OFFICER. The provisions of the order will be executed.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

The bill (S. 2515) to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed.

(The bill will be printed in a future edition of the RECORD.)

MILITARY CONSTRUCTION AUTHORIZATION ACT FOR FISCAL YEAR 2003

The bill (S. 2516) to authorize appropriations for fiscal year 2003 for military construction, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed.

(The bill will be printed in a future edition of the RECORD.)

DEPARTMENT OF ENERGY NATIONAL SECURITY ACT FOR FISCAL YEAR 2003

The bill (S. 2517) to authorize appropriations for fiscal year 2003 for defense activities of the Department of Energy, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. REID. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar No. 379, H.R. 4546, the House companion measure; that all after the enacting clause be stricken and the text of S. 2514, as passed by the Senate, be inserted in lieu thereof; that the bill be read a third time, passed and the motion to reconsider be laid upon the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate, with the above occurring without further intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4546), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

The PRESIDING OFFICER (Mr. CARPER) appointed Mr. LEVIN, Mr. KENNEDY, Mr. BYRD, Mr. LIEBERMAN, Mr. CLELAND, Ms. LANDRIEU, Mr. REED, Mr. AKAKA, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mrs. CARNAHAN, Mr. DAYTON, Mr. BINGAMAN, Mr. WARNER, Mr. THURMOND, Mr. MCCAIN, Mr. SMITH of New Hampshire, Mr. INHOFE, Mr. SANTORUM, Mr. ROBERTS, Mr. ALLARD, Mr. HUTCHINSON, Mr. SESSIONS, Ms. COLLINS, and Mr. BUNNING conferees on the part of the Senate.

PROVIDING FOR CONDITIONAL ADJOURNMENT OR RECESS OF BOTH HOUSES OF CONGRESS

Mr. DASCHLE. I ask unanimous consent that the Senate proceed to the immediate consideration of the adjournment resolution, that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 125) was agreed to, as follows:

S. CON. RES. 125

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Thursday, June 27, 2002, or Friday, June 28, 2002, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until 12:00 noon on Monday, July 8, 2002, or until such other time on that day as may be specified in the motion to recess or adjourn, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Thursday, June 27, 2002, Friday, June 28, 2002, or Saturday, June 29, 2002, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2:00 p.m. on Monday, July 8, 2002, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

MORNING BUSINESS

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business until the hour of 3:20 p.m., when I understand the next vote will occur.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Arkansas.

TO REAFFIRM THE REFERENCE TO ONE NATION UNDER GOD IN THE PLEDGE OF ALLEGIANCE

The PRESIDING OFFICER. Under a previous order, the Senate will proceed to the consideration of S. 2690.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

The bill (S. 2690) to reaffirm the reference to ''One Nation Under God'' in the Pledge of Allegiance bill.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. At 3:20 this afternoon we will vote on a piece of legislation I introduced to reaffirm Congress' commitment to the Pledge of Allegiance and our national motto ''In God we trust.'' I hope my colleagues will join me in this reaffirmation. Many already have.

I ask unanimous consent the list of 32 Senators as original cosponsors be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ORIGINAL COSPONSORS OF S. 2690

Mr. Sessions, Mr. Lott, Mr. Nichols, Mr. Burns, Ms. Collins, Mrs. Hutchison, Mr. Helms, Mr. Inhoff.

Mr. Campbell, Mr. Roberts, Mr. DeWine, Mr. McConnell, Mr. Shelby, Mr. Bennett, Mr. Stevens, Mr. Voinovich.

Mr. Phil Gramm, Mr. George Allen, Mr. Ensign, Mr. Bob Smith, Mr. Bunning, Mr. Enzi, Mr. Hagel, Mr. Lugar.

Mr. Bond, Mr. Murkowski, Mr. Craig, Mr. Thomas, Mr. Crapo, Mr. Brownback, Mr. Domenici, Mr. Kyl, Mr. Zell Miller.

Mr. HUTCHINSON. Yesterday's decision by the Ninth Circuit Court of Appeals in Newdow v. U.S. Congress was, in a word, outrageous. It is inexplicable that this man so seriously objected to his daughter having to listen and watch others recite the pledge at their school. Keep in mind, in this country no one can be forced to recite the Pledge of Allegiance. It is simply a matter of respect.

It is appalling that this court took the time and judicial resources to resuscitate this case which the district court had already dismissed for failing to state a claim. This complaint was a mess. The plaintiff, Dr. Newdow, who represented himself, asked a Federal court to order the President to change a law. The court took great pains to find a claim in Mr. Newdow's complaint and then to rule in his favor.

He did this at a time when Federal judicial resources are very strained. The Nation is trying to function in the speedy manner required by the sixth amendment, with 89 judicial vacancies, a staggering number, representing 10 percent of the Federal judiciary.

According to the Judicial Conference, in the past three decades, a U.S. Courts of Appeals judges' average caseload increased by nearly 200 percent. In light of these strained resources, it is appalling to me that the court took time to resuscitate this very flawed case.

The Pledge of Allegiance plays a very important part in the citizenship experience of every American. It is part of the patriotic thread that weaves us all together in times of crisis and times of celebration.

If the ninth circuit's interpretation of the establishment clause stands, many national ceremonies and celebrations will be negatively impacted. Singing of songs with references to God on government property will be prohibited. For example, songs such as ''Star Spangled Banner,'' ''God Bless America,'' and ''America the Beautiful,'' which Americans sing every Fourth of July on the steps of this building. But such references are not just important in ties of celebration. On September 11 we stood on the steps of the Capitol and sang ''God Bless America.'' Countless Americans uttered the phrase ''God Bless America'' and prayed together in public spaces. This ruling could prohibit that.

Judge Ferdinand Fernandez wisely dissented from this decision. His words have been quoted before. He said it beautifully. Such phrases as ''In God we trust'' or ''under God'' have no tendency to establish a religion in this country or to suppress anyone's exercise or nonexercise of religion. He went on, in eloquent terms, and defends his dissent.

I believe this ruling will be soundly rejected. I was so pleased that yesterday the majority leader and the minority leader moved the Senate very quickly in expressing its disapproval immediately following the ruling yesterday. The Ninth Circuit is not unfamiliar with going out on a limb, and the Supreme Court is not unfamiliar with striking it down. This circuit is the most overturned circuit in the country.

There is certainly nothing wrong with pushing the envelope and using an original interpretation on novel issues of law, but this court repeatedly makes rulings which countervail standing precedent. Instead of administering justice, it seems some judges in the ninth circuit are far more interested in making social policy statements. It is not what the Constitution asks them to do and it is not what the American people pay them for.

The first amendment prohibits Congress from passing any law establishing a religion. Coming as they did from a land with an established religion where those of other faiths were not well tolerated, they set the highest value on freedom of religion. But they were not advocating freedom from religion.

By passing this legislation today the Senate will make clear that we understand the Founders' intention. We will reiterate our support for the Pledge of Allegiance as codified and our national motto, ''In God we trust.''

Finally, I commend the Judiciary Committee today in voting out the nomination of Lavenski Smith to the Eighth Circuit Court of Appeals. Lavenski Smith, who is from the State of Arkansas will make an outstanding jurist on the Federal bench. He is supremely well qualified as a former member of the Arkansas Supreme Court. He understands the proper role of the judiciary.

I applaud the committee's unanimous vote today. I believe if we did not have the vacancies on the Federal bench to the extent that we now have them, the decision from the Ninth Circuit would not have occurred. In Judge Smith's confirmation hearings last month, he expressed his unshakable respect for an adherence to precedent. He said even when it goes against his personal beliefs, he would follow precedence. Clearly, we need people like Lavenski Smith on the bench.

I am pleased that the Judiciary Committee has taken this step. I am also pleased that the Senate will, today, make clear to the Federal judiciary, our reaffirmation of our Pledge of Allegiance and our national motto ''In God we trust.''

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. HUTCHINSON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUTCHINSON. Madam President, I ask unanimous consent that Senator ZELL MILLER be added as an original cosponsor on the bill on which we are about to vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUTCHINSON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. SESSIONS. Madam President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Madam President, I would like to speak in support of the legislation proposed by Senator HUTCHINSON from Arkansas. I am a cosponsor and helped draft this legislation. I would say this: This is not an ittybitty issue. This is a big issue. The Congress and States and cities have been expressing a desire to have, and be allowed to have, an expression of faith in the public life of America. The courts have been on a trend for decades now to constrict that.

The opinion out of the Ninth Circuit is not as aberrational as some would think. The Supreme Court, in my view, has been inconsistent and unclear. It has cracked down on some very small instances of public expression of faith. Our courts have made decisions such as constraining a valedictorian's address at a high school. Certainly our prayer in schools has been rigorously constricted or eliminated in any kind of normal classroom setting, as has the prayer at football games.

I will just say we hope the courts will reconsider some of their interpretations of the establishment clause and the free exercise clause of the first amendment and help heal the hurt in this country.

The PRESIDING OFFICER. The hour of 3:20 has arrived.

Mr. DASCHLE. Madam President, I wish to announce this will be a final rollcall vote of the day and the week. Our next rollcall vote will occur Tuesday morning following the July Fourth recess. Senators should be on notice that we will have a vote that morning and votes throughout the day and the week.

I yield the floor.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered.

The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 166 Leg.]

YEAS—99

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	McConnell
Baucus	Ensign	Mikulski
Bayh	Enzi	Miller
Bennett	Feingold	Murkowski
Biden	Feinstein	Murray
Bingaman	Fitzgerald	Nelson (FL)
Bond	Frist	Nelson (NE)
Boxer	Graham	Nickles
Breaux	Gramm	Reed
Brownback	Grassley	Reid
Bunning	Gregg	Roberts
Burns	Hagel	Rockefeller
Byrd	Harkin	Santorum
Campbell	Hatch	Sarbanes
Cantwell	Hollings	Schumer
Carnahan	Hutchinson	Sessions
Carper	Hutchison	Shelby
Chafee	Inhofe	Smith (NH)
Cleland	Inouye	Smith (OR)
Clinton	Jeffords	Snowe
Cochran	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kerry	Stevens
Corzine	Kohl	Thomas
Craig	Kyl	Thompson
Crapo	Landrieu	Thurmond
Daschle	Leahy	Torricelli
Dayton	Levin	Voinovich
DeWine	Lieberman	Warner
Dodd	Lincoln	Wellstone
Domenici	Lott	Wyden

NOT VOTING—1

Helms

The bill (S. 2690) was passed, as follows:

S. 2690

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds the following:

(1) On November 11, 1620, prior to embarking for the shores of America, the Pilgrims signed the Mayflower Compact that declared: ''Having undertaken, for the Glory of God and the advancement of the Christian Faith and honor of our King and country, a voyage to plant the first colony in the northern parts of Virginia,''.

(2) On July 4, 1776, America's Founding Fathers, after appealing to the ''Laws of Nature, and of Nature's God'' to justify their separation from Great Britain, then declared: ''We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness''.

(3) In 1781, Thomas Jefferson, the author of the Declaration of Independence and later the Nation's third President, in his work titled ''Notes on the State of Virginia'' wrote: ''God who gave us life gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the Gift of God. That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever.''.

(4) On May 14, 1787, George Washington, as President of the Constitutional Convention, rose to admonish and exhort the delegates and declared: ''If to please the people we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hand of God!''.

(5) On July 21, 1789, on the same day that it approved the Establishment Clause concerning religion, the First Congress of the United States also passed the Northwest Ordinance, providing for a territorial government for lands northwest of the Ohio River, which declared: ''Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.''.

(6) On September 25, 1789, the First Congress unanimously approved a resolution calling on President George Washington to proclaim a National Day of Thanksgiving for the people of the United States by declaring, ''a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a constitution of government for their safety and happiness.''.

(7) On November 19, 1863, President Abraham Lincoln delivered his Gettysburg Address on the site of the battle and declared: ''It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this Nation, under God, shall have a new birth of freedom—and that Government of the people, by the people, for the people, shall not perish from the earth.''.

(8) On April 28, 1952, in the decision of the Supreme Court of the United States in *Zorach v. Clauson*, 343 U.S. 306 (1952), in which school children were allowed to be excused from public schools for religious observances and education, Justice William O. Douglas, in writing for the Court stated: ''The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concern or union or dependency one on the other. That is the common sense of the matter. Otherwise the State and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; 'so help me God' in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: 'God save the United States and this Honorable Court.' ''.

(9) On June 15, 1954, Congress passed and President Eisenhower signed into law a statute amending the Pledge of Allegiance to read: ''I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.''.

(10) On July 20, 1956, Congress proclaimed that the national motto of the United States is ''In God We Trust'', and that motto is inscribed above the main door of the Senate, behind the Chair of the Speaker of the House of Representatives, and on the currency of the United States.

(11) On June 17, 1963, in the decision of the Supreme Court of the United States in *Abington School District v. Schempp*, 374 U.S. 203 (1963), in which compulsory school prayer was held unconstitutional, Justices Goldberg and Harlan, concurring in the decision, stated: ''But untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it. Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political, and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require that it do so.''.

(12) On March 5, 1984, in the decision of the Supreme Court of the United States in *Lynch v. Donelly*, 465 U.S. 668 (1984), in which a city government's display of a nativity scene was held to be constitutional, Chief Justice Burger, writing for the Court, stated: ''There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789. . . [E]xamples of reference to our religious heritage are found in the statutorily prescribed national motto 'In God We Trust' (36 U.S.C. 186), which Congress and the President mandated for our currency, see (31 U.S.C. 5112(d)(1) (1982 ed.)), and in the language 'One Nation under God', as part of the Pledge of Allegiance to the American flag. That pledge is recited by many thousands of public school children—and adults—every year... Art galleries supported by public revenues display religious paintings of the 15th and 16th centuries, predominantly inspired by one religious faith. The National Gallery in Washington, maintained with Government support, for example, has long exhibited masterpieces with religious messages, notably the Last Supper, and paintings depicting the Birth of Christ, the Crucifixion, and the Resurrection, among many others with explicit Christian themes and messages. The very chamber in which oral arguments on this case were heard is decorated with a notable and permanent—not seasonal—symbol of religion: Moses with the Ten Commandments. Congress has long provided chapels in the Capitol for religious worship and meditation.''.

(13) On June 4, 1985, in the decision of the Supreme Court of the United States in *Wallace v. Jaffree*, 472 U.S. 38 (1985), in which a mandatory moment of silence to be used for meditation or voluntary prayer was held unconstitutional, Justice O'Connor, concurring in the judgment and addressing the contention that the Court's holding would render the Pledge of Allegiance unconstitutional because Congress amended it in 1954 to add the words ''under God,'' stated ''In my view, the words 'under God' in the Pledge, as codified at (36 U.S.C. 172), serve as an acknowledgment of religion with 'the legitimate secular purposes of solemnizing public occasions, [and] expressing confidence in the future.' ''.

(14) On November 20, 1992, the United States Court of Appeals for the 7th Circuit, in *Sherman v. Community Consolidated School District 21*, 980 F.2d 437 (7th Cir. 1992), held that a school district's policy for voluntary recitation of the Pledge of Allegiance including the words ''under God'' was constitutional.

(15) The 9th Circuit Court of Appeals erroneously held, in *Newdow v. U.S. Congress*, (9th Cir. June 26, 2002) that the Pledge of Allegiance's use of the express religious reference ''under God'' violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Pledge of Allegiance is unconstitutional.

(16) The erroneous rationale of the 9th Circuit Court of Appeals in *Newdow* would lead to the absurd result that the Constitution's use of the express religious reference ''Year of our Lord'' in Article VII violates the First Amendment to the Constitution, and that, therefore, a school district's policy and practice of teacher-led voluntary recitations of the Constitution itself would be unconstitutional.

SEC. 2. ONE NATION UNDER GOD.

(a) REAFFIRMATION.—Section 4 of title 4, United States Code, is amended to read as follows:

''§ 4. Pledge of allegiance to the flag; manner of delivery

''The Pledge of Allegiance to the Flag: 'I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.', should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute.''.

(b) CODIFICATION.—In codifying this subsection, the Office of the Law Revision Council shall make no change in section 4, title 4, United States Code, but shall show in the

historical and statutory notes that the 107th Congress reaffirmed the exact language that has appeared in the Pledge for decades.

SEC. 3. REAFFIRMING THAT GOD REMAINS IN OUR MOTTO.

(a) REAFFIRMATION.—Section 302 of title 36, United States Code, is amended to read as follows:

''§ 302. National motto

'' 'In God we trust' is the national motto.''.

(b) CODIFICATION.—In codifying this subsection, the Office of the Law Revision Council shall make no change in section 302, title 36, United States Code, but shall show in the historical and statutory notes that the 107th Congress reaffirmed the exact language that has appeared in the Motto for decades.

Mr. DASCHLE. I move to reconsider the vote.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNANIMOUS CONSENT REQUEST—H.R. 3009

Mr. DASCHLE. Madam President, I ask the Chair to lay before the Senate a message from the House with respect to H.R. 3009.

The PRESIDING OFFICER. The clerk will state the message.

Mr. LOTT. Reserving the right to object, Madam President.

Mr. DASCHLE. I withdraw the request, Madam President.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. CAMPBELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CAMPBELL. Madam President, I ask unanimous consent to speak for 6 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOREST MANAGEMENT

Mr. CAMPBELL. Madam President, I rise today to talk about forest management, although I am certainly sad it has taken the current catastrophic wildfires out West to get some attention on this issue.

