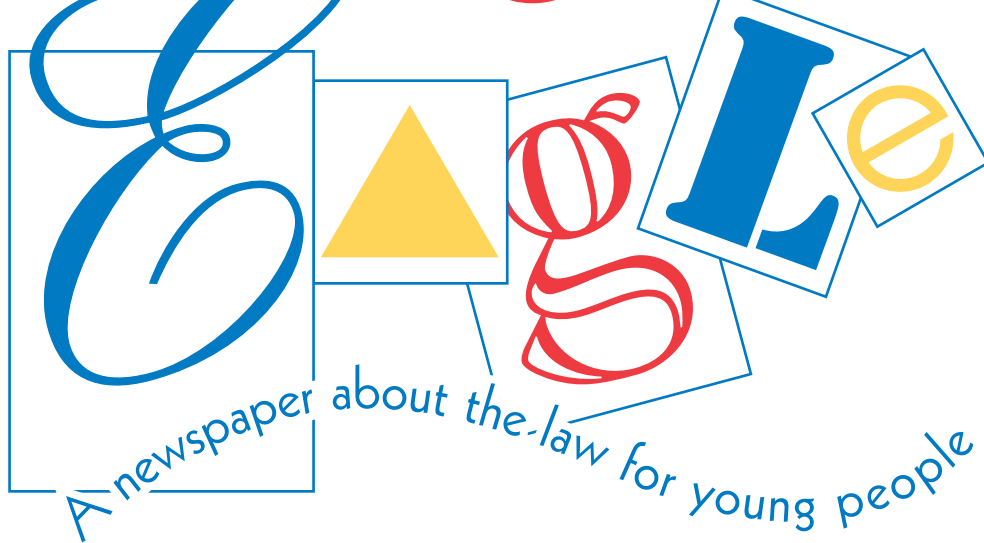


THE LEGAL



FALL 2005

When the Minority Needs to Be Heard

by Roberta K. Glassner, Esq.

Imagine you are on your town's baseball team of 20 players. The mayor of the town has just named someone to be your new coach. In this made-up situation, your team gets to vote on whether or not it wants the mayor's choice. To get the job, the coach needs to get a "yes" vote from a majority of the team, in this case at least 11 of the 20 players.



Here's how the team breaks down: the majority of the team, 12 players, are all for the mayor's choice. Eight players are dead-set against him. The eight players, who do not want the mayor's candidate, know that if a vote were held on the spot the proposed coach would get a solid majority vote of 12 and the job would be his.

Can a minority of eight prevent a vote being taken? If the rules of the U.S. Senate were applied to your team, it could. The minority players could filibuster in the hope of bringing about a compromise.

Talk, talk, talk

Since the 2004 election, 55 Republican senators have formed the majority party in the 100-member U.S. Senate. The minority is made up of 44 Democratic senators and one independent senator.

In the U.S. Senate, Rule XXII permits members of the minority party to rise to their feet on the Senate floor and talk, or filibuster, for hours or days to block a majority vote. Filibuster is derived from a Dutch word meaning "pirate." A filibuster is an attempt to block legislation by prolonged speaking. The idea behind the process of filibustering is that by taking up time and delaying the passage of a bill or the confirmation of a judicial nominee, the minority and the majority can come to a compromise. In the alternative, by holding out, the minority can also force the majority to withdraw the offending legislation or nominee.

When a senator embarks on a filibuster, he or she is not limited to discussing the relevant legislation or judicial nominee. He or she can speak about anything and everything. In the 1930s, Louisiana Senator Huey Long, a Democrat, recited Shakespeare and read recipes for 15 hours straight to block passage of legislation he felt was unfair to the poor.

The U.S. Supreme Court and the Road to Becoming a Justice

by Roberta K. Glassner, Esq.

John G. Roberts Jr. was recently sworn in as the 17th chief justice of the U.S. Supreme Court. As chief justice, Roberts, along with the other eight justices of the Court will interpret the law based on the rights, freedoms and protections set forth in the U.S. Constitution.

