

and to its reputation as the finest federal appellate court in the country.

More recently, just six years ago in 1992, President George Bush appointed Judge Morris Arnold to the United States Court of Appeals for the Sixth Circuit, where he joined his brother Judge Richard Arnold on that court. In our confirmation proceedings, a number of Senators commented favorably on the fact that Judge Arnold was joining his distinguished brother.

When it was a brother being nominated by a Republican President, the familial relationship was seen as a plus, a benefit for the public. Now that we have a Democratic President nominating a son to join a bench that has included his mother, a new danger of possible appearance of conflict of interest is being conjured up as an excuse to delay and oppose confirmation of a distinguished scholar and decent person.

I worry that we are raising something that we don't need to raise. I realize this affects Professor Fletcher's appointment. But I think we may have legislated beyond where we need to legislate.

There are problems with the appointment of judges to the federal judiciary, but nepotism in the appointment of judges does not appear to be one of them. After all, it is the President who nominates and the Senate that consents. If we really wanted to do something about the evils of nepotism, we would prohibit Presidents from nominating their relatives or the Senate from confirming theirs. Other judges, relatives or not, do not have a role in the appointment process.

The bigger problem with respect to the judiciary is the assault on the judiciary by the Republican majority and its unwillingness to work to fill long-standing vacancies with the qualified people being nominated by the President. Professor Fletcher's nomination has been a casualty of the Republican majority's efforts. Forty-one months and two confirmation hearings have not been enough time and examination to bring the Fletcher nomination to a vote.

Professor Fletcher is a fine person and an outstanding nominee has had to endure years of delay and demagoguery as some choose to play politics with our independent judiciary. The Ninth Circuit continues to function with multiple vacancies among its authorized judgeships, although we have five nominees to the Ninth Circuit pending before the Senate for periods ranging from four to 41 months. Two await hearings, one awaits a Committee vote, and two have been on the Senate calendar awaiting final action for many months.

This is too reminiscent of the government shutdown only a couple of years ago and the numerous times of late when the Republican congressional leadership has recessed without completing work on emergency supplemental and disaster relief legislation, on the federal budget, campaign fi-

nance reform, comprehensive tobacco legislation, the patient bill of rights and HMO reform.

In his most recent Report on the Judiciary the Chief Justice of the United States Supreme Court warned that vacancies would harm the administration of justice. The Chief Justice of the United States Supreme Court pointedly declared: "Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary."

Once this bill is acted upon by the Senate, the Senate will finally be allowed to turn its attention to the long-standing nomination of Professor Fletcher. I have said from the outset of Senator KYL's effort that I would not hold up consideration of his bill but that I wanted an opportunity to note my opposition to it and to vote against it. Indeed, it was Senator KYL who held his bill over for a week before it was considered before the Judiciary Committee.

Despite the Committee reporting of the bill on May 21, 1998, the majority did not propose consideration of S. 1892 until Monday of this week, October 5, 1998. I responded without delay that I was prepared, as I had been all along, to enter into a short time agreement to be followed by a vote on the bill. Consistent with that undertaking I have noted my opposition and am prepared to vote.

Madam President, I am willing to yield the remainder of the time and go to a vote.

Mr. KYL. Madam President, I am happy to yield the remainder of my time and am prepared to vote.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 1892) was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 1892

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION ON CLOSELY RELATED PERSONS SERVING AS FEDERAL JUDGES ON THE SAME COURT.

(a) IN GENERAL.—Section 458 of title 28, United States Code, is amended—

(1) by inserting "(a)(1)" before "No person"; and

(2) by adding at the end the following:

"(2) With respect to the appointment of a judge of a court exercising judicial power under article III of the United States Constitution (other than the Supreme Court), subsection (b) shall apply in lieu of this subsection.

"(b)(1) In this subsection, the term—

"(A) 'same court' means—

"(i) in the case of a district court, the court of a single judicial district; and

"(ii) in the case of a court of appeals, the court of appeals of a single circuit; and

"(B) 'member'—

"(i) means an active judge or a judge retired in senior status under section 371(b); and

"(ii) shall not include a retired judge, except as described under clause (i).

"(2) No person may be appointed to the position of judge of a court exercising judicial power under article III of the United States Constitution (other than the Supreme Court) who is related by affinity or consanguinity within the degree of first cousin to any judge who is a member of the same court."

