be generous, and students are asked to do more. The insidious part of this is that traditionally, States have been the largest part of funding for higher education. So very quietly we see States go from spending $2.16 for every dollar spent, which was the case in 1995, to less than $1 spent for every Federal dollar spent, which is the case 10 years later in 2005.

That is a major shift in funding, and we in the Congress and Secretary Spellings' new commission and the work Senator BINGAMAN and I are doing with the National Academy of Sciences need to take note of this and ask what will happen if we have 10 more years of these financing trends.

I yield the floor.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from the Commonwealth of Virginia.

Mr. ALLEN. Mr. President, I ask unanimous consent to speak as in morning business.

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

Mr. ALLEN. Mr. President, before I get into the third branch of Government, I want to remark and associate myself with many of the comments that were stated by Senator ALEXANDER of Tennessee. I do believe this country, for its long-term competitiveness, must interest and encourage more young people to get involved in science, engineering, and technology.

The fact is, 40 to 50 percent of our students in engineering schools are from overseas. That is good. America ought to be a magnet for the best brains in the world. I want this country to be the world capital of innovation, and to be the world capital of innovation, we need more young people interested in engineering, technology, and science.

I have a great concern that we are not matriculating sufficient numbers of students in this country in areas where new inventions and innovations and intellectual property will be created. We have about—and I think the Senator from Tennessee will corroborate this—50,000 engineers graduating every year. India has about 150,000 engineers graduating every year. The People's Republic of China has 250,000 engineers graduating every year.

There are a variety of things we must do in this country to be more competitive, to make sure young people are getting a good quality education and also develop an interest in science, technology, and engineering. These are great-paying jobs that are important for the security of this country, our standard of living, and our competitiveness. Until we reverse these trends, I believe it is going to be a problem for us in the long term. Indeed, the Senator from Tennessee and I have worked together on a variety of issues, including upgrading the technology capability of minority-serving institutions, whether they are historically Black colleges or Hispanic-serving institutions or tribal colleges.

We also have to recognize in our engineering schools that about 15 percent of the students are women, about 6 percent are African American, and only about 6 percent are Latinos. We need to get more of our country interested in engineering. Meanwhile, of course, we should be attracting more students from overseas because if they come to this country for education—and higher education. It is vitally important for our future and the future of the young people, for these graduates to stay in this country which I hope they do. That will continue to make this country a leader in innovation in the transformative technologies of the future. Whether it is nanotechnology, which is a multifaceted discipline or life sciences or microelectronics or energy applications to also materials engineering.

I associate myself with the remarks and sentiment of Senator ALEXANDER who, of course, more important than being Secretary of Education, was also president of the University of Tennessee. Senator ALEXANDER understands how our very diverse and multifaceted higher education systems in all the different States of the Union are really crown jewels. We must work with our colleges and universities to attract more young people—people of all ages—into technology, engineering, and science, and also be conducive to people coming from overseas.

I recall in our formulations hearing, when Dr. Rice was before us, one of the points I talked with her about getting student visas working better. Students are too queued up overseas. Visa requirements are another impediment for students coming from countries in Europe, Asia, or anywhere else in the world. If they are all queued up, they think, they are not welcome in this country, it is too bureaucratic. Hopefully the State Department will work with our Homeland Security people to make sure quality, well-qualified people from overseas can matriculate to our universities.

ROBERTS NOMINATION

Mr. ALLEN. With that diatribe or statement on innovation and invention completed, I switch to a place where I do not like invention, and that is in the judiciary. We have entirely too many judges in this country who invent the law rather than apply the law. I speak on this subject that is very timely because the Judiciary Committee is now considering—I know the Presiding Officer has been involved in those hearings—on Judge John Roberts, whom I sincerely hope will soon be on the floor for a vote, and confirmed to be our next Chief Justice of the Supreme Court of the United States.

When I met with Judge Roberts in my office last month, I relayed to him my concern about Federal judges acting as a superlegislative body, acting as legislators. There are judges who seem to be interpreting the laws passed by the elected representatives in a way that they think they know better than the elected people.

This country is a republic. The people of this country are the owners of the Government. Their views, their values, their aspirations are represented by those they elect. Sometimes it is at the local level, whether it is a county, city, or parish in Louisiana, or it will be a State legislature or for national, Federal laws, the people they elect to Congress and, obviously, Governors, as well as mayors, and the President of the United States in this representative democracy.

In so many cases we see Federal judges who are appointed for life making decisions that completely negate and have very little respect for the will of the people as expressed through their legislative bodies.

