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Senate

The Senate met at 12 noon and was called to order by the Honorable JON S. CORZINE, a Senator from the State of New Jersey.

PRAYER

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

Almighty God, strong source of strength for those who stretch the human limits and go beyond, we praise You for courage to stand firm for truth as You have revealed it to us. Give us convictions that require Your courage. We know that courage is fear that has said its prayers. Here we are, Lord, relinquishing any fears that may cripple us in being bold leaders. We can take hold of courage because You have taken hold of us. You give us power to overcome rather than overreact. We accept the admonition of the psalmist: *Wait on the Lord, be of good courage, and He shall strengthen your heart. Wait, I say, on the Lord*—(Psalm 27:14).

Bless the women and men of this Senate as You solidify their convictions and then give them the gift of courage. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JON S. CORZINE 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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 15, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JON S. CORZINE, a Senator from the State of New Jersey, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. CORZINE 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.

SCHEDULE

Mr. REID. Mr. President, the Chair will announce that the time until 1 o'clock will be evenly divided between Republicans and Democrats, with the Republicans having the first hour and Democrats having the second half hour.

At 1 o'clock, we will again go to the resumption of the accounting reform bill, with 5 hours remaining under postcloture proceedings.

MEASURES PLACED ON THE CALENDAR—H.R. 4954, H.R. 4635, H.R. 5017

Mr. REID. Mr. President, it is my understanding there are three bills at the desk that have been read for the first time. They are H.R. 4954, H.R. 4635, and H.R. 5017.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. REID. I ask unanimous consent that it be in order, en bloc, for these bills to receive a second reading, but I object to any further proceedings at this time.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, the clerk will read the titles of the bills.

The assistant legislative clerk read as follows:

A 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.

A bill (H.R. 4635) to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

A bill (H.R. 5017) to amend the Temporary Emergency Wildlife 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 fires.

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

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, 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 1 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Under the previous order, the first half of the time shall be under the control of the Republican leader or his designee.

The Senator from Wyoming is recognized.

THE USE OF SNOW MACHINES IN YELLOWSTONE NATIONAL PARK

Mr. THOMAS. Mr. President, I will take a few minutes to talk about an

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

important issue specifically to Wyoming, the Yellowstone National Park. In a broader sense, it is an issue that affects all kinds of parks and Federal public lands. It has to do with the question of access to these lands. Particularly, I am very interested in national parks, having grown up just outside of Yellowstone. I served as chairman of the National Parks Subcommittee for a long time. So I am very interested in parks.

We are in the process of working on an issue that I think has broader implications. It is the ability to use snow machines to see Yellowstone National Park in the wintertime. It is something that has been done, of course, for a number of years, and certainly there have to be changes that take place with use, and, as people are involved, unfortunately, those changes have not taken place as much as they should. Now we find ourselves in a dilemma with efforts made to eliminate the opportunity for people to use these machines in the wintertime.

As I mentioned, I think the purpose of the park is to maintain the resource, and all of us would agree to that. It is one of the national treasures that we have. We spend a lot of time here on parks—to establish new parks, and so on.

The second purpose of having a park, of course, in addition to saving the resource, is to give the opportunity for the park's owners to enjoy it—the people of America. And of course it needs to be done in an orderly way so there is not a problem with destroying those resources.

As I mentioned, snow machines in Yellowstone Park have been used for a good numbers of years. They are limited to the roads that are prepared for snow machining. You cannot go off the road; you stay on those roads. That has been the rule through the years. They enter, basically, in three of the entryways that come into Yellowstone Park, which is fewer than there are in the summer.

Of course, the wildlife remains in the park in the winter, for a good part of the time at least, and so one of the problems or complaints has been that the idea of preparing the roads for the use by snow machines provides an exit for the buffalo, and they go into Montana. There are concerns about brucellosis, and so on, and they don't like to have that happen.

The fact is that the roads are going to be prepared for use, whether visitors can use them or others, because they have to be used by the rangers and the people who are in the park.

In any event, this issue kind of came to a head about 2, 3 years ago when the Clinton administration had prepared a regulation that there would be no more use of snow machines in the wintertime. Well, many of us do not agree with that. We think there can be ways in which snow machines can be managed so that they can be changed if they need to be, that would take away the problems of that exit, and rather than to eliminate them, we think there ought to be a way to change them.

Indeed, during the course of this time, there have been a number of changes being made, partly by the manufacturers. Of course, there can be a regulation and a standard as to how the machines would be allowed to reduce emissions they have had in the past. They would also reduce the noise, which has been something people have been concerned about.

So we are prepared—and the manufacturers are prepared—to go into the market with machines, probably four-cycle engines rather than two, that would change both the emissions and the noise.

As this went on, of course, as the Clinton administration pushed their regulation, there were lawsuits brought. Then there was a change in the administration. The original EIS that was done was extended, and we took action in the Congress to extend the use period for another couple of years, and another supplemental EIS was held so there could be some additional alternatives.