(b) EFFECTIVE DATE.—This Act shall take effect on the date of enactment of this Act and shall apply only to any individual whose nomination is submitted to the Senate on or after such date.

Mr. KYL. Madam President, I move to reconsider the vote.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. SNOWE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. AL-LARD). Without objection, it is so ordered.

SECTION 371 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

Mr. GRASSLEY. Mr. President, I would like to take a moment to clarify one section of the Strom Thurmond National Defense Authorization Act with my colleague, Senator THURMOND.

I want to clarify further the intent of the language in section 371. This section deals with the ability of the children of U.S. Customs employees living in Puerto Rico to attend the Department of Defense school in Puerto Rico. It is my understanding that the Customs Service will not be required to reimburse the Department of Defense for the cost of dependents attending the DOD school in Puerto Rico. Is this the Senator's understanding?

Mr. THURMOND. I appreciate the opportunity to clarify the intent of this provision. The Conference Report authorizes children of Customs Service employees to attend the Department of Defense school in Puerto Rico during the period of their assignment in Puerto Rico. Our intent was to remove the five-year limit on the eligibility for children of non-Department of Defense personnel to attend the DOD school in Puerto Rico since Customs employees are routinely stationed in locations like Puerto Rico longer than five years. The provision does not require the Customs Service to pay tuition costs for these children to attend the DOD school; however, the Secretary of Defense may work with the Secretary of the Treasury to provide reimbursement for the tuition costs for children of Customs Service employees.

Mr. GRASSLEY. That was my understanding as well. I would like to make one additional point which I believe

you just made in your comments. I understand that the intention of the Conference was that the children of all Customs Service employees would be eligible to attend the DOD school in Puerto Rico. The Conferees did not intend to limit this eligibility to a single category of Customs Service employee. The Statement of Managers language in the Conference Report refers to Customs Agents. Some may interpret this to mean that only children of agents were eligible to attend the DOD school.

Mr. THURMOND. The Senator is correct in pointing this out. The term "agent" in the Statement of Managers is not used in the technical sense, but was intended to be a generic reference to all Customs Service employees stationed in Puerto Rico.

Mr. GRASSLEY. I thank my colleague for clarifying the intent of this provision.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, October 5, 1998, the federal debt stood at \$5,527,218,225,445.49 (Five trillion, five hundred twenty-seven billion, two hundred eighteen million, two hundred twenty-five thousand, four hundred forty-five dollars and forty-nine cents).

Five years ago, October 5, 1993, the federal debt stood at \$4,407,913,000,000 (Four trillion, four hundred seven billion, nine hundred thirteen million).

Ten years ago, October 5, 1988, the federal debt stood at \$2,621,612,000,000 (Two trillion, six hundred twenty-one billion, six hundred twelve million).

Fifteen years ago, October 5, 1983, the federal debt stood at \$1,385,519,000,000 (One trillion, three hundred eighty-five billion, five hundred nineteen million).

Twenty-five years ago, October 5, 1973, the federal debt stood at \$458,006,000,000 (Four hundred fifty-eight billion, six million) which reflects a debt increase of more than \$5 trillion—\$5,069,212,225,445.49 (Five trillion, sixty-nine billion, two hundred twelve million, two hundred twenty-five thousand, four hundred forty-five dollars and forty-nine cents) during the past 25 years.

NATIONAL HISTORIC SITE STUDY ACT OF 1998

Mr. CAMPBELL. Mr. President, Tuesday, October 6, 1998, will always hold a spot dear to my heart. I hope that today will also be dear to the hearts of the Cheyenne and Arapaho people, dear to Coloradans, and dear to Americans everywhere.

Today, S. 1695, the Sand Creek Massacre National Historic Site Study Act of 1998, a bill I was proud to introduce, was signed into law at a special White House ceremony. Under this new law, our nation takes a major step toward honoring the memory of the many innocent Cheyenne and Arapaho people massacred there by instructing the National Park Service to locate the site

of the Sand Creek Massacre once and for all.