We see Federal courts striking down parental consent or parental notification laws. These are laws that States passed—we did it while I was Governor of Virginia, and so have other States. These laws say that if an unwed minor daughter is going through the trauma of an abortion, a parent ought to be involved. It makes sense. For ear piercing, tattoos, taking an aspirin, one needs parental consent. Certainly for this surgery, it makes sense, and many legislatures and the people in the States said the parents ought to be involved. Federal judges struck down that law.

There are those who believe parameters ought to be placed on late-term, partial-birth abortion. That law was passed by the Congress and by various States. Federal judges struck that down.

We find Federal judges allowing attacks on the Boy Scouts. We see some judges, not necessarily Federal judges yet, but some judges redefining marriage. We see judges time after time making these decisions. Some folks wonder what is an activist judge. I did not get into specific cases with Judge Roberts when I was talking with him, but one of the prime examples was this Ninth Circuit Court of Appeals that was striking down the will of the people in California in certain counties where the Pledge of Allegiance is said in their public schools every day.

The Ninth Circuit struck that down and said, no, the Pledge of Allegiance cannot be recited in public schools in California because of the words ''under God'' being in the pledge. This is a prime example of judicial activism, contrary to the will of the people of these counties in California.

That case got to the Supreme Court. They avoided the decision, saying that the plaintiff did not have standing. That is a way for the U.S. Supreme Court to avoid making a decision.

Just last week we had another Federal district court judge in California striking down or saying that the Pledge of Allegiance cannot be recited in public schools in California because

of the words ''under God.'' This judge was following the Ninth Circuit in which California is located.

I will give some of my colleagues a bit of legal education. When there is a legal analysis of an unconstitutional establishment of religion, the Supreme Court has applied a three-pronged test. This three-pronged test applies to all the States in the country, even these Federal courts in California who strike down laws and misconstrue the Constitution, thwarting the will of the good people of California. Here is the test that the U.S. Supreme Court has applied in such cases.

The test as articulated in the U.S. Supreme Court case of Lemon v. Kurtzman. It is called the Lemon test. The first test is used to determine whether public activity had a primarily secular purpose. In this matter in California, the Pledge of Allegiance is primarily a patriotic event and purpose.

The second test is called the endorsement test. In this California matter, there is no endorsement of any denomination of any religion. So the endorsement test fails because there is no endorsement.

The third test is called the coercion test, and there is no coercion here for students.

The Supreme Court has commented that the presence of ''one nation under God'' in the Pledge of Allegiance is constitutional, as has most recently the Fourth Circuit Court of Appeals, which includes the circuit of Virginia, the Carolinas, West Virginia, and Maryland. The Fourth Circuit ruled in a case called Myers v. Loudoun County Public Schools that the Pledge of Allegiance is constitutional.

If this current decision in California that came down last week is not remedied by the Ninth Circuit Court of Appeals, I surely hope the Supreme Court of the United States will grant review to resolve this dispute between the circuits, because there are sometimes judges who have to be reversed on many occasions before they understand the plain intent of the law, of previous opinions, and the history of our country. These judges must have the proper respect for the people in this country to make laws that make sense, that are constitutional, and indicate their will.

As a resource for both the Ninth Circuit and, if necessary, the U.S. Supreme Court, if this case reaches them. I direct the attention of my colleagues to some outstanding historical analyses prepared by a gentleman from Texas named David Barton. Mr. Barton heads up and is part of an organization called Wall Builders and he noted if reciting the pledge is truly a religious act in violation of the establishment clause, then the recitation of the Constitution itself would be, which refers to ''the year of Our Lord,'' and our Declaration of Independence which contains multiple references to God.

Our Founders claimed the right to dissolve the political bands with Britain based on the laws of nature and of nature's God.

The most well-known passage, of course, is ''all men are created equal, that they are endowed by their Creator with certain unalienable Rights.''

Subsequently, the signatories of our Constitution and a variety of other documents appealed to the Supreme Judge of the world to rectify their intentions. Our national motto is, ''In God we trust.'' And the singing of the National Anthem actually has a verse and motto ''in God we trust.''

Furthermore, the Supreme Court of the United States, even the Ninth Circuit Court of Appeals, opens its sessions with a call that says ''God save the United States and this honorable court.'' This is the same court that said: No, you cannot have the Pledge of Allegiance in public schools. Obviously, we all recognize today as the Senate opened up there was a prayer, and then there was the Pledge of Allegiance.

There is an undeniable and historical relationship between God and our Founders and the Government leaders throughout the history of our country. In fact, it was the Congress in 1837, acting upon the will of the people, that authorized the motto ''In God we trust'' to be printed on our currency.

