

called for. But when there are allegations of perjury, or obstruction of justice, coaching witnesses, or trying to get people to leave town so maybe they would not testify—these are serious charges. I might remind colleagues that President Nixon was on the road to impeachment not because he broke into the Watergate, but because of charges of perjury, tampering with a witness and obstruction of justice.

So these are serious charges, but they don't need to be investigated on the floor of the Senate. It is possible that at some point the Senate will have a role; I don't know. But I don't think it is proper or right to have this campaign of attack and smear on Ken Starr. I think it undermines the judicial process and really undermines those people who are making such charges. Madam President, I hope that our colleagues and others will allow the independent counsel to do his work.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. FAIRCLOTH). Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF MARGARET M. MORROW, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to consider Executive Calendar No. 135, which the clerk will report.

The legislative clerk read the nomination of Margaret M. Morrow, of California, to be United States District Judge for the Central District of California.

The PRESIDING OFFICER. Debate on the nomination is limited to 2 hours equally divided and controlled by the Senator from Utah and the Senator from Missouri.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to support the nomination of Margaret Morrow to the Federal District bench in California.

Ms. Morrow enjoys broad bipartisan support, and it is no wonder. She graduated magna cum laude from Bryn Mawr College, and cum laude from the Harvard Law School. She is presently a partner at Arnold and Porter in their Los Angeles office where she handles virtually all of that office's appellate litigation.

I plan to outline in greater detail why I intend to support Ms. Morrow's

nomination. But first I would like to discuss the Judiciary Committee's record with respect to the confirmation of President Clinton's judicial nominees.

As chairman of the Senate Judiciary Committee, one of the most important duties I fulfill is in screening judicial nominees. Indeed, the Constitution itself obligates the Senate to provide the President advice concerning his nominees, and to consent to their ultimate confirmation. Although some have complained about the pace at which the committee has moved on judicial nominees, I note that it has undertaken its duty in a deliberate and serious fashion. Indeed, with respect to Ms. Morrow, there were concerns. Her answers to the committee were not entirely responsive. Rather than simply pushing the nomination forward, however, I believed it was important for the committee to ensure that its questions were properly answered. Thus, the committee submitted written questions for Ms. Morrow to clarify some of her additional responses. And, having reviewed Ms. Morrow's answers to the questions posed by the committee, I became satisfied that she would uphold the Constitution and abide by the rule of law.

In fact, we held two hearings in Margaret Morrow's case, as I recall, and the second hearing was, of course, to clarify some of these issues without which we might not have had Ms. Morrow's nomination up even to this day.

Thus, I think it fair to say that the committee has fairly and responsibly dealt with the President's nominees. Indeed, the Judiciary Committee has already held a judicial confirmation hearing, and has another planned for February 25. Thus, the committee will have held two nomination hearings in the first month of the session.

I note that Judiciary Committee processed 47 of the President's nominees last session, including Ms. Morrow. Today there are more sitting judges than there were throughout virtually all of the Reagan and Bush administrations. Currently, there are 756 active Federal judges. In addition, there are 432 senior Federal judges who must by law continue to hear cases. Even in the ninth circuit, which has 10 vacancies, only one judge has actually stopped hearing cases. The others have taken senior status, and are still actively participating in that court's work. I am saying that the other nine judges have taken senior status. Those who have retired, or those who have taken senior status, are still hearing cases. The total pool of Federal judges available to hear cases is 1,188, a near record number.

I have sought to steer the confirmation process in a way that kept it a fair and a principled one, and exercised what I felt was the appropriate degree of deference to the President's judicial appointees.

I would like to personally express my gratitude and compliments to Senator

LEAHY, the ranking Democrat on the Judiciary Committee, for his cooperative efforts this past year. In fact, I would like my colleagues to note that a portrait of Senator LEAHY will be unveiled this very evening in the Agriculture Committee hearing room. This is an honor that I believe my distinguished colleague justly deserves for his efforts on that great committee. I want Senator LEAHY to know that I plan on attending that portrait unveiling itself even though this debate is taking place on the floor between 4 and 6 today.

It is in this spirit of cooperation and fairness that I will vote to confirm Ms. Morrow. Conducting a fair confirmation process, however, does not mean granting the President carte blanche in filling judicial vacancies. It means assuring that those who are confirmed will uphold the Constitution and abide by the rule of law.

Based upon the committee's review of her record, I believe that the evidence demonstrates that Margaret Morrow will be such a person. Ms. Morrow likely would not be my choice if I were sitting in the Oval Office. But the President is sitting there, and he has seen fit to nominate her.

She has the support of the Senators from California. And the review conducted by the Judiciary Committee suggests that she understands the proper role of a judge in our Federal system and will abide by the rule of law. There is no doubt that Ms. Morrow is, in terms of her professional experience and abilities, qualified to serve as a Federal district court judge. I think the only question that may be plaguing some of my colleagues is whether she will abide by the rule of law. As I have stated elsewhere, nominees who are or who are likely to be judicial activists are not qualified to serve as Federal judges, and they should neither be nominated nor confirmed. And I want my colleagues to know that when such individuals come before the Judiciary Committee I will vociferously oppose them. In fact, many of the people that have been suggested by the administration have been stopped before they have been sent up. And that is where most of the battles occur, and that is where most of the work between the White House and myself really occurs. I have to compliment the White House in recognizing that some people that they wish they could have put on the bench were not appropriate persons to put on the bench because of their attitudes towards the rule of law primarily.

While I initially had some concerns that Ms. Morrow might be an activist, I have concluded, based on all the information before the committee, that a compelling case cannot be made against her. While it is often difficult to tell whether a nominee's words before confirmation will match that nominee's deeds after confirmation, I believe that this nominee in particular deserves the benefit of the doubt. And

all nominees deserve the benefit of the doubt, unless the contrary is substantial—or, should I say, less evidence to the contrary is substantial. In my view, there is not sufficient evidence to demonstrate that Ms. Morrow will engage in judicial activism. In fact, Ms. Morrow has assured the committee that she will abide by the rule of law, and will not substitute her preferences for the dictates of the Constitution.

If Ms. Morrow is a woman of her word, and I believe she is, I am confident that she will serve the country with distinction.

I would like briefly to address some of the questions raised by those who oppose Ms. Morrow's nomination. Perhaps the most troubling evidence of potential activism that Ms. Morrow's critics advance comes from several speeches she has given while president of the Los Angeles, CA, Bar Association. At the fourth annual Conference on Women in the Law, for example, Ms. Morrow gave a speech in which she stated that "the law is almost by definition on the cutting edge of social thought. It is a vehicle through which we ease the transition from the rules which have always been to the rules which are to be."

Now, if Ms. Morrow was speaking here about "the law" and "rules" in a substantive sense, I would have no choice but to read these statements as professing a belief in judicial activism. On that basis alone, I would likely have opposed her nomination. However, Ms. Morrow repeatedly and somewhat animatedly testified before the committee that she was not speaking substantively of the law itself but, rather, was referring to the legal profession and the rules by which it governs itself.

When the committee went back and examined the context of Ms. Morrow's speech, it concluded that this explanation was in keeping with the theme of her speech.

In her inaugural address as president of the State Bar of California on October 9, 1993, Ms. Morrow quoted then Justice William Brennan, stating that "Justice can only endure and flourish if law and legal institutions are engines of change able to accommodate evolving patterns of life and social interaction."

Here again some were troubled that Ms. Morrow seemed to be advocating judicial activism. Ms. Morrow, however, assured the committee that she was not suggesting that courts themselves should be engines of change. In response to the committee she testified as follows:

The theme of that speech was that the State Bar of California as an institution and the legal profession had to change some of the ways we did business. The quotation regarding engines of change had nothing to do with changes in the rule of law or changes in constitutional interpretation.

Once again, the committee went back and scrutinized Ms. Morrow's speech and found that its theme was in fact

changes the bar should make and did not advance the theme that courts should be engines of social change. The committee found the nominee's explanation of the use of the quotation, given its context, very plausible. In addition, the nominee went to some lengths in her oral testimony and her written responses to the committee to espouse a clearly restrained approach to constitutional interpretation and the rule of the courts. Frankly, much of what she has said under oath goes a long way toward legitimized, very restrained jurisprudence that some of our colleagues on the other side of the aisle called out of the mainstream just a decade ago.

For example, she testified that she would attempt to interpret the Constitution "consistent with the intent of the drafters." She later explained in more detail that judges should use the constitutional text "as a starting point, and using that language and whatever information there is respecting the intent behind that language one ought to attempt then to decide the case consistent with that intent."

She later testified that judges should not "by incremental changes ease the law from one arena to another in a policy sense." And in written correspondence with the committee, Ms. Morrow further elaborated on her constitutional jurisprudence by highlighting the case which in her view adopted the proper methodology to constitutional interpretation.

As she explained, in that case the Court "looked first to the language of the Constitution," then "buttressed its reading" of the text by "looking to the language of other constitutional provisions." And finally to "the intent of those who drafted and ratified this language as reflected in the Federalist Papers, debates of the Constitutional Convention and other writings of the time."

Contrary to the claim that she condemns all voter initiatives, Ms. Morrow has actually sought to ensure that voters have meaningful ways of evaluating such initiatives.

In a widely circulated article, Ms. Morrow noted that the intensive advertising campaigns that surround citizen initiatives often focus unfairly on the measure's sponsor rather than the initiative's substance. This made it hard, she argued, for voters to make meaningful choices and "renders ephemeral any real hope of intelligent voting by a majority."

Read in its proper context, this statement seized upon by Ms. Morrow's critics was a statement concerning the quality of information disseminated to the voters, not a comment on the voters' ability to make intelligent policy choices. Thus Ms. Morrow's statement is not particularly controversial but in fact highly respectful of the role voters must play in our electoral system. In fact, Ms. Morrow argued that the courts should not be placed in a position of policing the initiative process.

She explained that "having passed an initiative, the voters want to see it enacted. They view a court challenge to its validity as interference with the public will."

For this reason, Ms. Morrow advocated reforms to the California initiative process to take a final decision on ballot measures out of the hands of judges and to place it back into the hands of the people.

In supporting this nomination, I took into account a number of factors, including Ms. Morrow's testimony, her accomplishments and her evident ability as an attorney, as well as the fact that she has received strong support, bipartisan support from both Democrats and Republicans. Republicans included Ninth Circuit Judges Cynthia Hall, Steven Trott and Pamela Rymer, Reagan-Bush appointees, as well as Rob Bonner, a respected conservative, former Federal judge and head of the drug enforcement agency under President Bush.

I know all of these people personally. They are all strong conservatives. They are really decent people. They are as concerned as you or I or anybody else about who we place on the Federal bench, and they are strongly in favor of Margaret Morrow, as are many, many other Republicans. And they are not just people who live within the district where she will be a judge. They are some eminent judges themselves.

I have a rough time seeing why anybody basically under all these circumstances would oppose this nominee. Each of those individuals I mentioned and others, such as Richard Riordan, the Republican mayor of Los Angeles, have assured the committee that Ms. Morrow will not be a judicial activist. I hope they are correct. And at least on this point I have seen little evidence in the record that would suggest to me that she would fail to abide by the rule of law once she achieves the bench and practices on the bench and fulfills her responsibility as a judge on the bench.

In sum, I support this nominee and I urge my colleagues to do the same. I am also pleased, with regard to these judicial nominees, that no one on our side has threatened to ever filibuster any of these judges, to my knowledge. I think it is a travesty if we ever start getting into a game of filibustering judges. I have to admit my colleagues on the other side attempted to do that on a number of occasions the last number of years during the Reagan-Bush years. They always backed off, but maybe they did because they realized there were not the votes to invoke cloture. But I really think it is a travesty if we treat this third branch of Government with such disregard that we filibuster judges.

The only way I could ever see that happening is if a person is so absolutely unqualified to sit on the bench that the only way you could stop that person is to filibuster that nominee. Even then, I question whether that should be done. We are dealing with a

coequal branch of Government. We are dealing with some of the most important nominations a President, whoever that President may be, will make. And we are also dealing with good faith on both sides of the floor.

I have to say, during some of the Reagan and Bush years, I thought our colleagues on the other side were reprehensible in some of the things they did with regard to Reagan and Bush judges, but by and large the vast majority of them were put through without any real fuss or bother even though my colleagues on the other side, had they been President, would not have appointed very many of those judges. We have to show the same good faith on our side, it seems to me. And unless you have an overwhelming case, as may be the case in the nomination of Judge Massiah-Jackson, unless you have an overwhelming case, then certainly I don't see any reason for anybody filibustering judges. I hope that we never get into that. Let's make our case if we have disagreement, and I have to say that some of my colleagues disagree with this nomination, and they do it legitimately, sincerely, and I think with intelligence, but I think they are wrong. And that is after having been part of this process for 22 years now and always trying to be fair, whoever is the President of the United States and whoever the nominees are.

It is important because most of the fight has to occur behind the scenes. It has to occur between honest people in the White House and honest people up here. And that's where the battles are. When they get this far, generally most of them should be approved. There are some that we have problems with still in the Judiciary Committee, but that is our job to look at them. That is our job to look into their background. It is our job to screen these candidates. And, as you can see, in the case of Massiah-Jackson we had these accusations but nobody was willing to stand up and say them. I am not about to rely on unsubstantiated accusations by anybody. I will rely on the witness herself in that case. But we never quit investigating in the committee, and even though Massiah-Jackson was passed out of the committee, the investigation continued and ultimately we find a supnumber of people, very qualified people, people in that area who have a lot to do with law and justice are now opposed to that nomination. We cannot ignore that. But that is the way the system works. We have had judges withdraw after we have approved them in the Judiciary Committee because something has come up to disturb their nomination.

That is the way it should work. This is not a numbers game. These are among the most important nominations that any President can make and that the Senate can ever work on. In the case of Margaret Morrow, I personally have examined the whole record, and, like I say, maybe people on our side would not have appointed her if

they were President, but they are not the President. And unless there is an overwhelming case to be made against a judge, I have a very difficult—and especially this one; there is not—I have to say that I think we do a great injustice if we do not support this nomination.

So with that, I will yield the floor.

How much time does the distinguished Senator need?

Mrs. BOXER. About 10 minutes.

Mr. HATCH. I yield 10 minutes to the distinguished Senator from California.

If my colleague would prefer to control the time on his side, I would be happy—should I yield to the Senator?

Mrs. BOXER. I would prefer we yield to Senator LEAHY given his schedule.

Mr. HATCH. Let's split the time. You control half the time, and I will control half. You can make the determination, or if you would like—

Mr. LEAHY. Mr. President, how much time is there remaining?

The PRESIDING OFFICER. There are 36 minutes 30 seconds.

Mr. LEAHY. I wonder if I might yield myself 5 minutes.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont.

Mr. LEAHY. Mr. President, this really has been a long time coming, and I appreciate the effort of my friend, the chairman, who is on the floor, to support this nomination. I commend my good friend, the Senator from California, Mrs. BOXER, who has been indefatigable in this effort. She has worked and worked and worked. I believe she has spoken to every single Senator, every single potential Senator, every single past Senator, certainly to all the judges, and she has been at us over and over again to make sure that this day would come. She has worked with the Republican leader, the Democratic leader, and Republican and Democratic Senators alike. I appreciate all that she has done. We have all been aided by our colleague, Senator FEINSTEIN. She has spoken out strongly for Margaret Morrow as a member of the Judiciary Committee and as a Senator.

I feel though, as Senator BOXER has said, that none of us would have predicted that it would take 21 months to get this nomination before the Senate. I know that we would not even be here now if the distinguished Senator from Utah and the distinguished majority leader had not made the commitment before we broke last fall to proceed to this nomination this week.

I have spoken about this nomination so many times I have almost lost track of the number. I will not speak as long as I would otherwise today because I want to yield to the Senator from California. But I think people should know that for some time there was an unexplained hold on this outstanding nominee. This is a nominee, incidentally, who was reported out of the Judiciary Committee twice. This is a nominee who is the first woman to be the president of the California State Bar Asso-

ciation and a president of the Los Angeles County bar.