On May 18, before most of the fires had started and were underway, I held a field hearing for the Energy Committee in Golden, CO, to review coordination of firefighting efforts. The four intergovernmental witnesses all expressed serious concern that Colorado's unnaturally dense forests pose serious risk of unnaturally hot burning and unmanageable fires, increasing the danger to both people and property. Unfortunately, that worry became a very real, unimaginable reality for much of the West.

In our State alone just this year, we have had over 350,000 acres burn. As of yesterday, the Hayman fire east of I–25 between Denver and Colorado Springs had burned in excess of 137,000 acres, much of it in the all-important South Platte watershed of the City of Denver.

While the fire is now 70 percent contained, over 1,200 residents are at risk and many lost their homes. In fact, 618 homes and structures burned, and it has cost over $26 million so far in fighting this fire. The Forest Service tells us much of this fire is in an area of diseased and stressed timber, some of which they have been attempting to clean up, but opponents are delaying this needed management through courtroom appeals and litigation.

It is important to note that large parts of the area that has burned are in the areas that were designated as roadless during the Clinton administration, under the Clinton management plan.

We have the Million Fire near the little town of South Fork, CO, near Wolf Creek Pass. That fire is not big by the standards of this summer, but it has already consumed over 8,500 acres, and it is right on the outskirts of the town of South Fork. We have lost 13 homes and buildings in that fire. The resource managers tell us it is burning in an area of spruce and ponderosa pine already killed by insects.

History shows many of proposed salvage sales on the Rio Grande National Forest have also been opposed by opponents of cleaning the forests, and they have had difficulty getting proactive thinning and sanitation harvesting through the NEPA process. The agency tells us that nearly 100 additional homes and commercial buildings are currently threatened and that the town's watershed is also in the line of fire.

Finally, just near where I live in Durango, CO, what is called the Missionary Ridge fire, which I am sure you have seen on CNN and a number of other networks, is 15 miles from the town of Durango, CO—in fact, I can see it from my front porch—and it is burning that way. Ten subdivisions are endangered, over 1,150 residences are being evacuated, and we have lost 71 homes and outbuildings. The municipal watersheds of the towns of Durango and Bayfield are threatened, as well as numerous businesses, radio towers, and homes.

The interesting part of that fire is it is burning mostly in RARE II roadless areas. Last week, when I was home, the fire was only about 2 miles from the city limits of the town of Durango with zero containment and certainly has had a devastating impact on the morale of the community, on the structures, and on tourism, which is the backbone and mainstay of our economy.

All of those fires I have mentioned have really been eclipsed and overshadowed by the huge fire in Arizona in the Coconino National Forest, not far from the White River National Forest.

I am reminded of 1996, when there was an effort by the Forest Service to do some fuels reduction in the Coconino Forest. They were prevented from doing so by an environmental lawsuit under the Endangered Species Act which contended that the fuels reduction would disturb the goshawk, a small hawk. Later that same year, there was a fire that did start in that forest, and it destroyed everything in its path, including the goshawk nests. Now we have almost the same catastrophic fire in the White River National Forest.

Time and again, we hear from Colorado firefighters who are frustrated they can't seem to get ahead of the fires. I submit we cannot seem to get ahead of some of the lawsuits that block our responsible management of the forests, and we won't be able to get any place under control until we do. This year so far, we have had over 300 fires nationwide, and the fire season is just starting.

The science is certain: Thinning forests at natural levels significantly reduces the threat of wildfires. Yet the constant threat of environmental lawsuits has resulted in what has been described by the Forest Service as ''analysis paralysis.'' The Forest Service is now forced to study and assess proposed actions, not for the right reasons, but because of any potential action in the courts, in anticipation of a flurry of lawsuits and appeals by some extreme groups. Dale Bosworth, Chief of the Forest Service, testified before our committee that they are now using over 40 percent of their agency work and a good deal of their resources, about $250 million a year, that could have gone to save lives and property. Instead, they are using it to prepare for court actions against opponents of cleaning the forest.

Environmental groups are proud of that obstruction-through-litigation strategy because every dollar we spend in litigating is one less dollar we spend on managing the forest. They do acknowledge, however, that forests are unnaturally dense.

In Colorado, normally we have 50 trees per acre. But now we see stands of 200, 500, and 800 trees per acre, representing unmanageable fuel loads. Many of these trees are dying from insect infestation, which increases the fire risk. Yet environmentalists still oppose any thinning or removal of dead timber except if it is near homes or around homes. They argue that thinning other parts of the forest grants unnecessary footholds for the ''big, bad'' timber industry that will ravage the landscape. It is interesting that what they completely ignore is that industry thinning on national forests is done under very close scrutiny of the National Environmental Policy Act.

What about lawsuits in the name of animals? On the one hand, environmentalists sue land managers to keep them from thinning because the action might disturb all manner of species. On the other hand, they ignore the complete devastation that catastrophic

I will be giving a statement with regard to this matter later, but in consideration of Senator REID's and others' time, I thought I would make this unanimous consent request first and make my statement on this matter later.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, as we speak, there are negotiations going on at the White House dealing with a wide range of appointments and nominations. I hope this can be worked out. I was confident a day or two ago that the majority leader and the Republican leader, together with the White House, had worked something out on nominations on which we could move forward, but that did not come to be. We also know there is someone on the other side of the aisle who has asked that we on his behalf object, and I am doing that now. I object.

The PRESIDING OFFICER. The objection has been heard.

The Republican leader.

Mr. LOTT. Mr. President, I understand there may be another unanimous consent request in a moment, but it could lead to some discussion back and forth, so at this time I yield myself leader time so I can address the issue that was just objected to.

The PRESIDING OFFICER. The Senator has that right.

Mr. LOTT. Mr. President, the Senate, the American people, and the House of Representatives have all expressed their outrage at the decision by the Ninth Circuit Court of Appeals yesterday which ruled that the Pledge of Allegiance is unconstitutional because it contains the phrase ''under God.'' People are understandably stunned and find it not only unbelievable, but indefensible.

Senators and the American people are shocked that two Federal circuit judges were capable of making such an absurd decision. The fact that they did points up, once again, how vitally important these Federal judicial appointments are in guiding not only the country's present, but its future as well. Judges are important at every level, but particularly at the appellate court, the circuit court level.

This preposterous decision about the Pledge of Allegiance, which Senators have been outraged about, was handed down by three circuit court judges who voted 2–1 that reciting the Pledge violated the Constitution's Establishment Clause protections.

I should note that the vigorous dissent in the case was filed by Judge Ferdinand Fernandez, who was appointed by the first President Bush, and who went into great detail since echoed by many members of this chamber—as to why the other two judges views and reading of the law are both unfounded and inappropriate.

An interesting fact about these three judges is that two of the three are actually on senior status which means they are not considered active judges and are semi-retired. The fact that semi-retired judges were deciding is an indication in and of itself that there are problems in this circuit court and there are clearly major problems in the Ninth Circuit Court of Appeals.

Mr. President, we have been arguing for years about how the Ninth Circuit should be changed. It is a huge circuit which includes not only Hawaii and California, but Nevada, Arizona, Idaho, Oregon, Washington, and Montana as well. It is not surprising that the states in the circuit also have very different cultural views of the world. Therefore, geographically and ideologically, many Senators encompassed by the Ninth Circuit want it split into at least two, if not three, circuits.

The Ninth Circuit is also by far the court that has been reversed the most by the United States Supreme Court. Indeed, the 9th Circuit decisions that have been reviewed by the Supreme Court have been reversed over 80% of the time over the last 6 years. And these have not been close cases in the Supreme Court either. On average, the Ninth Circuit's decisions have received just two votes from the Supreme Court's nine justices.

Mr. President, I should also point that one of the judges who did decide to hold that the Pledge of Allegiance to the flag is unconstitutional was Stephen Reinhardt. This active judge, who was appointed in the last year of Jimmy Carter's Presidency, holds the record for the most unanimous reversals by the Supreme Court in a single court term—five. He has been reversed a total of 11 times since the court's 1996–1997 term. He has been involved in such infamous, ridiculous decisions as striking down California's ''three strikes and you're out'' criminal law this spring. He has a long record of other extremely unpopular and, in my opinion, inaccurate and unfounded interpretations of the law and/or the Constitution. So, this judge has engaged in a pattern of using his position on the court to become an activist for social change instead of interpreting the law as passed and voted on by Congress or as written by the Nation's Framers.

Twenty-eight active judges are authorized for the Ninth Circuit and five of those seats are vacant. Due to the heavy caseload in the Circuit, all five of those vacancies have been declared judicial emergencies by the Administrative Office of the Courts. President Bush has nominated individuals to fill three of those five vacancies, one from Hawaii who is supported by both of the Democrat Senators from his state has pending on the Executive Calendar since May 16, another from California has been held up in the Committee since June 22nd of last year without even a hearing, and the third from Nevada has been in the Committee for two months.

As we can see from this case that has everyone up in arms, these circuit judges do make a difference, and that is why President Bush's Circuit Court nominees are being held up. He and I agree that we should not be putting judges on the appellate courts who will render decisions such as this. The judgment of such judges really has to be questioned by the vast majority of Americans.

Despite the vacancies and the judicial emergencies on the Ninth Circuit and all the federal circuits, the Senate continues to have a problem confirming judges without undue and unjustifiable delay. There are some 45 judicial nominees pending before the Senate at one level or another. Yet, we have not confirmed one judge since before the Memorial Day Recess.

As I have already noted, as of this morning, there were 15 judges on the Executive Calendar who are ready to go if a few Senators would only let them. Three of the 15 are Circuit Court judges. And there are several circuits around the country that are having real problems handling their caseloads because they do not have enough judges to fill all of their seats—indeed one circuit, the Sixth, has half of its 16 judgeships vacant.

Around the country there are 89 judicial vacancies. Thirty-one are Circuit Court vacancies, 17 of which have been declared judicial emergencies by the Administrative Office of the Courts and the Judiciary Committee is holding 11 nominees President Bush has named to fill those 17 emergencies. There are currently 57 vacancies at the District Court level, 18 of which have been declared judicial emergencies.

I expect we are going to hear arguments back and forth about the numbers, well, it is because you guys did not confirm enough judges during the President Clinton's last 2 years. But whatever the history may have been, we have a problem now with our circuits that must and can be fixed.

Mr. President, another example of how important these judicial appointments can be and what the effect on the nation can be is the decision handed down by the Supreme Court today by a 5–4 vote upholding Cleveland's school voucher program. Frankly, I was amazed it was that close. Again, it points up the importance of even a single judge on the Supreme Court or on a circuit court.

I think that says a lot about the real reasons behind what is going on in the Committee with the President's judicial nominees. There are a number of people in the Senate who say that if the President tries to put a conservative, strict constructionist judge on the Supreme Court who will follow the law and not write it from the bench as the judges did in the Pledge of Allegiance case they are going to oppose him no matter how temperamentally, professionally, intellectually, or ethically qualified he or she is.

However, as I have said before, many of us on this side of the aisle, voted for

Justice Ginsburg when she went through the Senate when President Clinton was in office. We knew we would not agree with most if not all of her future decisions but we felt we had to admit that she was competent, ethical, and qualified for the job despite our philosophically differences with her.

There are several other Clinton judges, particularly one or two out in the California circuit, that I voted whose future decisions I will probably live to regret for as long as I live. But there is something worse than bad judges, I guess, and that is no judges, which then expands the power of the bad judges like Judge Goodwin and Judge Reinhardt that are on the Circuit Courts of Appeal now.

I will take a moment to note that the Supreme Courts 5-to-4 decision on school vouchers will prove immensely important to thousands of low-income parents whose children are trapped in failing schools. Low-income children need an education even more than other children since it is often their only means of escaping poverty for the rest of their lives. So, when public schools are not succeeding, they and their parents shouldn't be sentenced to failure year after year. They deserve a system and a process that offers them a hand up, and if need be a hand out of a failing school, to find another avenue to succeed. The Supreme Court upheld a process where the money that is being expended on their child in a failing school, or in a school that is drug infested or riddled with crime, can be used instead to lift the child out of the failure and into a setting where they can get an real academically sound education. Is that such an awful result for the thousands of low-income children trapped in dysfunctional and failing schools?

In Philadelphia, PA, I understand the State has taken over the running of the public schools. What a tragedy.

When Cleveland's system was failing, the city seized the initiative to try and improve things, and so have other areas. In this Cleveland's case, they put in place a voucher program that is working. It is helping children get an education that will last the rest of their lives.

Mr. President, getting back to the absurd decision in San Francisco, it is easy for us all to say the Pledge of Allegiance with gusto and mean it, but we need to look behind this decision—how in the world it happened. It is that America's voters understand that these Federal judgeships, and who fills them, do make a difference in the kind of society that not only will we live in, but our children's children will live in. That is why I have tried to find a way to get an agreement to move the President's eminently qualified nominees.

Senator DASCHLE and I have been talking about it for about 3 weeks. I thought we had it all worked out. I think, frankly, we did have it worked out, but now our friend Senator MCCAIN says he is going to object to any and all nominations until he gets some sort of guarantee with regard to a nominee for the Federal Election Commission (FEC). Her nomination was not agreed to for 5 months, and now that the President has started the routine vetting process in order to formally send her nomination to the Senate, Senator MCCAIN is saying that if the nomination is not moved on immediately, he is going to hold up every single nomination pending in the Senate.

The investigation and FBI clearance process, for all nominees—and this is a Democrat nominee—usually takes about 2 months now and she will have to go through that process the same as everyone else. So, the President could not appoint her right now if he wanted to. She has not had the clearance check. So, evidently every nominee is going to be held up today, this week, and all of July over a single nominee to the FEC. That means that lifetime appointments of Federal judges on the circuit and district courts, both Democrat and Republican, some who have been waiting for a year or more, will have to wait for months on this single nominee who could not be confirmed today even if everyone was in agreement about her.

I do not get it, Mr. President. I think this is a real sad commentary and not becoming, quite frankly, of the Senate, if she should allow this unjustifiable obstruction of all nominees to occur.

I have made an effort, as has Senator DASCHLE. I thought we had made real progress and were ready to go forward with an agreement that would move nonjudicial nominations, judicial nominees, marshals, U.S. attorneys, and a lot of folks who have been waiting a long time. Then we hit a stone wall yet again.

I had hoped that one way to do overcome this obstacle would be to move these nominees en bloc. As everyone knows, I do not usually move to Executive Calendar nominations on my own because that is normally the majority leader's prerogative, but if all else fails, you have to take advantage of whatever avenue is available to you.

I hope the American people, and the Senate, will take another look at these judicial nominations—and how we can move them and get them confirmed. If it is a continuation of tit for tat when will it ever end? Maybe it will fall to my lot—no pun intended—to some day say that we are going to end this, and we are going to move these nominations unless there is a big ethical problem or they are obviously not qualified.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before the Republican leader leaves, I am not going to give a long statement regarding judicial appointments because I have done that on a number of occasions. Suffice it to say, the majority leader went through this. As has been said by the majority leader, and I have said it on a number of occasions, this is not tit for tat, this is not payback time.

I served and practiced law for many years and argued cases before the Ninth Circuit. I have two sons in the Ninth Circuit—Leif Reid is the administrative assistant for the circuit judge; the other was a law clerk to the chief judge—and I am familiar with the circuit. There are very fine men and women serving in that court. I am not here today to defend in any way President Nixon's appointment to the court or President Carter's appointment to the court the two people who wrote that decision. We would all acknowledge it is wrong. I am confident that the Ninth Circuit, when they meet en banc, will stay that decision made by the two judges.

UNANIMOUS CONSENT REQUEST

Mr. REID. I ask unanimous consent that upon completion of the county reform bill, the Senate proceed to immediate consideration of Calendar No. 414, S. 2039, the National Aviation Capacity Expansion Act for 2002.

The PRESIDING OFFICER. Is there objection?

Mr. FITZGERALD. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. It is unfortunate we cannot get consent to move forward with this bill. It is a bill that enjoys strong bipartisan support.

In April, the Commerce Committee voted 19 to 4 in favor of this very important legislation. More than 60 Senators indicated their support by sending a letter to the two leaders asking for this bill to come before the Senate immediately. I simply believe this is a national priority. I have flown into O'Hare many times and understand how busy and important that airport is for the country, not just for the people of Illinois. I believe we have the votes to pass this bill and to do so very quickly.

I say to my friend, the junior Senator from Illinois, to object to this point only delays the inevitable and stands in the way of addressing a national aviation capacity problem in the Chicago region which affects the whole country. It jeopardizes jobs and stalls economic development. I am very disappointed.

Mr. DURBIN. Will the Senator yield?

Mr. REID. I am happy to yield to my friend.

Mr. DURBIN. I thank the majority whip for the unanimous consent request and would like to ask him a question as to whether he has any plans or discussion with the majority leader in reference to proceeding on this matter.

Mr. REID. I have spoken to the majority leader on several occasions. This legislation enjoys strong support and is a priority for the majority leader. It is fair to say the majority leader will use all appropriate avenues to bring this legislation to final passage.

When an impressive coalition and supermajority of the Senate, labor,

business, aircraft controllers, pilots, airlines, general aviation, and five former Secretaries of Transportation write, call, or in some way visit with the majority leader in support of this legislation, it is hard for the majority leader to ignore this, I respond to my friend.

Mr. DURBIN. If the majority whip will continue to yield, the purpose of this unanimous consent request was to make it clear on the record what I personally believed would occur when my colleague from the State of Illinois objected. There were some who said that would not happen, that once this bill had been reported from the committee, had gone through the regular order, with two hearings before the Senate Commerce Committee, on which my colleague from Illinois serves, a hearing both in Chicago as well as in Washington, when ample opportunity had been given both sides to present their point of view, when amendments were considered and offered by my colleague from Illinois, when the final vote on the committee was a substantial bipartisan vote of 19 to 4, it was the belief—and I am sorry to say the mistaken belief—of some of my colleagues in the Senate that my colleague from Illinois would accept a debate on this issue and would accept the consequences, up or down.

