

in support of Proposition F to transfer the property to a private organization. But still they didn't stop, and we have continued to see the litigation go on and on. Some of it arises from the case law and the very strong constitutional provisions unique to California.

In 2002, the Ninth Circuit had a ruling on it, and this is what they ruled: that the "no aid to religion" clause of the California Constitution prohibited California from transferring this property to a private association because any buyer who did not desire to keep the cross that was there would be required to pay for its removal, whereas an entity who wanted to buy and did not want to take the cross down would not have any expense; therefore, this aided religion. Now, that is the theory of it. I think that is not a sound analysis.

The Ninth Circuit is the most activist circuit in the country and we continue to have problems with them. They are reversed by the U.S. Supreme Court more often than any other circuit. Some years they have been reversed more often than all of the other circuits combined. One year it was 26 out of 27 cases the Supreme Court considered, they reversed. So that is what causes this problem.

A plan has been devised. Congressman HUNTER, who represents San Diego, and Congressman BRIAN BILBRAY, who represents the Mt. Soledad district, have worked hard to prepare legislation that would transfer it to the Federal Government, because this wouldn't be unconstitutional under Federal law. It passed in the House by an overwhelming vote of 349 to 74. We want to see that pass here. It has been called up and cleared on the Republican side of the aisle, and it is now being objected to by some on the Democratic side. So I would ask my colleagues on the Democratic side to work through this thing and see if we can get it passed. It would allow the veterans to be able to continue to have the memorial on Federal property that has been in place for 54 years. It does not establish a religion. On Federal property, it is consistent with the wishes of those veterans and their families for over a half a century.

I would note we have Democratic support for this concept. I notice that in one of the news articles from the Copley News Service here, Senator BARBARA BOXER, a California Senator, and one of the other Democratic Members, said:

[T]he monument is a historic memorial to our veterans and should be allowed to stay.

Senator DIANNE FEINSTEIN, the other Senator from California, has said:

[B]ecause of the history and significance of this monument to so many veterans and San Diegans, it should be preserved.

So the Congressmen there, the people of San Diego, and the Senators from California are in favor of this. It is as a result of this complex history and the obsession by the courts, it appears, to just eliminate any reference, any ex-

pression of religion whatsoever from the public square, even if it is not consistent with the U.S. Constitution, in my view.

I believe this legislation is important and should be passed. We can make this happen. I ask my colleagues to review it. I will plan to come back and deal with it some more if we cannot get it cleared. We need to have a vote on it, if it cannot be cleared voluntarily. I hope we can avoid that.

Mr. President, I note there are other Senators here wishing to speak. We are on the drilling offshore bill in the gulf, and that is a very important piece of legislation.

I, again, note I have asked this morning that this be cleared. We have another objection. We will continue to persist with this until we get everybody's attention and maybe they can review it and see fit to clear it. I think they will. If not, I will be asking the leader to invoke cloture on the legislation.

I further add, Senator MCCAIN has also offered legislation similar to mine. It would do the same thing. But the bill we are asking clearance on is the bill that came from the House, H.R. 5683.

I yield the floor.

#### MOUNT SOLEDAD CROSS

Mr. MCCAIN. Mr. President, I would like to express my strong support for passage of H.R. 5683, legislation passed by the House last week to preserve the Mount Soledad Veterans Memorial in Diego, CA. I want to associate myself with the comments made by my colleague, Senator SESSIONS. He and I both have introduced legislation similar to H.R. 5683 and I am pleased that Senator GRAHAM also has joined us in advocating a legislative solution to this important matter.

Since 1913, a series of crosses have stood on top of Mount Soledad, property owned by the city of San Diego. In April of 1954, the site was designated to commemorate the sacrifices made by members of the armed forces who served in World War II, as well as the Korean war.

In 1989, one individual filed suit against the city claiming that the display of the cross by the city was unconstitutional and, therefore, violated his civil rights. In 1991, a Federal judge issued an injunction prohibiting the permanent display of the cross on city property. Since that time, the city has repeatedly tried to divest itself of the property through sale or donation. But the plaintiff continued to mount legal challenges to every attempted property transfer. The legal wrangling over this memorial continues today.

The Mount Soledad Memorial is a remarkably popular landmark. In fact, I had the pleasure of visiting the Memorial during the Fourth of July recess and can personally attest to the profound impression it can leave on its visitors.

It is also of great importance to the local community. On two different occasions, the voters of San Diego have overwhelming passed ballot measures designed to transfer the property to entities which could maintain the cross. Given the many years of legal disputes regarding this memorial, I believe it is past time that this issue be resolved.

The bill that we are seeking to pass would bring the Mount Soledad cross under the control of the Federal Government, and specifically, the Department of Defense and would allow for the just compensation for the property in question. It also would address the required maintenance for the memorial and the surrounding property through a memorandum of understanding between the Secretary of Defense and the Mount Soledad Memorial Association. The minimal financial commitment required in this legislation will ensure the endurance of this memorial which serves as a reminder of the hundreds of thousands of men and women who made enormous sacrifices when our country called upon them.

I understand the bill has cleared on our side, and that we are awaiting for the other side to allow its approval. I can only hope that all of my colleagues will join us in supporting this legislation, and ensure the preservation of an important tribute to our men and women of the Armed Forces.

#### THE WAR IN IRAQ

Mr. BYRD. Mr. President, yesterday the Prime Minister of Iraq addressed a joint meeting of Congress. In his speech, he stressed his view that great progress has been made in his country in the past months and equated the violence in Iraq to the al-Qaida attacks on the United States on September 11, 2001. With the Prime Minister's comments in mind, it is worth taking stock of how this war began 3 years, 4 months, and 1 week ago. Let me say that again. It is worth taking stock of how this war began 3 years, 4 months, and 1 week ago.

The war in Iraq, that is what I am talking about. The war in Iraq. There is a war going on there, and we are involved in it. Our men and women are over there in harm's way. They die every day. The war in Iraq was initiated on the false promise of securing our country from the threat of weapons of mass destruction. That was a false promise. There have been many efforts to try to rewrite history. You can't do it. But there have been efforts to try to rewrite history and to try to find a new justification for the invasion of Iraq. But one need look no further than the use of force authorization passed by the Congress—when? On October 11, 2002. Look at that use of force resolution.

That resolution contains 23 "whereas" clauses. You can count them. Ten of those "whereas" clauses pertained to Iraq's efforts to develop weapons of mass destruction. The idea that Iraq