This is a nominee who is a partner in a prestigious law firm. This is a nominee who has the highest rating that lawyers can be given when they come before our committee for approval as a judge. This is a woman about whom letters were sent to me and to other Senators from some of the leading Republicans and some of the leading Democrats in California and from others whose background I know only because of their reputations, extraordinary reputations. I have no idea what their politics are. But all of them, whether they describe themselves as conservatives, liberals, moderates or apolitical, all of them say what an extraordinary woman she is. And I agree.

I have read all of the reports about her. I have read all the things people said in her favor, and the things, oftentimes anonymous, said against her. I look at all those and I say of this woman: If I were a litigant, plaintiff or defendant, government or defendant, no matter what side I was on, I could look at this woman and say I am happy to come into her court. I am happy to have my case heard by her—whether I am rich, poor, white, black, no matter what might be my background. I know she would give a fair hearing.

Now, finally, after 12 months on the Senate calendar without action over the course of the last 3 years, I am glad that the debate is beginning. I am also glad we can now look forward to the end of the ordeal for Margaret Morrow, for her family, her friends and her supporters.

Her supporters include the chairman of the Judiciary Committee and half the Republican members on that committee. The Republican Mayor of Los Angeles, Richard Riordan, calls her "an excellent addition to the Federal bench." All of these people have praised her.

To reiterate, this day has been a long time coming. When this accomplished lawyer was first nominated by the President of the United States to fill a vacancy on the District Court for the Central District of California, none of us would have predicted that it would be more than 21 months before that nomination was considered by the United States Senate.

I thank the Majority Leader and the Chairman of the Judiciary Committee for fulfilling the commitment made late last year to turn to this nomination before the February recess. Fairness to the people and litigants in the Central District of California and to Margaret Morrow and her family demand no less.

I trust that those who credit local law enforcement and local prosecutors and local judges from time to time as it suits them will credit the views of the many California judges and local officials who have written to the Senate over the last several months in support of the confirmation of Margaret Morrow. I will cite just a few examples:

Los Angeles County Sheriff Sherman Block; Orange County District Attorney Michael R. Capizzi; former U.S. Attorney and former head of the DEA under President Bush, Robert C. Bonner; former Reagan Assistant Attorney General of the Criminal Division and former Associate Attorney General and current Ninth Circuit Judge Stephen S. Trott; and California Court of Appeals Associate Justice H. Walter Croskey.

I deeply regret that confirmation as a Federal Judge is becoming more like a political campaign for these nominees. They are being required to gather letters of support and urge their friends, colleagues and clients to support their candidacy or risk being mischaracterized by those who do not know them.

Margaret Morrow's background, training, temperament, character and skills are beyond reproach. She is a partner in the law firm of Arnold & Porter. She has practiced law for 24 years. A distinguished graduate of Bryn Mawr College and Harvard Law School, Ms. Morrow was the first woman President of the California State Bar Association and a former president of the Los Angeles County Bar Association. She has had the strong and unwavering support of Senator BOXER and Senator FEINSTEIN of California.

In light of her qualifications, it was no surprise that in 1996 she was unanimously reported by the Senate Judiciary Committee. In 1997 her nomination was again reported favorably, this time by a vote of 13 to 5.

Yet hers has been an arduous journey to Senate consideration. She has been targeted—targeted by extremists outside the Senate whose \$1.4 million fundraising and lobbying campaign against judges needed a victim. As our debate will show today, they chose the wrong woman.

Lest someone accuse us of gratuitously injecting gender into this debate, I note the following: Her critics have gone so far as to deny her the courtesy of referring to her as Ms. Morrow. Instead, they went out of their way repeatedly to refer to her as "Miss" in a Washington Times op ed. Margaret Morrow is married to a distinguished California State Court Judge and is the proud mother of a 10-year-old son. It is bad enough that her words are taken out of context, her views misrepresented and her nomination used as a ideological prop. She is entitled to be treated with respect.

Nor was this reference inadvertent. The first point of criticism in that piece was her membership in California Women Lawyers, which is criticized for supporting parental leave legislation.

Senator FEINSTEIN posed the question whether Margaret Morrow was held to a different standard than men nominees. That is a question that has troubled me throughout this process. I was likewise concerned to see that of the 14 nominees left pending at the end of last year whose nominations had been pend-

ing the longest, 12 were women and minority nominees. I did not know, until Senator KENNEDY's statement to the Senate earlier this year, that judicial nominees who are women are now four times as likely as men to take over a year to confirm.

At the same time, I note that Senator HATCH, who supports this nomination, included two women whose nominations have been pending for more than a year and one-half, at last week's Judiciary Committee hearing. I also note that the Senate did vote last month to confirm Judge Ann Aiken to the Oregon District Court. So one of the four article III judges confirmed so far this year was a woman nominee.

Margaret Morrow has devoted her career to the law, to getting women involved in the practice of law and to making lawyers more responsive and responsible. Her good work in this regard should not be punished but commended.

As part of those efforts Margaret Morrow gave a speech at a Women in the Law Conference in April 1994. That speech was later reprinted in a law review. Critics have seized upon a phrase or two from that speech, ripped them out of context and contended that they show Margaret Morrow would be an unprincipled judicial activist. They are wrong. Their argument was refuted by Ms. Morrow in her testimony before the Judiciary Committee.

This criticism merely demonstrates the critics own indifference to the setting and context of the speech and its meaning for women who have worked so hard to achieve success in the legal profession. Her speech was about how the bar is begrudgingly adjusting to women in the legal profession. How telling that critics would fasten on that particular speech on women in the law and see it as something to criticize.

Margaret Morrow spoke then about "the struggles and successes" of women practices law and "the challenges which continue to face us day to day in the 1990s." Margaret Morrow has met every challenge. In the course of this confirmation, she has been forced to run a gauntlet. She has endured false charges and unfounded criticism. Her demeanor and dignity have never wavered. She has, again, been called upon to be a role model.

The President of the Woman Lawyers Association of Los Angeles, the President of the Women's Legal Defense Fund, the President of the Los Angeles County Bar Association, the President of the National Conference of Women's Bar Association and other distinguished attorneys from the Los Angeles area have all written the Senate in support of the nomination of Margaret Morrow. They wrote that: "Margaret Morrow is widely respected by attorneys, judges and community leaders of both parties." She "is exactly the kind of person who should be appointed to such a position and held up as an example to young women across the country." I could not agree more.

By letter dated February 4, 1998, a number of organizations including the Alliance for Justice, the Leadership Conference on Civil Rights and women's lawyer associations from California likewise wrote urging confirmation of Margaret Morrow without further delay. I ask that a copy of that letter be included in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FEBRUARY 4, 1998.

Senator PATRICK LEAHY,
*Russell Senate Office Building,
Washington, DC.*

DEAR SENATOR LEAHY: We write to express our concern over a series of developments that continue to unfold in the Senate that are undermining the judicial confirmation process. These include calls for the impeachment of judges, a slowdown in the pace of confirmations, unjustified criticisms of certain nominees, and efforts to leave appellate vacancies unfilled. Some court observers have opined that collectively these are the most serious efforts to curtail judicial independence since President Roosevelt's plan to pack the Supreme Court in 1937.

In the past year nominees who failed to meet certain ultraconservative litmus tests have been labeled "judicial activists." While these charges are unfounded, they nonetheless delay confirmations and leave judicial seats unfilled. We note that of the 14 individuals whose nominations have been pending the longest, 12 are women or minorities. This disturbing pattern is in striking contrast to those 14 judges who were confirmed in 1997 in the shortest period of time, 11 of whom are white men. For example, Margaret Morrow, a judicial nominee to the United States District Court for the Central District of California, was nominated more than a year and a half ago. Not only is she an outstanding candidate, but her credentials have earned her enthusiastic and bipartisan endorsements from leaders of the bar, judges, politicians, and civic groups.

An honors graduate from Harvard Law School, a civil litigator for more than 20 years, winner of numerous legal awards, and the first female president of the California Bar Association, Morrow has the breadth of background and experience to make her an excellent judge, and in the words of one of her sponsors, she would be "an exceptionally distinguished addition to the federal bench." Morrow has also shown, through her numerous pro bono activities, a demonstrated commitment to equal justice. As president of the Los Angeles County Bar Association, she created the Pro Bono Council, the first of its kind in California. During her year as bar president, the Council coordinated the provision of 150,000 hours of previously untapped representation to indigent clients throughout the county. Not surprisingly, the American Bar Association's judicial evaluation committee gave her its highest rating.

Republicans and Democrats alike speak highly of her accomplishments and qualifications. Robert Bonner, a Reagan-appointed U.S. Attorney and U.S. District Judge for the Central District of California and head of the Drug Enforcement Administration during the Bush Administration, has said Morrow is a "brilliant person with a first-rate legal mind who was nominated upon merit, not political affiliation." Los Angeles County Sheriff Sherman Block wrote that, "Margaret Morrow is an extremely hard working individual of impeccable character and integrity. . . . I have no doubt that she would

be a distinguished addition to the Court." Other supporters include local bar leaders; officials from both parties, including Los Angeles Mayor Richard Riordan; California judges appointed by the state's last three governors; and three Republican-appointed Ninth Circuit Court of Appeals judges, Pamela Rymer, Cynthia Holcomb Hall, and Stephen Trott.

Despite her outstanding record, Morrow has become the target of a coordinated effort by ultraconservative groups that seek to politicize the judiciary. They have subjected her to a campaign of misrepresentations, distortions and attacks on her record, branding her a "judicial activist." According to her opponents, she deserves to be targeted because "she is a member of California Women Lawyers," an absurd charge given that this bipartisan organization is among the most highly respected in the state. Another "strike" against her is her concern, expressed in a sentence from a 1988 article, about special interest domination of the ballot initiative process in California. Her opponents view the statement as disdainful of voter initiatives such as California's term limits law; however, they overlook the fact that the article outlines a series of recommended reforms to preserve the process. It is a stretch to construe suggested reforms as evidence of "judicial activism," but to search for this members of the Judiciary Committee unprecedentedly asked her to disclose her personal positions on all 160 past ballot propositions in California.

Morrow's confirmation has been delayed by the Senate beyond any reasonable bounds. Originally selected over nineteen months ago in May 1996, her nomination was unanimously approved by the Judiciary Committee that year, only to languish on the Senate floor. Morrow was again nominated at the beginning of 1997, subjected to an unusual second hearing, and recommended again by the Judiciary Committee, after which several Senators placed secret holds on her nomination, preventing a final vote on her confirmation. These holds, which prevented a final vote on her confirmation during the 1st Session of the 105th Congress, were recently lifted.

As Senator Orrin Hatch repeatedly said: "playing politics with judges is unfair, and I'm sick of it." We agree with his sentiment. Given Margaret Morrow's impressive qualifications, we urge you to bring the nomination to the Senate floor, ensure that it receives prompt, full and fair consideration, and that a final vote on her nomination is scheduled as soon as possible.

Sincerely,

Alliance for Justice: Nan Aron, President.
American Jewish Congress: Phil Baum, Executive Director.

Americans for Democratic Action: Amy Isaacs, National Director.

Bazelon Center for Mental Health Law: Robert Bernstein, Executive Law.

Brennan Center for Justice: E. Joshua Rosenkrantz, Executive Director.

Black Women Lawyers Association of Los Angeles: Eulanda Matthews, President.

California Women Lawyers: Grace E. Emery, President.

Center for Law and Social Policy: Alan W. Hausman, Director.

Chicago Committee for Civil Rights Under Law: Clyde E. Murphy, Executive Director.

Disability Rights Education and Defense Fund, Patricia Wright, Coordinator Disabled Fund.

Families USA: Judy Waxman, Director of Government Affairs.

Lawyers Club of San Diego: Kathleen Juniper, Director.

Leadership Conference on Civil Rights: Wade Henderson, Executive Director.

Marin County Women Lawyers: Eileen Barker, President.

Mexican American Legal Defense & Educational Fund: Antonia Hernandez, Executive Director.

Monterey County Women Lawyers: Karen Kardushin, Affiliate Governor.

NAACP: Hilary Shelton, Deputy Director, Washington Office.

National Bar Association: Randy K. Jones, President.

National Center for Youth Law: John F. O'Toole, Director.

National Conference of Women Bar Associations: Phillis C. Solomon, President.

National Council of Senior Citizens: Steve Protulis, Executive Director.

National Employment Lawyers Association: Terisa E. Chaw, Executive Director.

National Gay & Lesbian Task Force: Rebecca Issacs, Public Policy Director.

National Lawyers Guild: Karen Jo Koonan, President.

National Legal Aid & Defender Association: Julie Clark, Executive Director.

National Organization for Women: Patricia Ireland, President.

National Women's Law Center: Marcia Greenberger and Nancy Duff Campbell, Co-presidents.

Orange County Women Lawyers: Jean Hobbart, President.

People for the American Way Action Fund: Mike Lux, Senior Vice President.

San Francisco Women Lawyers Alliance: Geraldine Rosen-Park, President.

Santa Barbara Women Lawyers: Renee Nordstrand, President.

Union of Needletrades, Industrial and Textile Employees: Ann Hoffman, Legislative Director.

Women Lawyers Association of Los Angeles: Greer C. Bosworth, President.

Women Lawyers of Alameda County: Sandra Schweitzer, President.

Women Lawyers of Sacramento: Karen Leaf, President.

Women Lawyers of Santa Cruz: Lorie Klein, President.

Women's Legal Defense Fund: Judy Lichtman, President.

Youth Law Center: Mark Soler, Executive Director.

Mr. LEAHY. It is time. It is time to stop holding her hostage and help all Americans, and certainly those who are within the district that this court will cover in California. It is time to help the cause of justice. It is time to improve the bench of the United States. It is time to confirm this woman. And it is time for the U.S. Senate to say we made a mistake in holding it up this long. Let us go forward.

Mr. President, if the Senator from Utah has no objection, I would like now to yield, and yield control of whatever time I might have, to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I say to Senator LEAHY, before he leaves the floor, and because Senator HATCH in his absence explained the wonderful tribute he is going to have shortly with his portrait being hung in the Agriculture room, and he himself said that he is so respectful of you and wants to show his respect so much that he is going to join you, so that will leave me here on the floor to debate with the Senator from Missouri—before you leave the floor I wanted to say to you and to Senator

HATCH together, and I say this from the bottom of my heart, without the two of you looking fairly at this nomination, this day would never have come.

To me it is, in a way, a moving moment. So often we stand on the floor and we talk about delays and so on and so forth. But when you put the human face on this issue and you have a woman and her husband and her son and a law firm that was so excited about this nominee, and you add to that 2 years of twisting in the wind and not knowing whether this day would ever come, you have to say that today is a wonderful day.

So, before my colleague leaves, I wanted to say to him: Thank you for being there for Margaret Morrow and, frankly, all of the people of America. Because she will make an excellent judge.

Mr. LEAHY. Mr. President, I say to my friend from California and to my friend from Utah, I do appreciate their help in this. I can assure you that, while my family and I will gather for the hanging of this portrait—I almost blushed when you mentioned that is my reason for being off the floor—I can assure you I will be back in plenty of time for the vote and I will have 210 pounds of Vermonter standing in the well of the Senate to encourage everybody to vote the appropriate way.

Mrs. BOXER. I thank my colleague very much, Senator LEAHY.

The PRESIDING OFFICER. The Chair recognizes the Senator from California.

Mrs. BOXER. Mr. President, how much time do I have remaining on this side?

The PRESIDING OFFICER. The Senator from California has 15 minutes. The Senator from Utah has 30 minutes.

Mrs. BOXER. My understanding is I would have 15 minutes, then?

The PRESIDING OFFICER. The Senator is correct.

Mrs. BOXER. I ask that the Presiding Officer let me know when 10 minutes has passed, and I will reserve 5 minutes in which to debate the Senator from Missouri, because I know he is a tough debater and I am going to need some time.

Mr. President, as I said, I am so very pleased that this day has come at long last, that we will have an up-or-down vote on Margaret Morrow. I really think, standing here, perhaps the only people happier than I am right now are Margaret and her husband and her son and her law partners and the various citizens of California, Republicans and Democrats, who worked together for this day.

Margaret Morrow is the epitome of mainstream values and mainstream America, and the depth and breadth of her support from prominent Republicans and Democrats illustrate that she is eminently qualified to sit as a Federal judge. I don't think I could be any more eloquent than Chairman HATCH and Ranking Member LEAHY, in putting forward her credentials.