How did Chief Justice Roberts get to his place on the Court? Let's take a look at how the U.S. Supreme Court works and the road one takes to be appointed a U.S. Supreme Court justice.

U.S. Supreme Court finds a home

In 1790, the first session of the U.S. Supreme Court was held in the Merchants Exchange Building in New York City. Six justices, appointed by President George Washington, sat on that first Court with John Jay as chief justice. For many years the justices were required to "ride circuit," hearing cases twice a year in the different judicial districts of the country. The Court would later move to Philadelphia. When Washington, D.C. became the nation's capital, the Court met in various locations in that city. Finally, in 1935, the present Supreme Court building was completed, and it became the permanent home of the U.S. Supreme Court.

How many justices?

While the U.S. Constitution calls for the establishment of a U.S. Supreme Court, it does not specify how many

justices should sit on the Court. The U.S. Congress makes that determination.

The number of justices on the U.S. Supreme Court has changed six times. The first Court, under President Washington, consisted of six justices. Between 1807 and 1837, three more justices were added, bringing the total to nine. In 1863, during the Civil War, under President Abraham Lincoln, Congress voted to increase the Court to 10 members.

In 1866, after the Civil War, during Andrew Johnson's presidency, Congress passed legislation that reduced the number of justices to seven. The last change to the Court came in 1869 under President Ulysses S. Grant, when Congress raised the Court's size to its current number—nine. Several attempts since then to change the number of justices have been defeated.



Selecting a new justice

Article II, Section 2 of the U.S. Constitution gives the president the authority to appoint justices to the U.S. Supreme Court "with the advice and consent of the U.S. Senate." When a vacancy occurs on the U.S. Supreme Court, the president presents his staff with a list of possible candidates to fill the opening. The staff then conducts research into each candidate's experience, legal writings, speeches and personal background to determine the most qualified person. Once the president makes his choice, a written

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Pledging Allegiance: One Nation Under... What?

by Roberta K. Glassner, Esq. and Jodi L. Miller

In the summer of 2002, a California court declared that the Pledge of Allegiance, which is recited at the beginning of every school day in this country for close to half a century, was unconstitutional. This decision by the Ninth Circuit Court of Appeals stirred up a storm of anger and protest that still rages today.

The Origin of the Pledge

The original Pledge of Allegiance, written in 1892 by former Baptist minister Francis Bellamy, made no reference to God. Bellamy wrote the Pledge for this country's celebration of the 400th anniversary of Columbus' discovery of America. The Pledge of Allegiance was designed to be a patriotic oath commemorating, in Bellamy's words, "our national history... the Declaration of Independence... the Constitution... and the meaning of the Civil War..."

On Flag Day, June 14, 1954, which was at the height of the Cold War, the U.S. Congress added the phrase "under God" to distinguish the U.S. from what it called "godless Communism." At the time, some Americans opposed this newest addition, believing that it unnecessarily and unconstitutionally introduced religious belief into a purely patriotic expression.

Where the controversy began

Dr. Michael Newdow, an atheist and the father of a second-grader in a California public



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Pledging Allegiance CONTINUED FROM PAGE 1

school, did not want his daughter reciting the Pledge of Allegiance with the words "under God" in it. He filed a lawsuit against the state of California on the grounds that "under God" represents the government's endorsement of religious belief and has no place in public school. In his claim, Dr. Newdow asserted that his daughter is injured when forced to listen to her teacher lead a pledge that declares the existence of God when her father believes He does not exist.

In a 2-1 decision, a three-judge panel of the Ninth Circuit Court of Appeals determined that when the phrase "under God" is recited in a public school, it is a violation of the separation of church and state guaranteed by the establishment clause of the First Amendment to the U.S. Constitution. The establishment clause says, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof..."

Judge Alfred Goodwin of the Ninth Circuit Court of Appeals wrote in his **opinion**, "The establishment clause guarantees, at a minimum, that government may not **coerce** anyone to support or participate in religion or its exercise or otherwise act in a way which establishes a state religion or religious faith, or tends to do so."