The alternatives, of course, could be: Continue as it is now; eliminate it entirely; allow for coaches rather than individual snow machines; or change the rule so there could be some combination of the two.

The time is down now pretty close to where there should be, in this month, as a matter of fact, a reestablishment of the options that would be available, any favored option by the administration.

I met recently with the superintendents of the two parks, both the Grand Teton and Yellowstone, and they are prepared to do that. I think they are prepared to favor the option that would allow for the changes to be made in the machines and also for additional noise, but they could potentially have limitations on the numbers that could travel.

It is kind of interesting because those who oppose it, of course, do not want to include any machines, regardless of the situation. There are now machines that have less emissions than an automobile. There are only about 600,000 of these machines and 1.6 million cars in the summer, so it is quite hard to figure out how they are going to do extensive damage.

As I mentioned, there was a lawsuit. The snowmobile manufacturers, the State of Wyoming, and others brought a suit over the ban last summer. The settlement was agreed to. It called for a supplemental EIS, which I mentioned, which now has been done, and it called for some reasonable and commonsense resolutions and changes to the debate.

The public process has been open. There have been lots of responses. Because the environmentalists organized it, they had more people against it send in a card than those who were for it, but those who really took time to examine the issue and come up with alternatives, that was pretty evenly divided between those who want to continue and those who do not.

We are down now to making some decisions, and I think that is what we ought to do, and we are in this process.

I am disappointed that since then, a bill has been introduced in the Senate to eliminate snow machines in the park. It seems to me that is entirely inappropriate when we go through this whole process that has been laid out where people can be involved in this decision, and then suddenly we decide we are going to make the decision here. I hope that is not the case. I think we have had, as I said, an opportunity, and we can continue to talk about it and we ought to certainly let that process work its way through, which I think it will.

Everyone is for the protection of our parks. We all want to do that, and we can do that. We have had this sort of a problem in public lands, where you have to get a balance between usefulness and protection, and we can do that.

We are into another thing now on limiting roads in the forests. Obviously, there ought to be some limitation, but there also has to be access. It is not only access to people who want to hunt or do those kinds of things. I have received lots of communications from veterans, for instance, who say: Gosh, I cannot hike 5 or 10 miles to get there.

So we have to find a balance, and this is one of the areas in which a balance is necessary—not the only one. But I am saying that our resources of public lands and public uses also have to have access for a number of reasons. It also is an economic issue for people who live around the parks, as we do in Wyoming. So we hope we can go ahead with this and that the administration will continue to pursue the idea of having a resolution that provides for management, provides for protection, but provides people an avenue to still continue to enjoy the park.

I thought it was kind of interesting that one of the complaints about the noise—and I understand that—is people who go there do not want to have noise in the wintertime. Well, there is nobody there unless they go on machines because there is no place they can go without them. It is too far away. I wanted to raise that point. I feel very strongly about it, of course, as do many of us.

We certainly hope we can go on through this process and end up with an alternative that allows for the use of visitors to Yellowstone Park in the winter. It is a beautiful place. When one goes up there by Old Faithful and goes up the river, talk about the wildlife. One of the things that is sort of interesting is you drive along and if you want to stop, there is a buffalo right alongside the road in about 2 or 3 feet of snow, and they move right along in this little place pushing the snow out of the way so they can eat what is left

of the grass below. They are not concerned whether someone is there with a snow machine.

I see my friend from Alaska is present to speak, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

LEGAL SYSTEM REFORM

Mr. MURKOWSKI. Mr. President, I wish to indicate my concern about the recent ruling of the Ninth Circuit Court of Appeals in regard to the recitation of the Pledge of Allegiance in school as unconstitutional, noting its reference to ''one nation under God.''

I think we were all a bit surprised at that particular ruling. Perhaps for more years than I care to acknowledge, I have witnessed one bizarre decision after another arising from what I consider a very troubled court. During that time, a number of us in the Senate have worked to bring about fundamental reform in our legal system, including a wholesale restructuring of the Ninth Circuit.

I quote from the court's decision on the pledge, and this was Judge Alfred T. Goodwin who wrote:

> 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 without respect to religion.

I find that troubling because it is totally inconsistent. It tries to establish a parallel that there is virtually no difference whether we are under Zeus, under Vishnu, or under no god because, as is stated in the opinion, none of these professions can be neutral with respect to religion. This is a type of extremism carried out by individuals who want to eradicate any reference to religion in public life. It is clearly wrong. I am confident this ruling will be overturned. After all, it is quite common for a ruling from the Ninth Circuit to be overturned.

It is fair to take a few minutes and look at the record of the Ninth Circuit. Part of the problem is the Ninth Circuit is simply too large. It extends from the Arctic Circle to the Mexican border and spans the tropics from Hawaii, Guam, the Marianna Islands, the International Date Line, back to Montana and encompasses some 14 million square miles. It is the largest circuit by any measure. It is larger than the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eleventh Circuits combined.