Somewhere along the banks of Sand Creek in Southeastern Colorado is a killing field where many innocent Cheyenne and Arapaho, many of my ancestors, fell on the cold morning of November 29, 1864. On that day, in the month known by the Cheyenne and Arapaho people as the Month of the Freezing Moon, this ground was sanctified when the blood of hundreds of innocent Cheyenne and Arapaho women, children and elderly noncombatants was needlessly and brutally spilt.

Once this sacred ground is located, I hope it will be acquired and preserved with honor and dignity and in a way that takes into account the concerns of the Cheyenne and Arapaho decedents of those who died there. This ground should also be open to all people as a reminder of the national tragedy that occurred at Sand Creek.

On this special day, I would like to take a moment to thank a few people who helped S. 1695 become law. I want to thank my colleague from Colorado, Congressman BOB SCHAFFER, who introduced the companion bill and shepherded this legislation through the House of Representatives. I also want to thank Senator CRAIG THOMAS, who as the Chairman of the National Parks Subcommittee, was gracious and helpful in getting this bill through the Senate.

I especially want to thank my friends William Walksalong, Steve Brady and Laird Cometsavah, who all spoke with such eloquence as witnesses during the March 24th, 1998, hearing on S. 1695, that many in the room, including myself, were deeply moved. I also want to thank LaForce Lonebear who sent in his testimony even though he could not attend the hearing. Finally, I want to thank David Halaas of the Colorado State Historical Society and Roger Walke of the Congressional Research Service for their dedication along the way.

Many of these and other friends joined me at the White House earlier today as S. 1695 was signed into law.

Finally, on this occasion I want to pay a long overdue tribute to one young Coloradan, Captain Silas S. Soule, whose actions over one hundred and thirty years ago saved many innocent Cheyenne and Arapaho lives on that fateful day at Sand Creek.

When Captain Soule, who was under Colonel Chivington's command, heard of Chivington's plan to attack a peaceful Cheyenne and Arapaho winter encampment at Sand Creek, he vigorously tried to persuade Chivington to abandon the plan. However, Colonel Chivington, who was known to say "Nits make Lice" as a justification for killing innocent Cheyenne and Arapaho women and children, could not be dissuaded.

When Chivington ordered his men to attack the peaceful Sand Creek encampment, the vast majority of which were women, children, and elderly non-

combatants, Captain Soule steadfastly refused to order his Company to open fire. Captain Soule's refusal allowed many, perhaps hundreds, of innocent Cheyenne and Arapaho to flee the bloody killing field through his Company's line.

While the Sand Creek Massacre was at first hailed as a great victory, Captain Soule was determined to make the horrific truth of the massacre known. Even though he was jailed, intimidated, threatened, and even shot at, Soule refused to compromise himself and made his voice heard through reports that reached all the way from Colorado to Washington, and even to the floor of the U.S. Senate. Even with the bloody carnage of the Civil War, the brutal atrocities at Sand Creek shocked the nation.

During hearings in Denver, Captain Soule's integrity and unwavering testimony turned the tide against the once popular Chivington and the other men who participated in the massacre and mutilations at Sand Creek. Captain Soule fully realized that telling the truth about the massacre could cost him his life, even telling a good friend that he fully expected to be killed for his testimony. He was right. Walking home with his new bride a short time later, Silas Soule was ambushed and shot in the head by an assassin who had participated in the Sand Creek Massacre. Silas Soule's funeral, held just a few weeks after his wedding, was one of the most attended in Denver up until that time.

While Captain Silas Soule's name has largely faded into history, he stands out as one of the few bright rays of light in the moral darkness that surrounds the Sand Creek Massacre. He should be remembered.

Thank you, Mr. President. I yield the floor.

MESSAGES FROM THE HOUSE

At 11:55 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 563. An act to establish a toll free number in the Department of Commerce to assist consumers in determining if products are American-made.

H.R. 633. An act to amend the Foreign Service Act of 1980 to provide that the annuities of certain special agents and security personnel of the Department of State be computed in the same way as applies generally with respect to Federal law enforcement officers, and for other purposes.

H.R. 1756. An act to amend chapter 53 of title 31, United States Code, to require the development and implementation by the Secretary of the Treasury of a national money laundering and related financial crimes strategy to combat money laundering and related financial crimes, and for other purposes.

H.R. 1833. An act to amend the Indian Self-Determination and Education Assistance Act to provide for further self-governance by Indian tribes, and for other purposes.