

PRIVILEGE OF THE FLOOR

Mr. BENNETT. Mr. President, I ask unanimous consent that privilege of the floor be granted to John Ziolkowski, Fitzhugh Elder, Hunter Moorhead, Dianne Preece, Galen Fountain, Jessica Frederick, William Simpson, Tom Gonzales, Luke Johnson, Phil Karsting, as well as Stacy McBride, a detailee from the Food and Drug Administration to the Committee on Appropriations, during consideration of this H.R. 2744.

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

THE CALENDAR

Mr. FRIST. Mr. President, I will be running through a lot of business which reflects a tremendous amount of work over the last several hours, the last several days, much of it in response directly to the natural disaster of Katrina and its aftermath. There are a number of other bills that I will mention as well as we close tonight.

MEASURES READ THE FIRST TIME—S. 1715 AND S. 1716

Mr. FRIST. Mr. President, I understand there are two bills at the desk, and I ask for their first reading en bloc.

The PRESIDING OFFICER. The clerk will report the bills for the first time en bloc.

The legislative clerk read as follows:

A bill (S. 1715) to provide relief for students and institutions affected by Hurricane Katrina, and for other purposes.

A bill (S. 1716) to provide emergency health care relief for survivors of Hurricane Katrina, and for other purposes.

Mr. FRIST. I now ask for their second reading and, in order to place the bills on the calendar under the provisions of rule XIV, I object to my own request, all en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will be read for the second time on the next legislative day.

EMERGENCY TAX RELIEF

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3768, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3768) to provide emergency tax relief for persons affected by Hurricane Katrina.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the substitute amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, and the motion to reconsider be laid upon the table.

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

The amendment (No. 1728) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The bill (H.R. 3768), as amended, was read the third time and passed.

VITIATION OF ACTION ON S. 1696

Mr. FRIST. Mr. President, I further ask unanimous consent that third reading and passage of S. 1696 be vitiated, and the bill be placed on the Senate Calendar.

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

SUPPORT FOR PLEDGE OF ALLEGIANCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 243, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The senior assistant bill clerk read as follows:

A resolution (S. Res. 243) Expressing Support for the Pledge of Allegiance.

There being no objection, the Senate proceeded to consider the resolution.

Mr. ENSIGN. Mr. President, I rise today to speak about yesterday's court decision which ruled that the Pledge of Allegiance is unconstitutional. I am concerned, but certainly not surprised, with this decision. And I am very concerned with the decision's implications.

It is time for us to take a stand against activist judges who seek to circumvent the will of the American people and who issue judgments flying in the face of decency and common sense. With all that is going on in our world today, to attack the Pledge of Allegiance because it contains a reference to God is ludicrous.

Most Americans were outraged when the Ninth Circuit Court of Appeals ruled that the Pledge of Allegiance was unconstitutional. Last year, the Supreme Court dismissed the case. The Supreme Court said that the plaintiff in the Pledge of Allegiance case did not have standing. The Court found that, because he was not the custodial parent, he could not object to his daughter's reciting the pledge of allegiance in school.

When that decision came down, many people, myself included, knew that it would only be a matter of time before the plaintiff, Michael Newdow, would be back. We were right. Yesterday, the Court, looking to the previous ninth circuit decision, ruled that the use of the simple phrase "under God" was a religious act. The Court found that a school policy involving the recital of the Pledge of Allegiance had a coercive religious effect.

I strongly disagree that the pledge is coercive. I also strongly disagree with

the court's decision. The Pledge of Allegiance, in addition to containing a statement of common values and patriotism, recognizes historic facts behind our Nation's founding. There are so many references in America to God, our Creator. Those references can be seen in our currency, on public buildings, even in the Declaration of Independence which is displayed a few blocks from the Capitol in the National Archives.

This recent decision further emphasizes our Nation's need for judges who are respectful of people of faith and for judges who understand that America's continued reference, and reverence, toward the Creator are very important to our common culture.

Mr. SANTORUM. Mr. President, I rise in support of the resolution expressing the strong disapproval of the Senate to the September 14, 2005, decision by the U.S. District Court for the Eastern District of California in the case of Newdow, et al. v. The Congress of the United States of America, et.al.