Apparently that is not to be the case. It leads us in a position, today, where those colleagues on the floor who have any doubt in their mind should have it dispelled. The objection by the Senator from Illinois makes it clear that he is prepared to delay this as long as possible.

The Senator from Nevada has put his finger on the issue. What is at stake is the safety of O'Hare, the world's busiest airport. What is at stake is the efficiency of that airport. What is at stake are hundreds of thousands of jobs in Illinois and literally the future of our economy. That may sound like hyperbole from a Senator, but what I have said is supported by the Chamber of Commerce on a national and State basis, the national AFL–CIO and the State AFL–CIO, all of the major business organizations, economic development organizations which support this bill and oppose the position taken by the junior Senator from Illinois.

This is not a bill just being offered by me but, rather, with the cooperation and the active participation of my colleague, Senator GRASSLEY of Iowa, Senator HARKIN as well, and a bipartisan coalition. As the majority whip has noted, 61 Senators have signed on in support of this bill and sent a letter to the majority leader and Republican leader to indicate that support. My junior colleague from the State of Illinois certainly does not have that kind of support. He has said he is going to try to delay this and try to avoid it for as long as possible.

In making this unanimous consent and making this statement, I hope it is clear on the record that at this point in time we will use any appropriate means to bring this issue forward. We will not be enslaved by the threat of filibuster. I say to my colleague from the State of Illinois, if he will accept a debate on this issue for a reasonable period of time, offer the amendments, and bring it up for a vote, I will accept the consequences. Let the Senate make its decision, yes or no. If the merits of his argument are compelling, he will succeed. If they are not compelling, he will lose. The same is true for my position. That is the nature of the legislative body. It is the nature of fair play. I hope my colleague from the State of Illinois will reconsider his dedication to these delays.

NINTH CIRCUIT OPINION

Mr. REID. Mr. President, while I still have the floor, I will respond more specifically to my friend, but I want to go off subject a little bit with some good news.

As I just stated, I had a couple of sons who worked the Ninth Circuit. My son Leif Reid is administrative assistant to the Ninth Circuit. He just called the cloakroom and indicated the Ninth Circuit stayed the order that was issued yesterday. The pledge is intact. He is faxing me the opinion of the court.

I am, frankly, amazed they did it as quickly as they did, but I am happy they did this.

Back to O'Hare, again I am speaking—and I rarely do this, but on this occasion I am speaking for the majority leader of the Senate, TOM DASCHLE. Senator DASCHLE has authorized me to say to Senator DURBIN that he will use all his options, all the options of the Senate, to pass this legislation this year.

On behalf of the many people who support this legislation, I say to my friend, Senator DURBIN, he has done great work on this issue. I appreciate the support of Senator GRASSLEY and Senator HARKIN but especially the Senator from Illinois for his hard work on behalf of frustrated fliers everywhere. We have frustrated fliers at McCarran in Las Vegas, the sixth busiest airport in America. This is unfortunate to frustrated fliers. When fliers at O'Hare are less frustrated, we have more people coming to Las Vegas. It affects not only the Chicago area, the State of Illinois, but the entire country. That is a massive airport and is a feeder to the rest of the world.

I salute Senator DURBIN for such patience. The Senate is going to act on this legislation in some way. There are ways to do this. We are going to do it in some way, shape, or form, and we will do it as quickly as we can. The Senator has the full support of the majority leader.

Mr. DURBIN. I ask unanimous consent to be recognized for 10 minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I again thank my colleague from the State of Nevada. Let me explain for a moment what the issue is before us so those who are not familiar with it can come to understand it. O'Hare is pretty well known across America. It is our busiest airport. In the year 2001, despite September 11, it turned out to have more flights and passengers than virtually any airport in America.

But O'Hare is an airport that was designed and built in 1959, 43 years ago, with an anticipated annual volume of 20 million passengers. It now has some 67 million passengers annually. The runways that were designed in 1959 were designed to standards and expectations of that era—standards and expectations that have changed dramatically.

What we have seen in 43 years is larger planes, more frequent flights, changes in air traffic control. All of these have challenged O'Hare and every airport in the country to modernize. But O'Hare has been stuck with the same runway configuration now for over 40 years.

Part of it has to do with politics because in my State of Illinois the Governor has the final word when it comes to the construction of airports. Politically, it meant that a Democratic mayor of Chicago and a Republican mayor from some other part of our State would rarely find common ground or agreement on the future of O'Hare. But last year, there was finally a breakthrough. Gov. George Ryan, a Republican, and Mayor Richard Daley of Chicago, a Democrat, came to an agreement about how to change O'Hare, modernize it, improve it, and make it safer. Many people thought it could not occur, but it did happen, and because of that decision and because of that agreement we now have a chance to make that airport modern and safe by 21st century standards.

Some say that seems to be obvious. Who would object to it? It turns out that a handful of communities around O'Hare naturally are concerned about the prospects of changing flight patterns or expanding service to that airport. They would object, as one might expect.

The elected officials in that area created a coalition to oppose these changes at O'Hare. My colleague in the Senate, the junior Senator from Illinois, has announced his opposition to any plans to change O'Hare. I understand that. But there comes a moment in time when you have to say: What is in the best interests of our entire State? What is in the best interests of the region? What is in the best interests of the Nation?

I think what the people of Illinois have said in overwhelming numbers is they believe this historic agreement is in our best interests. We have the support, as I mentioned earlier, of the National Chamber of Commerce, the Illinois State Chamber of Commerce, the National AFL–CIO, the Illinois State AFL–CIO, the Airline Pilots Association, the air traffic controllers, general

GETTING ANSWERS

Mr. DORGAN. Mr. President, during England's darkest hour in 1940, Winston Churchill spoke of an unwavering sense of purpose. ''You ask, what is our aim? I can answer in one word: it is victory, victory at all costs, victory in spite of all terror,'' he told members of Parliament.

Sixty years later, we here in the United States are fighting a different kind of terror, terrorists who hide in caves and plan the murder of thousands of innocent Americans, but our resolve to defeat it matches that of Churchill. Some have expressed concerns that the investigations of how our intelligence and law enforcement authorities handled information prior to 9–11 will weaken our efforts to defeat terrorists.

Frankly, I think the questions that are being raised will strengthen our efforts to defeat terrorism. We have a lot of good men and women working in the CIA, the FBI and other agencies. But evidence, we have learned in recent months, suggests that there is a layer of bureaucracy and resistance in the management of some of these critical agencies that stifles the efforts of good law enforcement and good intelligence when tracking terrorists.

We have to fix that. Our job is to prevent the next act of terror and if the bureaucracy is clogging the arteries of our intelligence and law enforcement agencies, then we have to get rid of it.

Consider this: six months after Mohammed Atta and MarwanAl-Shehhi flew huge jets into the World Trade Center, the U.S. Immigration and Naturalization Service inexplicably sent notice their visa status had been changed from travel to student. In recent weeks, reports indicate a Phoenix FBI agent alerted headquarters of his suspicions about Middle Eastern men taking flight lessons. Minneapolis agent Coleen Rowley has complained bitterly that her office's efforts to obtain a search warrant about a suspected highjacker were ignored. Now the CIA says that it was tracking two of those who committed terrorist's acts on 9–11, but there is controversy over whether the FBI was actually notified. As a result the terrorists moved in and out of our country with ease. These and other reports, in recent months, raise real concerns about how these federal intelligence and law enforcement agencies are working to prevent future acts of terrorism.

When people begin to raise questions about these issues, some claim that the intent is to criticize President Bush.

President Bush, indeed any President, would have moved heaven and earth to prevent the catastrophe of 9–11 if he had received any advance warning. These inquiries are not about the President or the White House. They are about the effectiveness of our Federal agencies in the war against terrorism here at home.

The information disclosed in recent months about some of the failures of these agencies has come from people working inside the agencies. These are employees of the FBI and other agencies who are blowing the whistle on agency managers who fail to see the gravity of this situation and refuse to take appropriate actions.

For example, Minneapolis FBI agents were admonished by their superiors for sharing information with the CIA in the case of suspected terrorist, Zacarias Moussaoui, who had links to Osama bin Laden. That is unacceptable. These agencies need to work together. Preventing the next terrorist act is a tough job, and we will succeed only if we have all of the resources working full time and cooperating fully.

In recent months and weeks, the head of Homeland Security has warned our country the terrorist attacks against the Untied States could happen at any time. That's why these agencies and their officials have to be fighting the battle against terrorists, not turf battles between their agencies.

Big, bureaucratic and slow doesn't get it anymore. We deserve better from these agencies. What if there is critical information right now in the possession of one agency that is not sharing it with another? Are those who dropped the ball last year in these agencies. The same ones we now rely on to prevent another terrorist nightmare?

The answer to these questions is why this is such an urgent matter. We, the President, the Congress and the American people, deserve the unvarnished facts so that we can move ahead and protect our country, so I say let's do these investigations. Let's make sure that they don't turn into a circus. As Sergeant Joe Friday used to say, ''Just the facts, ma'am.'' Let's use those facts to make the changes these agencies so that the men and women of the FBI, the CIA and other agencies who are very capable and serve America well, are able to do their jobs successfully.

Only then, as Winston Churchill did, can we finally win the war against terrorism.

PLEDGE OF ALLEGIANCE

Mr. ALLARD. Mr. President, I would like to speak on the ridiculous ruling of the Ninth U.S. Circuit Court of Appeals. Literally ridiculous; it deserves to be ridiculed. It was a 2–1 decision, so there is, at least, one judge on the Court who can rule based on the same legal and civic theory that the rest of the country has been operating under for the last 226 years.

I cannot accept removing ''under God'' from the Pledge of Allegiance. This ruling is appalling. I never thought I would see the day when saying the Pledge of Allegiance would be declared unconstitutional by a court. I certainly did not think I would see it on the day I placed my hand on a Holy Bible and made an Oath at my swearing in.

The Magna Carta of 1215, considered the initial codification of Western democratic theory, clearly shows that power is granted from ''above.'' Not ''above'' from a judge's bench, but higher—from an Almighty Power. Every major assertion of our fundamental political thought references God, and not in passing, but as a cornerstone of human life.

Sometimes it is again literally a cornerstone. The Jefferson Memorial has quotes from that great man, which contain references to God carved into the stone. The Lincoln Memorial also has a testament to that President's commitment to God cut into the very marble. Anyone reading his Second Inaugural must know his view of a daily presence of God in the affairs of man and in the political life of this nation. The Holocaust Memorial facade quotes scriptures. So does our Library of Congress, Union Station, Constitution Hall, and many others.

Even William Shakespeare's Puck is quoted referring to God over outside the Folger Shakespeare Theater—in a quote that I think rings especially true regarding certain court rulings—''Lord, What fools these mortals be.'' Lord, what foolish rulings these judges make. There has already been discussions on this floor regarding our coins, our money, and this very Chamber. I don't bring these up just to worry aloud as to whether they are soon to be ruled against as well, but to show that our nation was incorporated under God, and an attempt to excise God from this Republic is wrong and lacking in historical and legal insight.

Our citizens are free from an official state religion—not forced to be free from religious thought.

When President Eisenhower signed the law adding ''under God'' to the pledge, he was not doing so in attempt to lead this Nation down a Godly path. It was not using the bully pulpit to attempt to steer a course. He was affirming that this nation has already consistently and thoroughly incorporated belief in and submission to God.

We separated ourselves from the United Kingdom under the laws of Nature's God, claiming the unalienable rights we were endowed with by our Creator and appealing to the Supreme Judge of the world for recititude of our intentions. We have continued this way ever since—no matter what the Ninth might say.

Finally, I want to make it clear that I am not merely upset about the fact that the Pledge of Allegiance was ruled against. I want to also speak against the ongoing assault on our basic religious beliefs. As my friend Senator SESSIONS voiced earlier, this is just another result of a dangerous and radical viewpoint that is held by an irresponsible few. Few as they are compared to our citizens as a whole, there are far too many in this body and elsewhere who express beliefs and support for radical judges that cannot help but lead us to these types of decisions. We do not jump from a nation that believes itself endowed by its Creator with

unalienable rights to a nation where the Pledge of Allegiance can be ruled unconstitutional without many intervening steps along the way. Those of us who oppose the many small steps taken down this path welcome those who finally stand aghast at where we end up. I hope this body and the Nation will move to correct the error.

REPORT ON TRIP TO BULGARIA, MACEDONIA, KOSOVO, SLOVAKIA, SLOVENIA AND BRUSSELS

Mr. VOINOVICH. Mr. President, over the Memorial Day recess, I joined seven members of the House of Representatives to participate in the spring meeting of the NATO Parliamentary Assembly. Twice a year, legislators from NATO member countries and seventeen countries that have been given ''associate'' status—including NATO aspirants and members of the Partnership for Peace program—gather to discuss significant issues facing the Alliance.

At the forefront of the agenda this year were issues related to the war on terrorism, and questions that will be raised when NATO heads of state meet in Prague this November, including: the future direction of the Alliance; the growing gap in military capabilities between the United States and our European allies; and the selection of new members.

This was the third year that I have participated in the NATO Parliamentary Assembly's spring gathering. The meeting took on a new urgency as the Alliance continues to confront a changed international security environment in the aftermath of the terrorist attacks on September 11th. As parliamentarians discussed the military campaign in Afghanistan and the role of NATO in the war on terror, I reminded my European counterparts of the need to invest in the defense budgets of their respective countries. Without fundamental military capabilities such as strategic airlift and command and control systems, the European contribution to the global war on terrorism will continue to be limited.

It was clear throughout the meeting that the events of 9–11 have impacted discussions in many areas, including expansion of the Alliance. During consideration of a Declaration on NATO Enlargement, I introduced an amendment calling attention to the significant threats that terrorism and the proliferation of weapons of mass destruction pose to NATO countries, and recognizing that as NATO considers enlargement, the Alliance remains open to tolerant, democratic societies, which embrace values that terrorism seeks to destroy.

As the meeting progressed, I also expressed my strong support for a robust round of enlargement during the Summit of the Alliance in Prague later this year. I share the President's vision of enlargement, articulated in Warsaw, Poland last June, when he said that as we approach Prague: ''We should not calculate how little we can get away with, but how much we can do to advance the cause of freedom.''

Yet while the Alliance should extend invitations to a number of countries in Prague, I believe it is premature to single out countries for membership at this point. Instead, we should continue to encourage aspirants to make progress on their membership action plans and move forward with democratic, economic and judicial reforms.

As such, during consideration of the Declaration on NATO Enlargement, I joined Congressman DOUG BEREUTER, the chairman of the U.S. delegation, and other members of the United States Congress at the meeting in abstaining from a vote on an amendment that identified seven countries as ready for membership in the Alliance. Despite U.S. concerns, the amendment was adopted.

While I do not disagree that the countries listed in the amendment—Bulgaria, Romania, Slovakia, Slovenia, Estonia, Latvia and Lithuania—have made some strides in their preparations to join NATO, there are serious discussions that must take place between now and November regarding the selection of new members.

This spring's NATO Parliamentary meeting was especially important to its host country, Bulgaria, which hopes to receive an invitation to join the Alliance in Prague. I remain very interested in discussion about NATO enlargement, and while in Sofia, I was glad to have opportunity to visit with Prime Minister Simeon Saxe-Coburg-Gothe and President Georgi Parvanov to discuss Bulgaria's work to join the Alliance. I also met with Defense Minister Nikolay Svinarov and Foreign Minister Solomon Passy, who I have met with previously in my office in Washington, DC.

My first official visit outside of the NATO session was with Bulgaria's Defense Minister, Nikolay Svinarov. Just minutes before our meeting, Mr. Svinarov spoke to the NATO PA's Committee on Defense and Security, outlining Bulgaria's plans to move forward with defense reforms. His presentation was clear, and I congratulated him on his effort to describe Bulgaria's progress on the defense portion of the membership action plan (MAP). While noting the progress that has been made, I encouraged him to follow through on the vision that he articulated to the NATO parliamentarians. I was impressed with Bulgaria's plan; however, it is evident that there is still a lot of work to be done to implement their ambitious agenda for military reform.

My impressions were reaffirmed several days later when I visited Graf Ignatievo air base, near the city of Plovdiv. The enthusiasm of the officers and pilots at the base was evident. Since 2001, the Bulgarian government has invested in modernization of base infrastructure, upgrading the runway and the flight line and renovating buildings and training facilities. While this is certainly a positive development, I was concerned with the equipment at the base, including Soviet-era MiG–29 and MiG–21 aircraft. While the MiG–21s will be retired, the Bulgarians hope to upgrade their MiG–29s by 2004, with the goal of full NATO interoperability. There are serious questions not only about whether or not this can actually be done, but also whether this is money wisely spent. As NATO considers questions about military capabilities, it will be important to consider how NATO members and aspirant countries can best invest limited defense dollars to contribute to the overall mission of the Alliance. As Bulgaria continues with defense reforms, this will be one factor to consider.

Bulgaria must also confront challenges in other areas, including the need to move forward with judicial reforms. The government must take action to combat corruption and organized crime. I discussed this issue with Prime Minister Saxe-Coburg-Gothe and President Purvanov, as well as Foreign Minister Passy.