What I am going to do later is just read from some of the many letters that we got about Margaret, and then I, also, at that time, will have some letters printed in the RECORD.

Again, I want to say to Senator HATCH how his leadership has been extraordinary on this, and also I personally thank Majority Leader LOTT and Democratic Leader DASCHLE for bringing this to the floor and arranging for an agreement that this nominee be brought to the floor. I thank my colleague from Missouri for allowing an up-or-down vote, for not launching a filibuster on this matter. I think Chairman HATCH spoke of that eloquently, and I am very pleased that we can have this fair vote.

I recommended Margaret Morrow to the President in September of 1995. She was nominated by the President on May 9, 1996. She received her first hearing before the Judiciary Committee on June 25, 1996, and was favorably reported out unanimously by the committee 2 days later. Because there was no action, she was renominated again on January 7, 1997, and had her second hearing on March 18, 1997. This time she was reported out favorably. This time the vote was 13 to 5.

I want to make the point that there is a personal side to this judicial nomination process. For nominees who are awaiting confirmation, their personal and professional lives truly hang in the balance. Margaret Morrow, a 47-year-old mother and law partner has put her life and her professional practice on hold while she waited for the Senate to vote on her nomination. Her whole family, particularly her husband and son, have waited patiently for this day. That is stress and that is strain, as you wait for this decision which will so affect your life and the life of your family and, of course, your career.

Former Majority Leader Bob Dole spoke of this process himself when he once said, "We should not be holding people up. If we need a vote, vote them down or vote them up, because the nominees probably have plans to make and there are families involved." I think Senator Dole said it straight ahead. So I am really glad that Margaret's day has come finally.

I do want to say to Margaret, thank you for hanging in there. Thank you for not giving up. I well understand that there were certain moments where you probably were tempted to do so. There were days when you probably thought this day would never come. But you did hang in there, and you had every reason to hang in there.

This is a woman who graduated magna cum laude from Bryn Mawr College and received her law degree from Harvard, graduating cum laude, 23 years in private practice in business and commercial litigation, a partner at the prestigious law firm of Arnold and Porter. She is married to Judge Paul Boland of the Los Angeles Superior Court and has a 10-year-old son, Patrick Morrow Boland, who actually

came up here on one of the times that she was before the committee.

Over the years, Margaret has represented a diverse group of business and Government clients, including some of the Nation's largest and most prominent companies.

In the time I have remaining now, I want to quote from some very prestigious leaders from California, and from the Senate, who have spoken out in behalf of Margaret Morrow. First we have Senator ORRIN HATCH. He spoke for Margaret himself, so I won't go over that quote.

Robert Bonner, former U.S. attorney appointed by President Reagan, former U.S. district court judge in the Central District of California and former head of the Drug Enforcement Administration, appointed by President George Bush, he sent a letter to Senators BOND, D'AMATO, DOMENICI, SESSIONS and SPECTER. In it he says:

The issue—the only real issue—is this: Is Margaret Morrow likely to be an activist judge? My answer and the answer of other Californians who have unchallengeable Republican credentials and who are and have been leaders of the bar and bench in California, is an unqualified NO. . . . On a personal note, I have known Margaret Morrow for over twenty years. She was my former law partner. I can assure you that she will not be a person who will act precipitously or rashly in challenging the rule of law.

He continues:

Based on her record, the collective knowledge of so many Republicans of good reputation, and her commitment to the rule of law and legal institutions, it is clear to me that Margaret will be a superb trial judge who will follow the law as articulated by the Constitution and legal precedent, and apply it to the facts before her.

I think that this statement is quite powerful. We have numbers of others as well. In a letter to Senators ABRAHAM and GORDON SMITH and PAT ROBERTS, Thomas Malcolm, who is chairman of Governor Wilson's Judicial Selection Committee for Orange County and served on the Judicial Selection Committees of Senators Hayakawa, Wilson, and Seymour, wrote the following:

I have known Ms. Morrow for approximately 10 years. Over the years, she has constantly been the most outstanding leader our California Bar Association has ever had the privilege of her sitting as its President. . . . Of the literally hundreds of nominations for appointment to the federal bench during my tenure on Senators Hayakawa, Wilson and Seymour's Judicial Selection Committees, Ms. Morrow is by far one of the most impressive applicants I have ever seen.

Mr. President, how much time do I have remaining—

The PRESIDING OFFICER. You have 7½ minutes.

Mrs. BOXER. Remaining of my 10 minutes?

The PRESIDING OFFICER. You have 3 minutes of your 10 minutes remaining.

Mrs. BOXER. Thank you, Mr. President. In the 3 minutes remaining I am going to quote from some others.

Los Angeles Mayor, Richard Riordan, in a letter to Senator HATCH, said:

Ms. Morrow would be an excellent addition to the Federal bench. She is dedicated to following the law and applying it in a rational and objective fashion.

Republican judges in the 9th Circuit, Pamela Rymer and Cynthia Hall—they are both President Bush and President Reagan's appointees respectively—in a letter to Senators HUTCHISON, COLLINS and SNOWE, write:

[We] urge your favorable action on the Morrow nomination because [we] believe that she would be an exceptional federal judge.

Representative JAMES ROGAN, former Republican Assembly majority leader in the California State Assembly, the first Republican majority leader in almost 30 years—actually he testified in front of the Judiciary Committee and said:

When an individual asks me to make a recommendation for a judgeship, that is perhaps the single most important thing I will study before making any recommendation. . . . I am absolutely convinced that. . . she would be the type of judge who would follow the Constitution and laws of the United States as they were written. . . . [I]t is my belief. . . that should she win approval from this committee and from the full Senate, she would be a judge that we could all be proud of, both in California and throughout our land.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of people from all over California endorsing Margaret Morrow.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

REPUBLICAN SUPPORT FOR MARGARET M. MORROW

Robert C. Bonner, former U.S. Attorney (appointed by President Reagan), former U.S. District Court Judge in the Central District of California and former Head of the Drug Enforcement Administration (appointed by President Bush), Partner at Gibson, Dunne and Crutcher in Los Angeles (2 letters).

Thomas R. Malcolm, Chairman of Governor Wilson's judicial selection committee for Orange County and previously served on the judicial selection committees of Senators Hayakawa, Wilson, and Seymour.

Rep. James Rogan (R-27-CA), former Assembly Majority Leader, California State Legislature, former gang murder prosecutor in the LA County District Attorney's Office, former Municipal Court Judge in California.

Pamela Rymer, Circuit Court Judge, U.S. Court of Appeals for the Ninth Circuit (2 letters), appointed by President Bush.

Cynthia Holcomb Hall, Circuit Court Judge, U.S. Court of Appeals for the Ninth Circuit, appointed by President Reagan.

Lourdes Baird, District Court Judge, U.S. District Court, Central District of California, appointed by President Bush.

H. Walter Croskey, Associate Justice, State of California Court of Appeal, Second Appellate District (2 letters), appointed by Governor Deukmejian.

Richard J. Riordan, Major, City of Los Angeles.

Michael R. Capizzi, District Attorney, Orange County.

Lod Cook, Chairman Emeritus, ARCO, Los Angeles.

Clifford R. Anderson, Jr., supporter of the presidential campaigns for Presidents Nixon and Reagan, and former member of Governor Wilson's judicial selection committee (when

he was Senator) member of Governor Wilson's State judicial evaluation committee.

Sherman Block, Sheriff, County of Los Angeles.

Roger W. Boren, Presiding Justice, State of California Court of Appeal, Second Appellate District (2 letters), appointed by Governor Wilson.

Sheldon H. Sloan, former President of Los Angeles County Bar Association.

Stephen Trott, Circuit Court Judge, U.S. Court of Appeals for the Ninth Circuit (2 letters), appointed by President Reagan.

Judith C. Chirlin, Judge, Superior Court of Los Angeles County, appointed by Governor Deukmejian.

Richard C. Neal, State of California Court of Appeal, Second Appellate District, appointed by Governors Deukmejian and Wilson.

Marvin R. Baxter, Associate Justice, Supreme Court of California, appointed by Governor Deukmejian.

Charles S. Vogel, Presiding Justice, State of California Court of Appeal, Second Appellate District, appointed by Governors Reagan and Wilson.

Dale S. Fischer, Judge, Los Angeles Municipal Court, appointed by Governor Wilson.

Richard D. Aldrich, Associate Justice, State of California Court of Appeal, Second Appellate District, appointed by Governors Deukmejian and Wilson.

Edward B. Huntington, Judge, Superior Court of the State of California, San Diego, appointed by Governor Wilson.

Laurence H. Pretty, former President of the Association of Business Trial Lawyers.

Mrs. BOXER. Mr. President, I want to say to you again, I know you have been very fair as I presented the case to you, this is a woman that every single Senator should be proud to support today. It is not a matter of political party. This is a woman uniquely qualified. I almost want to say, if Margaret Morrow cannot make it through, then, my goodness, who could? I really think she brings those kinds of bipartisan credentials.

I reserve my 5 minutes and yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Missouri is recognized.

Mr. ASHCROFT. Mr. President, thank you very much. I yield myself so much time as I may consume, and I ask that the Chair inform me when I have consumed 15 minutes.

I thank you very much for allowing me to participate in this debate. It is appropriate that we bring to the floor nominees who are well known to the committee for debate by the full Senate. I commend the chairman of the committee for bringing this nomination to the floor. I have no objection to these nominations coming to the floor and no objection to voting on these nominees. I only objected to this nominee coming to the floor to be approved by unanimous consent because I think we deserve the opportunity to debate these nominees, to discuss them and to have votes on them.

So many people who are not familiar with the process of the Senate may think that when a Senator says that he wants to have a debate that he is trying to delay. I believe the work of the

Senate should be done in full view of the American people and that we should have the opportunity to discuss these issues, and then instead of having these things voted on by unanimous consent at the close of the business day with no record, I think it is important that we debate the nominee's qualifications on the record.

I think it is important because the judiciary is one-third of the Government of the United States. The individuals who populate the judiciary are lifetime appointments.

The United States Constitution imposes a responsibility on the Senate to be a quality screen, and it is the last screen before a person becomes a lifetime member of the judiciary. So we need to do our best to make sure that only high-quality individuals reach that level, individuals who have respect for the Constitution, who appropriately understand that the role of the courts is to decide disputes and not to expand the law or to somehow develop new constitutional rights. The legislature is the part of the body politic that is designed to make law. The courts are designed to settle disputes about the law.

It is against this background that I am pleased to have the opportunity to debate the nomination of Margaret Morrow.

Let me begin by saying that Ms. Morrow is an outstanding lawyer. No one wants to challenge her credentials. No one believes that she is not a person of great intellect or a person of tremendous experience. She is a person who has great capacity. It has been demonstrated in her private life, her educational record and in her life of service as an officer of the California Bar Association.

The only reservations to be expressed about Ms. Morrow, and they are substantial ones in my regard—they are not about her talent, not about her capacity, not about her integrity—they are about what her interpretation of the role of a judge is; whether she thinks that the law as developed in the court system belongs on the cutting edge, whether she thinks that the law, as developed in the court system, is an engine of social change and that the courts should drive the Nation in a direction of a different culture and a direction of recognizing new rights that weren't recognized or placed in the Constitution, and that needed to be invented or developed or brought into existence by individuals who populate the courts. That, I think, is the major question we have before us.

So let me just say again, this is an outstanding person of intellect, from everything I can understand a person of great integrity, a person whose record of service is laudable and commendable. The only question I have is, does she have the right view of the Constitution, the right view of what courts are supposed to do, or will she be someone who goes to the bench and, unfortunately, like so many other law-

yers in the ninth circuit, decide that the court is the best place to amend the Constitution? Does she think the court is the best place to strike down the will of the people, to impose on the people from the courts what could not be generated by the representatives of the people in the legislature.

So, fundamentally, the question is whether or not this candidate will respect the separation of powers, whether this candidate will say the legislature is the place to make the law, and whether she will recognize that courts can only make decisions about the law. Will she acknowledge that the people have the right to make the law, too? After all, that is what our Constitution says, that all power and all authority is derived from the people, and they, with their elected representatives, should have the opportunity to make the law.

It is with these questions in mind that I look at some of the writings of this candidate for a Federal judgeship, and I come to the conclusion that she believes that the court system and the courts are the place where the law can be made, especially if the people are not smart enough or if the people aren't progressive enough or if the Constitution isn't flexible enough.

I can't say for sure this is what would happen. I have to be fair. I have to go by what she has written. I will be at odds with the interpretation of some of the things said by the committee chairman. I respect the chairman, but I think that his interpretation of her writings is flawed.

In 1995, in a law review comment, Ms. Morrow seemed to endorse the practice of judicial activism, that is judge-made law. She wrote:

For the law is, almost by definition, on the cutting edge of social thought. It is a vehicle—

Or a way—

through which we ease the transition from the rules which have always been to the rules which are to be.

She is saying that the law is the vehicle, the thing that takes you from what was to what will be. I was a little puzzled when the committee chairman said that the committee found that she didn't mean the substantive as expressed in the courts and the like. Let me just say I don't believe the committee made any such findings. I have checked with committee staff, and it is just not the case that the committee made findings.

It is true that a majority of the members of the committee voted this candidate to the floor, but the committee didn't make findings that this was not a statement of judicial activism. Frankly, I think it is a statement of judicial activism, despite the fact that Ms. Morrow told the committee that she was not speaking about the law in any substantive way, but rather was referring to the legal profession and the rules governing the profession.

The law, by definition, is on the cutting edge of social thought? Social

thought doesn't govern the profession, social thought governs the society. The transition of the rules from the way they have always been to the rules which they are to be? I think it is a stretch to say that this really refers to the legal profession.

If she meant that the legal profession is a vehicle through which we ease the transition from the rules which always have been to the rules which are to be, that doesn't make sense. Clearly she is referring to something other than the legal profession or the rules of professional conduct.

Some have suggested that because Ms. Morrow initially made these remarks at a 1994 Conference on Women and the Law, that it is plausible that she was referring to the profession and not to the substantive law. But I think it is more likely that her statement reflects a belief that the law can and should be used by those who interpret it to change social norms, inside and outside of the legal profession.

Truly, that is a definition of activism, the ability of judges to impose on the culture those things which they prefer rather than have the culture initiate through their elected representatives those things which the culture prefers.

Frankly, if it is a question of a few in the judiciary defining what the values of the many are in the culture, I think that is antidemocratic. I really believe that the virtue of America is that the many impose their will on the Government, not that the few in Government impose their will on the many.

Reasonable people can disagree on the proper interpretation of Ms. Morrow's statement. Others can argue about whether or not hastening social change is a proper role for judges in the courts. But I think it is fair to conclude that Ms. Morrow's comments were an endorsement of judicial activism.

In 1993, Ms. Morrow gave another speech that suggested approval of judicial activism, quoting William Brennan, an evangelist of judicial activism. Morrow stated:

Justice can only endure and flourish if law and legal institutions are "engines of social change" able to accommodate evolving patterns of life and social interaction in this decade.

She said these remarks were not an endorsement of activism. She told the Judiciary Committee the subject of the comments was, once again, not the law but the legal profession and the California State Bar Association.

To say that both law and legal institutions are engines of social change I think begs the question of whether you are just talking about the State bar association. In this statement, Ms. Morrow refers specifically to the law and legal institutions. Ms. Morrow's words were a call for activism to those who administer the law.

Again, the committee chairman indicated that the committee found that she was referring to those things she

referenced in her testimony. That may have been the conclusion of some on the committee as a basis for how they voted, but I don't believe the committee made any findings about what her statements meant.

Ms. Morrow was the president of the California State bar in 1993 and 1994, one of the things for which she is to be applauded. She was first woman elected president of the bar. But according to press reports, her first bar convention as president was "marked by only one big issue: gun control." Even U.S. Attorney Janet Reno traveled all the way to the San Diego convention to exhort attendees to work against Americans' "love affair with guns."

And although a 1990 U.S. Supreme Court decision prohibited the California bar from using dues for political activities and specifically listed advocacy of gun control legislation as an example, Ms. Morrow said the bar should consider the Court's ruling, "assess the risks, and then do what is right."