After the ruling became the shot heard round the world, former Attorney General John Ashcroft asked for a review of the case by the entire 11-judge panel of the Ninth Circuit Court of Appeals. The court refused to reconsider the ruling but did amend its decision. Stopping short of calling the "under God" phrase unconstitutional, the amended decision applied only to public

schools, would allow the voluntary recitation of the phrase and would also allow recitation of the pledge in other official settings.

Taking it to the Supreme Court

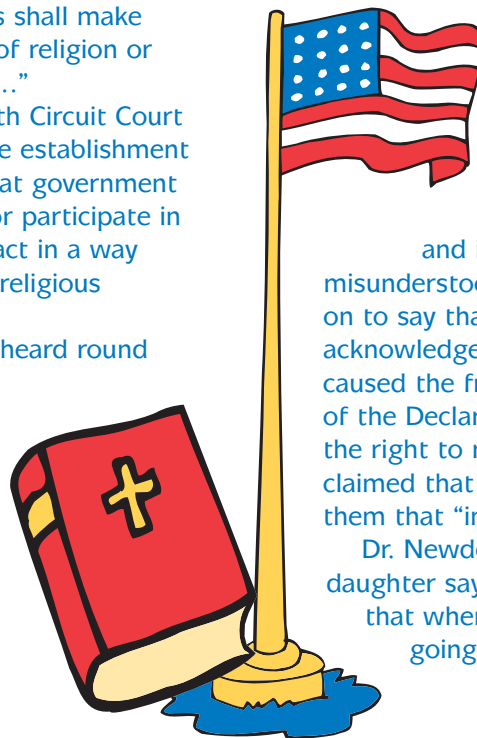
The case eventually made its way to the U.S. Supreme Court, where Dr. Newdow, who also holds a law degree, argued his case himself. Solicitor General Theodore B. Olson defended the constitutionality of the Pledge of Allegiance.

During oral arguments before the justices of the Supreme Court, it was suggested to Dr. Newdow that the "under God" phrase had over the years attained a civic, broader meaning and included virtually everyone.

"I don't think I can include "under God" to mean "no God," Dr. Newdow answered. "I deny the existence of God and government needs to stay out of this business altogether."

Solicitor General Olson argued the "under God" phrase in the Pledge did not rise to the level of religious expression and indicated that the Ninth Circuit Court misunderstood the Pledge of Allegiance. He went on to say that the phrase is a "civic and ceremonial acknowledgement of the indisputable historical fact that caused the framers of our Constitution and the signers of the Declaration of Independence to say that they had the right to revolt and start a new country." Olson claimed that the framers believed that God gave them that "inalienable right."

Dr. Newdow brought the argument back to his daughter saying, "As her father, I have a right to know that when she goes into the public schools she's not going to be told every morning to stand up, put



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What's the Matter with Our Motto?

Like the "under God" phrase in the Pledge of Allegiance, the United States' national motto, "In God We Trust," has come under fire from those who believe a push to place posters with the motto in all public schools violates the separation of church and state and is an attempt to bring religion into the schools.

Several states, most recently Pennsylvania, have introduced legislation, called the National Motto Display Act, that would allow school districts to display the national motto in colorful 11 x 14 inch posters suitable for framing. The driving force behind the movement is the American Family Association (AFA), a fundamentalist Christian organization, whose stated mission is to "equip citizens to change the culture to reflect Biblical truth and traditional family values." According to the *Pittsburgh Post-Gazette*, if a school district cannot afford the posters or cannot pay for them with taxpayer dollars, the AFA sometimes donates them.

"America has a rich Christian, and really religious heritage," Tim Wildmon, an officer of AFA, told CNN in 2002. "If the president of the United States can be sworn in by placing his hand on the Holy Bible, certainly kids can know what the national motto is."

History of national motto

"In God We Trust" was first inscribed on the two-cent coin in 1864 during the Civil War at the request of Salmon P. Chase, the secretary of the U.S. Treasury at the time. Chase was moved to do this by a letter he received from a Pennsylvania reverend asking for the recognition of "the Almighty God in some form on our coins." Eventually, "In God We Trust" was placed on all U.S. coins and in 1957 the motto first appeared on paper currency, after the U.S. Congress passed a law ordering it in 1955.

