SJR

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ALASKA STATE SENATE

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SJR 8 Sponsor Statement

On February 28, 2003 the Ninth Circuit Court of Appeals upheld its controversial June 2002 decision declaring a portion of the Pledge of Allegiance unconstitutional. This ruling exemplifies the relational disconnect the Ninth Circuit Court has with many Western States including Alaska.

On February 28, 2003 Senate Joint Resolution 8 — calling upon Congress to divide the Ninth Circuit Court — was read across the floor of the Alaska State Senate. This action is necessitated for a variety of reasons not the least of which includes the vast geographical *and* philosophical distance separating Alaska from the San Francisco based Court.

The Ninth Circuit Court oversees a population — and a concomitant caseload — far beyond that which is reasonably manageable. In total, there are *eleven* Circuit Courts of Appeal throughout the country, yet the Ninth Circuit Court oversees nearly *20%* of the U.S. population. In other words, the Ninth Circuit is *twice* the ideal size. This size disparity is cited as the principal reason for the Ninth Circuit Court's relatively high reversal record in cases heard by the U.S. Supreme Court.

SJR 8 endorses legislation introduced in the 106th and 107th Congress by Senators Ted Stevens and Frank Murkowski that would split the Ninth Circuit Court in two. The reconfigured Ninth would encompass Arizona, California and Nevada. The new Twelfth Circuit Court would take in Alaska, Hawaii, Idaho, Montana, Nevada, Oregon and Washington (as well as the Northern Marianas and Guam). Similar legislation was also recently introduced in the 108th Congress by Senator Lisa Murkowski.

SJR 8 simply seeks to accomplish two objectives: (1) correct a considerable imbalance in the Ninth Circuit Courts' caseload, and; (2) provide the disparate regions falling within the Ninth Circuit Court's current purview with a better informed panel of Judges. These objectives are best accomplished by splitting the Ninth Circuit Court. The benefit accruing to Alaska of a smaller, closer Twelfth Circuit Court is self evident and undoubtedly long overdue.

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ate.

It seems race manager Jack Niggemeyer and executive director Stan Hooley have dealt with as many challenges before the race as the 64 mushers will encounter during it.

This year's restart was moved to Fairbanks from the Wasilla-Willow area because of a lack of snow created by unseasonably warm weather in Southcentral Alaska, necessitating a last-minute scramble by organizers. The restart begins at 10 a.m. Monday on the Chena River at Pike's Landing.

"Obviously, when you have to make a decision of this magnitude, sleep becomes a forgotten memory at this time of the year," Niggemeyer said from his office at the Iditarod headquarters in Wasilla.

For Iditarod officials, getting good rest these days has been as difficult as a bad singer getting to the finals of American Idol. Niggemeyer admits

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Al Grillo/The Associated

SCRAPING THE BOTTOM—City of Anchorage snow removal perso gather snow in Anchorage Thursday for the ceremonial start of the 2003 tarod Trail Sled Dog Race. Due to the warm weather and the lack of sno Anchorage, the Iditarod Trail Committee has been gathering snow to down along the 11 mile race route through Anchorage.

Appeals court upholds ban on 'under God' in pledge

The New York Times

The federal appeals court that outraged much of the country last summer when it declared the Pledge of Allegiance unconstitutional because of the words "under God" refused Friday to reconsider that ruling.

At least until the U.S. Supreme Court takes up the case, which legal experts consider highly likely, children in public schools in the nine Western states that the appeals court covers will be barred from reciting the full pledge.

Over the vehement objections of nine of its 24 judges, the appeals court, the U.S. Court of Appeals for the 9th Circuit, in San Francisco, let stand a slightly modified version of the 2-1 decision that a three-judge panel of that court handed down in June. The panel said then that the phrase "under God" in the pledge violated the separation of church and state mandated by the Constitution. On Friday, the panel shifted the focus to public school decisions that allow the voluntary recitation of the words.

The June ruling was almost immediately stayed, pending a review and decision by the full court. The decision on Friday surprised legal experts. Some experts speculated that some of the judges had voted against rehear-

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Iraq to begin destroying missiles

The Associated Press

BAGHDAD, Iraq—A top U.N. weapons inspector met with an Iraqi general Saturday to work out final details of Iraq's destruction of its Al Samoud 2 missile program, expected to begin within hours.