So looking into the face of a Supreme Court decision of the United States, Ms. Morrow said, "Yeah, we should figure out what we think is right and assess the risks." I suppose of getting caught and what the consequences would be, "and then just basically do what we think is right."

I think if we are going to ask someone to undertake the responsibility of administering justice in the Federal judicial system, we have to expect them to accord the Constitution of the United States respect. We have to expect them to accord the rulings of the Supreme Court of the United States respect, and to assess the risks and do what is right is not a philosophy.

Frankly, one does not need to assess the risks if one is going to do what is right. If you are going to do what is right, there are no risks. Rather than imply that the Court's prohibition on using bar dues for political purposes may be somehow circumvented or disregarded, Ms. Morrow could have stated her clear intention to respect the Court's decision and to urge her membership to do the same.

Ms. Morrow not only has indicated her willingness to use the law "on the cutting edge" and to use the law, the legal profession and the courts to change the rules whereby people live and to make law and not just interpret law or decide disputes, she has argued that when the people get involved in making the law, the result is dubious and should be called into question and into doubt.

The PRESIDING OFFICER. The Senator has used 15 minutes.

Mr. ASHCROFT. I allocate myself such further time as I may consume in making this next point.

Mr. President, Ms. Morrow's supporters argue that her comments about judicial activism are taken out of context or misinterpreted, but I don't believe that they are. Her supporters will have a harder time explaining away

Ms. Morrow's disparaging and elitist views about direct citizen involvement in decisionmaking processes.

If she is not clear about saying that she would displace the legislative function by being a judicial activist in one arena, that is, when it comes to interpreting the law and expanding the Constitution, she is very clear about her disrespect for legislation enacted by the people.

In 1988, she wrote an article and smugly criticized the ballot initiative as used by the citizens of California. Here is what she wrote in that article:

The fact that initiatives are presented to a "legislature" of 20 million people renders ephemeral any real hope of intelligent voting by a majority.

What she is saying, in other words, is that whenever the people get involved, decisions will not be intelligent. She suggests that the courts are going to have to step in and do the right thing, what they know to be better than what the people have said, and take over. I think a lot of Americans would be concerned if the courts simply took over.

By the way, I noted there was a substantial list of letters that were sent to the desk on behalf of individuals that endorsed Ms. Morrow.

I ask unanimous consent that the list assembled by the Judicial Selection Monitoring Project be printed in the RECORD. It lists more than 180 different grassroots organizations, from the American Association for Small Property Ownership to the Independent Women's Forum to the Women for Responsible Legislation, that oppose this nomination.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

JUDICIAL SELECTION
MONITORING PROJECT,

Washington, DC, October 29, 1997.

Hon. John Ashcroft,

U.S. Senate,

Washington, DC.

DEAR SENATOR ASHCROFT: We strongly oppose the nomination of Margaret Morrow to the U.S. District Court for one or more of the following reasons.

First, her activities and writings reveal aggressive advocacy of liberal political causes and the view that courts and the law can be used to effect political and social change. This combination foretells liberals judicial activism on the bench. She wants bar association to take "a strong active voice" on political issues and has written that the law is "on the cutting edge of social thought" and "the vehicle through which we ease the transition from the rules which have been to the rules which are to be." She opposes any restrictions on blatantly political litigation by the Legal Services Corporation.

Second, as Senator Charles Grassley has said, Morrow's "judgment and candor are under a great deal of question." Morrow twice withheld nearly 40 articles, reports, and speeches from the Senate Judiciary Committee, including those clearly reflecting her activist approach to the law. She refused to answer Senators' legitimate questions following her hearing, and eventually provided answers that Senator Grassley called "false and misleading."

Finally, and perhaps most important, Americans now know what Morrow's wholesale condemnation of direct democracy will

mean if she becomes a federal judge. She has written that "any real hope of intelligent voting" by the people on ballot measures is only "ephemeral." On October 8, the U.S. Court of Appeals in California implemented that same view and swept aside an initiative enacted by Californians because two judges thought the voters did not understand what they were doing. It is clear that Morrow will be yet another judge more than willing to substitute her own elitist judgments for the will of the people.

A nominee who believes the courts can be used to enact liberal political a social policy, whose "judgment and candor are under a great deal of question," and who will undermine democracy has no place on the federal bench.

Sincerely,

Alabama Citizens for Truth
Alabama Family Alliance
Alliance Defense Fund
Alliance for American
American Association of Christian Schools
American Association for Small Property
Ownership
American Center for Law and Justice—DC
American Center for Law and Justice—National
American Family Association
American Family Association of KY
American Family Association of MI
American Family Association of MO
American Family Association of NY
American Family Association of TX
American Foundation (OH)
American Land Rights Association
American Policy Center
American Pro-Constitutional Association
American Rights Coalition
Americans for Choice in Education
American for Decency
Americans for Tax Reform
California Coalition for Immigration Reform
Catholic League for Religious and Civil Rights
Center for Arizona Policy
Center for Individual Rights
Center for New Black Leadership
Christian Coalition
Christian Coalition of California
Christian Coalition of IA
Christian Coalition of KS, Inc.
Christian Exchange, Inc.
Christian Home Educators of Kentucky
Citizens Against Repressive Zoning
Citizens Against Violent Crime
Citizens for Better Government
Citizens for Community Values
Citizens for Constitutional Property Rights, Inc.
Citizens for Economically Responsible Government
Citizens for Excellence in Education (TX)
Citizens for Law & Order
Citizens for Reform
Citizens for Responsible Government
Citizens United
Coalition Against Pornography
Coalitions for America
Colorado Coalition for Fair Competition
Colorado for Family Values
Colorado Term Limits Coalition
Concerned Women for America
Concerned Women for America of Virginia
Legislative Action Committee
Conservative Campaign Fund
Conservative Opportunity Society PAC
Constitutional Coalition
Constitutionalists Networking Center
Coral Ridge Ministries
Council of Conservative Citizens
Defenders of Property Rights
Delaware Family Foundation
Eagle Forum
Eagle Forum of Alabama
Eagle Forum, Inc. (FL)

Environmental Conservation Organization
Evergreen Freedom Foundation
Family Foundation (KY) (The)
Family Foundation (VA) (The)
Family Friendly Libraries
Family Institute of Connecticut
Family Life Radio—Micky Grace (KFLT, Phoenix)
Family Policy Center (MO)
Family Research Council
Family Research Institute of Wisconsin
Family Taxpayer's Network (IL)
Family Taxpayers Foundation
First Principles, Inc.
Focus on the Family
Freedom Foundation (The)
Frontiers of Freedom
Georgia Christian Coalition
Georgia Sports Shooting Association
Government Is Not God PAC
Gun Owners of America
Gun Owners of South Carolina
Heritage Caucus/Judicial Forum
Home School Legal Defense Association
Idaho Family Forum
Illinois Citizens for Life
Illinois Family Institute
Impeach Federal Judge John T. Nixon
Independence Institute
Independent Women's Forum
Indiana Family Institute
Individual Rights Foundation (Center for Pop Cult)
Institute for Media Education (The)
Iowa Family Policy Center
"Janet Parshall's America"—WAVA FM
Judicial Selection Monitoring Project
Judicial Watch, Inc.
Justice for Murder Victims
Kansas Conservative Union
Kansas Eagle Forum
Kansas Family Research Institute
Kansas Taxpayers Network
Landmark Legal Foundation
Law Enforcement Alliance of America
Lawyer's Second Amendment Society, Inc.
League of American Families
League of Catholic Voters (VA)
Legal Affairs Council
Liberty Counsel
Life Advocacy Alliance
Life Coalition International
Life Decisions International
Life Issues Institute, Inc.
Madison Project (The)
"Mark Larson Show (The)"—KPRZ San Diego
Maryland Assoc. of Christian Schools
Massachusetts Family Institute
Michigan Decency Action Council
Michigan Family Forum
"The Mike Farris Show"
Minnesota Family Council
Mississippi Family Council
Morality Action Committee
Nat'l Center for Constitutional Studies
Nat'l Center for Public Policy Research
Nat'l Citizens Legal Network
Nat'l Coalition for Protection of Children & Families
Nat'l Family Legal Foundation
Nat'l Institute of Family & Life Advocates
Nat'l Legal and Policy Center
Nat'l Legal Foundation (The)
Nat'l Parents' Commission
Nat'l Rifle Association
NET-Political News Talk Network
Nevada State Rifle & Pistol Association
New Hampshire Landowners Alliance
New Hampshire Right to Life
New Jersey Family Policy Council
Northwest Legal Foundation
Oklahoma Christian Coalition
Oklahoma Family Policy Center
Oklahomans for Children & Families
Organized Victims of Violent Crime
Parents Rights Coalition
Pennsylvania Landowners Association

Pennsylvanians For Human Life
"Perspectives Talk Radio"—Hosted by Brian Hyde (KDXU)
Philadelphia Family Policy Council
Pro-Life Action League
Public Interest Institute
Putting Liberty First
"Radio Liberty"
Religious Freedom Coalition
Resource Education Network
Resource Institute of Oklahoma
Right to Life of Greater Cincinnati, Inc.
Safe Streets Alliance
Save America's Youth
Seniors Coalition (The)
Sixty (60) Plus Association
Small Business Survival Committee
South Carolina Policy Education Foundation
South Dakota Family Policy Council
"Stan Solomon Show"
Strategic Policies Institute
Take Back Arkansas, Inc.
Talk USA Network
TEACH Michigan Education Fund
Texas Eagle Forum
Texas Public Policy Foundation
Toward Tradition
Traditional Values Coalition
U.S. Business and Industrial Council
Utah Coalition of Taxpayers
WallBuilders
West Virginia Family Foundation
"What Washington Doesn't Want You to Know" Hosted by Jane Chastain
Wisconsin Information Network
Wisconsin State Sovereignty Coalition
Women for Responsible Legislation

Mr. ASHCROFT. I think the fact that these grassroots organizations oppose this nomination reflects the fact that they distrust an individual who distrusts the people. Whenever you have someone moving into the Federal court system who expresses in advance the fact that when people get involved in government, it renders an intelligent result ephemeral or unlikely to take place, I think they have a right to be disconcerted and upset.

She continued in her article:

Only a small minority of voters study their ballot pamphlet with any care, and only the minutest percentage takes time to read the proposed statutory language itself. Indeed, it seems too much to ask that they do, since propositions are . . . difficult for a layperson to understand.

Basically, this says that lawyers are smart enough to understand these things but ordinary people cannot and, as a result, cannot make intelligent decisions. I have noted before that it is not a requirement to be a lawyer to be a Member of the Senate. Ordinary people can run for the U.S. Senate. And they do. You need only be 35 years old.

I have also noticed that, very frequently, only a small minority of the Senators have read, in the totality, the legislation which is before the Senate. If you are going to say that laws are not effective and should not be respected because they were not read thoroughly or not everybody who voted on them was a lawyer, that would be a premise for disregarding any law passed in the United States. It would be a premise for saying that the laws of the United States are not to be accorded deference by the courts. And sometimes I think that is the way the courts look at them.

They look at the laws that are enacted by the Congress and they say, "Well, we're going to have to expand that. We're going to have to change that. They weren't smart enough. The representatives of the people weren't smart enough. They didn't know what they were doing."

Frankly, this distrust of democracy is the kind of thing that provides the predicate for judicial activism where individuals substitute their judgment for the law of the Constitution, where courts substitute their preferences for the people's will as expressed in the law.

This has been a particular problem with the Ninth Circuit Court of Appeals, which has been striking down propositions approved by the voters of Californians right and left.

Proposition 140. A three-judge panel affirmed a decision by Judge Wilkin, a Clinton appointee, to throw out term limits for State legislators. The ninth circuit en banc reversed and upheld the constitutionality of the initiative.

Here you have it. The people of California decide they want term limits, and you have a Federal judge who thinks, "Well, they don't know what they're doing. They're just people. They aren't lawyers. They didn't read this carefully enough," and it is set aside. That is the attitude we cannot afford to replicate there.

Proposition 209. Judge Henderson struck down this prohibition of race and gender preferences. People of America do not want quotas and preferences. They want to operate based on merit. So the people of California did what the people should do when they want something in the law, they enacted it through the constitutional method of passing an initiative.

But the judge, Federal judge, thinking himself to be superior in wisdom to the voters—maybe the judge had been reading the article by Ms. Morrow that said, "The fact that initiatives are presented to a 'legislature' of 20 million people renders ephemeral any real hope of intelligent voting by a majority"—struck down that initiative.

Proposition 187. This law denying certain public benefits to illegal aliens was declared unconstitutional by another judge.

Proposition 208 was recently blocked in its enforcement by Judge Karlton.

Over and over again in California we have had this problem caused by judges who basically think that the initiatives of the people are not due the respect to be accorded to enactments of the law. And when judges place themselves above the people, when judges elevate their own views to a point where they are saying that they have a legislative capacity to say what ought to be the law rather than to resolve disputes about the law, I think that is when we get into trouble.

Now, many confirmation decisions will require Senators to anticipate what will happen. We cannot really know for sure what is going to happen.

Almost 4½ years ago the Senate confirmed, by unanimous consent, without a vote, Claudia Wilken to be a district court judge in the Northern District of California.

She was asked about things like this before the Judiciary Committee. And she stated, "A good judge applies the law, not her personal views, when she decides a case." She said judges should fashion broad, equitable relief "only where the Constitution or a statute" requires. But she's the judge who said that the term limits initiative passed in California in 1990 was unconstitutional. Now, when the Federal Constitution itself has term limits for the President, you have to wonder if she is not just trying to substitute her judgment and displace the judgment of the people of California.

Last April, Judge Wilken ruled that the term limits initiative, which was passed by the voters in the State, and approved by the California Supreme Court—violated the Constitution. The new law, Judge Wilken held, was unfair to those voters who wanted to support a candidate with legislative experience. I wonder if maybe she had been reading the material of the nominee in this case. I wonder if she really believed that "The fact that initiatives are presented to a 'legislature' of 20 million people renders ephemeral any real hope of intelligent voting by a majority."

The ninth circuit court of appeals, which covers California, is the circuit in which these questions arose. Unfortunately, it is the most active circuit judicially. I think we have to be very careful when we are appointing individuals to courts within that circuit that we do not find ourselves reinforcing this judicially active mentality.

Let us just take a look at what kind of legal environment they are in out there.

In 1997, the Supreme Court reversed an astounding 27 out of 28 ninth circuit decisions.

In 1996, it was 10 out of 12 decisions that were reversed.

In 1995, it was 14 out of 17.

It is obvious that the ninth circuit is out of control, filled with individuals who believe that the people are to be disregarded, that the intelligence resides solely in the court system. Frankly, I think that is a troublesome problem.

Here is what one of the judges on the ninth circuit said, expressing pride in the fact that the court was frequently reversed. Chief Judge Procter Hug said in a recent interview:

We're on the cutting edge of a lot of cases.

Does the phrase "cutting edge" remind you of anything? Another one of those quotes from Ms. Morrow.

We're on the cutting edge of a lot of cases. If a ruling creates a lot of heat, that's why we have life tenure.

I really believe that life tenure is supported by the need for independence, but it is not to be a license to take over the legislative responsibility of Government. It is not to be a license

to be out there on the cutting edge, to be writing new laws, instead of deciding controversies presented by application of old laws.

On the ninth circuit, no judge is reversed more than judge Stephen Reinhardt, the renegade judge who in recent years has argued that the Constitution protects an individual's right to commit physician-assisted suicide. Of course, he was reversed by the Supreme Court. He recently ruled that school-administered drug tests for high school athletes violated the Constitution. His creation there of a new constitutional right again was reversed by the U.S. Supreme Court. Finally, Reinhardt argued that farmers lack standing to challenge the Endangered Species Act because they have an economic interest in doing so. This decision also was reversed by the Supreme Court. And just last week, Reinhardt reversed a lower court decision and held employers are prevented by the Constitution from conducting genetic tests as part of their employees' routine physicals—another new constitutional right found by an activist judge.