On July 30, 1956, Congress passed a law establishing "In God We Trust" as the official motto of the United States. This law did not repeal the United States' previous motto, *E Pluribus Unum*, a Latin phrase meaning "From Many, One."

Legal challenges

According to CNN, the use of "In God We Trust" has survived several federal court challenges, one by an appeals court in Denver. The U.S. Supreme Court has so far declined to hear a case regarding the national motto.

"It's been tested for its constitutionality in federal court," Michigan Congressman Stephen Ehardt told CNN in 2002. "It's secular. It's not a religious statement and it's something we should be proud of," he said.

Pennsylvania's legislation was referred to its Education Committee in March 2005, and while it may be the latest state to consider legislation, it is by no means the first. Michigan and Mississippi have laws in place and the Legislatures in South Carolina, Virginia, Mississippi, Ohio, Utah and Louisiana are all considering similar legislation.

In 2001, New Jersey Senator Leonard T. Connors Jr. introduced legislation that would "require the New Jersey Department of Education to provide every public school with either a durable poster or a framed copy of the national motto to be displayed in a prominent place within the school." The original legislation died in committee, however, Senator Connors reintroduced it in the 2004 legislative session. The bill was referred to the Senate Education Committee and, if not approved, will die December 31 with the end of the legislative calendar. Senator Connors, who believes the legislation will pass eventually, says the motto has nothing to do with church and has every intention of reintroducing the legislation in 2006 if it is not approved by December.

Stephen Latimer, a New Jersey constitutional law attorney, said that if the legislation were mandated it might violate the establishment clause of the U.S. Constitution, which prohibits the favoring of one religion over another. The way New Jersey's bill is currently written, however, it would not be a violation, Latimer said.

Although the American Civil Liberties Union has not formally challenged the law in any state, some chapters of the organization have spoken out. Most notably, Larry Spalding of the organization's Florida chapter who told *USA Today*, "This is no more than a means to get religion in the schools through the back door."

Regarding New Jersey's pending legislation, Deborah Jacobs, executive director of the ACLU-NJ, noted that a non-religious slogan that more fully represented the whole community might be a better choice to put in public schools.

"There are ways of expressing sentiment in public schools in terms of showing we are a nation united that might exclude less people," Jacobs said.

— Jodi L. Miller

nomination is sent to the Senate for its “advice and consent.”

Although the U.S. Constitution does not require experience as a judge or lawyer or any legal experience at all to qualify for appointment to the U.S. Supreme Court, all the justices in the history of the Court have had a legal background.

The framers of the U.S. Constitution, determined to prevent any president from creating a Court reflecting his own personal or political views, provided for shared power between the president and the Senate. Under this shared power, the Senate has the constitutional right to vote to accept or reject the person the president nominates. In addition, to assure the U.S. Supreme Court’s independence from political influences, the framers of the U.S. Constitution provided that justices of the Court serve for their lifetime or until they wish to retire.

The confirmation hearings

For the first week after the nomination, the nominee introduces him or herself to members of the Senate at informal meetings. Then the formal confirmation process begins.

The nominee is called to testify at length before the 18-member Senate Judiciary Committee. The Senators’ questions focus on the candidate’s personal and legal positions on controversial issues and prior rulings.

Then, before it votes on the nominee, the committee opens the hearings to give special interest groups an opportunity to express their support of, or opposition to, the candidate. In recent years, many of these groups have also run active campaigns on television and in the press for or against a nominee.

After all the questioning of the candidate has ended and the special interest groups have been heard, the Judiciary Committee votes to recommend or reject the nomination to the full Senate.

Advice and consent

Different views exist as to the role of the Senate in the “advice and consent” process. Some maintain that the Senate’s proper role is to confirm the president’s choice unless the nominee is clearly unqualified. Others believe that the Senate has the constitutional right to reject the candidate if it finds anything in his or her background, temperament, legal history or **ideology** that would affect the ability to decide cases strictly on the law, without prejudice or a predetermined position.