This decision is a prime example of why we need to put judges on the bench who will strictly interpret the law and not legislate from the bench. Judges are not politicians. They are on the bench to hear the cases in front of them, not to pursue their own personal political agendas. We need more judges that will decide each case based on the facts and the law, not legislate from the bench.

Like most Americans, those of us who are not serving on the Judiciary Committee have watched intently as President Bush's nominee for Chief Justice of the Supreme Court has stood up to the over 21 hours of questioning. Judge John Roberts has been asked nearly 500 questions, and his responses have added to the more than 76,000 pages of documents concerning his Federal Government service. The hearings themselves have proved to be an incredible civics lesson for the American public, and to some extent the Senate, on the role of judges.

I have been very impressed with Judge Roberts, both when we met and in his considerable response during these hearings. He is a modest and humble man who I believe will be a credit to our judicial system. As he stated in his opening remarks, "[i]t is that rule of law that protects the rights and liberties of all Americans. It is the envy of the world. Because without the rule of law, any rights are meaningless." Judge Roberts believes in judicial restraint, adherence to the rule of law, as well as a posture of modesty and humility in a court.

I believe that Judge Roberts is the kind of judge that America needs—a fair, independent and unbiased judge committed to equal justice under the law. If confirmed, I am convinced that Judge Roberts will strictly interpret the law and not legislate from the bench. As he said yesterday, he does not come to the bench or to a case with an agenda or a platform. In fact, he reminded my colleagues that he was not

a politician, and he is not going to advocate positions on issues to win votes.

Returning to the case at hand, I call on my colleagues to support this resolution. The Pledge of Allegiance is a unifying force in this Nation. It draws all of us, regardless of race, religion, gender, or national origin, together in support of the common good. At a time when we should be uniting to support our troops in Iraq and our neighbors in the Gulf States affected by Hurricane Katrina, it is a shame that an activist court is seeking to divide based on the principle of "I" or "me first," instead of pursuing the selfless principle of the common good. Just last Congress this body came together to support the current Pledge of Allegiance on a 94-0 vote. I hope that we will have the same bipartisan support again for this important issue, and I urge support of this resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 243) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 243

Whereas on June 26, 2002, a 3-judge panel of the Ninth Circuit Court of Appeals ruled in *Newdow v. United States Congress* that the words "under God" in the Pledge of Allegiance violate the Establishment Clause of the United States Constitution when recited voluntarily by students in public schools;

Whereas on March 4, 2003, the United States Senate passed a resolution disapproving of the Ninth Circuit's decision in *Newdow* by a vote of 94-0;

Whereas on June 14, 2004, the Supreme Court of the United States dismissed the case, citing the plaintiff's lack of standing;

Whereas on January 3, 2005, the same plaintiff and 4 other parents and their minor children filed a second suit in the Eastern District of California challenging the words "under God" in the Pledge of Allegiance;

Whereas on September 14, 2005, the Eastern District of California declined to dismiss the new *Newdow* case, holding that the Ninth Circuit's earlier ruling that the words "under God" in the Pledge of Allegiance violate the Establishment Clause was still binding precedent;

Whereas this country was founded on religious freedom by the Founding Fathers, many of whom were deeply religious;

Whereas the First Amendment to the United States Constitution embodies principles intended to guarantee freedom of religion both through the free exercise thereof and by prohibiting the Government from establishing a religion;

Whereas Congress, in 1954, added the words "under God" to the Pledge of Allegiance;

Whereas Congress, in 1954, believed it was acting constitutionally when it revised the Pledge of Allegiance;

Whereas the Pledge of Allegiance has for more than 50 years included references to the United States flag, 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 107th Congress overwhelmingly passed a resolution disapproving of the

panel decision of the Ninth Circuit in *Newdow*, and overwhelmingly passed legislation recodifying Federal law that establishes the Pledge of Allegiance in order to demonstrate Congress's opinion that voluntarily reciting the Pledge in public schools is constitutional;

Whereas the Senate believes that the Pledge of Allegiance, as revised in 1954, as recodified in 2002, and as recognized in a resolution in 2003, is a fully constitutional expression of patriotism;

