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

diminishes the quality of justice within a Circuit.

Last, former U.S. Senator Mark O. Hatfield, State of Oregon:

The increased likelihood of intracircuit conflicts is an important justification for splitting the court.

These are gentlemen who have reviewed this issue and evaluated it objectively on its merits.

We see here the Supreme Court agrees that reform is needed. Here is a quote from Justice Scalia:

The disproportionate segment of this court's discretionary docket that is consistently devoted to reviewing ninth circuit judgments, and reversing them by lop-sided margins, suggests that this error-reduction function is not being performed effectively.

That is a pretty strong statement on the manner in which the Ninth Circuit has been conducting itself. As the reference is from Justice Scalia, he cites a disproportionate segment of the Supreme Court's discretionary docket that is devoted to reviewing Ninth Circuit judgments reversing them by lopsided margins. That is certainly a critique against the Ninth Circuit's performance.

Supreme Court Justice Sandra Day O'Connor:

With respect to the ninth circuit in particular, in my view the circuit is simply too large.

Finally, Supreme Court Justice John Paul Stevens:

In my opinion, the arguments in favor of dividing the circuit into either two or three smaller circuits overwhelmingly outweigh the single serious objection to such a change.

So there you have three Justices indicating that in their opinion the court is too large, there have been too many reversals coming to the Supreme Court. It is the criticism of the function of the court.

Let me continue because I think it is important to reflect on just what these figures are, relative to the filings and the increase. The number of filings continues to increase in the Ninth, from 8,415 in 1995 to 9,070 in 1998, and now 10,342 in the year 2001. We have seen the chart with the caseloads increasing. Here is a vivid comparison of the years, as this caseload jumps, particularly from 2000 to 2001, as one can see, in the red.

The ever increasing, expanding docket in the Ninth Circuit creates an inherent difficultly in keeping abreast of legal developments within its own jurisdiction, rendering inconsistency in constitutional interpretation within the court. Interestingly, the statistical opportunities for inconsistency on a 28-panel court calculate out to about 3,276 combinations of panels that could resolve any given issue.

I have had conversations with judges on the Ninth Circuit who have indicated the caseload is such that it is impossible for them to communicate among themselves on the activities going on within the court, as opposed to the usual process of judges having an opportunity to review other judges' opinions. As a consequence, the caseload is simply too big to allow, not for leisure, but it is a necessity, given the manner in which judges reflect upon their observation.

I would like to point out to my colleagues an article from the June 30 New York Times entitled ''Court That Ruled on Pledge Often Runs Afoul of Justices.'' I would like to read highlights. Obviously, there is too much material in it, but specifically I quote: . . . judges on the court said that they did not have time to read all of the decisions it issued.

According to the commission's 1998 report, 57 percent of judges in the Ninth Circuit, compared with 86 percent of federal appeals court judges elsewhere, said they read most or all of their court's decisions.

That does not take place in the Ninth Circuit.

Critics say the Ninth Circuit's procedure for full-court review accounts for much of the reversal rate. All other circuits sit as one to hear full-court, or en banc, cases. The Ninth Circuit sits in panels of 11.

The procedure injects randomness into decisions. If a case is decided 6 to 5, there is no reason to think it represents the views of the majority of the court's 23 active members.

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One only needs to review the appallingly high reversal rate of Ninth Circuit cases to appreciate the severity of the problem.

During the 1995–1996 session, the Supreme Court overturned an astounding 83 percent of the cases heard from the Ninth Circuit—83 percent, Mr. President, a figure which is 30 percent higher than the national average reversal rate.

In the 1996–97 session alone, an astounding 95 percent of its cases reviewed by the Supreme Court were overturned. This number should raise more than a few eyebrows.

A split in the circuit would enable a more complete and sound review, thereby reducing the circuit's rate of reversal before the Supreme Court.

The uniqueness of the Northwest cannot be overstated. An effective appellate process demands mastery of State law and State issues relative to geographic land mass, population, native cultures that are unique to the relevant region, and particularly public land issues.

Presently, California is responsible for almost 50 percent of the appellate court's filings, which means that California judges and California judicial philosophy dominate judicial decisions on issues that are fundamentally unique to the Pacific Northwest.

Let me show on this chart the specifics of where all the cases come from. Nearly half of them—46 percent—come from California; Arizona, 7 percent; Alaska 1.3 percent; Hawaii, 1.9 percent; Idaho, Montana, Nevada, 5.6 percent.

Clearly, you see the significant overwhelming evidence that most of the cases, of course, are from California.

As a consequence, this need for greater regional representation is demonstrated by the fact that the east coast of the United States is composed of five Federal circuits. I wonder what the justification for that was. Clearly, it was justified in the sense of good judicial decision. But here we have on the west coast one court. The division of the Ninth Circuit would enable judges, lawyers, and parties to master a more manageable and predictable universe of relevant case law.

Establishing a circuit comprised solely of States in the West would adhere certainly to congressional intent. Alaska, Washington, Oregon, Hawaii, Idaho, and perhaps Nevada—although I understand Nevada, in the minds of some, is in the State of California. In any event, we share similar land-based populations and economics. Each State contains a high percentage of public land, a fairly comparable population, is financially dependent on tourism and is blessed with an abundance of natural resources.

In conclusion, while I may believe even more sweeping changes are in order, I strongly urge that this body address the crisis in our judiciary system. It is the 54 million residents of the Ninth Circuit who suffer from our inaction. These Americans wait years before their cases are heard, and, after those unreasonable delays, justice may not even be served by an overstretched and out of touch judiciary.

Congress has known about the problem in the Ninth Circuit for a long time. Justice has been delayed too long. The time for reform has come. I urge action on this legislation. I will be offering it on every bill until we obtain a vote on this issue.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. CORZINE. Thank you, Mr. President.

ECONOMIC SECURITY FOR ALL AMERICANS

Mr. CORZINE. Mr. President, today I want to talk about the corporate scandals and financial problems we have been experiencing, and discuss how these problems highlight the importance of keeping the ''security'' in Social Security.

Last week, American financial markets plunged dramatically in response to the ongoing litany of corporate scandal and earnings restatements. The New York Times called the current 2½-year slide in the stock market the ''worst bear market in a generation.'' For ordinary investors, retirees, and near-retirees—last week, and certainly the year—the post-bubble environment has been a financial nightmare. What felt like a hard-earned, secure retirement for many became an open question filled with uncertainty for many