Once the review is completed, the Senate Judiciary Committee usually recommends the candidate to the full Senate, the Senate votes its approval and the new justice is seated on the Court. However, this isn’t always the case. Since 1789, the Senate has rejected 27 of the 148 Supreme Court nominations. When a nominee is rejected, the president names a new candidate and the process starts all over again.

Cases heard

Cases arrive at the U.S. Supreme Court, or High Court as it is sometimes called, only after they have been heard and ruled on in lower state and federal courts. If the **appeal** from a lower court ruling is accepted by the High Court, the justices make the final decision on the case and that decision becomes the law of the land.

The U.S. Supreme Court is not required to accept every appeal submitted to it. Each year, more than 6,500 civil and criminal appeals are filed with the U.S. Supreme Court, a number too overwhelming to be heard. The Court selects the

cases it will decide based on the importance of the constitutional issue involved. For example, controversial cases that affect the rights of all Americans, such as free speech, discrimination, privacy rights or criminal justice tend to reach the High Court.

Each year, between the first Monday in October and the end of June, the U.S. Supreme Court hears testimony and **adjudicates** approximately 82 cases. Before the justices enter the courtroom, each justice shakes hands with the other eight. The tradition of the “conference handshake” represents a shared commitment to the U.S. Constitution and the law despite differences of opinion in individual cases.

While the U.S. Constitution does not require the justices to explain their decisions in writing, the U.S. Supreme Court long ago elected to issue written opinions explaining and supporting their decisions. While one justice is appointed to write the **majority opinion** or the “opinion of the court,” each of the other eight justices may write separate opinions as well. Those who agree with the majority may add to the opinion, while those who do not agree may state their reasons in what is known as a **dissenting opinion**.

The opinion of the Supreme Court is printed and bound in a set of books that can be found in every lawyer’s library. The decision in a U.S. Supreme Court case is considered a **precedent**, which means that it is the law for every future case involving the same constitutional issue.

Judicial review

The U.S. Constitution is designed to provide and protect the balance between the government’s need to maintain an ordered society and a citizen’s individual right to freedom. The complex role of the U.S. Supreme Court is to protect that balance by reviewing laws within the meaning of constitutional protections. The process by which the justices determine whether laws conflict with the U.S. Constitution is known as “judicial review.”

Although judicial review is not a provision of the U.S. Constitution, both Alexander Hamilton and James Madison, two of the country’s original founders, wrote that judicial review was crucial to ensuring that rights protected by the U.S. Constitution would not be violated. To guarantee that laws are not passed for political reasons or simply to satisfy the demands of one group over another, the framers argued that a

neutral, independent judiciary should have the power to declare such laws unconstitutional.

With the 1803 case of *Marbury v. Madison*, the U.S. Supreme Court recognized that Article III of the U.S. Constitution granted the Court an “implied power” of judicial review. In this landmark case, the Court began to define what vesting “the judicial power” meant, with Chief

Justice John Marshall declaring that judicial review of acts of Congress was necessary to provide “checks and balances” on the legislative and executive branches of government.

For more than two centuries, justices of the U.S. Supreme Court have derived the prestige and authority from their ability to maintain their independence from the two other branches of government, as well as from the presidents who appointed them.

Reform proposals

Those who take issue with the power of the U.S. Supreme Court have proposed changes to it. Proposed reforms have included completely taking away the Court’s power to declare any law passed by Congress unconstitutional; requiring a

A Controversial Nominee

Although Chief Justice Roberts seemed to sail through the confirmation process, that is not always the case with Supreme Court nominees.

In 1987, President Ronald Reagan nominated Robert Bork, a federal appeals court judge, to fill the U.S. Supreme Court seat vacated by Associate Justice Lewis Powell. Judge Bork was well-known for his intelligence, legal experience and outspoken conservative views. He declared himself a “strict constructionist,” one who believes U.S. Supreme Court decisions must be based only on the law explicitly stated in the U.S. Constitution.