The dismantling of the finned white rockets was seen as a key test of Baghdad's resolve to disarm and avert a U.S.-led war. Chief U.N. weapons inspector Hans Blix, who ordered the missiles' destruction, praised the Iraqi decision as "a very significant piece of real disarmament."

Iraqi sources in the capital, speaking on condition of anonymity, said destruction of the missiles would start today. Predictably, the 11th-hour concession was greeted with celebration by governments opposed to war and skepticism by those advocating it.

In Washington, White House spokesman Ari Fleischer dismissed the idea that the Iraqi move reflected progress. "This is the deception the president predicted," he said Friday.

He said President Bush expected Iraq to

See IRAQ, Page A9

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PLEDGE: Judges, federal officials expect Supreme Court to take up issue

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ing the case simply to hasten a Supreme Court review.

Attorney General John Ashcroft indicated that the government would ask the Supreme Court to review the case. "The Justice Department," Ashcroft said in a statement, "will spare no effort to preserve the rights of all our citizens to pledge allegiance to the American flag. We will defend the ability of Americans to declare their patriotism through the time-honored tradition of voluntarily reciting the pledge."

Lawyers for the states and the federal government did not respond to questions about asking the Supreme Court to stay the decision, which formally takes effect next Friday. The appeals court covers Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.

Gov. Gray Davis of California said: "At the start of every court session, the Supreme Court invokes God's blessing. So does the Senate and the House of Representatives. Surely, the Supreme Court will permit schoolchildren to invoke God's name while reciting the Pledge of Allegiance."

Eugene Volokh, a professor of law at the University of California at Los Angeles, said that "the Supreme Court will almost certainly agree to hear the case," partly because "this is a hot button issue in which a majority of the justices probably disagree with the panel" and partly because of a disagreement between two appeals courts. The 9th Circuit decision is at odds with a decision in 1992 by the U.S. Court of Appeals for the 7th Circuit, in Chicago.

The 9th Circuit panel that rendered the pledge ruling in June issued an amended version of that decision on Friday. Like the earlier decision, the vote was 2-1. The decision now stops short of declaring the law passed by Congress in 1954 that added the words "under God" to the pledge unconstitutional. The panel focuses instead on public school decisions that allow voluntary recitations of the words.

The distinction makes the decision less sweeping. It may now not apply by implication to reciting the pledge in other official settings or to similar phrases in other laws and governmental statements.

The panel majority sided with the plaintiff, Michael A. Newdow of Sacramento, an atheist who said his daughter was injured when forced to listen to teachers lead a pledge that includes the assertion that there is a God. Newdow did not respond to requests for comment.

Denials of petitions for full-court rehearings are usually dry one- or two-sentence affairs. That was not so on Friday.

Judge Diarmuid F. O'Scannlain, writing for six judges, called the very wror ing the simply no two-judge as a mat precedent wrong be conflict w circuit, ar common s

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Judge Diarmuid F. O'Scannlain, writing for six judges, called the panel decision "wrong, very wrong—wrong because reciting the Pledge of Allegiance is simply not a 'religious act' as the two-judge majority asserts, wrong as a matter of Supreme Court precedent properly understood, wrong because it set up a direct conflict with the law of another circuit, and wrong as a matter of common sense.

"If reciting the pledge is truly 'a religious act' in violation of the Establishment Clause, then so is the recitation of the Constitution itself, the Declaration of Independence, the Gettysburg Address, the National Motto or the singing of the national anthem," a verse of which says, 'And this our motto: In God is our trust.'

The Constitution refers to the "year of our Lord," and the National Motto is "In God we trust."

Judge Stephen Reinhardt, who along with Alfred T. Goodwin, was one of the two judges in the original majority, was the sole judge who explained his vote against rehearing. Such explanations are uncommon, and Reinhardt said he wrote because he felt "compelled to discuss a disturbingly wrongheaded approach to constitutional law manifested in the dissent authored by Judge O'Scannlain" that noted the exceptional "public and political reaction" to the original decision.

"We may not—we must not—allow public sentiment or outcry to guide our decisions," Reinhardt wrote. "Any suggestion, whenever or wherever made, that federal judges should be encouraged by the approval of the majority or deterred by popular disfavor is fundamentally inconsistent with the Constitution and must be firmly rejected."

O'Scannlain responded that his opinion had "nothing to do with bending to the will of an outraged populace and everything to do with the fact that Judge Goodwin and Judge Reinhardt misinterpret the Constitution and 40 years of Supreme Court precedent. That most people understand this makes the decision no less wrong."