We can cite the actions of the entire body of the Founding Fathers. For example, in 1800, when Washington, DC, became the capital of the United States, Congress approved the use of this Capitol Building as a church building for Christian worship services. In fact, Christian worship services on Sunday started at the Treasury Building and at the War Office.

A scant review of the legislative history of the States and of the Federal Government reveals the intent of our Founders from George Washington to Thomas Jefferson who lay out the absurdity and even the arrogance of this district court decision.

Everyone knows—maybe not everyone knows. Most of my learned colleagues know one of the things that Thomas Jefferson was most proud of was authoring the Declaration of Independence, founding the University of Virginia, and the third, no, was not the Louisiana Purchase—although that was the best real estate deal ever made—the thing he was thirdly most proudly of and is on his tombstone is ''Author of the Statute of Religious Freedom.''

If one reads the Statute of Religion Freedom—it is in article 1, section 16 of the Virginia Constitution—it is much better than the first amendment in the Constitution of the United States and the Bill of Rights because it goes on for paragraphs. One gets the sense of how there was not to be the establishment of religion, that people would not be forced or compelled to join a church contrary to their views, that they would not have to tithe or pay for a church, and people's rights were not to be enhanced or diminished on account of their religious beliefs.

Mr. Jefferson was elected in 1800. He took office in 1801, at the same time that this Capitol Building was being used for Christian worship services.

If the author of the Statute of Religious Freedom—and it was authored before the Federal Constitution and adopted in part of the Bill of Rights—if he thought that was going to be an establishment of religion or the Government funding religion, or compelling people to worship in a broad Christian sense, not Baptist versus Methodist versus Anglicans or Episcopalians or other denominations. If he saw that as an establishment of religion, he surely would have objected to it because he became President in 1801 right when DC became the Nation's Capital.

That is the sense of history of the foundation of our country, and the law. It is a shame that the majority of justices on the Ninth Circuit Court of Appeals do not seem to understand this.

Each of us who has the high privilege to serve in this Chamber is aware of the circumstances by which ''one nation under God'' became a part of the pledge in 1954. It was a will of Congress. Where did Congress get the idea, they got the idea from the people. The will of the people. Congress acted and that was made part of our Pledge of Allegiance.

Today it is the will, unfortunately, of a few unelected judges that seek to remove those words from the Pledge of Allegiance.

When one is dealing with Federal judges, they must get into the history, once again, that they are appointed for life. Most States do not have judges appointed for life; they are appointed for terms. The people have recourse from time to time to remove them. California has a way of recourse on State judges who are first appointed, but then there is a retention possibility.

Federal judges, though—unfortunately Alexander Hamilton won this debate with Mr. Jefferson who wanted judges appointed for terms. Hamilton wanted them for life and Hamilton won. These Federal judges get selected and they are on there for life.

Something that I know the Presiding Officer and I and others try to do is try to discern their views. Judges ought to have a greater respect for the will of the people.

The State of California is not unique in encouraging students to engage in an appropriate patriotic exercise.

In my Commonwealth of Virginia, we have a statute requiring a daily recitation of the Pledge of Allegiance in every public classroom in our Commonwealth. It is thoughtfully crafted. The Virginia statute provides that no student shall be compelled to recite the pledge if he, his parent, or legal guardian objects on religious, philosophical, or other grounds to his participation in this exercise. Students are thus exempt from reciting the pledge and shall remain quietly standing or sitting at their desk while others recite the pledge.

The reason I talk about this is when I was Governor in 1996, I was able to sign, and happy to sign, this into law. It is a law that has commonsense provisions requiring the Pledge of Allegiance, but also with provisions to develop guidelines for reciting the pledge in public schools. That law has been the law since 1996.

The point is that the pledge is a patriotic exercise. Thomas Jefferson, again, who authored the Statute of Religious Freedom, had no intention of allowing Government to limit, restrict, regulate, or interfere with public religious practices.

Mr. Jefferson believed, along with our other Founders, that the first amendment had been enacted only to prevent Federal establishment of a national denomination. This patriotic pledge establishes no religious denomination. There is no establishment of any religious denomination. I would fight against any sort of effort, by any State, or by the Federal Government to establish any national denomination.

Understand the history of our country. There was an Anglican Church, the Church of England. There were people who were forced to pay tithes or contribute to this church, even if they did not believe in it. The Baptists were the ones who were the most upset. Mr. Jefferson sent a letter to the Baptists of Danbury, where he was espousing his views and where some of these misinterpretations may have occurred. The point is this is no establishment of religion.