Judge Bork told the Judiciary Committee that the “original intent” of the founders, as written in the U.S. Constitution, is the law of the land. He expressed his disagreement with the “living Constitution” view of “activist” judges who interpret the provisions of the Constitution to make “new law” that meets changing conditions and new situations in society.

Robert Bork’s appearance before the Senate Judiciary Committee was the most heated, bitter and **partisan** confirmation hearing in the history of the U.S. Senate. While many senators agreed with Judge Bork, the majority found his views too inflexible. The committee did not recommend his appointment to the Senate and he was rejected by a full Senate vote of 42-58, the largest margin of defeat for any nominee.

— Roberta K. Glassner

unanimous vote by all nine justices to declare such laws unconstitutional; limiting a justice’s term to 10 years; and requiring that justices retire at the age of 70. None of these reforms have been enacted. In fact, it has been 130 years since a proposed reform of the U.S. Supreme Court has passed.

Two openings on the Court

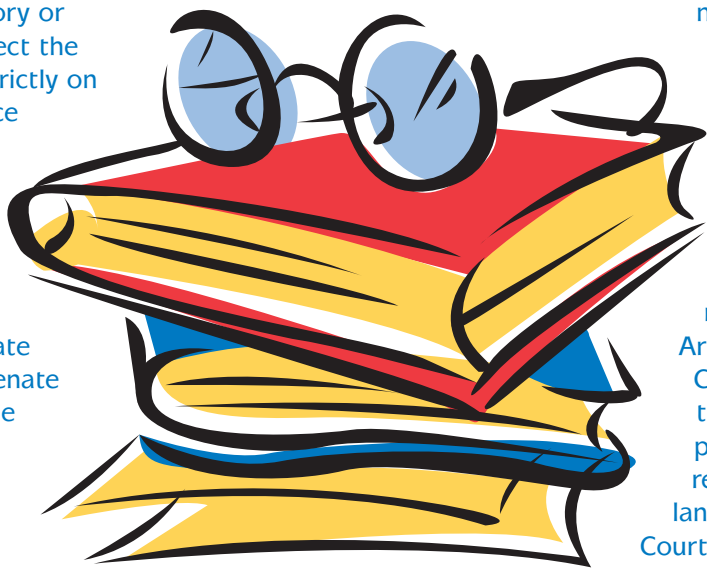
In June, at the end of the 2005 term, Associate Justice Sandra Day O’Connor, the first woman justice on the U.S. Supreme Court, announced her retirement after 24 years on the bench. Two months later, in August, the chief justice of the Court, William Rehnquist, died. Chief Justice Rehnquist served on the Court for 32 years, 20 years as chief justice.

This is only the second time in the history of the U.S. Supreme Court that two vacancies have occurred at the same time. These are the first openings on the Court in 11 years, the longest in the Court’s history.

With Justice O’Connor’s retirement and the passing of Chief Justice Rehnquist, a nominating process for their replacements was set in motion that is at once historical, legal and political. It is a process that involves all three branches of the government — executive, legislative and judicial.

In July 2005, the process began with President George Bush’s nomination of Roberts, a federal appeals court judge, to fill the seat vacated by Justice O’Connor and become the 109th justice to sit on the Court. Following Chief Justice Rehnquist’s death, the president elevated Roberts’ nomination from associate justice to chief justice. Chief Justice Roberts was confirmed by a Senate vote of 78-22. He took his seat as chief justice on October 3, 2005, the day the U.S. Supreme Court opened its session.

The nomination process began again on that day with President Bush’s nomination of White House Counsel Harriet Miers to fill Justice O’Connor’s seat on the Court. Only time will tell if, and when Miers will be confirmed and begin her tenure with the Court.



When the Minority Needs to Be Heard CONTINUED FROM PAGE 1

Senator Strom Thurmond of South Carolina, a Republican, who still holds the Senate record for an individual speech, filibustered against the Civil Rights Act of 1957 for 24 hours and 18 minutes. Other Southern senators picked up where he left off and continued to filibuster for a total of 74 days, another Senate record. While the filibuster went on, all other business in the Senate came to a complete stop until, ultimately, a compromise was reached and the Civil Rights Act was passed.