Perhaps one of the most eye-opening conversation I had during my trip to Bulgaria was with FBI Special Agent Victor Moore, who is working with the Bulgarian government and local NGOs to combat human trafficking. As a member of the Helsinki Commission and an active participant in the annual meetings of the OSCE Parliamentary Assembly, I have worked on this issue with Congressman CHRIS SMITH—who has a long record of work to combat the trafficking of men, women and children. I also follow the efforts of the Southeast European Cooperative Initiative (SECI), which aims to combat trans-border crime in the region.

SECI has spearheaded an initiative to combat human trafficking in southeast Europe, and Vic Moore's efforts are tied directly to their objectives. Of his eleven years in the FBI, he spent nine of them working on drug enforcement in New York City. In Bulgaria, he is working to give law enforcement personnel the skills they need to investigate and prosecute human trafficking cases. The Bulgarian government has formed a multi-agency task force, which has liberated more than 160 women, issued 60 arrest warrants and captured approximately 60 traffickers. This important work should continue. I believe it is important that the government take continued steps to strengthen the rule of law and reform the judicial systems. This will be important as NATO evaluates the progress of aspirant countries later this year.

In all of my conversations in Sofia, one thing was clear: the people of Bulgaria, and the members of government who represent them, want to join NATO. Over a breakfast meeting with members of the U.S. delegation at the home of our Ambassador to Bulgaria Jim Pardew, President Parvanov said that there is complete public and political consensus on NATO in Bulgaria.

S. 2689. A bill to establish a United States-Canada customs inspection pilot project; to the Committee on Finance.

By Mr. HUTCHINSON (for himself, Mr. SESSIONS, Mr. LOTT, Ms. COLLINS, Mr. BURNS, Mrs. HUTCHISON, Mr. HELMS, Mr. INHOFE, Mr. CAMPBELL, Mr. ROBERTS, Mr. DEWINE, Mr. SHELBY, Mr. ALLEN, Mr. ENSIGN, Mr. SMITH of New Hampshire, Mr. BENNETT, Mr. STEVENS, Mr. VOINOVICH, Mr. GRAMM, Mr. MCCONNELL, Mr. BROWNBACK, Mr. NICKLES, Mr. BUNNING, Mr. ENZI, Mr. HAGEL, Mr. LUGAR, Mr. BOND, Mr. MURKOWSKI, Mr. CRAIG, Mr. THOMAS, Mr. CRAPO, Mr. DOMENICI, Mr. KYL, Mr. MILLER, Mr. ALLARD, and Mr. WARNER):

S. 2690. A bill to reaffirm the reference to one Nation under God in the Pledge of Allegiance; considered and passed.

By Mr. FEINGOLD:

S. 2691. A bill to amend the Communications Act of 1934 to facilitate an increase in programming and content on radio that is locally and independently produced, to facilitate competition in radio programming, radio advertising, and concerts, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CORZINE (for himself, Mr. TORRICELLI, Mr. DURBIN, and Mr. NELSON of Florida):

S. 2692. A bill to provide additional funding for the second round of empowerment zones and enterprise communities; to the Committee on Finance.

By Mr. DORGAN (for himself and Mr. CORZINE):

S. 2693. A bill to amend the Internal Revenue Code of 1986 to encourage retirement savings for individuals by providing a refundable credit for individuals to deposit in a Social Security Plus account, and for other purposes; to the Committee on Finance.

By Mr. ALLEN (for himself and Mr. WARNER):

S. 2694. A bill to extend Federal recognition to the Chickahominy Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Tribe, and the Nansemond Tribe; to the Committee on Indian Affairs.

By Mr. FRIST (for himself, Mr. FEINGOLD, and Mr. LUGAR):

S. 2695. A bill to amend the Foreign Assistance Act of 1961 to extend the authority for debt reduction, debt-for-nature swaps, and debt buybacks to nonconcessional loans and credits made to developing countries with tropical forests; to the Committee on Foreign Relations.

By Mr. BINGAMAN:

S. 2696. A bill to clear title to certain real property in New Mexico associated with the Middle Rio Grande Project, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself, Mrs. BOXER, Mrs. CLINTON, Mr. LIEBERMAN, and Mr. SARBANES):

S. 2697. A bill to require the Secretary of the Interior to implement the final rule to phase out snowmobile use in Yellowstone National Park, John D. Rockefeller Jr. Memorial Parkway, and Grand Teton National Park, and snowplane use in Grand Teton National Park; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER:

S. 2698. A bill to establish a grant program for school renovation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ROCKEFELLER:

S. 2699. A bill to amend the Internal Revenue Code of 1986 to expand the incentives for the construction and renovation of public schools; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BIDEN (for himself, Mr. THURMOND, Mr. CONRAD, Mr. CLELAND, Mrs. CLINTON, Mr. ROCKEFELLER, Mr. MILLER, Mr. DEWINE, Mr. COCHRAN, Mr. DURBIN, Mr. LUGAR, Ms. COLLINS, Mr. SESSIONS, Mr. KERRY, Mr. BREAUX, Mr. DODD, Mr. DORGAN, Mr. HELMS, Mr. BAUCUS, Mrs. BOXER, Mr. JOHNSON, Ms. LANDRIEU, Mr. GRASSLEY, Mr. ROBERTS, Mr. LEVIN, Mr. REID, Mr. LEAHY, Mr. MCCAIN, Mr. HOLLINGS, Mr. SARBANES, Mr. VOINOVICH, Mr. INHOFE, Mrs. MURRAY, Mr. GREGG, Ms. MIKULSKI, Mr. DOMENICI, Mr. HUTCHINSON, Mrs. LINCOLN, Mr. SANTORUM, Mr. CRAPO, Mr. BUNNING, Mr. CRAIG, Mr. STEVENS, Mr. AKAKA, Mr. NELSON of Florida, Mr. CARPER, Mr. INOUYE, Mr. HAGEL, Mr. FEINGOLD, Mr. WARNER, Mr. BINGAMAN, and Mr. DAYTON):

S. Res. 293. A resolution designating the week of November 10 through November 16, 2002, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. SPECTER, Mr. DASCHLE, Mr. DODD, Mr. TORRICELLI, Mr. FEINGOLD, Mr. DAYTON, Ms. STABENOW, Mr. DURBIN, Mr. JEFFORDS, Mr. KENNEDY, Mr. INOUYE, Ms. CANTWELL, Mr. LEAHY, Mr. WYDEN, Mrs. BOXER, Mr. REED, Mr. AKAKA, Mr. HARKIN, Mrs. CLINTON, Mr. REID, Mrs. MURRAY, Mr. CORZINE, Mr. BINGAMAN, Ms. MIKULSKI, Mr. BAYH, Mr. LEVIN, Mr. WELLSTONE, Mr. KERRY, Ms. COLLINS, Mr. LIEBERMAN, Ms. LANDRIEU, Mr. EDWARDS, Mr. SMITH of Oregon, Mr. BIDEN, Mr. SCHUMER, Mr. CHAFEE, Mr. SARBANES, Mr. KOHL, Mrs. CARNAHAN, Mr. CARPER, Mr. NELSON of Florida, and Mr. CLELAND):

S. Res. 294. A resolution to amend rule XLII of the Standing Rules of the Senate to prohibit employment discrimination in the Senate based on sexual orientation; to the Committee on Rules and Administration.

By Mr. CAMPBELL (for himself, Mr. AKAKA, Mr. DOMENICI, Mr. COCHRAN, and Ms. STABENOW):

S. Res. 295. A resolution commemorating the 32nd Anniversary of the Policy of Indian Self-Determination; to the Committee on the Judiciary.

By Mr. DASCHLE:

S. Con. Res. 125. A concurrent resolution providing for a conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives; considered and agreed to.

By Mr. REID (for himself, Mr. CRAIG, Mrs. FEINSTEIN, and Ms. STABENOW):

S. Con. Res. 126. A concurrent resolution expressing the sense of Congress regarding Scleroderma; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 326

At the request of Ms. COLLINS, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 326, a bill to amend title XVIII of the Social Security Act to eliminate the 15 percent reduction in payment rates under the prospective payment system for home health services and to permanently increase payments for such services that are furnished in rural areas.

S. 346

At the request of Mr. MURKOWSKI, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 346, a bill to amend chapter 3 of title 28, United States Code, to divide the Ninth Judicial Circuit of the United States into two circuits, and for other purposes.

S. 454

At the request of Mr. BINGAMAN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 454, a bill to provide permanent funding for the Bureau of Land Management Payment in Lieu of Taxes program and for other purposes.

S. 572

At the request of Mr. CHAFEE, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 572, a bill to amend title XIX of the Social Security Act to extend modifications to DSH allotments provided under the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

S. 677

At the request of Mr. FRIST, his name was added as a cosponsor of S. 677, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financing to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 999

At the request of Mr. BINGAMAN, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 999, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

S. 1156

At the request of Mr. SMITH of Oregon, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1156, a bill to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act.

S. 1220

At the request of Mr. BREAUX, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1220, a bill to authorize the Secretary of Transportation to establish a grant program for the rehabilitation, preservation, or improvement of railroad track.

S. 1339

At the request of Mr. LEAHY, the name of the Senator from Utah (Mr.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, FRIDAY, JUNE 28, 2002 *No. 89*

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, July 8, 2002, at 2 p.m.

Senate

FRIDAY, JUNE 28, 2002

The Senate met at 9:31 a.m. and was called to order by the Honorable DEBBIE STABENOW, a Senator from the State of Michigan.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God of progress, our hearts are filled with gratitude. Thank You for answered prayer. You have been with the Senators through these intensely busy weeks. You have honored their commitment to hard work. Thank You for the legislation that has been accomplished. We praise You that You guide and provide. When we seek Your direction, goals can be set and achieved to Your glory.

Now we ask You to bless the Senators as they return to their States to work with their constituencies for the Fourth of July recess. While they enjoy a break from the pressures here in Washington, refresh them with rest, renewal, and rejuvenation. Give them quality time with their families and friends. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DEBBIE STABENOW led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 28, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEBBIE STABENOW, a Senator from the State of Michigan, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Ms. STABENOW thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

In my capacity as a Senator from Michigan, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. DASCHLE. Madam President, the Senate will be in a period of morning business with Senators permitted to speak for up to 10 minutes each. I have already announced there will be no rollcall votes today. The next rollcall vote will occur on Tuesday morning, July 9.

I will use my leader time this morning; if my time exceeds the 10 minutes, I ask the time be taken off leader time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ACCOUNTING REFORM AND INVESTOR PROTECTION WILL BE THE FIRST ORDER OF BUSINESS WHEN WE RETURN

Mr. DASCHLE. Madam President, our form of government rests on two pillars. One is democracy. The other is free enterprise. We are the strongest, most successful nation in the world because we have maintained the strength of both of those pillars.

We are the most durable democracy in the world because our system is constantly refreshed by new leaders and new ideas. If leaders fail, they can be voted out of office. If ideas fail, they can be either discarded or improved.

The strength of the system rests on the fact that—while not perfect—our Government is open and accountable.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Essay 10.] It is, that in a democracy, the people meet and exercise the government in person; in a republic they assemble and administer it by their representatives and agents. A democracy consequently will be confined to a small spot. A republic may be extended over a large region.

To this accidental source of the error may be added the artifice of some celebrated authors, whose writings have had a great share in forming the modern standard of political opinions. Being subjects either of an absolute, or limited monarchy, they have endeavored to heighten the advantages or palliate the evils of those forms; by placing in comparison with them, the vices and defects of the republican, and by citing as specimens of the latter, the turbulent democracies of ancient Greece, and modern Italy. Under the confusion of names, it has been an easy task to transfer to a republic, observations applicable to a democracy only, and among others, the observation that it can never be established but among a small number of people, living within a small compass of territory.

Such a fallacy may have been the less perceived as most of the governments of antiquity were of the democratic species; and even in modern Europe, to which we owe the great principle of representation, no example is seen of a government wholly popular, and founded at the same time wholly on that principle. If Europe has the merit of discovering this great mechanical power in government, by the simple agency of which, the will of the largest political body may be concentred, and its force directed to any object, which the public good requires; America can claim the merit of making the discovery the basis of unmixed and extensive republics. It is only to be lamented, that any of her citizens should wish to deprive her of the additional merit of displaying its full efficacy on the establishment of the comprehensive system now under her consideration.

As the natural limit of a democracy is that distance from the central point, which will just permit the most remote citizens to assemble as often as their public functions demand; and will include no greater number than can join in those functions; so the natural limit of a republic is that distance from the center, which will barely allow the representatives of the people to meet as often as may be necessary for the administration of public affairs.

* * * * *

THE PLEDGE OF ALLEGIANCE

Mr. BYRD. Mr. President, we all know that on Wednesday, in a 2-to-1 decision, a three-judge panel of the Ninth Circuit Court of Appeals held that the United States Pledge of Allegiance was unconstitutional. The court held that the pledge was unconstitutional because in 1954 the Congress had the audacity—imagine that—to include a reference to God in its provisions.

Some say these are just mechanical, ceremonial provisions. Get out of my face. That may be what some people think, but the majority of people in this country I don't believe are thinking in terms of ceremonial language.

I was a Member of the U.S. House of Representatives at that time. I am the only Member of Congress today in either body who can say that I was a Member of the House of Representatives on June 7, 1954, when the words ''under God'' were included in the Pledge of Allegiance.

Now I see in the morning paper that the next thing these misguided atheists are wanting to do is to challenge the words ''In God we trust.''

I was a Member of the House of Representatives on that same date, coincidentally, June 7, 1 year later, 1955, when the House voted to add the words ''In God we trust'' to the Nation's coins and currency. Every time you take out a dollar bill—that is a pretty popular bill in my lifetime, a dollar bill; here it is—on it we read the words ''In God we trust.'' It is all there. It is on the coins.

I was a Member of the House of Representatives when Congress voted to make that the motto, and here it is, inscribed, which is said in marble, ''In God we trust,'' right here over this door to the Chamber.

Over to my left are those words, ''Novus Ordo Seclorum,'' a new order of the ages.

''E Pluribus Unum,'' all in one, one in all.

Over here, ''Annuit coeptis,'' God has favored our undertakings.

Here are these inscriptions. Bring in your stone masons and take these off the walls. That is what these pernicious atheists are saying. They want everything to suit themselves.

God have mercy on them. But if they have their way, we will have to have stonemasons come into this Chamber and chisel off these words.

They are not going to have their way. The people of these United States are not going to stand for this. And the courts had better take notice and kind of draw back a little bit. After all, if the American people do not believe in it and if they do not support it, that court decision is not going to be obeyed.

The courts, starting with the Supreme Court, need to take a new look at this first amendment. If anything will ever result in amending the first amendment, then continue to go down this road, I say to the courts. They ought to draw back just a little bit distant from going down the road they are presently on.

I am proud to inform my colleagues that I was in the House when Joint Resolution 243, which was entitled ''A Joint Resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America'' was enacted. That resolution was approved by the House on June 7, 1954—almost half century ago.

The plaintiff in the case that was just decided is a self-described atheist. His daughter attends elementary school in California. The public schools there, as elsewhere, begin each school day with the Pledge of Allegiance to the Flag. If this court's outlandish and ill-conceived decision is allowed to stand, it will mean that children in public schools in at least nine states will no longer be allowed to recite the pledge of allegiance by referring to America as ''one Nation, under God, indivisible, with liberty and justice for all.''

That is too much power.

Specifically, the court in this case has held that the words ''under God'' are unconstitutional because they support the existence of God but deny ''atheistic concepts.'' Unbelievably, the Court has held that this runs counter to the intent of the First Amendment of the U.S. Constitution, because, according to this court, the Establishment Clause of the First Amendment prohibits the government from endorsing any particular religion, including a belief in one God—which the court calls ''monotheism''—at the expense of atheism.

Take a look at this Bible, which I hold in my hand. Here it is, the Holy Bible. It is the King James version—King James of England. Here is what it says in Psalm No. 127:

> Except the Lord build the House, they labour in vain that build it: except the Lord keep the city, the watchman waketh but in vain.

Those are the words written long before the U.S. Constitution was written—written by wise men in many instances, Solomon, Son of David—long before the Constitution was written, long before the court system was established in these United States. Those are the words:

> Except the Lord build the House, they labour in vain that build it.

Hear me, Judges!

In reading the court's decision, I was astonished by the tortured reasoning of the majority as opposed to the lucid opinion recorded by Judge Fernandez, the lone dissenter. In responding to the arguments of the majority, Judge Fernandez did not see fit to hold that the phrase ''under God'' violates the Constitution of the United States.

How silly, how lucidly silly.

If the schoolchildren of America were to be required to commemorate to memory, as they used to be required to commit many things to memory, the Declaration of Independence, would that ninth circuit judge render such an absurd decision concerning the constitutionality of the Declaration of Independence?

Let's just select three or four phrases from the Declaration of Independence.

The Declaration refers to ''Nature's God.'' The Declaration also refers to ''the Supreme Judge of the world,'' meaning God. The Declaration refers to ''a firm reliance on the protection of divine Providence.'' This is the Declaration of Independence. It was not written by Congress in 1954, as the words ''under God'' were inserted into the pledge. This Constitution was not written then. This Declaration of Independence was not written then. And who wrote it? In the main, it was written by Thomas Jefferson, along with John Adams, Benjamin Franklin, Philip Livingston, and one other. But there are at least four or five references to ''Providence,'' to ''the Divinity,'' to

''God,'' to ''the Supreme Judge of the world'' in the Declaration of Independence.

Now, would the same judge render such a misguided, absurd decision concerning the Declaration of Independence?