Judge Reinhardt seems to share the arguments made by Ms. Morrow in her article about initiatives. To Reinhardt, the Constitution is not a charter to be interpreted strictly; rather, it is an outline for creative judges to fill in the blanks.

I think judges who believe that the Constitution is written in pencil and who think that the Bill of Rights is written in disappearing ink are judges that are out of control. We have to be careful we don't put more individuals on the bench who have a disregard for the separation of powers and who do not understand that what the people do under the authority of the Constitution is valid and must be respected.

I see my colleague from the State of Alabama has arrived and is prepared, I believe, to make remarks in this respect. I want to thank him for his outstanding work on the Judiciary Committee. He takes his work very seriously. He is a champion of the Constitution of the United States. He understands that the people are the source of power. He understands well that judges are very important. It is important that we have intelligent judges, capable judges; but also, judges that respect the fact that they have a limited function of resolving disputes. And in so doing they are not to amend the Constitution or extend the law but to rely upon the legislature or the people to do that whenever is necessary.

I yield to the Senator from Alabama 10 minutes in which to make his remarks in opposition to this nominee.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Alabama is recognized.

Mr. SESSIONS. I spent 15 years in my professional career as a Federal prosecutor prosecuting full-time before Federal judges. I have had the pleasure of practicing before some of the finest judges in America. It is a thrill to have

that opportunity, to have the opportunity to represent the United States of America in court and to utilize our Constitution, our laws and our statutes, and the logic that God gives us the ability to utilize, to analyze difficult problems.

Many of us can disagree, but I do rise today in opposition to the nomination of Margaret Morrow to the U.S. District Court bench for the Central District of California. This is not an easy decision. These are not pleasant tasks for those of us on the Judiciary Committee and in this Senate to decide to vote against a Presidential nomination. But if we believe in that and we are concerned about that, our responsibility as Members of this body calls on us to do so.

By all accounts, she is a fine lawyer and a good person. However, her writings and speeches which span over a decade indicate that she views the Federal judiciary as a means to achieve a social or political end.

This nomination is all the more important when one considers that Ms. Morrow's home State of California has repeatedly been victimized recently by liberal and undemocratic Federal judges. Moreover, judicial activism has plagued her judicial circuit, the ninth circuit, like no other circuit in the country.

Consider for a moment how big a problem judicial activism is on the ninth circuit. In 1997, last year, the Supreme Court reversed 27 out of 28 decisions rendered by the ninth circuit. In 1996, the Supreme Court reversed 10 out of 12 ninth circuit decisions. That pattern has been going on for decades. As a Federal prosecutor in Alabama, when criminal defense lawyers file briefs and cite law to argue their opinion or to suppress evidence or matters of that kind, they most frequently cited ninth circuit opinions because those were the most liberal in the country on criminal law. Frankly, they were not given much credit around the country. Most judges in the United States recognize that this circuit too often was out of step with the rest of the country.

There are a number of factors that cause me to oppose the confirmation of Ms. Morrow. Chief among the factors is her skepticism, if not outright hostility, toward voter initiatives. In a 1988 article, Morrow criticized California's initiative process. In this article, she stated, really condescendingly, these words, "The fact that initiatives are presented to a 'legislature' of 20 million people renders ephemeral any real hope of intelligent voting by a majority." I suggest that that indicates a lack of respect for that process and the jealously guarded privilege of California voters to enact legislation by direct action of the people.

She further criticized the initiative process with this statement: "The public, by contrast, cast its votes for initiatives on the basis of 30- and 60-second advertisements which ignore or obscure the substance of the measure."

At the time of her hearing, I found that Ms. Morrow's suspicion of initiatives particularly troubling because of two recent California initiatives, Proposition 187 and Proposition 209, the California civil rights initiative, both of which have been blocked by activist Federal judges in California. In fact, the judges in the ninth circuit have invalidated voter initiatives on tenuous grounds since the early 1980s. These decisions demonstrate the enormous power that a single sitting Federal district judge possesses to subvert the will of the people. Morrow's criticism of citizen initiatives reveals an elitist mindset characteristic of activist judges who use the judiciary to impose their personal values onto the law.

Unfortunately, recent events have left me even more concerned about her disdain for the people's will as expressed in voter initiatives. Late last year, the ninth circuit effectively enshrined Ms. Morrow's view of initiatives into ninth circuit law. In an opinion striking down yet another voter initiative, term limits for California State legislatures, the ninth circuit held that Federal courts must scrutinize voter initiatives more closely than "ordinary legislative lawmaking." This "extra scrutiny" is necessary, according to the ninth circuit Judge Stephen Reinhardt and Betty Fletcher, because initiatives are not the product of committee hearings and because "the public also generally lacks legal or legislative expertise." In the end, the ninth circuit invalidated the term limits initiative not because term limits are unconstitutional—because I submit to you they plainly are not unconstitutional—but because the two Federal judges did not think the voters fully understood what they were voting for.

The ninth circuit does not need any more reinforcements in its war on the initiative process. The people of California are rightly jealous of their initiative process. They are frustrated that judges go out of their way to strike down the decisions they reach by direct plebiscite. We don't need to send them another judge, another leader on that court who would support the anti-initiative effort.

Ms. Morrow's distaste for voter initiatives is not the only troubling aspect of her record. For example, in a 1995 law review comment, she wrote what can be interpreted clearly to me as a blatant approval of judicial activism:

For the law is, almost by definition, on the cutting edge of social thought. It is a vehicle through which we ease the transition from the rules which have always been to the rules which are to be.

I know she has suggested a view of that language that would indicate that she meant something like the practice of law, rather than the rule of law. But that's not what she said and, in fact, maybe she meant it to apply to both circumstances. In fact, I think that's the most accurate interpretation of it. She may well have been talking about

the practice of law, but at the same time her approach to law, because that is what her language includes. It would suggest to me that this is, in fact, the language of a judicial activist.

In a 1983 speech, she also made comments that suggest approval of judicial activism. In this speech, she quoted Justice William Brennan, the evangelist of judicial activism, stating:

Justice can only endure and flourish if the law and legal institutions are "engines of change" able to accommodate evolving patterns of life and social interaction in this decade.

Obviously, using the law as an "engine of change" is the very definition of judicial activism and is fundamentally incompatible with democratic government.

Mr. President, it is a serious matter when the people, through their contract with the Government and their Constitution, set forth plain restraints on the power of the law, when the people, through their legislators in California, or through their Congress in Washington, pass statutes requiring things to be done one way or the other, and when a judge, if they do not respect that law, feels like he or she can reinterpret or redefine the meaning of words in those documents in such a way that would allow them to impose their view of the proper outcome under the circumstances. That makes them a judicial activist. I submit that these writings from her past indicate that tendency.

Also, in 1983, the nominee strongly criticized the Reagan administration's efforts to restrict the Legal Services Corporation from filing certain categories of lawsuits. As many of you know, the Legal Services Corporation grantees—they receive money from the Government—have repeatedly filed partisan suits in Federal courts to achieve political aims. For example, the Legal Services Corporation has repeatedly sued to block welfare reform efforts in the States. Issues of public policy simply are not properly decided by litigation. The use of public tax dollars to promote an ideological agenda through the Federal courts is not acceptable.

Of course, support for the historic mission of the Legal Services Corporation—helping the poor with real legal problems—is not the issue. What bothers me is Ms. Morrow's opposition to President Reagan's attempt to depoliticize the Legal Services Corporation and to direct its attention fundamentally to its goal of helping the poor. But we had a very serious debate in America and I think, for the most part, it has been won; for the most part, Legal Services Corporation has been restrained. There are still problems ongoing, but I hope we have made progress, despite the very strong opposition of Ms. Morrow in her writings.

So Ms. Morrow's intelligence, academic record, and professional achievements are not in question. However,

her writings, published over the last decade, provide a direct look at her view of the law. That view, I must conclude, indicates that Ms. Morrow would be yet another undemocratic, activist Federal judge.

One last point must be made. Unlike other judicial nominees, Ms. Morrow has not previously been a judge. Consequently, she does not have a lengthy judicial record for the Senate to review. In this situation, we must rely on her private writings and speeches to determine her judicial philosophy. This is not an easy or certain task. We must make judgments as to what is relevant and probative and what is not. In this situation, I have made such an inquiry and have decided to oppose the confirmation of this very able attorney. The Senate must fulfill its advise and consent responsibilities to ensure that federal judges respect their constitutional role to interpret the law. Consequently, I urge you to oppose this nomination.

I yield the floor.

Mrs. FEINSTEIN. Mr. President, I rise in support of the confirmation of Margaret Morrow to the Federal District for the Central District of California.

Her consideration by the United States is long overdue.

Ms. Morrow's nomination has twice been reported out by the Senate Judiciary Committee, on which I have the honor to serve;

Both times she has enjoyed the public support of the Chairman of the Judiciary Committee, Senator ORRIN HATCH;

Both times the American Bar Association voted unanimously to give her its highest rating, "well qualified."

Yet for nearly two years, Ms. Morrow's nomination has languished in the Senate.

By way of background, Ms. Morrow graduated from Harvard Law School, cum laude, in 1974. Prior to that, she graduated from Bryn Mawr College, magna cum laude, in 1971.

Since 1996, she has been a partner in the Los Angeles office of Arnold & Porter, one of the nation's preeminent corporate law firms.

Prior to 1996, she helped form the Los Angeles law firm of Quinn, Kully & Morrow in 1987, where she chaired the firm's Appellate Department.

Prior to 1987, she practiced for 13 years at the Los Angeles firm of Kadison, Pfaelzer, Woodard, Quinn, & Rossi, where she attained the rank of partner and handled a wide range of commercial litigation in the federal and state courts.

The legal profession has recognized Ms. Morrow's quality of work, commitment to the profession, and dedication to the broader community with a host of awards.

Among the many legal awards Ms. Morrow has received are the following:

In 1997, she received the Shattuck-Price Memorial Award, the Los Angeles County Bar Association's highest

award, awarded to a lawyer dedicated to improving the legal profession and the administration of justice.

In 1995, she received the Bernard E. Witkins Amicus Curiae Award, presented by the California Judicial Council to non-jurists who have nonetheless made significant contributions to the California court system.

In 1994, the Women Lawyers Association in Los Angeles recognized Ms. Morrow as most distinguished woman lawyer with the Ernestine Stalhut Award.

She received the 1994 President's Award from the California Association of Court-Appointed Special Advocates for her service on behalf of abused, neglected, and dependent children.

In 1990, the Legal Aid Foundation of Los Angeles presented her with the Maynard Toll Award for her significant contribution to legal services for the poor. She is the only woman to date who has received this award.

Margaret Morrow's excellent legal skills have been consistently recognized:

She was listed in the 1997-1998 edition of *The Best Lawyers in America*.

In 1995 and 1996, the Los Angeles Business Journal's "Law Who's Who," listed her among the one hundred outstanding Los Angeles business attorneys.

In 1994, she was listed as one of the top 20 lawyers in Los Angeles by California Law Business, a publication of the Los Angeles Daily Journal.

Margaret Morrow has held leadership positions in Federal, State and county bar associations and other legal organizations.

She served as the first woman President of the State Bar of California, a position she held from 1993 to 1994. Prior to that, she served as the State Bar's Vice-President.

From 1988-89, she served as President of the Los Angeles County Bar Association, creating the Pro Bono Council and the Committee on the Status of Minorities in the Profession during her term.

As President of the Barristers' Section of the Los Angeles County Bar, she established a nationally recognized Domestic Violence Counseling Project as well as an AIDS hospice program.

She directed the American Bar Association's Young Lawyers' Division and served on its Standing Committee for Legal Aid for Indigent Defendants.

She has served on the boards of a number of legal services programs, and has been a member of several Advisory Committees of the California Judicial Council.

The true test of Margaret Morrow's qualifications to serve on the federal bench is the long list of attorneys, judges, law enforcement personnel, and community leaders who actively support her nomination.

Indeed, the list of Margaret Morrow's supporters reads like a "Who's Who" of California Republicans and Bush, Reagan, Deukmejian, and Wilson appointees.

Just to highlight a few of Margaret Morrow's many supporters:

Los Angeles Mayor Richard Riordan, Republican;

Los Angeles County Sheriff Sherman Block, Republican;

Orange County District Attorney Michael Capizzi, Republican;

Former DEA Head, U.S. District Judge, and U.S. Attorney, Robert Bonner, who was appointed to those positions by Presidents Bush and Reagan; Cynthia Holcomb Hall and Stephen Trott, Reagan appointees to the Ninth Circuit Court of Appeals; and the list goes on and on.

Perhaps most telling is the recommendation of H. Walter Croskey. Judge Croskey is a Governor Deukmejian appointee to the appellate court of the State of California, and a self-described life-long conservative Republican.

Judge Croskey is well-acquainted with Margaret Morrow's reputation in the legal community, having observed her over a period of 15 years, when she appeared before him in both trial and appellate courts, and worked professionally on numerous State and local bar activities.

Based on his observations, this conservative Republican appellate jurist concluded:

She is the most outstanding candidate for appointment to the Federal trial court who has been put forward in my memory.

Margaret Morrow is, by any measure, an unusually accomplished member in her profession, and I believe that her qualifications will serve her well as a member of the Federal judiciary.

I urge the Senate to swiftly confirm her nomination.

Mr. KENNEDY. Mr. President, I rise in strong support of Margaret Morrow to the U.S. District Court in Los Angeles. She is well-qualified to serve as a federal judge, and she has already been waiting far too long for the vote she deserves on her nomination.

Margaret Morrow was nominated in the last Congress in May 1996. Partisan politics prevented action on her nomination before the 1996 election, but even that excuse can't be used to justify the Senate's failure to act on her nomination in all of 1997.

Margaret Morrow is a partner in a prestigious California law firm, and the first woman to serve as the president of the California Bar Association. She is a well-respected attorney and a role model for women in the legal profession.

Her nomination has wide support. The National Association of Women Judges calls her "an extraordinary candidate for the federal bench, a true professional, without a personal or political agenda, who would be a trustworthy public servant of the highest caliber." The National Women's Law Center calls her "a leader and a path blazer among women lawyers."

She also has the support of many prominent Republicans, because of her impressive qualifications for the bench.

Representative JAMES ROGAN says that "she would be the type of judge who would follow the Constitution and the laws of the United States as they were written." Richard Riordan, the Republican Mayor of Los Angeles has stated that the residents of Los Angeles "would be extraordinarily well-served by her appointment." Robert Bonner, who headed the Drug Enforcement Administration under President Bush, says that Morrow is "a brilliant person with a first-rate legal mind."

I hope we can move ahead today her nomination. But I also want to express my concern over a related issue—the excessive difficulty that women judicial nominees are having in obtaining Senate action or their confirmation. An unacceptable double standard is being applied, and it is long past time it stopped.

In this Republican Congress, women nominated to the federal courts are four times—four times—more likely than men to be held up by the Republican Senate for more than a year.

Women nominees may eventually be approved by the Judiciary Committee. But too often their nominations languish mysteriously, and no one will take responsibility for secretly holding up their nominations.

The distinguished majority leader has rightly noted that the process of confirming judges is time-consuming. The Senate should take care to ensure that only individuals acceptable to both the President and the Senate are confirmed. The President and the Senate do not always agree. But there is no reason the process should take longer for women than it does for men.

It is time to end the delays and double standards that have marred the Senate's role in the Advice and Consent process. I urge my colleagues to support the nomination of Margaret Morrow and to vote for her confirmation.

Mr. LEAHY. Mr. President, Senator ASHCROFT feels strongly about the validity of citizen initiatives. So do I. So does Margaret Morrow. As she explained to the Committee when she testified and reiterated in response to written questions, she fully respects and honors voters choice.

Ms. Morrow has explained to the Committee that she is not anti-initiative in spite of what some would have us believe. In response to written questions, she discussed an article she wrote in 1988 and explained, in pertinent part:

My goal was not to eliminate the need for initiatives. Rather, I was proposing ways to strengthen the initiative process by making it more efficient and less costly, so that it could better serve the purpose for which it was originally intended. At the same time, I was suggesting measures to increase the Legislature's willingness to address issues of concern to ordinary citizens regardless of the views of special interests or campaign contributors. I do not believe these goals are inconsistent.