Historically, the filibuster has played a crucial role in maintaining the system of checks and balances in government and between the minority and majority parties in the Senate. This dramatic form of protest, the last resort of an opposing minority, has long been considered essential to avoid the dangers of one-party control.

Ending a filibuster

Those in the majority party, with enough senators to win a vote, dread having to sit through a filibuster and want it over as quickly as possible or, better yet, not to take place at all. Their objective is to put their bill or nominee before the full Senate for an up or down vote, requiring a simple majority of 51 votes, which they know can be obtained.

In 1917, at President Woodrow Wilson's suggestion, the Senate passed a rule where a two-thirds vote of the Senate could end a filibuster. In other words a senator can call for a full vote of the Senate and if 67 (two-thirds) senators agree to end the filibuster, the bill or judicial nomination would go to the Senate floor for a simple up or down vote. This formal procedure is called **cloture**. In 1975, the rule was amended to require only three-fifths of the Senate or 60 senators.

If there are fewer than 60 senators in the majority party, a successful cloture vote is not likely unless members of the opposing party join the majority and vote for a filibuster's end. If a cloture vote is taken and fails, the majority party is usually faced with withdrawing the candidate or putting off the bill until another session rather than have the filibuster continue.

The nuclear option

Faced with the difficulty of winning a cloture vote, the present Republican Party, with its majority of 55 members, has devised a new course of action to prevent a filibuster on judicial nominees. According to *The Washington Post*, the plan, labeled "nuclear option," involves a Republican senator making a motion to the presiding officer of the Senate, Vice President Dick Cheney, declaring that Rule XXII, which permits a

filibuster against a judicial nominee, is unconstitutional. A simple majority of 51 would be needed to approve the vice president's ruling and the right to filibuster would be ended.

This drastic measure is called the nuclear option because it would not only permanently eliminate the minority's right to filibuster a judicial nominee, it would also virtually guarantee that the majority party would have its way in every vote. Every judicial nominee could be approved by a simple majority of 51 senators, no matter how strongly opposed by members of the minority.

While some people may say that the majority should rule, and in some cases it does, our founding fathers found a way to give the minority a voice in government.

Pledging Allegiance CONTINUED FROM PAGE 2

her hand over her heart, and say your father is wrong, which is what she's told."

In his closing statement, Dr. Newdow spoke of the principle of separation of church and state. "I'm hoping this Court will uphold this principle so that we can finally go back and have every American want to stand up, face the flag, place their hand over their heart and pledge to one nation, indivisible, not divided by religion, with liberty and justice for all."

What the Supreme Court said

In considering the case, the justices questioned Dr. Newdow about whether he had legal standing to bring the lawsuit. A parent does have the right to bring a lawsuit on behalf of his or her child; however, Dr. Newdow, who never married his daughter's mother, does not have legal custody of the child. In addition, the child's mother told the Court that her daughter does not have a problem with reciting the "under God" phrase in the Pledge and indicated that she is raising her daughter with a religious upbringing.

The Court ultimately decided that Dr. Newdow did not have sufficient legal standing to bring the lawsuit. As a result, the Court dismissed the case without an official ruling of whether the Pledge of Allegiance, as written now, is constitutional or not. Because a court does not have **jurisdiction** in a case where the **plaintiff** lacks legal standing, the decision of the Ninth Circuit Court of Appeals is also invalid.

While all eight justices (one justice had recused or disqualified himself from the case) voted to **reverse** the Ninth Circuit's decision, three of the justices said they would have allowed Dr. Newdow to sue on his daughter's behalf but would have ruled against him and upheld the Pledge of Allegiance as written.

"Reciting the Pledge, or listening to others recite it, is a patriotic exercise, not a religious one," The late Chief Justice William Rehnquist said. "Participants promise **fidelity** to our flag and our nation, not to any particular God, faith or church," he said. Justices Sandra Day O'Connor and Clarence Thomas agreed with him.