Let's see who signed that Declaration of Independence. John Hancock—there are several signers. I will just select a few: John Hancock; George Wythe; Richard Henry Lee; Thomas Jefferson; Benjamin Harrison, who later would become President; Robert Morris, the financier of the American Revolution; Benjamin Rush; Benjamin Franklin; George Clymer; James Wilson of Pennsylvania; Samuel Adams; John Adams; Elbridge Gerry and Roger Sherman. What would they think? What would these signers of the Declaration think?

What would the signers of the Constitution say if they could speak today? What would they say about this pernicious decision we have just read about?

What would Roger Sherman think? What would William Livingston think? I am wondering, if they could speak today, what would they think? What would Benjamin Franklin say? What would Robert Morris think, George Clymer? These are also signers of the Constitution. What would James Wilson think? How about George Read? How about John Dickinson, what would he say—John Dickinson of Delaware, who signed this Constitution?

What would George Washington think? He presided over the Constitutional Convention. What would he say? What would John Rutledge say? What would Charles Cotesworth Pinckney say? What would Charles Pinckney say? What would Pierce Butler say? If they could speak to this—I will use a word that is pretty widely used—godawful decision, what would they say?

Well, Judge Fernandez said we should recognize ''that the religious clauses in the Constitution were not designed to drive religious expression out of public thought; they were simply written to avoid discrimination.''

Judge Fernandez acknowledged further, that, ''we can run through the litany of tests and concepts which have floated to the surface from time to time.'' But, he said, ''when all is said and done, the danger that the words 'under God' in our Pledge of Allegiance will tend to bring about a theocracy or suppress somebody's beliefs is so minuscule as to be de minimis.'' He concluded his dissent by finding that there is nothing unconstitutional about the Pledge of Allegiance, because any danger presented to first amendment freedoms by the phrase 'one nation under God' is, in his words, ''picayune.''

Well, to that, I would say, ''Amen.''

Mr. President, over my many years in office, I have known other critics, like the majority of this court, who have attacked the words ''under God'' as they exist in the Pledge of Allegiance. They have implied that the Founding Fathers were essentially ''areligious'' or ''neutral'' about religion. Some of these critics even claim the Founding Fathers were antireligious, that they were bent on establishing a completely secular state in which God has no place. These individuals assert that America's fundamental origins are basically devoid of religious meaning, and that this was the intent of the Founding Fathers.

Well, nothing could be further from the truth.

If we read the Federalist essays, if we read other documents, we know that the intent of the Framers was to keep the new government from endorsing or favoring one religion over another. It was never meant to prohibit any voluntary expression of religious faith. I believe that this court's decision is wrongheaded, destructive, and completely contrary to the intent of the Founders of this great Nation. Instead of ensuring freedom of religion in a nation founded in part to guarantee that basic liberty, a literal suffocation of that freedom has been the result. The rights of those who do not believe in a Supreme being are being zealously guarded, to the denigration, I repeat, the denigration, of the rights of the millions of people in this country who do believe.

The American doctrine of separation of church and state forbids the establishment of any particular religion by the state, but it does not forbid the influence of religious values in the life of our Nation. Religious faith has always been a basic tenet of American life. This is evident throughout the history of America.

The history of the first amendment in particular is one of the great legacies of faith bequeathed by the Founding Fathers, but it is one that is little understood and sometimes distorted—as it was in the recent court decision. In 1791, Congress passed the first 10 amendments to the Constitution. We refer to these 10 amendments as the Bill of Rights. The very first amendment recognized the importance of religion in American life, stating that, Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, which the second phrase is just as important and has equal weight with the preceding clause. The purpose of this tenet was to allow religious faith to flourish, not to suppress it, not to hobble it.

In fact, even earlier—before the passage of the First Amendment—Congress had clarified its attitude toward religion when, on August 7, 1789, it officially reenacted the Northwest Ordinance of 1787, which included an explicit endorsement of religion. Article III of the Northwest Ordinance of 1787 stated, ''Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of learning shall forever be encouraged.''

At that juncture, most schools were church enterprises. Congress recognized this, and expected—and I want to emphasize this—expected that the schools would teach religion and morality.

Against this backdrop, the First Amendment is especially enlightening. James Madison, the principal sponsor of the Bill of Rights and later himself President, was a lifelong Episcopalian who had studied theology at Princeton with apparent plans to enter the ministry. However, on his return to Virginia after college, he changed his mind and went into politics primarily because he was deeply disturbed by the persecution of Baptists and other nonconformists in the Old Dominion. He therefore entered politics to become an ardent advocate of religious tolerance.

Madison declared that, ''the religion of every man must be left to the conviction and conscience of every man.'' Thus, in consultation with John Leland, the leading Baptist clergyman in Virginia, Madison hammered out the church/state principles that were eventually embodied in the first amendment.

As a result, the institutions of Church and State were officially separated, but the exercise of religion and its influence on society were encouraged—not discouraged.

One of the most perceptive observers of the early American scene was the celebrated Alexis de Tocqueville. De Tocqueville, in summarizing the condition of religion in the United States in the 1830s, wrote:

> On my arrival in the United States the religious aspect of the country was the first thing that struck my attention . . . In France I had almost always seen the spirit of religion and the spirit of freedom marching in opposite directions.

That is what this court would have us do in this country. But, continued de Tocqueville:

> But in America, I found they were intimately united and that they reigned in common over the same country . . . Religion . . . must be regarded as the foremost of the political institutions of the country—

Meaning this country—

> for if it does not impart a taste for freedom—

We hear the word ''freedom'' kicked around everywhere today——

> it facilitates the use of free institutions.

De Tocqueville grasped what millions of Americans have known, past and present. God has been and continues to be an intimate and profound participant in the ongoing history of these United States. Keep that in mind. God has been and continues to be an intimate and profound participant in the ongoing history of America.

Remember the Scriptures: ''Except the Lord build the house, they labor in vain that build it.'' The American people believe that.

Through the decades, most Americans have come to discover the truth of de Tocqueville's conclusion when he asserted that, ''Unbelief is an accident.'' Hear that, ye atheists: ''Unbelief is an accident, and faith is the only permanent state of mankind.''

In the context of this heritage, then, it is not surprising that the United

States—a nation that evolved out of the American Revolution—should be, at root, a religious nation, from the beginning, from the Mayflower Compact, which in at least four instances refers to God.

Indeed, most of the men who have been President of the United States have been men of exceptional faith. Two Presidents other than James Madison John Adams and Benjamin Harrison had considered entering the ministry. James Garfield was a lay preacher in the Disciples church. And Theodore Roosevelt, Benjamin Harrison, William McKinley, and James Earl Carter were all Sunday School teachers at various points during their lives.

Of all of the Presidents, Abraham Lincoln was among the most theologically astute and Biblically influenced. Paradoxically, he never formally joined any particular church. Nonetheless, he said the Bible—this is what Lincoln was talking about, the Holy Bible—was ''the greatest gift God has given to man.'' Hear me, Judge Goodwin of the Ninth Circuit. This is Lincoln speaking, not Robert C. Byrd. Lincoln said the Bible was ''the greatest gift God has given to man.'' And he was an avid reader of the Bible. He kept a battered old family Bible with him in the White House, and his speeches were laced with Biblical quotations. Reporters of his day stated that his delivery reflected the cadences and rhythms of the King James Version of the English Bible. The first Bible was the Coverdale Bible, written in 1535, the same year Thomas Moore was executed.

But Lincoln was not alone among the Presidents who bore public witness to their personal faith. Every President, from George Washington through George W. Bush, has included some reference to God in his inaugural address. I have gone through all the inaugural addresses. I think there might have been one President who was pretty weak in his references to the Supreme Judge of the world. But in most cases they didn't have any hesitancy about referring to providence, to God.

In his First Inaugural address, Washington declared, ''No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than those of the United States. Every step by which they have advanced to the character of an independent nation seems to have been distinguished by some token of providential agency.'' George Washington also instituted another custom that has been followed by every President since, by proclaiming a national day of Thanksgiving in late November of 1789.

Jefferson, specifically included in his plans for the University of Virginia the proposal that ''proof of the being of God, the Creator, Preserver, and Supreme Being of the Universe, and Author of all morality, and the laws and obligations these infer, will be the province of the Professor of ethics.''

However, nowhere, perhaps, did Jefferson's religious faith have a greater influence than in the words of the Declaration of Independence. At one point, Jefferson wrote, ''Religion is the alpha and omega of our moral law.'' He also pledged that he had ''sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man.'' In the Declaration, which he wrote, Jefferson made it clear that religion is not only the root of our moral law but of our political rights. The Declaration of Independence contains five synonyms for the word ''God,'' and maintains that freedom itself is a gift from God as an element of man's being.

As, hopefully, we all recall, the Declaration of Independence states, with respect to God:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. . . .
>
> We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions. . . .
>
> And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor. . . .

These are various and sundry excerpts from the Declaration of Independence.

Based on this foundation established by Jefferson and the other Founding Fathers, archaeologists in future millennia will have little difficulty reading the evidence of the religious faith and traditions that have been part and parcel of American history. Every nook and cranny of this Capitol—and I might add, of this Capital City—provides such evidence. In fact, wherever one may go in this great national city, he or she is constantly reminded of the strong spiritual awareness of our forefathers who wrote the Constitution, who built the schools, who built the churches, who hewed the forests, who dredged the rivers and harbors, and who created this Republic.

Here in the Senate, for example, the services of an ordained clergyman have been employed since 1789. The Senate Chaplain is the embodiment of a corporate faith in God and the symbol of the eternal judgment that we Senators recognize exists over our legislative and personal actions. Moreover, the institution of the Senate Chaplaincy is itself the result of a historical process that reveals much about the long development of American values.

For example, the first prayers offered in Congress were uttered on September 7, 1774. At the initial meeting of the First Continental Congress, Samuel Adams requested that the convention begin with prayer. As the Revolutionary War continued, the Continental Congress issued calls for periodic national days of prayer and fasting, asking the populace ''to reverence the Providence of God, and look up to Him as the Supreme Disposer of all events and the arbiter of the fate of nations.''

These religious expressions were not just pretense, they were not just ceremonial verbiage. Heavens no. Prayer and worship were held in high regard by the remarkable men who led the American Revolution, and the Chaplaincy of today's Senate is derived directly from the guidance provided by those great men. During the rocky sessions of the Constitutional Convention of 1787, the various representatives of the several States were locked in heated disagreement over petty prerogatives with little concern, apparently at that moment, for the national well-being. The weather had been very hot—probably as humid as it gets here in Washington at times—and the delegates to the Convention were tired and they were edgy. The debates were stymied and a melancholy cloud seemed to hang over the Convention.

Suddenly, old Dr. Franklin stood to his feet and faced the chair in which sat GEN George Washington. His famous double-spectacles were low on his nose, and he broke the silence when he addressed George Washington. Franklin reminded the Convention how, at the beginning of the war with England, the Continental Congress had prayed for Divine protection in that very room. ''Our prayers, sir, were heard,'' he declared. ''They were graciously answered. . . .'' He then asked, ''And have we now forgotten that powerful Friend? Or do we imagine that we no longer need His assistance?''

He continued on saying:

> I have lived, sir, a long time, and the longer I live, the more convincing proofs I see of this truth—that God governs in the affairs of men. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without his aid?
>
> We have been assured, sir, in the sacred writings, that ''except the Lord build the house, they labor in vain that build it.''

He selected the same portion of Scripture that I picked today, didn't he? This is Benjamin Franklin talking. He went on to say:

> I firmly believe this: and I also believe that without His concurring aid we shall succeed in this political building no better than the builders of Babel. . . .

Well, today, we follow the Senate tradition of morning prayer. The Chaplain was among the first officers elected in the Senate upon adoption of the Constitution. In my volumes, ''The Senate 1789–1989,'' Senators will find a chapter on the Senate Chaplain. I hope they will read it again. To this very day, the first daily order of the business in the Senate is a prayer for Divine Guidance by the Chaplain.

This, of course, was not perceived by the Framers as an attack on the first amendment requiring separation between church and state, for the simple reason that no single church has anything to do with it.

It is not simply prayer in the Senate that reaffirms the religious history of the American people. Let us speak

briefly of some of the other reminders in Washington that reaffirm the proposition that our country is founded on religious principles.

On the Washington Monument, one may read three Biblical quotations on the 24th landing. One was donated by the Sunday school children of the Methodist Church of Philadelphia who contributed a stone bearing an inscription from the Book of Proverbs which states:

Train up a child in the way he should go, and when he is old, he will not depart from it.

Another inscription on the Washington Monument, which was contributed by the Methodist Church of New York, is also taken from Proverbs and reads:

The memory of the just is blessed.

That comes from chapter 22 of Proverbs, verse 6.

And the third stone bears these words of Christ from the Book of Luke:

Suffer the little children to come unto me, and forbid them not, for of such is the kingdom of heaven.

Near the Washington Monument, of course, is the Lincoln Memorial. This massive shrine pays homage to the greatness of this simple and heroic man whose very life was offered on the altar of liberty. We know of his knowledge of the Bible and his gentleness, his power, his determination, and we know that determination of Lincoln came to us clearly through his features chiseled in granite by the sculptor.

We can almost hear Lincoln speak the words which are cut into the wall by his side. Mr. President, we need to get some stonemasons to go down to the Lincoln Memorial. If this judge with his pernicious ruling and if the atheists are successful in having these words stricken from this Chamber—''In God We Trust''—and from the Nation's currency, we will have to have a lot of new dollar bills printed and a lot of new coins. We have to strike those words ''In God We Trust'' now from the bills if these pernicious suits by atheists are upheld by some misguided judges, like the one who rendered this decision. We had better hire some stonemasons. That might be a pretty good job, come to think of it. Maybe I should just retire at the end of this term—I would be about 89 then—and then I can perhaps get myself a job as a stonemason. I could go down here to the Lincoln Monument—I would not do it—at least I could think in terms of being a stonemason and take these words off that Lincoln Memorial.

Listen to what Lincoln says, according to the inscription on the Lincoln Memorial. Can you just witness those stonemasons going down there and chipping with chisel and hammer, chipping out these words? Listen, these are words that are cut into the wall by the side of Lincoln on the Lincoln Memorial:

That this Nation under God—

Praise God, hallelujah, there they are. That is Lincoln, that is what he said.

That this Nation under God, shall have a new birth of freedom. . . .

Hear that, judges of the Ninth Circuit. Hear that, Judge Goodwin of the Ninth Circuit. I have a great judge in West Virginia named Goodwin. He is a Federal judge. He is Judge Goodwin. But I daresay he would not have rendered that kind of a foolish decision. Here are the words that are cut into the wall by the side of Lincoln:

That this Nation under God, shall have a new birth of freedom, and that government of the people, by the people, and for the people shall not perish from the earth.

In his second inaugural address, this great President—a Republican, by the way. See, I do not hold that against him—in his great second inaugural address, great President Lincoln made use of the words ''God,'' ''Bible,'' ''prayer,'' ''providence,'' ''Almighty,'' and ''divine attributes,'' and then his address continues:

As was said 3,000 years ago so it still must be said, [that] ''the judgements of the Lord are true and righteous altogether.''

That was Abraham Lincoln.

With malice toward none, with charity for all, with firmness in the right as God—

This is Lincoln talking, Abraham Lincoln talking—

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the Nation's wounds, to care for him who shall have borne the brunt of the battle and for his widow and his orphan—to do all which may achieve and cherish a just and lasting peace among ourselves and all nations.

Before leaving Washington, a visitor might make a final stop at the National Cemetery in Arlington, VA. Here are the peaceful ranks of crosses, stars of David, other religious symbols reminding us that our Government has given its fallen men back to the God who gave them life. The Tomb of the Unknown Soldier stands for all those who have fallen in battle who could not be identified—members of all sects, faiths, and religions. And here, once more, we find the acknowledgment of God's divine power in the eloquent words:

Here lies in honored glory, an American soldier known but to God.

Can you imagine, we may have to someday get stonemasons to go over there and take hammers and chisels and take those words off that monument.

Thus, the connection between God and the United States of America is long established in the minds of most Americans. If we begin now to erase the connection between God and schoolchildren under the pretense of protecting the so-called constitutional rights of nonbelievers or atheists, as the Ninth Circuit did, will it not be necessary to go a little further, or perhaps a great deal further, in the future?

Will we next be forced to remove the name of God from all official documents, historic edifices, and patriotic events for fear of possibly offending what is a nonbelieving minority?

Must we do so when even the possibility of offending such a minority is, in the words of Judge Fernandez, picayune?

What will the court crier say—''God save this honorable court''? He will have to stop there, will he not? He will have to say something else. Would he say, ''President Bush save this honorable court?'' Would he say, ''President Clinton, save this honorable court?'' One can see how silly such a decision was and how foolish it is to pursue that line in this country with all of its history.

Obviously, in establishing and maintaining a secular government, the American people never intended to foster an atheistic or a faithless society. In this light, in closing, I recite perhaps more sincerely than ever the prayer that climaxes one of our greatest national hymns:

Our fathers' God to Thee,
Author of liberty,
To Thee we sing;
Long may our land be bright
With freedom's holy light;
Protect us by Thy might,
Great God our King.

INDEPENDENCE DAY

Mr. BYRD. Mr. President, the Nation will honor its birthday on the forthcoming July 4. That was the day on which, in 1826, both Thomas Jefferson and John Adams died. They both died on the same day, 50 years exactly from the date on which Thomas Jefferson wrote that Declaration of Independence and the Congress approved it. What a coincidence. God works in miraculous ways, his wonders to perform, does not he?

As I look forward to that Fourth of July, I know the Senate will not be in session. But before we depart, I want to talk about the event that Senators and Members of the other body will be celebrating next week back in their home States and districts: Independence Day.

As I think of Independence Day, I think of Henry Van Dyke's poem, ''America For Me.''