. . . The reasons that led Governor Johnson to create the initiative process in 1911

are still valid today, and it remains an important aspect of our democratic form of government.

Does this sound like someone who is anti-democratic? No objective evaluation of the record can yield the conclusion that she is anti-initiative. No fair reading of her 1988 article even suggests that.

After the November 1988 elections in California, she was writing in the aftermath of five competing and conflicting ballot measures on the most recent California ballot. They had been placed there by competing industry groups, the insurance industry and lawyers each had their favorites, and each group spent large sums of money on political advertising campaigns to try to persuade voters to back their version of car insurance restructuring. It was chaotic and confusing for commentators and voters alike.

Rather than throw up her hands, Margaret Morrow wrote in a bar magazine as President of a local bar association that lawyers could contribute their skills to make the process more easily understood by those voters participation is limited to reading the ballot measures and descriptions and voting.

Her concerns were not unlike those of our colleague from Arizona, who proclaimed last year that when the voters of Arizona adopted a state ballot measure to allow medical use of marijuana, they had been duped and deceived. Indeed, Senator KYL criticized that ballot initiative passed by the voters of Arizona during the last election and said: "I believe most of them were deceived, and deliberately so, by the sponsors of this proposition."

Senator KYL proceeded at a December 2, 1996 Judiciary Committee hearing to focus on the official description of the proposition on the Arizona ballot as misleading. His approach was similar to what the majority did on the 9th Circuit panel that initially held the California term limits initiative unconstitutional, but that does not make Senator KYL a "liberal judicial activist."

I also recall complaints from conservative quarters when the people of Houston reaffirmed their commitment to affirmative action in a ballot measure last fall. They complained that the voters in Houston had been deceived by the wording of the ballot measure.

There have been problems with citizen initiatives and the campaigns that they engender. But that problem is not with Margaret Morrow or her commitment to honor the will of the voters. The problem is that they are being utilized in ever increasing number to circumvent the legislature and the people's will as expressed through their democratically-elected representatives. They are no longer the town meeting democracy that we enjoy in New England but the glitzy, Madison Avenue, poll-driven campaigns of big money and special interest politics.

Margaret Morrow was right when she pointed out that these measures, their

ballot descriptions and their advertising campaigns ought to be better, more instructive, more clearly written. The thrust of that now-controversial article was that lawyers should contribute their skills better to draft the measures so that once adopted they are clear and controlling, so that they are not followed by court challenges during which courts are faced with difficult conflicts over how to interpret and implement the will of the people.

We know how hard it is to write laws in a way that they are binding and leave little room for misinterpretation. With all the staff and legislative counsels, and legal counsels and specially-trained legislative drafters and Congressional Research Service and hearings and vetting and comments from Executive Branch departments and highly-skilled and experienced and highly-paid lobbyists, Congress has a difficult time writing plain English and passing clear law. Were it not for the administrative agencies and supplemental regulatory processes even more of our work product would be the target of legal actions by those who lost the legislative battle over each contested point.

For those who preach unfettered allegiance to initiatives, I commend their rhetoric but note that it does not advance us. The questions in most of the subsequent legal challenges to voter-passed ballot measures are either what does it mean or was it passed fairly. Both those questions are premised on an acceptance of the will of the voters.

For example, the first challenge to the California term limits initiative was not that in Federal court that resulted in the split opinion by a panel of the Ninth Circuit that is later reversed. No, the earlier challenge was in the state courts and reached the California Supreme Court. The California Supreme Court was required to determine, what did the ballot measure say, was it written to be a lifetime ban or a limit on the number of consecutive terms that could be served.

That was not an easy question given the poor drafting of the measure and the official materials that described it to the voters. Indeed, the California Attorney General, a conservative Republican, argued that the measure meant only to be a limit on the number of consecutive terms. After three levels of state court proceedings and months and months and hundreds of thousands of dollars in legal fees the case was decided by a split decision of the California Supreme Court.

The Federal challenge to the statute followed on the alternative ground that the voters were not clearly informed what the measure meant. This is only important for those who cherish the will of the voter and want to protect against voter fraud.

On citizen initiatives, Margaret Morrow has told the Committee:

I support citizen initiatives, and believe they are an important aspect of our democratic form of government. . . .

I believe the citizen initiative process is clearly constitutional. I also recognize and support the doctrine established in case law that initiative measures are presumptively constitutional, and strongly agree with [the] statement that initiative measures that are constitutional and properly drafted should not be overturned or enjoined by the courts.

Contrary to the impression some are seeking to create about her views, she told the Committee:

In passing on the legality of initiative measures, judges should apply the law, not substitute their personal opinion of matters of public policy for the opinion of the electorate.

I am disappointed to see that some have sought to make the nomination of Margaret Morrow into a vote about guns; it is not. During two years of consideration by the Judiciary Committee and through two sets of hearings and waves of written questions, no one even asked Ms. Morrow about guns.

Nonetheless, some who have sought to find a reason to oppose Ms. Morrow have fastened upon a few phrases taken out of context from a National Law Journal article from October 1993 that discussed the 67th California State Bar conference. This meeting followed the July 1993 killings in the San Francisco offices of the law firm of Pettit & Martin.

The National Law Journal's report notes that the representatives of the local voluntary bars considered 100-plus resolutions for referral to the State Bar's Board of Governors. The fact missed by those who are seeking to criticize this nominee is that the State Bar took no anti-gun action.

The National Journal report noted that the widow of one of the victims pleaded at a reception that the convention "take action on gun control." What has gone unrecognized is that in spite of the emotional rhetoric at the conference, the California State Bar took no such action. Instead, mindful of the legal constraints on bar associations and the United States Supreme Court decision in *Keller v. State Bar*, the conference scaled back anti-gun resolutions. A resolution calling for a ban on semiautomatic handguns from the San Francisco delegation was reworded as a safety measure for judges, other court personnel and lawyers. A resolution from the Santa Clara delegation was turned into a mere call for a study.

The Chairwoman of the conference was not Margaret Morrow but Pauline Weaver of Oakland. Margaret Morrow was not installed as the new President of the California State Bar until the end.

Ms. Morrow told the National Law Journal that the bar should act like a client and do what is right by following the legal advice of its lawyers. That is what the California State Bar did under Margaret Morrow. In fact, and this is the key fact missed by those who seek to criticize Ms. Morrow, the California State Bar followed the law as declared by the United States Supreme Court and did not take action on gun control.

Mindful of the strictures of law, Margaret Morrow appointed a special committee of the Board of Governors to review the resolutions that had been recommended at the conference. Based on the recommendations of that committee, the Board of Governors of the California State Bar did not take a stand on gun control and did not even adopt the resolutions passed at the State conference.

This is hardly a basis on which to oppose this outstanding nominee. First, she was not involved in the efforts by some to push gun control resolutions through the State Bar, following the horrific killings in the San Francisco law offices a few months before. Second, she was not installed as the President of the State Bar until the end of the conference. Third, the actions she took as President were essentially to make sure the Board of Governors understood the law and the limits on what they could do.

So, in spite of the emotional plea by victims and the desires of certain activists, the California State Bar did not adopt gun control resolutions in 1994 and did not act to use mandatory dues for political activities. Far from demonstrating that she would be a judicial activist or is anti-gun, these facts show how constrained Margaret Morrow was in making sure the law was followed and everyone's rights were respected.

I grew up hunting and fishing in the Vermont outdoors and I enjoy using firearms on the range. I believe in the rights of all Americans to use and enjoy firearms if they so desire. I voted against the Brady bill and other unconstitutional anti-gun proposals. I have no reason to think that Margaret Morrow will judicially impose burdens on gun ownership.

I urge others to review the facts. I am confident that they will come to the same conclusion that I have with respect to the nomination of Margaret Morrow and the lack of any basis to conclude that she is anti-gun.

I ask unanimous consent that a January 15, 1998 letter to Senator BOXER signed by 11 members of the Board of Governors of the California State Bar that year be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JANUARY 15, 1998.

Re Margaret M. Morrow: Judicial nominee for the Central District of California.

Hon. BARBARA BOXER,

U.S. Senate, Washington, DC.

DEAR SENATOR BOXER: We write concerning the nomination of Margaret M. Morrow to the United States District Court for the Central District of California. It has recently come to our attention that various individuals and/or groups have charged that Ms. Morrow "vowed to push a gun control resolution" through the State Bar of California during the year she served as President of that association.

Each of us was a member of the State Bar Board of Governors during Ms. Morrow's year as President. We represent a broad spectrum of political views. We are Republicans and Democrats, liberals and conservatives.

We write to inform you that Ms. Morrow did not advocate that the State Bar take a position on gun control, and that the association in fact did not take a position on the issue during the 1993-1994 Board year.

The assertion that Ms. Morrow vowed to push gun control appears to emanate from an article that appeared in the National Law Journal concerning the 1993 State Bar Annual Meeting. At that meeting, the Conference of Delegates, which is comprised of representatives of voluntary bar associations throughout California, passed two resolutions that called upon the State Bar to study the possible revision of laws relating to firearms, and propose and support measures to protect judges, court personnel, lawyers, lawyers' staffs and lawyers' clients from gun-related violence. These resolutions were passed in the wake of a shooting incident at a prominent San Francisco law firm that took the lives of several of the firm's lawyers and employees.

At the time the Conference resolutions were passed, Ms. Morrow had not yet assumed the office of President. When asked how the Board of Governors would respond to the resolutions, she told the National Law Journal that she would "discuss Keller strictures with the Board," and also that she believed the bar "should act more like a client, . . . that is, get legal advice, 'assess the risks and then do what is right.'" Ms. Morrow's reference to "Keller strictures" was a reference to the United States Supreme Court's decision in *Keller v. State Bar*. That case held that the bar could not use mandatory lawyers' dues to support political or ideological causes.

On its face, therefore, the National Law Journal article does not support the assertion that Ms. Morrow "vowed to push a gun control resolution" through the State Bar. Rather, it reports that she vowed to discuss legal restrictions on the bar's ability to act on such a resolution with other members of the Board.

Ms. Morrow's actions in the months that followed the Annual Meeting further demonstrate that she followed the law as it relates to this subject. Consistent with usual State Bar procedure, the resolutions passed by the conference of Delegates were considered by the Board of Governors. Because of the legal issues involved, Ms. Morrow appointed a special committee of the Board to review the resolutions and recommend a position to the full Board. Based on the committee's recommendation, the Board did not adopt the resolutions passed by the Conference. Rather, it adopted a neutral resolution that called on lawyers to "participate in the public dialogue on violence and its impact on the administration of justice," and suggested that the State Bar sponsor "neutral forums on violence and its impact on the administration of justice." The even-handed tone of the resolution was due, in large part, to the belief of Ms. Morrow and others that the Board should not violate Keller's spirit or holding. Stated differently, Ms. Morrow and the Board followed the law, and avoided taking a stand in favor of or against gun control.

We hope these comments help set the record straight with respect to Ms. Morrow's actions as President of the State Bar.

Very truly yours,

Michael W. Case,
Maurice L. Evans,
Donald R. Fischbach,
Edward B. Huntington,
Richard J. Mathias,
James E. Towery,
Glenda Veasey,
Hartley T. Hansen,
John H. McGuckin, Jr.,
Jay J. Plotkin, and

Susan J. Troy.

Mr. LEAHY. Mr. President, I note that Senators ASHCROFT and SESSIONS have not challenged Ms. Morrow's truthfulness before the Committee. At their press conference last fall announcing their opposition to her nomination, they were careful to avoid such personal attacks. Instead, they based their conclusions on her writings. I disagree with them and agree with those who read those writings in context. That is a disagreement, we draw different conclusions from the same words. That is understandable.

What I do not understand is how anyone can continue to repeat the claim that Ms. Morrow was not truthful with the Committee. She was required to answer more litmus test questions and was more forthcoming than any nominee I can remember.

Some have made the confirmation process into an adversary process. Ms. Morrow is not paranoid; someone has been out to get her.

In this difficult context, in which the Morrow nomination was targeted by forces opposing the filling of judicial vacancies, charges against Ms. Morrow's integrity and character remain out of line and unfounded. Unfortunately, I have heard repeated over the last day the charge that Ms. Morrow provided a false answer to a written question propounded at the Committee. That is incorrect.

While I will not take the Senate's time to refute all of the unfounded arguments that have been used in opposition to this nomination, I do want to clear up the record on this. This is a matter of honor and honesty. I do not want the record left unchallenged should her son, Patrick, come to read it someday.

The written questions propounded long after the Committee deadline following the March 18, 1997 hearing included the following: "Are there any initiatives in California in the last decade which you have supported? If so, why? Are there any initiatives in California in the last decade you have opposed? If so, why?"

On April 4, the nominee responded in writing noting:

I have not publicly supported or opposed any initiative measure in the past decade, with one exception." The nominee proceeded in her answer to describe her participation as a member of the Los Angeles County Bar Association Board of Trustees in a unanimous vote authorizing the Association to oppose a measure sponsored by Lyndon LaRouche concerning AIDS, a measure that was also opposed by Governor Deukmejian and many others.

I raised objection to these questions at a meeting of the Committee on April 17 because I saw them as asking how Ms. Morrow voted on the more than 150 initiatives that Californians had considered over the last 10 years. Later, the Senator who submitted these questions indicated that he did not intend to ask how the nominee voted and he revised the questions. When he did, he resubmitted another set of supple-

mental written questions to the nominee on April 21, he acknowledged that 160 initiatives have been on the ballot in California in the last 10 years and he disavowed any interest whether or not the nominee voted on the initiatives but asked for "comment" on a list of initiatives.

Some have come to contend that the portion of the answer about public support or opposition to initiatives was "intentionally or unintentionally" not truthful information. Their supposed "smoking gun" is a November 1988 article in the Los Angeles Lawyer magazine. What this contention about dishonesty ignores is that the nominee had previously furnished the Committee with the November 1988 article and that article had been inquired about at the March 18 hearing and in the follow up written questions. In fact, the written questions that included the ones at issue contained quotes from the article and questions specifically about it. Thus, no one can seriously contend that this article was unknown to the Committee or that the nominee had failed to disclose it.

Equally important, and the reason I suspect that the nominee did not refer to the article in her written response to the questions in issue, was that the article was not relevant to these particular questions. Preceding questions had inquired about the meaning of the article. The questions in issue ask about support or opposition for initiatives and appear to inquire about such support or opposition for initiatives in the course of their being considered by voters in California.

By contrast, the article concerned measures that had already been acted upon by the voters of California, including one that had been considered two years previously. They were not support for or opposition to these initiatives, as the nominee, or, for that matter as I, understood those questions. They were commentary after the fact by way of comment upon the growing resort to initiatives in California and ways lawyers might help to improve the initiative process and the drafting and consideration of initiatives as well as a call for the State legislature to function more efficiently.

Indeed, when the author of those questions received the initial answer, he did not question that it was untruthful or feign ignorance of the November 1988 article. Instead, when he revised and resubmitted supplemental questions he prefaced his revised question by noting that he was aware of the nominee's "public comments regarding citizen initiatives."

Thus, no one can fairly believe that this nominee's answer was incomplete or deceptive for having failed to include express reference to an article that was not advocating in favor or in opposition to a pending initiative and about which the questioner had knowledge, had already specifically inquired and on which the questioner promptly professed knowledge.

Stripped of the rhetoric and hyperbole, there is simply no basis to contend that this nominee misled the Committee by her answer. This is no basis to question her candor. Any purported "major misstatement of fact" is not that of this nominee but would be of those who accuse her of a lack of honesty or candor.

No fair and objective evaluation of the record can yield the conclusion that she is anti-initiative. No fair reading of her statements suggests a basis for any such assertion.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. The Senator from Missouri said I could yield myself 10 minutes.

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

Mr. GRASSLEY. Mr. President, I would like to make a few comments regarding the nomination of Margaret Morrow.

Some of my colleagues on the other side have attempted to argue that Ms. Morrow has been treated unfairly. This unsubstantiated argument is based partly on the questions she was asked in the Judiciary Committee. However, all that some of us were trying to achieve in asking those questions was to attempt to understand what Ms. Morrow's views were on a number of important issues to the American people. In particular, we've had a number of Federal judges overturn popular initiatives, in direct conflict with voters' decisions. The last thing we need is another Federal judge that will defy what the voters have decided. Ms. Morrow has spoken against citizen initiatives and has publicly opposed specific ballot initiatives. So, we believed it was important to understand better what kind of a judge she might be.