This Federal judge, though, in California, and the Ninth Circuit Court of Appeals judges, are examples of Government overreach in a very different and harmful way. It is judicial activism at its very worst. It is activism by unelected judges. Through this decision and decisions such as this, they usurp the rights of the people, usurp the policymaking role given to this body and also to the people in the States. These are rights that are actually guaranteed to all of the people in the States in our Constitution.

I do not know what the next decision from Federal judges might be, especially if they are relying on this precedent from the Ninth Circuit Court of Appeals. Will they ban the singing of God Bless America in our schools? Who knows?

Will they redact, or force the editing of founding documents, which are some of the greatest documents in the history of mankind and civilization, because there are references to God or to our creator? Will the Congress, the Supreme Court, and State legislatures all across the land be prohibited from opening their sessions with the pledge because it might somehow offend the sensibilities of someone watching a legislative body opening with a Pledge of Allegiance, whether it is on a public access channel or C–SPAN or otherwise?

The fact is this is not an argument about God or no God. It is not an argument about the separation of church and State. It is not an argument about the establishment of any particular religious denomination. Saying the Pledge of Allegiance is no more of a religious act than buying food with currency that reads ''In God We Trust.'' It is a patriotic act. If a student does not want to say it, he or she can sit quietly in the classroom. But that should not thwart the desire of the people, whether it is in counties in California or counties in cities and towns in the Commonwealth of Virginia or in the plains of Kansas or in the Rocky Mountains or anywhere else. If that is what they so desire, then the people ought to be able to have that in their public schools.

I sense that most Americans agree that the Pledge of Allegiance should remain in our schools and other public functions. As it is today, it should be voluntary and should be a matter of public conscience.

On this issue, similar to so many others, the Ninth Circuit Court of Appeals is out of touch with the people and flat-out wrong. This errant decision clearly points out the need to put, reasonable, well-grounded judges who have common sense on the Federal bench, rather than these delusional activists who ignore the will of the people of the United States. The promise of America is rooted in one idea, that the direction of our country is, and will always be, determined by the consent and the will of the people.

If there is anything to be understood from our Constitution, our Bill of Rights, it is that the Government is instituted by the people. They may have representative government through the States, but the Bill of Rights is there to protect our God-given rights. Some rights of ours are to have a government, with our consent, that reflects our values.

I hope, in this particular case, which is illustrative of others, that either the Ninth Circuit, or the United States Supreme Court will reverse this egregious decision that bans the Pledge of Allegiance in public schools. The will of the people ought to be respected.

I will close by saying this: God bless America; and I am glad I am still allowed to say it. I wish the kids were able to say the Pledge of Allegiance or God bless America in their schools, without worrying about some unelected Federal judge coming in and thwarting the will of the people, the decency and wholesomeness of the people of this country. I am hopeful we will soon have John Roberts as Chief Justice of the Supreme Court and other men and women, whether on the Ninth Circuit or other Federal courts, who understand the foundational principles of this country.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

CONCLUSION OF MORNING BUSINESS

Mr. REID. Mr. President, I ask morning business be closed.

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

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006—Continued

AMENDMENT NO. 1732

Mr. REID. Mr. President, I send an amendment to the desk on behalf of BEN NELSON of Nebraska, an amendment numbered 1732.

The PRESIDING OFFICER. Without objection the pending amendment will be set aside and the clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. NELSON of Nebraska, proposes an amendment numbered 1732.

Mr. REID. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the use of funds for developing a final rule with respect to the importation of beef from Japan)

On page 173, after line 24, insert the following:

SEC. 7_____. None of the funds made available under this Act shall be used by the Secretary of Agriculture for the purpose of developing a final rule relating to the proposed rule entitled ''Importation of Whole Cuts of Boneless Beef from Japan'', dated August 18, 2005 (70 Fed. Reg. 48494), to allow the importation of beef from Japan, unless the President certifies to Congress that Japan has granted open access to Japanese markets for beef and beef products produced in the United States.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

MR. RONALD W. KISER

Mr. MCCONNELL. Mr. President, I rise today to recognize the outstanding service of a remarkable Kentuckian, Mr. Ronald W. Kiser. Mr. Kiser is the assistant chief of the Engineering Division for the Louisville District of the U.S. Army Corps of Engineers. He will retire from the Corps of Engineers this September 30 with over 36 years of dedicated service to our Nation.

A Louisville resident for decades, Mr. Kiser is originally a native of Charleston, WV. He began his career with the Corps of Engineers in the Huntington District, in West Virginia, upon graduation from the West Virginia University Institute of Technology, where he