Whereas the National Motto, patriotic songs, United States legal tender, and engravings on Federal buildings also refer to "God"; and

Whereas in accordance with decisions of the United States Supreme Court, public school students are already protected from being compelled to recite the Pledge of Allegiance: Now, therefore, be it

Resolved,

SEC. 1. That the Senate authorizes and instructs the Senate Legal Counsel to continue to cooperate fully with the Attorney General in this case in order to vigorously defend the Constitutionality of the Pledge of Allegiance. That the Senate strongly disapproves of the September 14, 2005, decision by the United States District Court for the Eastern District of California in *Newdow*, et al. v. The Congress of the United States of America, et al.

SEC. 2. That the Senate authorizes and instructs the Senate Legal Counsel to continue to cooperate fully with the Attorney General in this case in order to vigorously defend the constitutionality of the Pledge of Allegiance.

Mr. FRIST. Mr. President, this resolution that we passed is a Senate resolution expressing support for the Pledge of Allegiance. Because of the significance of this matter, I would like to read some paragraphs in the resolution and then the closing resolve section:

Whereas on June 26, 2002, a 3-judge panel of the Ninth Circuit Court of Appeals ruled in *Newdow v. United States Congress* that the words "under God" in the Pledge of Allegiance violate the Establishment Clause of the United States Constitution when recited voluntarily by students in public schools;

Whereas on March 4, 2003, the United States Senate passed a resolution disapproving of the Ninth Circuit's decision in *Newdow* by a vote of 94-0;

Whereas on June 14, 2004, the Supreme Court of the United States dismissed the case, citing plaintiff's lack of standing.

Whereas on January 3, 2005, the same plaintiff and 4 other parents and their minor children filed a second suit in the Eastern District of California to challenge the words "under God" in the Pledge of Allegiance.

Whereas on September 14, 2005, the Eastern District of California declined to dismiss the *Newdow* case, holding that the Ninth Circuit's earlier ruling that the words "under God" in the Pledge of Allegiance violates the Establishment Clause was still binding precedent . . .

Mr. President, the "whereas" clauses continue.

Resolved, That the Senate strongly disapproves of the September 14, 2005, decision by the United States District Court for the Eastern District of California in *Newdow*, et al. v. The Congress of the United States of America, et al.

SEC. 2. That the Senate authorizes and instructs the Senate Legal Counsel to continue to cooperate fully with the Attorney General in this case in order to vigorously defend the

constitutionality of the Pledge of Allegiance.

This is an important Senate resolution, as is the one that follows this, S. Res. 244, which we will address shortly. Every morning in the Senate, we open with that pledge to the flag of the United States of America. It is an issue on which the Senate now speaks loudly in disagreement with the most recent findings.

The second resolution related to this issue is S. Res. 244.

EXPRESSING SUPPORT FOR THE PLEDGE OF ALLEGIANCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 244, submitted earlier today by Senator SALAZAR.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The senior assistant bill clerk read as follows:

A resolution (S. Res. 244) expressing support for the Pledge of Allegiance.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, en bloc, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the resolution be printed in the RECORD as if read.

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

The resolution (S. Res. 244) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 244

Whereas Congress in 1954 added the words "under God" to the Pledge of Allegiance;

Whereas the Pledge of Allegiance has for more than 50 years included references to the U.S. flag, the country, to our country having been established as a union "under God" and to this country being dedicated to securing "liberty and justice for all";

Whereas the Congress in 1954 believed it was acting constitutionally when it revised the Pledge of Allegiance;

Whereas this Senate of the 109th 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"; and

Whereas the Congress expects that the U.S. Court of Appeals for the Ninth Circuit will review on appeal the decision of the District Court. Now, therefore, be it

Resolved,

SEC. 1. That the Senate strongly disapproves of the U.S. District Court ruling in *Newdow v. the Congress of United States of America*, et al., holding the Pledge of Allegiance unconstitutional.

SEC. 2. That the Senate authorize and instructs the Senate Legal Counsel to continue to cooperate fully with the Attorney General in this case in order to vigorously defend the constitutionality of the Pledge of Allegiance.