'Tis fine to see the Old World, and travel up and down
Among the famous palaces and cities of renown,
To admire the crumbly castles and the statues of the kings,—
But now I think I've had enough of antiquated things.

So it's home again, and home again, America for me!
My heart is turning home again, and there I long to be,
In the land of youth and freedom beyond the ocean bars,
Where the air is full of sunlight and the flag is full of stars.

Oh, London is a man's town, there's power in the air;
And Paris is a woman's town, with flowers in her hair;
And it's sweet to dream in Venice, and it's great to study in Rome;

But when it comes to living there is no place like home.
I like the German fir-woods, in green battalions drilled;
I like the gardens of Versailles with flashing fountains filled;
But, oh, to take your hand, my dear, and ramble for a day;
In the friendly western woodland where nature has her way!
I know that Europe's wonderful, yet something seems to lack:
The Past is too much with her, and the people looking back.
But the glory of the Present it is to make the Future free,—
We love our land for what she is and what she is to be.
Oh, it's home again, and home again, America for me!
I want a ship that's westward bound to plough the rolling sea,
To the blessed Land of Room Enough beyond the ocean bars,
Where the air is full of sunlight and the flag is full of stars.

I will think of America in the context of Henry Van Dyke's beautiful poem, ''America For Me.'' I am not referring to the movie of several years ago. No one will be battling any alien invasions. Rather, we will participate in that most American of all holidays, all birthdays certainly, celebrating the founding of this Nation on July 4, 1776. That was 226 years ago.

Our Nation's birthday party is a time for picnics, ice cream, parades, and fireworks. It is a time for family and friends to gather under the shade of the biggest and the oldest tree around, camped out in lawn chairs and on blankets with sweating glasses of cold drinks in hand, watching, laughing, as children run through the lawn sprinklers—ha, ha. What a joy that was, to run through those lawn sprinklers. These pages have enjoyed those things. We did not have lawn sprinklers when I was a boy, but I knew the joy of the summer rain.

So while these children are running through the lawn and enjoying the lawn sprinklers, our minds will shift to hotdogs. When the evening shadows gather and the fireflies begin their display, it is time to pull out the sparklers and watch the fireworks. Small children then, like my granddaughters, like my great granddaughter, will nestle against parents or grandparents or great grandparents. They are made timid by the loud booms and shrill shrieks of the big rockets, but their shyness is soon forgotten as the enormous chrysanthemum bursts of red, gold, green, and blue burst forth against the dark sky.

I can see it from McLean. I can look toward Washington and see these enormous chrysanthemums of fireworks, these bursts of gold, red, yellow, and blue as they burst against the dark sky. Only when the show is over do small heads and sticky hands hang limp against a parent's shoulder for a long, sleepy walk back to the car and then home.

Many holidays touch deep wellsprings of feeling in Americans. Memorial Day and Veterans Day play upon our heartstrings like the melancholy sigh of a violin, calling up visions of heroism and sacrifice, of the tears and loss and suffering that are sadly necessary parts of defending our nation, our people, and our freedom. Columbus Day sounds a bright note of discovery and optimism, the shining promise of new worlds. Flag Day foreshadows the patriotism of Independence Day, but no other holiday brings out such affection and pride in our nation and the ideals upon which it is based. It is as if the July sun heats the deep strong current that flows through this nation and brings it to the surface, each year as strong and fresh as ever, as powerful as it was in 1776.

July 4, 1776 was probably much like July 4, 2002 will be: hot, sunny, sticky with humidity in the South and East, dry in the West, but in 1776, the air would have been thick with tension. The colonies' ties with England were tearing apart. The previous year, on July 6, 1775, the Congress had issued a ''Declaration of the Causes and Necessity of Taking Up Arms,'' which detailed American grievances while explicitly denying any intention of separating from Great Britain. King George responded by proclaiming a state of rebellion in the colonies, and Parliament passed an act that cut off colonial trade.

Since January of 1776, everyone had been reading and talking about the then-anonymous pamphlet, ''Common Sense,'' that so eloquently argued for independence. Rebel forces were fighting, and winning, battles against British forces at Lexington, Concord, Fort Ticonderoga, Breed's Hill, and around Boston. A lot of things going on around Boston. Unable to conscript sufficient forces, King George had resorted to hiring mercenary soldiers from Germany the ''Hessians.'' In May, King Louis XVI of France secretly authorized arms and munitions shipments to the Americans. In June 1776 the Continental Congress appointed a committee to compose a declaration of independence.

On June 28, 1776, American forces in Charleston, South Carolina, fought off a British attack, but on July 2, British General Sir William Howe landed an army that would reach 32,000 troops, including 9,000 Hessian mercenaries, at Staten Island, New York. The same day, Congress voted for independence. Two days later in Philadelphia, on the evening of July 4, the Declaration of Independence was adopted when John Hancock, president of the Congress, signed the final draft copy.

Composed primarily by one man, Thomas Jefferson, with changes made by after debate among the Congress, parts of the Declaration of Independence are well known to many Americans. Many people can recite the opening words—''When, in the course of human events * * *''—and more can recite the first line of the second paragraph: ''We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these, are life, liberty, and the pursuit of happiness.'' After that, sadly, Americans' knowledge of the substance of the Declaration drops off sharply. I hope that perhaps some parents will read the Declaration of Independence to their children this July fourth. Or some children will read the Declaration of Independence to their parent, on this 4th. The litany of wrongs inflicted upon the colonists by the British crown, designed to incite rebellion, still retains the power to inflame our passions. The actual declaration that follows, in the last paragraph of the document, is by contrast, firm and solemn, a straightforward and almost lawyerly assertion of separation from the Crown.

At the signing of the Declaration, which occurred on August 2, 1776, John Hancock was reported to have urged unanimity, saying ''There must be no pulling different ways. We must hang together.'' To which Benjamin Franklin, with his usual wit, is said to have retorted, ''Yes, we must indeed all hang together, or most assuredly we shall all hang separately.'' Gallows humor aside, Franklin's words were true. Failure on the part of the signatories to make the Declaration of Independence a reality would, for these men, mean losing not just a war, but their homes, their possessions, and, in all likelihood, their lives. These men were committing treason. Think about that. These men were committing treason. They were putting their lives, their honor, their sacred honor, on the altar.

They were putting everything they had on the line. The final words of the Declaration could not have been lightly written: ''And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.'' In the months ahead, American defeats at the battles of Long Island, White Plains, and Fort Lee may have made a few signers wish that they had not been swayed by Hancock's plea. Indeed, by September of 1777, the British under Howe had driven Washington's army toward Philadelphia, forcing Congress to flee the city. On September 26, 1777, Howe's forces occupied the city where the Declaration of Independence was signed.

The Revolutionary War continued for six more difficult years, until a preliminary peace treaty was signed in Paris. Congress would not declare a formal end to the war until April 11, 1783. The Treaty of Paris formally ending the war was signed on September 3, 1783 and ratified by Congress in January 1784.

Mr. President, I think it is good to remind ourselves of these things from time to time. And remember those men who were willing to sign their names on the line, committing to the cause their lives—their lives, their fortunes,

and their sacred honor. What would you have given for their lives had they not won that war? They were putting their lives on the line. They were committing treason. What a chance they took—for us. For us!

It is difficult today, accustomed as we are to automobiles, air conditioning, electricity, mobile phones and instant communications, to imagine what those years of war must have been like. Weeks might pass before you heard or read, by candlelight on a hot summer's night, about a decisive battle in a spot that might take you weeks to reach on horseback. Imagine life as a Revolutionary soldier: a wool uniform if you were lucky, and some French powder and ammunition hanging at your waist while you walk in the middle of long, dust-covered column between battles, carrying your three-foot-long, very heavy musket over your shoulder. I can see those boys from Vermont, can't you? In the hills of New Hampshire, Boston—can't you see them, plodding along from Lexington on to Concord?

In the winter you might have a tent to protect you from the winter, not nearly enough to eat. You might get paid only sporadically. Most of us could not do that for a weekend, let alone for six years.

This Independence Day, America is at the beginning of what promises to be another kind war—a war against terrorism. It, too, will be fought on our territory as well as at points far distant from us. It will require the same kind of resolve and commitment, and the same reliance on the protection of Divine Providence, that our Founding Fathers showed. But next week, as we celebrate 226 years spent enjoying the inalienable rights of life, liberty, and the pursuit of happiness, of freedom from tyranny, I am confident that Americans will demonstrate the same fortitude and bravery that our Founding Fathers displayed. Our ideals are too deeply ingrained in us to be lightly given up.

I close with the words from Longfellow's poem, ''The Building Of the Ship'':

Thou, too, sail on, O Ship of State!
Sail on, O Union, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!
We know what Master laid thy keel,
What Workmen wrought thy ribs of steel,
Who made each mast, and sail, and rope,
What anvils rang, what hammers beat,
In what a forge and what a heat
Where shaped the anchors of thy hope!
Fear not each sudden sound and shock,
'T is of the wave and not the rock;
'T is but the flapping of the sail,
And not a rent made by the gale!
In spite of rock and tempest's roar,
In spite of false lights on the shore,
Sail on, nor fear to breast the sea!
Our hearts, our hopes, are all with thee,
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee,—are all with thee!

THE PLEDGE OF ALLEGIANCE DECISION

Mr. THURMOND. Mr. President, I rise today to express my outrage at the decision reached by the Ninth Circuit Court of Appeals in Newdow v. U.S. Congress, in which a three-judge panel held that schoolchildren's recitation of the phrase ''under God'' in the Pledge of Allegiance violates the Establishment Clause of the Constitution. This case is the result of yet another attempt by the radical left to wipe away public references to God, and is an unconscionable act of judicial activism. I hope that the Ninth Circuit's decision will ultimately be reversed on appeal, allowing reason and common sense to prevail.

Simply put, there is no support in the law for this ruling, even in the Ninth Circuit's own jurisprudence. The phrase ''under God'' in the Pledge of Allegiance is very similar to the use of ''In God We Trust'' on currency and as the national motto, which has been repeatedly upheld by the courts. In Aronow v. United States, the Ninth Circuit Court of Appeals ruled that the phrase does not violate the Establishment Clause of the Constitution. The court said, ''Its use is of a patriotic or ceremonial character and bears no true resemblance to a governmental sponsorship of a religious exercise.'' It also said that ''it is quite obvious'' that the phrase ''has nothing whatsoever to do with the establishment of religion.''

While the Ninth Circuit is the most relevant here because of Wednesday's ruling, other circuit courts have reached the same conclusion. The Tenth Circuit explained in Gaylor v. United States that the national motto ''through historical usage and ubiquity cannot be reasonably understood to convey government approval of religious belief.'' In cases such as Lynch v. Donnelly, the Supreme Court has indicated its approval of these rulings. Even Justice William Brennan, one of the most liberal Supreme Court justices of the modern era and one of the most strident advocates for the separation of church and state, indicated his support for this view, saying that Americans have ''simply interwoven the motto so deeply into the fabric of our civil polity'' as to eliminate constitutional problems.

The same reasoning applies to the phrase ''under God'' in the Pledge of Allegiance. The use of this phrase simply indicates the important role that religion plays in America, but it does not establish a religion or endorse a religious belief.

It is also significant that even when the Supreme Court ruled in Engel v. Vitale that organized prayer is unconstitutional in public schools, the Court made it clear that the case did not apply to patriotic slogans or ceremonial anthems that refer to God. While I have always viewed this case as misguided, and have for years introduced a constitutional amendment to reverse it, even this case supports the use of phrases, such as ''under God'' and ''God Bless America,'' as part of our civic vocabulary.

The fact is that religion is central to our culture and our patriotic identity as a nation. As the Supreme Court said in Lynch v. Donnelly, there is ''an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life.''

I am pleased my colleagues have denounced this ruling. Throughout the history of this great Nation, we have invoked the blessings of God without establishing religion. From prayers before legislative assembly meetings and invocations before college football games to the national motto on our currency, our Constitution has allowed references to God.

I would also like to say a few words about the Ninth Circuit. Several years ago, it was suggested that the Ninth Circuit be broken up. I think that it is time to reconsider that proposal. The Supreme Court reverses the Ninth Circuit at a much higher rate than other circuits, indicating the activist propensities of this circuit. Simply put, the Ninth Circuit is out of the mainstream, and the decision in Newdow underscores that fact. It is unhealthy for our democracy when one circuit routinely refuses to follow the law. During the last six years, the Supreme Court has reversed 80–90% of Ninth Circuit cases reviewed. While the Supreme Court corrects the Ninth Circuit often, it cannot do so on every questionable ruling, and this allows the establishment of dangerous precedents.

I am particularly concerned about Wednesday's ruling because one of the judges who joined in the majority opinion was Judge Stephen Reinhardt, whose own confirmation process was marked by controversy in 1980. I served as Ranking Member of the Judiciary Committee at the time, and I expressed serious concern over Judge Reinhardt's fitness to serve as a Federal judge. He was extremely active in politics and known for his very liberal views. Judge Reinhardt's major area of practice was labor law, and there was a question as to whether he had sufficient experience. His record, in my view, called into question his ability to serve as an impartial judge. During his tenure of the Ninth Circuit, Judge Reinhardt has been reversed an alarming number of times. He was reversed 11 times during the 1996–97 term, and he holds the record for unanimous reversals in one term.

I mention the matter of Judge Reinhardt's controversial past only to address his fitness as a Federal judge. This question is legitimate because circuit judges make important decisions that affect a lot of people. In the Ninth Circuit case, Judge Reinhardt helped create law that is dangerous in its precedent and unsound in its reasoning.

Mr. President, once again I want to state unequivocally that the Ninth Circuit made a poor decision in the Newdo

case. I hope that this decision will alert all Americans to the dangerous judicial activism that plagues the Ninth Circuit. Furthermore, I hope that this case is reversed on appeal, so that many more generations of schoolchildren will proudly learn the Pledge of Allegiance.

HIGH FRUCTOSE CORN SYRUP ANTITRUST DECISION

Mr. LEVIN. Mr. President, I wish to bring to the Senate's attention a recent decision of the U.S. Court of Appeals for the Seventh Circuit, written by Judge Richard Posner, in the case of In Re High Fructose Corn Syrup Antitrust Litigation, found at 2002 U.S. App. LEXIS 11940. Judge Posner's unanimous opinion, joined by Circuit Judges William Bauer and Michael Kanne, articulates in clear, cogent, and unequivocal language the standard for the Federal courts in the Seventh Circuit to follow in deciding whether circumstantial evidence of price-fixing or tacit collusion should be presented to a jury in antitrust cases. This is a much needed improvement in the state of the law, and I hope that it will soon be followed in other circuits as well.

Last month, the Permanent Subcommittee on Investigations, which I chair, completed a 10-month investigation into the reasons why gasoline prices fluctuate so dramatically and why retail gasoline prices seem to go up and down together at so many gas stations. The majority staff issued a comprehensive 400-page report explaining our findings, and we then held 2 days of hearings on the report.

I will not summarize the entire report here, but I would urge anyone interested in how gasoline prices are set to visit the subcommittee's Web site, where the report can be downloaded.

I would like to highlight, however, several of the issues the subcommittee examined that are directly relevant to the Seventh Circuit's decision. First, the subcommittee found that in several of our domestic gasoline markets where there is little competition a few oil companies have sufficient market power to raise the price of gasoline through their decisions on how much gasoline to produce.

The subcommittee examined retail prices in several geographic markets. The subcommittee found at various times in these markets the prices of the major brands of gasoline followed a ''ribbon-like'' pattern. The prices of these brands moved up and down together, usually by about the same amount each day, and they maintained a constant difference in price with respect to each other.

The documents reviewed by the subcommittee indicate that the marketing practices of the various gasoline wholesalers and retailers in the market contribute to this pricing pattern. First, the major brands usually seek to maintain a constant price difference with respect to one or more other brands that are considered the major competition or the price leader in that market. Second, the market strategy of the major brands generally is to maintain market share, and avoid costly price wars which do not result in greater market shares, but often lead to lower margins for all of the firms competing in the market. Thus, most of the major brands establish their retail price simply by following the price movements of one or more other brands. They do not attempt to undercut their rivals; rather they seek to maintain their relative competitive position with respect to their rivals.

Another strategy supporting the ribbon-like retail price pattern is the influence the refiners maintain over the retail price. Major brand refiners usually set the wholesale price paid by their dealers on the basis of surveys of the retail prices of competitors; the refiner then subtracts an amount considered to be an adequate margin for the retailer, and charges the retailer for the remainder. In this manner, the dealers receive a fixed margin for their gasoline, and the benefits and costs of retail price changes accrue to the refiner rather than the dealer. In reality, therefore, a few refiners rather than many individual dealers set the retail price of gasoline for the major brands.

The resulting retail pricing pattern—the ribbon-like pattern—is exactly the same pattern one would expect to see in a market where there is some type of collusion between the firms in the market. In a collusive marketplace, each firm has an agreed-upon market share, and the relative prices of the different brands are fixed.

By itself, parallel pricing does not indicate collusion. Parallel pricing can develop in a competitive market, as each firm strives independently to obtain some advantage from a movement in price, only to be matched by its competitors who seek to deny that firm any such advantage.

Hence, to establish that firms in a market are colluding with one another, it is necessary to demonstrate more than just the existence of parallel or interdependent pricing. A plaintiff, or the government, as the case may be, must establish either an explicit agreement on pricing, or present sufficient circumstantial evidence indicating a tacit agreement on pricing.