After the Court's ruling, Dr. Newdow told CNN, "This issue is not about whether or not people are forced to say anything. The issue is whether or not government is taking a position," he contended. "The establishment clause, unlike any other clause in the Bill of Rights, talks only about government. Government is not allowed to take a position with regard to religion."

A country divided

The constitutionality of the Pledge of Allegiance sparked a national debate. The attorneys general of all 50 states, the National School Boards Association and the National Education Association all submitted **briefs** to the Court in support of the Pledge as written.

The Christian Legal Society, comprised of lawyers, judges and professors, also submitted a brief supporting the "under God" phrase. The organization stated in its

brief that the phrase served as a reminder that "government is not the highest authority in human affairs" and that "inalienable rights come from God."

Jay Sekulow, chief counsel for the American Center for Law and Justice, which advocates for religious rights, told *The New York Times* after the Court's decision came down, "the Court has removed a dark cloud that has been hanging over one of the nation's most important and cherished traditions—the ability of students across the nation to acknowledge the fact that our freedoms in this country come from God, not the government."

A group of 32 Christian and Jewish clergy members submitted a brief in opposition of the Pledge. Their brief states that if schoolchildren are supposed to recite the words, "under God" with no meaning behind the words, then the government essentially "asks millions of children to take the name of the Lord in vain."

In response to the Court's ultimate decision in the case, Rev. Barry Lynn, executive director of Americans United for the Separation of Church and State, expressed his disappointment to *The New York Times* saying, "Students should not feel compelled by school officials to subscribe to a particular religious belief in order to show love of country."

Where the issue stands

So, does the establishment clause include atheists? Frank Askin, a professor at Rutgers Law School—Newark and director of the Rutgers Constitutional Litigation Clinic, believes it does, saying not only does the establishment clause prohibit government from favoring one religion over another religion, it also prohibits the favoring of religion over non-religion.

Hackensack attorney Stephen Latimer, who practices constitutional law, said he thinks the "under God" phrase is unconstitutional because it "chooses a particular form of belief over others" and does not allow for the inclusion of other religions such as Buddhism or Hinduism. Latimer further stated that forcing someone who does not believe in the existence of God at all to acknowledge God would be a violation of the establishment clause.

When his case was dismissed in June 2004, Dr. Newdow vowed to re-file and eventually bring the case back to the U.S. Supreme Court. On January 3, 2005, he filed a lawsuit in a Sacramento federal court on behalf of three parents and their children. Dr. Newdow again tried the case. In September, a federal judge ruled that the "under God" phrase in the Pledge is unconstitutional, claiming he was bound by the Ninth Circuit Court of Appeals ruling in 2002. The issue will likely be in the courts for years as the U.S. Justice Department is continuing to fight the ruling.

Askin and Latimer do not think Dr. Newdow has much of a chance if the case goes to the U.S. Supreme Court, both believing that the Court will rule against him and the other plaintiffs.



adjudicate — to act as a judge.

appeal — legal proceeding where a case is brought from a lower court to a higher court to be heard.

atheist — a person who does not believe there is a God.

brief — a formal, written summary of relevant facts submitted to a court of law in a legal case.

cloture — a procedure to stop debate in a legislative body so that a vote can be taken.

coerce — to influence another person's choices in a negative way.

dissenting opinion — a statement written by a judge that disagrees with the opinion reached by the majority of his or her colleagues.

fidelity — faithfulness.

ideology — a way of thinking that is characteristic of one political theory.

jurisdiction — authority to interpret or apply the law.

majority opinion — a statement written by a judge that reflects the opinion reached by the majority of his or her colleagues.

opinion — a document containing the reasons why a decision was rendered.

partisan — someone who supports a party or cause with great devotion.

plaintiff — person or persons bringing a civil lawsuit against another person or entity.

precedent — a legal case that will serve as a model for any future case dealing with the same issues.

reverse — to void or change a decision of a lower court.