For these reasons and more, I am going to be introducing legislation in the balance of this Congress to split the Ninth Circuit. I will now be offering an amendment to all legislation for the remainder of this Congress to enact this commonsense legislation until such time as I can get a vote. I am joined by a number of our colleagues: Senators STEVENS, BURNS, CRAIG, GORDON SMITH, INHOFE, and CRAPO.

A little history will show this is not the first attempt to solve the crisis of the Ninth Circuit. I believe the need for change, however, has never been greater. The Ninth Circuit has grown so large and has drifted so far from prudent legal reasoning that sweeping changes are in order. Congress has already recognized that the change is needed. Back in 1997, we commissioned a report on structural alternatives for the Federal court of appeals. The commission was chaired by the former Supreme Court Justice, Byron R. White. They found numerous faults within the Ninth Circuit. In its conclusion, the commission recommended major reforms and a drastic reorganization of the court.

This legislation divides the Ninth Circuit into two independent circuits. The new Ninth would contain basically California. I understand there is an interest from Nevada to stay with California. Basically, we propose to leave the Ninth containing California and perhaps Nevada. A new Twelfth Circuit would be composed of the following: Arizona, Alaska, Hawaii, Idaho, Montana, Oregon, Washington, Guam, and the Northern Marianna Islands. Immediately upon enactment, concerns of the White commission would be addressed. A more cohesive, efficient, and predictable judicial group would emerge.

The circuit serves a population of more than 54 million, almost 60 percent more than are served by the next largest circuit. By 2010, the Census Bureau estimates that the population of the Ninth Circuit will be more than 63 million people. How many people does this court have to serve before the Congress of the United States realizes the Ninth Circuit is overwhelmed by its population? Congressional Members are not alone in advocating a split.

In 1973, a congressional commission on the revision of Federal Court Appellate System Commission, commonly known as the Hruska Commission, recommended the Ninth Circuit be divided. Also that year, the American Bar Association adopted a resolution in support of the split. In 1990, the U.S. Department of Justice endorsed legislation to split the Ninth Circuit in a surprising reversal of the official ''no position'' approach it had previously assumed. That is significant in relationship to a fair evaluation based on facts in the White commission on the need for splitting the court.

In 1995, a bill was reported from the Senate Judiciary Committee to go ahead and split the Ninth Circuit. There were objections. Most of those objections came from California and were simply based on the theoretical concept that California has been the headquarters of the Ninth, and there is a certain amount of prestige associated with having the largest court, so it is quite natural that there should be such a response from California. But it was not necessarily based on what is good for justice.

Supreme Court Justice Kennedy, a former member of the Ninth Circuit for 12 years, testified before a Senate Appropriations Committee and stated he has increasing doubts about the wisdom of retaining the circuit's current size.

Arguments in support of a divided Ninth Circuit are both qualitative and quantitative. The magnitude of cases filing in the Ninth Circuit creates a slow and cumbersome docket. In 2001, the caseload of the Ninth Circuit Court of Appeals was 10,342 filings.

I refer now to a chart which shows the filings of the court relative to the Ninth Circuit. We have the various circuits: The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits. The Ninth has a population of 54 million; the caseload is 10,000 filings. The nearest would be the Eleventh Circuit. Clearly, the workload is significant in this court.

I refer you now to chart 2, which shows the current size of the court. This gives a better understanding showing the makeup of the Ninth Circuit covering Alaska, Washington, Idaho, Montana, Oregon, California, Nevada, and Arizona. It covers a population of 54 million. The caseload is 10,000 cases. The Ninth Circuit area is 1.4 million square miles.

It is interesting to reflect on the east coast. On the east coast, we have Maine, the eastern States, with their own court in red on the chart in the First Circuit. The green is the Second District. Third is in the raspberry color. The Fourth Circuit includes the Carolinas. We have five circuit courts covering a significant population. Clearly, this chart points out the difference between the size of the area of the Ninth and the caseload.

I will quote from various Justices relative to their views on splitting the court. It is imperative we reflect on those who have studied this issue and evaluated it on its merits.

From retired U.S. Supreme Court Chief Justice Warren Burger: I strongly believe the Ninth Circuit is far too cumbersome and it should be divided.

Justice Anthony M. Kennedy:

> I have increasing doubts and increasing reservations about the wisdom of retaining the ninth circuit in its historic size, and with its historic jurisdiction. We have very dedicated judges on that circuit, very scholarly judges. . . . But I think institutionally, and from the collegial standpoint, that it is too large to have the discipline and control that's necessary for an effective circuit.

We go to the Honorable Diarmuid O'Scannlain, a Ninth Circuit judge:

> We—the ninth circuit—cannot grow without limit. . . . As the number of opinions increases, we judges risk losing the ability to know what our circuit's law is. In short, bigger is not necessarily better. The ninth circuit will ultimately need to be split. . . .

Former Alabama Supreme Court Chief Justice Howell Heflin, one of our former colleagues:

> Congress recognized that a point is reached where the addition of judges decreases the effectiveness of the court, complicates the administration of uniform law, and potentially