It is rare to find in the modern age, with many corporations well-schooled in the antitrust laws, and legions of lawyers eager to educate those who are not, to find an express agreement to fix prices or restrict supply. Moreover, in markets most susceptible to price-fixing those with few firms, a high degree of concentration, homogeneous products, and high barriers to entry, such as the gasoline market—express collusion is totally unnecessary to carry out the purposes of any such conspiracy. In highly concentrated markets, the few firms can observe each other's behavior, determine how they react to various strategies, and react accordingly. After a while, the firms in these markets can develop patterns of behavior that are as non competitive as if an actual agreement had been reached.

The problem, therefore, is how to determine whether certain market activity is the natural result of the structure of the market and purely independent decisionmaking, or is the result of some tacit agreement or understanding or agreed-upon practices that restrict competition.

Again, rarely will there be a ''smoking gun'' document pointing out the existence of tacit collusion. The best way—and in reality the only way to determine whether in fact such collusion exists is to look at all of the evidence regarding the marketplace and the behavior of the firms in the market. For example, are the companies acting independently? To what extent and how do they communicate with each other? To what extent do they have agreements between themselves on terms of sale, supply, storage, or transportation? To what extent do they share information? To what extent do they pursue innovation independently?

At the subcommittee's hearings we heard testimony from several attorneys general, knowledgeable in the antitrust laws, including Attorney General Jennifer Granholm from my home State of Michigan, that the standards used by the courts in recent years have become unduly stringent for plaintiffs seeking to present evidence of tacit collusion to a jury in an antitrust case. Many courts have been requiring plaintiffs in price-fixing cases to present evidence that it was more likely than not that the conduct complained of was the result of collusion before the evidence would be presented to the jury. In effect, this standard relegates to the judge on a motion for summary judgment the determination of the basic factual issues that are normally the province of a jury. Furthermore, it essentially requires the plaintiff to present evidence amounting to a ''smoking gun'' demonstrating collusion in order to survive a motion for summary judgment by the defendants. This standard thus prevents many cases that should be presented to a jury from ever getting to the jury.

Judge Posner's opinion in the High Fructose Corn Syrup case clarifies the law of the Seventh Circuit that economic evidence and other evidence indicating firms in a market have an agreement—either tacit or explicit—not to compete should be presented to a jury. The opinion clearly states that in a price-fixing case the question of ''whether, when the evidence was considered as a whole, it was more likely that the defendants had conspired to fix prices than that they had not conspired to fix prices'' should be presented to a jury, and that the antitrust laws do not establish a higher threshhold for surviving motions for summary judgment than other types of cases. The plaintiff need not present one single item that demonstrates an

its 11th Annual Scholarship Awards Dinner on June 15, 2002 in Orion, Michigan.

As southeastern Michigan is home to a thriving Hispanic community, we have the opportunity to recognize the accomplishments and contributions of a fabulous organization dedicated toward ensuring the prosperity of Hispanic communities throughout the nation. Since its founding in 1973, The Labor Council for Latin American Advancement, or LCLAA, has served as a loyal voice for over 1.5 million Hispanic trade union members in the United States and Puerto Rico currently representing 43 international unions in 45 national chapters. The LCLAA's mission is to achieve social dignity, economic justice and higher living standards for every Hispanic worker. The LCLAA fulfills this mission by assisting young Hispanics in school by establishing educational support services, organizing recreational activities and mentoring students. Every year the LCLAA offers disadvantaged Hispanic students the opportunity for educational advancement by awarding college scholarships. This year the LCLAA's Oakland County, Michigan Chapter will give 17 students the opportunity to receive a college degree by awarding tuition scholarships. As a result of generous donations and the undying commitment of the LCLAA, these students will achieve a college education and enter fields like medicine, law, education, business, and many others.

Our great state of Michigan is home to thousands of Hispanic Americans, patriotic citizens who give so much to our country every day. With help from the LCLAA, Hispanic communities throughout the country continue to prosper and celebrate their great achievements. The spirit and enthusiasm of the LCLAA and the Hispanic community it represents is an invaluable asset to our great state and our great nation.

I urge my colleagues to join me in congratulating the Labor Council for Latin American Advancement's Oakland County, Michigan Chapter, the student scholarship recipients and the entire Hispanic American community of Michigan on this wonderful day, and I salute them all for their years of tremendous contributions and support.

HONORING THE LIFE OF JOHN FRANCIS ''JACK'' BUCK

SPEECH OF

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 26, 2002

Mr. COSTELLO. Mr. Speaker, I rise today to pay tribute to a man who made a significant difference to many in the St. Louis region, Mr. John Francis ''Jack'' Buck.

Jack Buck was the voice of the Cardinals. He started calling games in 1954, and was the voice that I, along with millions of others throughout the Midwest, identify as St. Louis Baseball. We grew up listening to him and are deeply saddened by his death.

In addition to calling Cardinals games for almost 50 years, he also gained fame for his work on the CBS, NBC and ABC television networks and as the voice of the NFL on the CBS radio network. He called everything from pro bowling to Super Bowls and the World Series.

Buck was inducted into the Baseball Hall of Fame's broadcaster's wing in 1987, received the Pete Rozelle Award by the Pro Football Hall of Fame in 1996, and received a lifetime achievement Emmy in 2000. He was a member of both the Broadcasters and the Radio Hall of Fame.

His sports-casting abilities were surpassed only by his community involvement. He happily gave his time to a variety of non-profit causes through the St. Louis area and was campaign chairman of the Cystic Fibrosis Foundation. He was commended by the city of St. Louis for his service, and received the distinguished University of Missouri's Journalism Award for his outstanding achievements in broadcasting and citizenship.

Mr. Speaker, Jack Buck truly was an icon to the people of St. Louis. It is fitting that we pass this resolution honoring this great man. I urge my colleagues to join me in support of this legislation.

MASS RAPES OF WOMEN AND GIRLS IN BURMA

HON. CYNTHIA A. McKINNEY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 27, 2002

Ms. McKINNEY. Mr. Speaker, I stand today to call attention to the appalling campaign of terror-through-rape recently uncovered in Burma. A report by the Shan Women's Action Network and Shan Human Rights Foundation reveals a truly horrific campaign of systematic rape carried out by the military against women and girls—some as young as five years old—in Burma's Shan State.

While Burma's record of repression is well known, this new report shines a light on atrocities previously hidden by the dark clouds of dictatorship. The report, based on interviews with girls and women refugees along the Thailand-Burma border, documents the rapes of 625 women and girls by Burmese military forces against villagers in Burma's Shan State. Given the alarming numbers in this limited refugee population, it is likely that this is but the tip of the iceberg. While the exact scale of this atrocity is unknown, there can be no doubt that Burma's military leaders are using rape on a wide scale as a weapon of war against its own civilian population.

According to the report, an astounding 83% of the documented rapes were committed by military officers from 52 different battalions, usually in front of their own troops. 61% of the cases were gang rapes, and many women were raped inside military bases. Many were held captive and raped repeatedly for months on end. Many women recounted the terror of being severely beaten, tortured, or mutilated. In 25% of the documented cases the women were murdered after being raped. The report also notes how those murdered by the Burmese military were left in public areas in order to intimidate and terrorize villagers and family members.

In this report, hundreds of courageous Burmese women and girls recount the terror of their experiences. One young Burmese woman told of how she found her five year old sister ''tied up and crying, with her sexual organs bloody . . .'' Another recounted how she and other women of her village ''were forced to serve as sex slaves.'' Ironically, these new revelations of mass rapes come on the heels of the release of 1991 Nobel Peace Prize recipient Aung San Suu Kyi. But we harbor no illusions about the nature of this brutal military regime.

Mr. Speaker, whether they take place in Burma, Bosnia, or Eastern Congo, rape as a weapon of war is a grave violation of the Geneva Conventions and a crime against humanity. I call on the State Department, United Nations, and my colleagues in the Congress to speak out strongly against the military regime that continues to sanction and condone these rapes and other atrocities.

PLEDGE OF ALLEGIANCE

HON. TODD TIAHRT

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 27, 2002

Mr. TIAHRT. Mr. Speaker, this morning I recited our Pledge of Allegiance with extra vigor, for our nation is under attack—not from terrorists but extremists in our own country. Yesterday the 9th Federal Appeals court in San Francisco ruled that the Pledge is an unconstitutional endorsement of religion and cannot be recited in schools—CANNOT BE RECITED IN SCHOOLS. I am sure you share my outrage. There is a reason that our Marines in Iwo Jima risked their lives to display the stars and stripes. Our flag stands for all that makes this nation great. From kindergarten on, our children are taught respect for our flag—a flag that represents this wonderful and, yes, Godly nation. Our children are taught that the United States represents liberty and justice for all. Our Declaration of Independence, Constitution and even our currency state our country's relationship to God. On September 11th, as soon as it was safe enough the first thing Members of Congress did was to gather on the steps of this magnificent building and sing ''God Bless America.'' The judges in California are clearly out of touch, not only with the principles upon which the Pledge is based but also with the sentiment of the American people. For the past 9 months Americans have proudly displayed their love for their nation, as well as their faith in God. We realize now more than ever that our nation has a special charge and thus revere the Pledge more than ever. I am proud of our flag, I am proud of our nation and I will proudly recite ''one nation, under God'' for the rest of my life.

CHANGING THE CORPORATE CULTURE

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 27, 2002

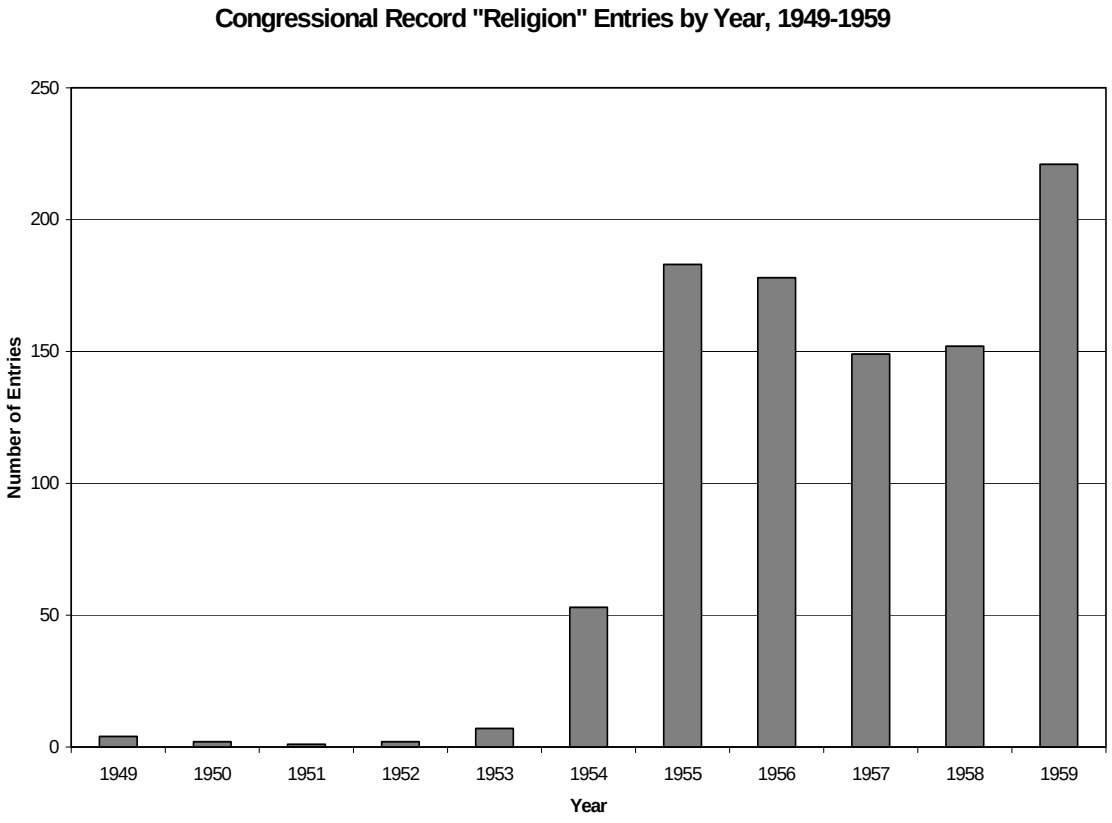
Mr. BEREUTER. Mr. Speaker, this Member commends to his colleagues the following editorial from the June 25, 2002, edition of the Lincoln Journal-Star entitled ''Culture Change Is Needed in Corporate Crisis.'' The editorial suggests that changing America's business culture is the best long-term solution to the current crisis of business scandal after business scandal. These scandals have caused a

APPENDIX C

Religion in the Congressional Record
(Circa 1954)

APPENDIX C

RELIGION IN THE CONGRESSIONAL RECORD
(Circa 1954)



This bar graph was created by counting the number of entries under the heading "Religion" (and associated terms) in each Index volume of the Congressional Record for the years 1949 through 1959. For the five years from 1949-1953, there was an average of 3.2 entries. For the five years from 1955-1959, the average shot up to 176.6 … a greater than fifty-fold increase!

These data clearly reveal the increased influence and involvement of religion in government (and of government in religion) that occurred contemporaneously with Congress spatchcocking "under God" into the Pledge of Allegiance. Two hundred sample titles of these entries follow, after which are provided ten pages of Congressional Record excerpts – mostly related to the Pledge. This evidence further demonstrates how bogus is the claim that it was "history" or "patriotism" underlying the Act of 1954. That Act was purely driven by the majority's monotheistic religious belief.

SELECTED CONGRESSIONAL RECORD INDEX ENTRIES 1954-1960

(1) Transcript of Back to God Program[1]
(2) Celebration, 300 years of Protestantism[2]
(3) Thank God for Freedom[3]
(4) City Under God[4]
(5) Religion Versus Communism[5]
(6) Threats to Christianity and Democracy[6]
(7) Faith Versus Fear[7]
(8) "Under God" this Nation lives[8]
(9) For God and Country[9]
(10) Meditation, Christ, our hope[10]
(11) Ninety-first Psalm[11]
(12) Proceedings of Dedicatory Prayer Breakfast[12]
(13) Dedication of Crucifix in Gary, Ind.[13]
(14) Christian in Politics[14]
(15) Christians in Politics[15]
(16) Duty of Christian Politician[16]
(17) Faith in Our Time[17]
(18) Faiths of Our Presidents[18]
(19) Free Government Based on Faith[19]
(20) God's Answer to Communism[20]
(21) No Coexistence of Religion and Communism[21]
(22) One Hundred Years of Spiritual Blessing[22]
(23) Strengthening America Under God[23]
(24) This Nation Under God[24]
(25) We Pray or We Perish[25]
(26) With Faith and Flag They Called It America[26]
(27) Beloved Man of God[27]
(28) Christian and Debt[28]
(29) Congressmen Get Prayer Room[29]
(30) Drive to Erect World's Largest Cross[30]
(31) God Meant Us To Find Atom[31]
(32) God and U.N.[32]
(33) Great Christian[33]
(34) Harvesting Lord's Acre[34]
(35) Has Your Home a Prayer Room?[35]
(36) Our Father's God to Thee[36]
(37) Our Prayers Could Change World[37]
(38) President Honored for Religious Aim[38]
(39) What Did Jesus Believe About Wealth?[39]
(40) Who Are Disciples of Christ?[40]
(41) Effect of Spiritual Guidance[41]
(42) I Speak for Christian Citizenship[42]
(43) One Nation Under God[43]
(44) Communists versus God[44]
(45) Atheists misquote George Washington[45]
(46) God: acknowledge in the Constitution[46]
(47) Erection of Giant Cross[47]
(48) Religion in American Life[48]
(49) This I Believe[49]
(50) Christian Impact[50]
(51) Christian Life[51]
(52) Love of Neighbor Is God's Guided Missile to Peace[52]
(53) Need for Spiritual Values in These Times[53]
(54) Our Holy Father[54]
(55) Place of God In Education[55]
(56) Religion Should Accompany Student[56]
(57) Seeking God's Way for World Peace[57]
(58) Spiritual Statesmanship[58]
(59) Spiritual Strength in Cold War[59]
(60) Supplying Education with Religious Spirit[60]
(61) This Nation Under God[61]
(62) World Must Choose Between Religion and Ruin[62]
(63) Christian and Jew[63]
(64) Eisenhower Should Lead Godly Against Reds[64]
(65) Man Who Sees Inside Heaven[65]
(66) Our Home and God[66]
(67) Prayer - Exposure to God[67]