Now, we've heard Margaret Morrow was reported out of the Judiciary Committee in the last Congress without a problem. So, why is there a problem now? Well, I think to our credit, we on this side tried to give the President a great deal of deference regarding his nominees. But, as Senator HATCH and others have pointed out, the President has appointed a number of judges who have taken it upon themselves to try to make the law, and have angered the public in doing so. This record now demands the kind of scrutiny Senator LEAHY advocated, which has been absent until the last couple of years or so. I've received a great deal of letters from my State asking me to do a better job of scrutinizing nominees.

Of course, after getting used to us rubber-stamping nominees, I'm sure it's been quite a shock to see Republicans borrowing from the Democrats' playbook and turning the tables. Over the last year, I've heard irresponsible and overheated rhetoric directed at Republicans regarding judicial nominees.

To suggest, as some misguided Members have, that Ms. Morrow's gender is a factor in our decision to ask her

questions, or even oppose her nomination, is both irresponsible and absurd. As others may have noted, we've processed around 50 women judicial nominees for President Clinton, including Justice Ginsberg, and I've supported almost all of them. As a matter of fact, the first nominee unanimously confirmed last year was a woman candidate, and we've already confirmed a couple this year. It's just absurd to think that any Senator makes his or her decision on a nominee based on gender or race.

Mr. President, I sent Ms. Morrow five pages of questions in total. As a contrast, I sent Merrick Garland 25 pages of questions. So, 5 pages versus 24 pages. And, we're supposedly unfair to Ms. Morrow. Figure that one out.

I must say though, it was easier getting Mr. Garland to respond to his 25 pages of 100 or so questions than it was to get Ms. Morrow to answer her 5 pages.

Mr. President, when a judicial nominee, whether a man or a woman, writes an article which is critical of democratic institutions like the citizen initiative process, it is our duty as Senators to learn the reasons for this. How can a Senator reasonably give advice and consent without understanding a potential judge's position on such fundamental issues? With the recent propensity of Federal judges, especially in California, to overturn Democratic initiatives on shaky grounds. It's important that we not confirm another activist judge who is willing to substitute his or her will for that of the voters.

I recall during the Democrat-run confirmation hearings of various Republican nominees the issue of "confirmation conversion" was a recurrent theme.

But, now the shoe is on the other foot. When Ms. Morrow answered written and oral questions contradicting her former beliefs on certain issues, I became somewhat concerned. Several of my followup questions related to such "conversations." Where there are discrepancies, we have a duty to uncover the reasons why.

But a more disturbing problem I have seen with Ms. Morrow's writing is that, on number of issues, she doesn't say her views have changed. She says we are misreading her writing. In other words, she doesn't really mean what she appears to say.

In the 1988 article on citizen initiatives, for example, Ms. Morrow writes in language that is highly critical of the voters. She has recently responded that she "had not meant to be critical of citizen initiatives." Yet, in her article she goes so far as to state that

The fact that initiatives are presented to a "legislature" of 20 million people renders ephemeral any real hope of intelligent voting by a majority.

In her statement, Ms. Morrow was basically saying that initiatives are inherently flawed, although now she is translating it differently. So this raises serious questions about Ms. Morrow's

ability to enunciate her views in a clear and concise manner, which we all hope judges will do. If such conflicting messages are reflected in her writing as a lawyer, her potential judicial opinions may be equally confusing. How can citizens rely on writings of someone who has a record of contradicting herself?

But, on top of these shortcomings, Mr. President, there is a matter of more importance. Whether intentionally or not, Ms. Morrow has, unfortunately, provided false and misleading information to the Judiciary Committee. And, I believe the integrity of the committee and the nomination process is at stake.

When asked her views on a number of initiatives, Ms. Morrow first responded by stating unequivocally, "I have not publicly supported or opposed any initiative measure in the past decade with one exception." And, then she mentioned a specific initiative from 1988 sponsored by the extremist Democrat, Lyndon Larouche, that she opposed.

But, despite Ms. Morrow's unequivocal denial, in 1988 it turns out she also publicly attacked three other initiatives that pitted the insurance industry against trial lawyers. Ms. Morrow wrote, "Propositions 101, 104 and 106 were, plain and simple, an attack on lawyers and the legal system." In 1988, she went on to attack a 1986 proposition that would have reduced the salaries of public officials. She argued it would have "driven many qualified people out of public service." Of course, we hear that worn out argument every time we debate our own pay raises.

Now, Ms. Morrow had stated, without question, that she had not taken any public position on these initiatives whatsoever. And, after creating this foundation of sand, she used it to refuse to answer questions on her views.

Well, the foundation crumbled after the chairman demanded responses, and perhaps the nominee realized her misinformation had been discovered. Only then did she finally provide more responsive answers to the questions.

But, the fact remains that regardless of whether there was an intention or motive, false and misleading information was provided to the Judiciary Committee by the nominee, an experienced lawyer, who one would presume either knew, or should have known, what she was doing. If she indeed didn't realize what she was doing, then one has to question her ability to be careful with the details, which would reflect on her ability to function as a Federal judge.

Now, I'm sure that many of you are unaware of this problem, so I'm bringing it to your attention. Unfortunately, some have tried to make the feeble argument that these were just mistakes that should be overlooked. Well, this isn't a mistake of failing to provide articles to the committee, which the nominee did. This isn't a mistake of quoting a controversial

statement of Justice Brennan, and they saying she pulled the quote from some book, but hadn't read the context of the quote, and didn't know what it meant.

This is a major misstatement of fact, that was used as the basis for not responding to the committee. This is not what we expect from lifetime tenured judges. Mr. President, this is below the standard we all demand. This is below the standard afforded most Americans in their dealings with the government. For these reasons Mr. President, I will vote against the nominee.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I ask that I be able to speak for 5 minutes and retain the remainder of my time, and Senator HATCH would like to have his 5 minutes retained as well. My understanding is I have 10 minutes, he has 5 minutes, and I will now use 5 minutes of my time.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. I want to put in the RECORD an article from the Los Angeles Lawyer, November 1988, that directly refutes the remarks by the Senator from Iowa, Senator GRASSLEY, who said that Ms. Morrow misled the committee and publicly took a stand on initiatives when clearly in this article it is very obvious she wrote about these after those initiatives were voted on in all cases. I think it is very serious that the Senator from Iowa, who is my friend and we work on many issues together, would misstate what occurred.

So, Mr. President, at this time I would place this article in the RECORD. She says she is commenting on initiatives that had appeared on the November 8 ballot in one case. On the other she commented on an initiative that was voted on 2 years prior. So I ask unanimous consent that be printed in the RECORD for starters.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REFORMING THE INITIATIVE PROCESS—AN OPPORTUNITY TO RESTORE RESPONSIBLE GOVERNMENT TO CALIFORNIA

(By Margaret M. Morrow)

We in California have this month concluded the single most expensive and one of the most complicated initiative campaigns in history. I refer, of course, to the battle over Propositions 100, 101, 103, 104 and 106, the insurance and attorneys' fees initiatives, which appeared on the November 8 ballot. Much as we might like to dismiss these propositions and the campaigns they spawned as an aberration, we cannot do so. The cost and tone of the campaigns, and the complexity of the measures involved, are simply the latest examples of a disturbing trend toward overuse and abuse of the initiative process.

Much of the rhetoric in the recent campaign focused on lawyers, and much of the spending pro and con was done by lawyers. Insurance industry Propositions 101, 104 and 106 were, plain and simple, an attack on lawyers and the legal system. They were not the first such assault and they probably will not be the last. Self-interest alone, therefore,

may dictate that lawyers examine the initiative process to see if it is serving the purpose intended by its creators. Our responsibility as citizens compels us to do so as well, since recent abuse of the initiative process is but one symptom of a general malaise in government in this state.

The right of initiative was placed in the California Constitution in 1911, as part of a series of reforms championed by populist Governor Hiram Johnson. Johnson believed that the initiative would serve as a check on the unaccountable, corrupt or unresponsive legislature, and would provide a grass roots vehicle for citizens who saw their desires thwarted by elected representatives.

The initiative was never intended to serve as a substitute for legislative lawmaking, nor as a weapon in the arsenal of wealthy special interest groups. In reality, however, it has become both of these things.

DRAMATIC INCREASE

The number of initiatives put before the public has risen dramatically in recent years. Only 17 initiatives were filed in the 1950s. This number rose to 44 in the 1960s, and leaped to 180 in the 1970s. Thus far in the 1980s, 204 initiatives have been filed. There were 12 on this month's ballot alone, covering such diverse topics as the homeless, AIDS, insurance rates, attorneys' fees, cigarette taxation and part-time teaching by judges at public universities and colleges.

This increased use of the initiative process is attributable to a number of factors. In recent years, California legislators have become so beholden to special interest groups for campaign financing and added personal income that they have been paralyzed to act on controversial measures negatively impacting their benefactors. One need look no further than tort reform and insurance reform, the meat of Propositions 100, 101, 103, 104 and 106, to see that this is true. Bills on these subjects have been consistently opposed by trial lawyers associations on the one hand, and the insurance industry on the other. Whether one favors reform in these areas or not, it is hard to argue with the fact that their movement in the legislature has been stymied not on the merits, but because of the perceived power of the interests involved. This lawmaking paralysis, coupled with tales of corruption in Sacramento, has led the public to lose confidence in and to mistrust state government. A natural side effect has been an increase in the popularity of the initiative.

Special interest groups, too, have begun to perceive the utility of the initiative in pushing their agendas. Measures sponsored by such groups often lend themselves to packaging for mass media consumption. Initiatives, moreover, get less scrutiny than legislative bills, and frequently this is just what their interest group sponsors want. In the legislature, many eyes review a bill before it is put to a final vote. Legislative counsel examines it for technical or legal shortcomings. Various committees look at it from different perspectives. Pros and cons are debated, and compromises are reached.

The public, by contrast, casts its vote for initiatives on the basis of 30- and 60-second advertisements which ignore or obscure the substance of the measure, and which focus instead on who sponsors the proposition. The process allows for no amendment or compromise. An initiative is an all-or-nothing proposition.

Reformers and special interest groups have been joined, ironically enough, by politicians and officeholders in frequent resort to the initiative. Lawmakers, frustrated with being the party out of power or seeking to increase their popularity through association with a successful proposition, have begun to spon-

sor and promote a variety of initiatives. They do so to circumvent a legislative process they cannot control or to create leverage they can use to manipulate that process more effectively. Personal popularity is enhanced, too, when one lends one's name to a successful ballot proposition.

SPIRALING COSTS

This increased use of the initiative has fundamentally changed the nature of the right. Spiraling costs have made a mockery of its grass roots origins. A good example of the runaway expense associated with most initiative campaigns is Proposition 61, a measure which appeared on the ballot two years ago. This proposal would have drastically reduced the salaries of all government officials, including judges, and driven many qualified people out of public service. The measure was opposed by virtually every recognized organization and by the state's most prominent political leaders. Yet opponents were told that they would have to raise millions of dollars to ensure the measure's defeat. This year's battle over insurance and attorney's fees raises the even more frightening specter of massive campaigns financed by wealth special interest groups. The insurance industry alone has spent something in the range of \$50 million promoting its position on Propositions 100, 101, 103, 104, and 106. These kinds of numbers make any true grassroots effort by a group of citizens nothing more than a pipedream.

Misleading advertising and reliance on seconds-long television and radio spots, moreover, defeat any chance that citizens can obtain the information necessary to cast an informed vote. The fat that initiatives are presented to a "legislature" of 20 million people renders ephemeral any real hope of intelligent voting by a majority. Only a small minority of voters study their ballot pamphlet with any care and only the minutest percentage take time to read the proposed statutory language itself.

Indeed, it seems too much to ask that they do, since propositions are often lengthy and difficult for a layperson to understand. Proposition 104, for example, consumed almost 13 pages of small, single-spaced type in the most recent ballot pamphlet and concerned some of the most technical aspects of the Insurance Code. The problem is exacerbated by the fact that paid advertising and news reports tend to focus on the identity of the proponents and opponents and on how much money each campaign is spending, rather than on the substance of the measure and the arguments in favor of or against it. Some advertising, in fact, is affirmatively misleading concerning the content and effect of the initiative.

To add to the confusion, many initiatives are poorly drafted, internally inconsistent or hopelessly vague. Bills introduced in the legislature are subjected to many levels of review before final passage, and drafting or clarity problems usually surface and are resolved before a final vote is taken. Initiatives, by contrast, receive no prior review before being put to a vote of the people. The likelihood of any subsequent review is minimal too, since an initiative, once approved, can only be amended by another vote of the people.

The net result is that many of the more complicated measures passed by the voters end up in the courts for final review.

As David Magleby of Brigham Young University, a leading authority on the initiative process, has said, "Unlike other political processes, there are no checks and balances on the initiative process [other] than the courts." The courts are thus forced to become "the policeman of the initiative process."

Requiring that the courts assume this role is not good for the public image of the judiciary or of the legal profession. Having passed an initiative, voters want to see it enacted. They view a court challenge to its validity as interference with the public will, and blame the lawyers and judges who control the legal process for thwarting the public's directive.

* * * * *

numerous proposals for reform of the initiative process over the years. Some have urged that contributions to initiative campaigns be limited, and that disclosure of financial backers be required in all campaign advertising. Others have suggested that initiatives go directly to the legislature for a vote before being presented to the electorate. Still others have proposed that all initiatives be screened by the Secretary of State's office for legal and drafting problems before they qualify for the ballot. Several of these ideas are sound and would address some of the most glaring problems with the initiative process as it now operates. Given the campaign we have just endured, we must hope that these proposals are resurrected quickly and implemented swiftly.

Initiative reform, however, is not enough. There must be in addition an overhaul of the way business gets done in Sacramento, so that the legislature can function as it should and resort to the initiative is not necessary. Limits on campaign spending, higher salaries coupled with rules prohibiting the taking of honoraria and gifts, quarterly disclosure of contributions by legislators and serious self-policing through active ethics committees in the Assembly and Senate are just a few of the ideas which should be explored. Whatever the solution, legislators must become what they were intended to be—representatives of the people, not puppets of a panoply of interest groups who define public good in terms of their own pocketbooks.

Lawyers and lawyers' organizations should be at the forefront of these reform efforts. Lawyers are among those most uniquely concerned with the interpretation of laws and the enforcement of legal rights. We are among those most familiar with the delicate balance between executive, legislative, and judicial branches envisioned by the founders of our democratic form of government. Our traditions and our rules of professional responsibility, moreover, obligate us to work for the public good. There is no greater public good than strong, effective, good government.

We lawyers assert that we are among the leaders of society, and it is time we began to act the part. I intend to establish a committee to examine existing proposals for reform, explore other options and recommend a course of action. Our Association has a real opportunity, which we cannot ignore, to contribute to restoring responsible government of California. We welcome your ideas and support.

Mrs. BOXER. I also want my colleagues to understand that the Senator from Iowa asked Ms. Morrow in an unprecedented request which, frankly, had Senators on both sides in an uproar, to answer the question how she personally voted on 10 years' worth of California initiatives. It was astounding. I remember going over to my friend, whom I enjoy working with, and I have worked with him on so many procurement reform issues, and I said, "Senator, I can't imagine how you would expect someone to remember how they voted on 160 ballot measures," some of which had to do with

parks, some of which had to do with building railroads, some of which had to do with school bond measures. And besides, I always thought—and correct me if I am wrong—we had a secret ballot in this country; it is one of the things we pride ourselves on.

Now, Margaret Morrow has been forthcoming. That is why she has the strong support of Senator ORRIN HATCH, and let's read what Senator HATCH has written about Margaret Morrow.

Mr. GRASSLEY. Mr. President, since my name was mentioned, I would like to respond, if the Senator would yield.

The PRESIDING OFFICER. Does the Senator from California yield?

Mrs. BOXER. Yes. I will be happy to allow a 30-second response.