O'Scannlain conceded, however, that Supreme Court precedent in this area could be "fractured and incoherent." Legal experts on both sides have said the original decision was a careful and coherent work of judicial craftsmanship.

Supreme Court decisions have prohibited many forms of religious observance in public

gious observance in public schools, including prayers, Bible readings and minutes of silence. O'Scannlain said the pledge was at bottom not about religion.

"Most assuredly," he wrote, "to pledge allegiance to flag and country is a patriotic act. After the public and political reaction last summer, it is difficult to believe that anyone can continue to think otherwise."

A number of Supreme Court decisions have indicated that the pledge is constitutional. The panel's decision said that those statements were observations made in passing, points that lawyers call dicta, and that they did not bind lower courts.

Legal experts said the 15 judges who voted not to rehear the case might have done so for any number of reasons, including agreeing with the original decision.

"There is a good argument that the 9th Circuit's ruling is correct under United States Supreme Court case law, which is unclear," said Howard J. Bashman of Philadelphia, a specialist in appellate litigation.

The judges may have believed that case was not exceptionally important, the showing required by the rules that seek to discourage petitions for rehearings by the full court.

Four judges, including one who also joined O'Scainlann's decision, would have granted the rehearing not on the ground that it was necessarily wrong, but because, as Judge M. Margaret McKeown said, "The recitation of the Pledge of Allegiance by schoolchildren presents a constitutional question of exceptional importance."

They may have been wary of the makeup of the 11-judge panel that would rehear the case. The 9th Circuit is alone among the federal appeals courts in not having every active judge participate in so-called en banc, or full court, rehearings.

Some judges may have just wanted to hasten what they viewed as the inevitable Supreme Court review.

"You know this has the Supreme Court written all over it," Volokh said. "So let them figure it out."

OPINI

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3/6/03

FAIRBANKS
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Columnist

ROD BOYCE
Assistant Managing Editor

Please, God, split the 9th Circuit

If there was any doubt that Alaska needed to be separated from the exceptionally liberal, San Francisco-based (need we say more?) 9th Circuit, consider the fiasco of the court's ruling that it is unconstitutional for students to recite the Pledge of Allegiance in public schools.

Although the court on Tuesday temporarily suspended its ruling, which stated the words "under God" in the pledge amount to a government endorsement of religion, the court's general tenor does not match that of Alaska. The 9th Circuit has jurisdiction over nine Western states, including Alaska.

There are many other reasons, of a more practical and less political nature, to split the 9th Circuit into two or even three additional appellate courts, however.

The court consists of 28 judges and is by far the nation's largest appellate circuit, with jurisdiction over one-fifth of the U.S. population. The number of cases the 9th Circuit accepts each year does not allow each judge sufficient time to analyze rulings of the court's three-judge panels, from which most rulings stem. That leads to inconsistency and a propensity, more so than with other circuit courts, to have rulings overturned by the U.S. Supreme Court.

From Alaska's interest, the court is so large that judges cannot become as familiar as we would like with laws that affect our state. The Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act, for example, are complex and controversial laws that touch on many facets of Alaska life. A smaller circuit court would allow judges to visit the state more often.

Creating additional circuits out of the 9th Circuit is not a new idea. Nor is the general concept of dividing Circuit Courts: In 1980 the 5th Circuit, because of its size, was broken apart to create the 11th Circuit.

The idea for remaking the 9th Circuit is one that could be gaining momentum after years of struggle. U.S. Sen. Lisa Murkowski said this week that she will introduce legislation to split the 9th Circuit, and the state Legislature will consider a resolution by Fairbanks Sen. Ralph Seekins calling for the court's breakup.

We rule in favor of both.

Art enhanc

Quick, name the first 10 things that come to mind when I say Fairbanks arts. Jo Scott, June Rogers, Peggy Ferguson, the University of Alaska Museum, Fairbanks Drama, concert and symphony associations, New Horizons Gallery, Summer Music Festival, Denali Bar'k.

Denali Bank?

Yes. Last year the bank won the first ever Business in the Arts Award for its extraordinary support of Fairbanks' cultural community.

This award is presented by the Fairbanks Business Committee for the Arts, in partnership with the national Business Committee for the Arts and the Greater Fairbanks Chamber of Commerce.

Arts often suffer from a narrow focus on the aesthetic and cultural. However, Fairbanks arts are also a vital part of our

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