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