(68) Religious Illiteracy Is Problem for Home[68]
(69) Supping With Devil[69]
(70) Thanks Be to Providence[70]
(71) The Christian Leader and Politics[71]
(72) Worship and Work[72]
(73) World Day of Prayer[73]
(74) "I Met God There"[74]
(75) Christian amendment flier[75]
(76) Bible ABC Verses[76]
(77) Christ Did Not Wear Crown of Thorns To Teach Appeasement[77]
(78) Christianity, Patriotism, and Myth of National Communism[78]
(79) Faith That Built America[79]
(80) Role of Church in American Politics[80]
(81) Unfair Trial of Jesus[81]
(82) Appeal to Churches[82]
(83) Apostolic Blessing[83]
(84) Christian in Politics[84]
(85) Christian Survival at Stake[85]
(86) Church Versus Dictatorships[86]
(87) Convert Russia Through Prayer[87]
(88) Cross Against Sky[88]
(89) Direction of Our Gratitude[89]
(90) Faith Is Target[90]
(91) God's Time[91]
(92) Ideas Are God's Weapons for New World[92]
(93) Prayer Is Power[93]
(94) Why Not Teach Religion?[94]
(95) Church of Christ[95]
(96) Mobilizing religious influence[96]
(97) Prayer breakfast: proceedings[97]
(98) Amendment to Constitution recognizing God[98]
(99) Christian Reformed Church in America[99]
(100) Errors in trial of Jesus[100]
(101) Power of prayer[101]
(102) Proceedings of sixth annual presidential prayer breakfast[102]
(103) Atheistic Character of Communism[103]
(104) Church-Related Colleges[104]
(105) Importance of Easter and Good Friday[105]
(106) Modern Delusions and God's Design[106]
(107) Politics and Christian Service[107]
(108) Antichrists on Prowl[108]
(109) Christ in Marketplace[109]
(110) Churches Under Open Skies[110]
(111) Contemporary Church Heraldry in America[111]
(112) Has My Church Left Me?[112]
(113) Holy Week Holds the Answer[113]
(114) Moses, Prophets, Jesus Fought To Erase Inequality[114]
(115) Opposes Asking God's Aid for United States[115]
(116) 139 Joined Church During Crusade[116]
(117) Presidential Prayer Breakfast[117]
(118) Religious Imperatives and Foreign Aid[118]
(119) Religious Overseas Aid[119]
(120) Uriel, Flame of God[120]
(121) World Day of Prayer[121]
(122) Yes; My Church Has Left Me - Thank God[122]
(123) Faith of our forefathers[123]
(124) Speak for Christian citizenship[124]
(125) Subsidy for ministers[125]
(126) Voting according to religious precepts[126]
(127) Spiritual faith of our fathers[127]
(128) Catholicism and politics[128]
(129) God, peace, and you[129]
(130) Protestantism speaks on justice and integration[130]
(131) Reaffirm Christian faith in Middle East crisis[131]
(132) Essay: Christian Principles and Citizenship[132]
(133) Proceedings at presidential prayer breakfast[133]
(134) Aggressive Secularism Undermining Nation[134]
(135) Can-Do Christians[135]
(136) Catholic President?[136]
(137) Christian Amendment Resolution[137]
(138) Faith[138]
(139) Faith and Learning[139]

(140) For God and Country[140]
(141) In Remembrance of Him[141]
(142) Our Religious Heritage[142]
(143) Religion Today[143]
(144) Religious Acknowledgements in Political Documents[144]
(145) Religious Education and Democracy[145]
(146) Spirituality and Prayer: Weapons Against Communism[146]
(147) Ten Commandments[147]
(148) Catholic Can Become President[148]
(149) Catholic in Politics[149]
(150) Christianity or Communism?[150]
(151) Christ United Church of Christ[151]
(152) Christian Philosophy of Civil Government[152]
(153) Everybody Prays at Sholl's[153]
(154) Ex-Coach Blaik Believes in Prayer[154]
(155) Foreign Policy and Christian Conscience[155]
(156) Jesuit Denounces Racism as Pagan[156]
(157) Let's Not Forget Power of Faith[157]
(158) Man Sent From God[158]
(159) Our Religious Heritage[159]
(160) Sunday Change Shocks God Fearing[160]
(161) Will Science Ever Replace God?[161]
(162) God and Mr. Dulles[162]
(163) Khrushchev, Nikita: minute of silent prayer to greet[163]
(164) American spiritual values versus Lenin and Marx[164]
(165) Lord's Day Observance[165]
(166) Vaughn Bible Class[166]
(167) We Believe in Prayer[167]
(168) We Pay Taxes for Sin[168]
(169) Lecture: Existence of God[169]
(170) Proceedings at Presidential Prayer breakfast[170]
(171) Text on broadcast on Christian amendment[171]
(172) Christian amendment[172]
(173) Christ and Politics[173]
(174) Dedication of "In God We Trust" Plaque in Post Offices[174]
(175) Power of Prayer[175]
(176) Union of Church and State[176]
(177) Apostate Clergymen Battle for God-Hating Communist China[177]
(178) Christianity and Capital Punishment[178]
(179) Did God Attend the Summit?[179]
(180) Guide to Atheism[180]
(181) How Much God Is There in Government[181]
(182) Jesus, the Perfect Man[182]
(183) Millennium of Christianization[183]
(184) Washington's Lady Ambassador for Christ[184]
(185) What Faith in God Has Meant to Me[185]
(186) Christian Citizenship[186]
(187) Faith by William Jennings Bryan[187]
(188) Shrine of the Immaculate Conception[188]
(189) Make yourself a rubberstamp for God[189]
(190) Religious qualificqations for the Presidency[190]
(191) Spiritual values are our basic need[191]
(192) Revised Standard Version of the Holy Bible: adoption of[192]
(193) World Day of Prayer[193]
(194) Bible: eternal source of strength[194]
(195) Bible: light that illumines the pathway[195]
(196) Good Shepherd and the abundant life[196]
(197) Holy Week[197]
(198) In the beginning God[198]
(199) Prayer rooms, U.S. Capitol[199]
(200) Psalm 23[200]

[1] 100-a Cong. Rec. A1204 (1954).
[2] 100-a Cong. Rec. A5288 (1954).
[3] 100-a Cong. Rec. A5674 (1954).
[4] 100-a Cong. Rec. A5519 (1954).
[5] 100-a Cong. Rec. A5569 (1954).
[6] 100-a Cong. Rec. A3187 (1954).
[7] 100-a Cong. Rec. 13977 (1954).
[8] 100-a Cong. Rec. 15828 (1954).
[9] 100-a Cong. Rec. A5879 (1954).
[10] 101-a Cong. Rec. 11120 (1955).
[11] 101-a Cong. Rec. 4767 (1955).
[12] 101-a Cong. Rec. 1212 (1955).
[13] 101-a Cong. Rec. 6264 (1955).
[14] 101-a Cong. Rec. 1698 (1955).
[15] 101-a Cong. Rec. A129 (1955).
[16] 101-a Cong. Rec. 8792 (1955).
[17] 101-a Cong. Rec. A4822 (1955).
[18] 101-a Cong. Rec. A4625 (1955).
[19] 101-a Cong. Rec. A2167 (1955).
[20] 101-a Cong. Rec. A2057 (1955).
[21] 101-a Cong. Rec. 275 (1955).
[22] 101-a Cong. Rec. A505 (1955).
[23] 101-a Cong. Rec. 11111 (1955).
[24] 101-a Cong. Rec. A2982 (1955).
[25] 101-a Cong. Rec. A3247 (1955).
[26] 101-a Cong. Rec. A145 (1955).
[27] 101-a Cong. Rec. A150 (1955).
[28] 101-a Cong. Rec. A2262 (1955).
[29] 101-a Cong. Rec. A836 and A1211 (1955).
[30] 101-a Cong. Rec. 2872 (1955).
[31] 101-a Cong. Rec. 2853 (1955).
[32] 101-a Cong. Rec. A4664 (1955).
[33] 101-a Cong. Rec. A742 (1955).
[34] 101-a Cong. Rec. A1972 (1955).
[35] 101-a Cong. Rec. A5881 (1955).
[36] 101-a Cong. Rec. A2149 (1955).
[37] 101-a Cong. Rec. A786 (1955).
[38] 101-a Cong. Rec. A3368 (1955).
[39] 101-a Cong. Rec. A4210 (1955).
[40] 101-a Cong. Rec. A1953 (1955).
[41] 101-a Cong. Rec. 4942, A2945, A2946, A2987, A2990, A2991, A2996, and A5468 (1955).
[42] 101-a Cong. Rec. A3151 (1955).
[43] 101-a Cong. Rec. A3154 (1955).
[44] 101-a Cong. Rec. 6265 (1955).
[45] 101-a Cong. Rec. 13135 (1955).
[46] 101-a Cong. Rec. 6848 (1955).
[47] 101-a Cong. Rec. 4400 (1955).
[48] 101-a Cong. Rec. 3217 (1955).
[49] 101-a Cong. Rec. 6603 (1955).
[50] 102-a Cong. Rec. A1957 (1956).
[51] 102-a Cong. Rec. A6037 (1956).
[52] 102-a Cong. Rec. A1589 (1956).
[53] 102-a Cong. Rec. A542 (1956).
[54] 102-a Cong. Rec. A4893 (1956).
[55] 102-a Cong. Rec. A2131 (1956).
[56] 102-a Cong. Rec. A2659 (1956).
[57] 102-a Cong. Rec. 2272 (1956).
[58] 102-a Cong. Rec. 4547 (1956).
[59] 102-a Cong. Rec. 9454 (1956).
[60] 102-a Cong. Rec. A4122 (1956).
[61] 102-a Cong. Rec. A3533 and 9277 (1956).
[62] 102-a Cong. Rec. A429 (1956).
[63] 102-a Cong. Rec. A2803 (1956).
[64] 102-a Cong. Rec. A452 (1956).
[65] 102-a Cong. Rec. A5129 (1956).
[66] 102-a Cong. Rec. 6895 (1956).
[67] 102-a Cong. Rec. A1493 (1956).
[68] 102-a Cong. Rec. A1650 (1956).
[69] 102-a Cong. Rec. A5842 and A6209 (1956).
[70] 102-a Cong. Rec. A3960 (1956).
[71] 102-a Cong. Rec. 8031 (1956).
[72] 102-a Cong. Rec. A5366 (1956).
[73] 102-a Cong. Rec. 2751 (1956).
[74] 102-a Cong. Rec. 1519 (1956).
[75] 102-a Cong. Rec. A700 (1956).
[76] 103-a Cong. Rec. A4891 (1957).
[77] 103-a Cong. Rec. A2221 (1957).
[78] 103-a Cong. Rec. A291 (1957).
[79] 103-a Cong. Rec. A4008 (1957).
[80] 103-a Cong. Rec. A4184 (1957).
[81] 103-a Cong. Rec. 8121 (1957).
[82] 103-a Cong. Rec. A4124 (1957).
[83] 103-a Cong. Rec. A45 (1957).
[84] 103-a Cong. Rec. A4236 (1957).
[85] 103-a Cong. Rec. A532 (1957).
[86] 103-a Cong. Rec. A5220 (1957).
[87] 103-a Cong. Rec. A1008 (1957).
[88] 103-a Cong. Rec. A3083 (1957).
[89] 103-a Cong. Rec. A1512 (1957).
[90] 103-a Cong. Rec. A2671 (1957).
[91] 103-a Cong. Rec. A1357 (1957).
[92] 103-a Cong. Rec. A4515 (1957).
[93] 103-a Cong. Rec. A3467 (1957).
[94] 103-a Cong. Rec. A7212 (1957).
[95] 103-a Cong. Rec. A154 (1957).
[96] 103-a Cong. Rec. 8249 (1957).
[97] 103-a Cong. Rec. 2085 (1957).
[98] 103-a Cong. Rec. 234 (1957).
[99] 103-a Cong. Rec. 6128 (1957).

[100] 103-a Cong. Rec. 5848 (1957).
[101] 103-a Cong. Rec. 2452 (1957).
[102] 104-a Cong. Rec. 2192 (1958).
[103] 104-a Cong. Rec. A32 (1958).
[104] 104-a Cong. Rec. A3246 (1958).
[105] 104-a Cong. Rec. A3578 (1958).
[106] 104-a Cong. Rec. A2159 (1958).
[107] 104-a Cong. Rec. 10790 (1958).
[108] 104-a Cong. Rec. A2214 (1958).
[109] 104-a Cong. Rec. A5975 (1958).
[110] 104-a Cong. Rec. A6724 (1958).
[111] 104-a Cong. Rec. A1257 (1958).
[112] 104-a Cong. Rec. A3993 (1958).
[113] 104-a Cong. Rec. A3199 (1958).
[114] 104-a Cong. Rec. A883 (1958).
[115] 104-a Cong. Rec. A2494 (1958).
[116] 104-a Cong. Rec. A690 (1958).
[117] 104-a Cong. Rec. A1119 (1958).
[118] 104-a Cong. Rec. 6283 (1958).
[119] 104-a Cong. Rec. A927 (1958).
[120] 104-a Cong. Rec. A3253 (1958).
[121] 104-a Cong. Rec. A1606 (1958).
[122] 104-a Cong. Rec. A4976 (1958).
[123] 104-a Cong. Rec. A4646 (1958).
[124] 104-a Cong. Rec. A5262 (1958).
[125] 104-a Cong. Rec. A869 (1958).
[126] 104-a Cong. Rec. A7215 (1958).
[127] 104-a Cong. Rec. 18591 (1958).
[128] 104-a Cong. Rec. A7518 (1958).
[129] 104-a Cong. Rec. A3088 (1958).
[130] 104-a Cong. Rec. 1918 (1958).
[131] 104-a Cong. Rec. A7264 (1958).
[132] 105-a Cong. Rec. A4622 (1959).
[133] 105-a Cong. Rec. 4418 (1959).
[134] 105-a Cong. Rec. A8440 (1959).
[135] 105-a Cong. Rec. A1524 (1959).
[136] 105-a Cong. Rec. A5345 (1959).
[137] 105-a Cong. Rec. 6158 (1959).
[138] 105-a Cong. Rec. A174 (1959).
[139] 105-a Cong. Rec. A4918 (1959).
[140] 105-a Cong. Rec. A1966 (1959).
[141] 105-a Cong. Rec. A3369 (1959).
[142] 105-a Cong. Rec. 9499 (1959).
[143] 105-a Cong. Rec. A7022 (1959).
[144] 105-a Cong. Rec. A1125 (1959).
[145] 105-a Cong. Rec. A7057 (1959).
[146] 105-a Cong. Rec. A8446 (1959).
[147] 105-a Cong. Rec. A7354 (1959).
[148] 105-a Cong. Rec. 3482 (1959).
[149] 105-a Cong. Rec. 12008 (1959).
[150] 105-a Cong. Rec. A4465 (1959).
[151] 105-a Cong. Rec. A5375 (1959).
[152] 105-a Cong. Rec. A4536 (1959).
[153] 105-a Cong. Rec. A4718 (1959).
[154] 105-a Cong. Rec. A1529 (1959).
[155] 105-a Cong. Rec. A4653 (1959).
[156] 105-a Cong. Rec. A4950 (1959).
[157] 105-a Cong. Rec. A1278 (1959).
[158] 105-a Cong. Rec. A5186 (1959).
[159] 105-a Cong. Rec. A5838 (1959).
[160] 105-a Cong. Rec. A6542 (1959).
[161] 105-a Cong. Rec. A3542 (1959).
[162] 105-a Cong. Rec. A648 (1959).
[163] 105-a Cong. Rec. 17448 (1959).
[164] 105-a Cong. Rec. 5346 (1959).
[165] 105-a Cong. Rec. A6540 (1959).
[166] 105-a Cong. Rec. A1568 (1959).
[167] 105-a Cong. Rec. A1573 (1959).
[168] 105-a Cong. Rec. A4315 (1959).
[169] 106-a Cong. Rec. 13735 (1960).
[170] 106-a Cong. Rec. 3591 (1960).
[171] 106-a Cong. Rec. A478 and A410 (1960).
[172] 106-a Cong. Rec. A1538 (1960).
[173] 106-a Cong. Rec. A6547 (1960).
[174] 106-a Cong. Rec. A5504 (1960).
[175] 106-a Cong. Rec. 15044 (1960).
[176] 106-a Cong. Rec. A1578 (1960).
[177] 106-a Cong. Rec. A1476 (1960).
[178] 106-a Cong. Rec. A6053 (1960).
[179] 106-a Cong. Rec. A5421 (1960).
[180] 106-a Cong. Rec. A5601 (1960).
[181] 106-a Cong. Rec. 3903 and 9337 (1960).
[182] 106-a Cong. Rec. A3291 (1960).
[183] 106-a Cong. Rec. A2563 (1960).
[184] 106-a Cong. Rec. A404 (1960).
[185] 106-a Cong. Rec. 17414 (1960).
[186] 106-a Cong. Rec. A3910 (1960).
[187] 106-a Cong. Rec. 6744 (1960).
[188] 106-a Cong. Rec. A170 (1960).
[189] 106-a Cong. Rec. A5895 (1960).
[190] 106-a Cong. Rec. A5673 (1960).
[191] 106-a Cong. Rec. A6441 (1960).
[192] 106-a Cong. Rec. 8272 (1960).
[193] 106-a Cong. Rec. 6009 (1960).
[194] 106-a Cong. Rec. 8708 (1960).
[195] 106-a Cong. Rec. 8849 (1960).
[196] 106-a Cong. Rec. 12072 (1960).
[197] 106-a Cong. Rec. 8070 (1960).
[198] 106-a Cong. Rec. 10519 (1960).
[199] 106-a Cong. Rec. 3403 (1960).
[200] 106-a Cong. Rec. 8850 (1960).

INDEX

APPENDIX D

Cover of Rev. R. Harris Slavery Tract

SCRIPTURAL RESEARCHES

ON THE LICITNESS

OF THE

SLAVE-TRADE,

SHEWING ITS CONFORMITY

WITH THE PRINCIPLES OF

NATURAL AND REVEALED RELIGION,

DELINEATED IN THE

SACRED WRITINGS OF THE WORD OF GOD:

THE SECOND EDITION;

TO WHICH ARE ADDED,

SCRIPTURAL DIRECTIONS

FOR THE

PROPER TREATMENT OF SLAVES,

AND

A REVIEW OF SOME SCURRILOUS PAMPHLETS

LATELY PUBLISHED AGAINST THE AUTHOR AND HIS DOCTRINE

BY THE AUTHOR, THE REV. R. HARRIS,

SEARCH THE SCRIPTURES, FOR IN THEM YE THINK YE HAVE ETERNAL LIFE.—JOHN, C. 5, V. 39.

LIVERPOOL:

PRINTED BY H. HODGSON;

M.DCC.LXXXVIII.

[*Entered at* STATIONER'S HALL.]