Mr. GRASSLEY. I will only remind the Senator from California that the point I was making is not when—the question I was proposing is not when Ms. Morrow responded. The question is that she said she did not take a position on public policy issues except for that one, and she did take, we found out that she did take positions on public policy issues. So she was misleading.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. If I might make a point here. When one is asked if one took a stand on an initiative, one would assume the critical point is at what time you speak out about it. My goodness, if we are forbidden as human beings, let alone the head of a bar association, to comment on what voters have voted on and to talk about ways the initiative process can be improved—and I am going to put into the RECORD her remarks on that point because she has such respect for the initiative process. She has thought about ways to improve it—if we are gagged as human beings from commenting on what the voters have voted on, this is a sad state of affairs for this country.

So I want to talk about what Senator HATCH has said about Margaret Morrow. I think it is important. He said it himself quite eloquently at the beginning of this debate. But I want to reiterate because he sent a letter out to all of our colleagues, and he talked about the comment that Margaret Morrow made that has been so taken out of context by my colleagues.

He said that the committee, the Judiciary Committee, studied Margaret Morrow's response to make a decision as to whether she was an activist judge, and they concluded that her explanation was in keeping with the theme of her speech. And essentially, Senator HATCH goes on to say, "[T]he nominee went to some lengths in her oral testimony and her written responses to the Committee to espouse a clearly restrained approach to the constitutional interpretation and the role of the courts."

Then he goes on to say the following:

In supporting the nomination, the Committee takes into account a number of fac-

tors including Ms. Morrow's testimony, her accomplishments and her evident ability as an attorney, as well as the fact that she has received strong support from a number of Republicans.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mrs. BOXER. I ask I be allowed another 2 minutes.

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

Mrs. BOXER. So my colleagues have every right to oppose Margaret Morrow. My goodness, it is a free country. They have every right to vote against her and speak against her. But I would like when we have arguments in the Chamber, particularly where someone is not present, that these arguments be true, that these arguments hold up, that these arguments are backed up by the facts.

I want to point out that in several of my colleagues' dissertations here today, they have talked about other lawyers, they have talked about other judges. It is extraordinary to me that they do not want Margaret Morrow, so they talk about three other judges. Margaret Morrow is Margaret Morrow. She is not judge X, judge Y or judge Z. She is Margaret Morrow. She is coming before us, the second woman ever elected to head the Los Angeles County Bar Association, the first woman ever elected to head the California State Bar Association. This is the largest State bar in any State. Republicans voted for her for that position. Democrats did as well. She has the most extraordinary support across the board.

So when we attack Margaret Morrow, my goodness, don't talk about other judges. Talk about Margaret Morrow. If my colleagues are running for the Senate, they want to be judged on who they are, what do they stand for, not to stand up and say, well, I can't vote for this candidate X because he or she reminds me of candidate Y, and if he gets in, he will act like candidate Y.

One great thing about the world today is we are all individuals. We are all human beings. God doesn't make us all the same. That is why I am going to vote against cloning. We are different than one another. So when you attack Margaret Morrow, I think you need to do it in a fair way, not by the fact that another judge ruled a certain way. And when I come back to my last 5 minutes, I will continue on this theme.

I yield back and retain my time.

The PRESIDING OFFICER. Who yields time?

Mr. ASHCROFT. Mr. President, I yield to myself the remainder of the time and ask you to inform me when there is 1 minute remaining.

I am concerned about this nominee who has indicated that when the people are involved in developing the law through a referendum, you don't get intelligent lawmaking. I am concerned about that because from her writings it appears that the Ninth Circuit Court of Appeals embraced that very view. When the Ninth Circuit Court of Ap-

peals sought to set aside the California voters' commitment to term limits, they did so based on what they considered to be the lack of expertise of the people. Here is what Judge Reinhardt said when he set aside the term limits initiative in California:

The public lacks legal or legislative expertise—or even a duty to support the Constitution. Our usual assumption that laws passed represent careful drafting and consideration does not obtain.

Where might he get an idea like that idea, to allege that the people are disregarded because they don't have legal training.

Here is what Ms. Morrow said:

The fact that initiatives are presented to a legislature of 20 million people renders ephemeral any real hope of intelligent voting by the majority.

This is the judge who has been reversed over and over again when the California Ninth Circuit was reversed 27 out of 28 times by the Supreme Court. They are embracing this philosophy in those kinds of items.

Reinhardt said:

The public . . . lacks the ability to collect and study information that is utilized routinely by legislative bodies.

Where could he have gotten that? Same philosophy as Ms. Morrow who said:

. . . propositions are often lengthy and difficult for a layperson to understand. The public . . . casts its votes for initiatives on the basis of 30- and 60-second advertisements.

Both of these reflect a distrust of the people: One an activist judge, one of the most reversed judges in history; the other an offering of this administration for us to confirm.

I am calling into question the judgment and the respect that this nominee has for the people. And it is based on her statements. By contrasting her to Judge Reinhardt, I am trying to point out that the same kind of mistakes made by the most reversed judge on the ninth circuit are the kinds of mistakes that you find in Ms. Morrow's writings, and I think it reflects a confidence in lawyers and judges that permits them to do things that the law doesn't provide them a basis to do.

The law says the people of California have a right, if they want to have term limits, to have an initiative that embraces it. But what does Judge Reinhardt say? Judge Reinhardt says:

Before an initiative becomes law, no committee meetings are held, no legal analysts study the law, no floor debates occur, no separate representative bodies vote on the bill. . . .

He does that as a means of setting aside the law, saying the people are simply too ignorant. They have not studied this carefully enough.

Where would Morrow be on that kind of issue? According to her writings:

In the legislative, many eyes review a bill before it is put to a final vote. Legislative counsel [another lawyer] examine it for technical or legal shortcomings. Various committees look at it from different perspectives. Pros and cons are debated.

We have already in California and on the west coast in the Ninth Circuit

Court of Appeals, a court of appeals that is reversed constantly. In their setting aside of initiatives, in their invasion of the province of the people, and in their invasion of the legislative function, they take a page out of the writings of this candidate. But I don't think we need more judicial activists. I think it is clear she believes the cutting edge of society should be the law and its profession. I think the cutting edge needs to be the legislature and the people expressing their will in initiatives. That is where the law should be changed. The engine of social change should not be the courts. The engine for social change should be the people and their elected representatives. When the people enact a law through the initiative process, it is imperative that the will of the people be respected.

Even if you graduate from the best of law schools and you have a great understanding of legal principles, our country says that the people who cast the votes are the people whose will is to be respected. Because she seems to believe otherwise, I do not think this nominee should be confirmed by the U.S. Senate.

The PRESIDING OFFICER. Who yields time?

Mrs. BOXER. Mr. President, at this point, since Senator HATCH is not here, he has given me permission to use up his time and mine, and I assume I have about 7 minutes left.

The PRESIDING OFFICER. The Senator has 8 minutes remaining.

Mrs. BOXER. Mr. President, sometimes I think my colleagues have a very strange definition of activist judge. Listening to them, I think if you have a heartbeat and a pulse, they call you an activist. I mean, I—really, listen to them.

Are you supposed to nominate a person who has not had a thought in her head, who cannot say, 2 years after an initiative passed, that she thought it was good, bad, or indifferent, who cannot comment on a way to make the initiative process better?

They also have a way of selective arguing—selective arguing. In 1988, Margaret Morrow wrote the following. This is directly from an article in 1988, way before she even dreamt of coming before this Senate. Here is what she wrote:

Having passed an initiative, voters want to see it enacted. They view a court challenge to its validity as interference with the public will.

So here is Margaret Morrow arguing that when the voters pass an initiative, they want it enacted. I see Senator HATCH is here, so when I finish my 2 minutes I am going to yield him his 5 minutes.

I want to say that this is a woman whose practice, if you look at it, is far from anyone's definition of being an activist. These are the areas of law that she has practiced.

Contract disputes, business torts, unfair competition, securities fraud, directors' and officers' liability, employ-

ment law, arbitration law, copyright and trademark infringement, libel, partnership dissolution, real estate development, government contracts, and insurance coverage.

So my colleagues paint the picture of someone who is entirely different from Margaret Morrow. Mr. President, I just ask my colleagues on both sides of the aisle to vote on Margaret Morrow. Do not vote on judge X, do not vote on judge Y, don't vote on some ideological basis because you think she is going to be a certain way. Follow the leadership of Chairman HATCH, follow the leadership of the many Republican conservatives who have gone on the line to fight for Margaret Morrow.

I have to say to my colleague from Missouri, thank you for bringing this debate almost to an end. I think I have enjoyed debating you. I wish we could have done it sooner rather than later. But I am pleased that we have reached this day, and to Margaret and to her family, I hope that tonight you will have a reason to celebrate. I can't be sure until the votes are in, but we will know soon.

Finally, Mr. President, I would just like to continue my response to some of the arguments offered by my colleagues, and set the record straight. On the issue of Ms. Morrow's position on ballot initiatives, there are some people who, having read an article she wrote in 1988, believe that Ms. Morrow holds disdain for citizen initiatives. This is completely false. I repeat—any concerns that Ms. Morrow holds a position other than being 100% supportive of citizen initiatives has no basis in fact. In fact, in that 1988 article, Ms. Morrow expressed her concern about misleading advertisements which provide misinformation for voters. This made it hard, she argued, for voters to make meaningful choices and "renders ephemeral any real hope of intelligent voting by a majority." Read in context, this statement concerned the quality of information disseminated to the voters, and was not a comment on the ability of voters to make intelligent choices with the necessary information in hand. Ms. Morrow holds the utmost respect for democratic institutions like the citizen initiative process in California.

In that same 1988 article, Ms. Morrow argued that courts should not be put in the position of policing the initiative process. "Having passed an initiative," she explains, "voters want to see it enacted. They view a court challenge to its validity as interference with the public will. . . ." Hopefully my colleagues here in the Senate understand that Ms. Morrow merely advocated reforms that would ameliorate problems in the California initiative process.

For those who may still not be convinced, I would like to read a portion of a letter that I referred to earlier from Robert Bonner, who, as I mentioned, was former U.S. Attorney under President Reagan, former U.S. District Court Judge in the Central District of

California and former Head of the Drug Enforcement Administration under President Bush. Mr. Bonner writes:

The concerns expressed about judicial activism appear to be based on a misunderstanding or misinterpretation of certain articles written by Margaret years ago in her capacity as President of the State Bar of California, the Los Angeles County Bar Association, and the Barristers (young lawyers) section of the Los Angeles County Bar Association. In particular, in 1988, while she was the President of the Los Angeles County Bar Association, Margaret wrote an article concerning the initiative process. The article was critical of the way certain recently concluded initiative campaigns had been run, and suggested ways in which the initiative process could be strengthened by communicating more information to the electorate about the substance of the measures. It also discussed procedural reforms that would assist in correcting the drafting errors that sometimes provide the basis for a legal challenge. Finally, it suggested measures to reduce the influence of special interests and increase the legislature's willingness to address issues of concern to the citizens of the state.

The article does not suggest hostility to the initiative process; rather it seeks to strengthen the process. Margaret's responses to the Judiciary Committee demonstrate that she unequivocally supports the initiative process and believes that all legislative enactments, including initiatives, are presumptively constitutional, and that courts should be reluctant to overturn them. Margaret explained to the committee her desire to strengthen the process, not make it vulnerable to legal challenge. She also explained that the article proposed ways to make the process more efficient and less costly, so that the initiatives could serve the purpose for which they were intended.

To anyone still skeptical, I invite you to call Robert Bonner, who believes in Margaret Morrow. In his letter to Senators BOND, D'AMATO, DOMENICI, SESSIONS and SPECTER, Mr. Bonner urged them to give him a call with any questions.

Finally, the California Research Bureau, which is a branch of the state public library and supplies nonpartisan data to the executive and legislative branches of the California state government, has much the same role as the Congressional Research Service does for the U.S. Legislative Branch. The Bureau put out a study in May of 1997, entitled California's Statewide Initiative Process, which iterated many of the same concerns Ms. Morrow has about the initiative process in California, and which the senior senator from California, Senator FEINSTEIN, referred to during the markup of Ms. Morrow's nomination. For instance, this impartial, non-partisan research service notes that proponents and opponents of a ballot measure may not have the incentive to provide clear information to voters. Further, the Bureau notes that a number of scholars, elected officials, journalists and commissions have examined the initiative process over the last decade.

The Bureau cited to concerns about "serious flaws that require improvement," including limited voter information, deceptive media campaigns,

the lack of legislative review, poor drafting, and the impact of money in the initiative process. In other words, Margaret Morrow believes in ballot initiatives, but has concerns similar to those of the California Research Bureau, a nonpartisan research service for the California State Legislature.

In summary, let there be no doubt that Ms. Morrow supports citizen initiatives as an important part of our democratic form of government. She also subscribes to the position that legislative enactments, including initiatives, are presumed to be constitutional, and that courts should be reluctant to overturn legislation. Margaret Morrow did suggest ways the initiative process could be strengthened by providing more information to the electorate and by correcting the drafting errors that sometimes form the basis for a legal challenge, but she does NOT oppose ballot initiatives.

On charges that she may be a judicial activist, let me make it very, very clear. Ms. Morrow believes in the respective roles of the legislative and judicial branches, and will look to the original intent of the drafters of the laws and our Constitution.

Some have questioned whether Margaret Morrow will be an activist judge. Her critics pulled a quote, out of context, from one of her many speeches, and those critics have decided that that single quote is evidence that Margaret Morrow will be an activist judge. The quote in controversy is from a 1- to 2-minute presentation to the State Bar Conference on Women in the Law. She says: "For the law is, almost by definition, on the cutting edge of social thought. It is the vehicle through which we ease the transition from the rules which have always been to the rules which are to be."

As Margaret said during her second hearing, the overall context of that speech concerned how lawyers were going to govern the legal profession. She wasn't speaking of the substance of the law. Rather, she was referring to the legal profession. Her point in that speech was if lawyers have to work 2,000 to 3,000 hours a year in order to have positions in private law firms, how will both men and women in the legal profession govern and balance their careers and their family lives? In her speech at the Women in the Law Conference, Margaret Morrow said: "[Women lawyers] should reject the norm of 2000-plus hours a year; the norm that places time in the office above time with family . . . We should work to infuse our perspective into the law—our experience as women, as wives, and as mothers."

I would also refer you to the letter from Robert Bonner which so clearly states that he, and so many other Republicans of good reputation, can assure you that Margaret Morrow will not be an activist judge.

Finally, some of her critics base their belief that Ms. Morrow will be an activist judge on a speech she made during

her installation as the first woman president of the State Bar of California on October 9, 1993. In her speech, Ms. Morrow quoted Justice William Brennan: "Justice can only endure and flourish if law and legal institutions are engines of change, able to accommodate evolving patterns of life and social interaction." Taken out of context, her critics believe Ms. Morrow will use the courts as an engine of change. However, during her hearing, Ms. Morrow confessed she pulled Justice Brennan's statement from a book of quotes, and she testified that "The theme of that speech was that the State Bar of California as an institution and the legal profession had to change some of the ways we did business. The quotation regarding engines of change had nothing to do with changes in the rule of law or changes in constitutional interpretation." In fact, the speech was about the changes the bar should make so that it would be more responsive to the public. It did not advance a theme that the courts should be engines of change.

To respond to my colleagues' charge that Margaret Morrow advocated gun control while president of the state bar, let me just say that this is patently untrue, and is refuted by 11 of the 21 Members of the California State Bar Board of Governors who were on the board at the time in question. They were there, they know what happened and what didn't happen, and they have signed a letter confirming that Margaret Morrow did not advocate gun control as her critics accuse her of. These 11 members are Republicans and Democrats alike.

These Republicans and Democrats explain in their letter to me that in 1993, the State Bar Conference of Delegates—representatives of voluntary bar associations throughout California—adopted two resolutions calling upon the Bar to study a possible revision of firearms laws and to propose measures to protect judges, lawyers, and others from gun violence. These resolutions were prompted by a tragic shooting incident at a San Francisco law firm in which several people were killed. These resolutions were passed before Ms. Morrow assumed her position as the first woman President of the State Bar of California.

The resolutions were then considered by the State Bar Board of Governors, of which Margaret Morrow was president in 1993-94. She appointed a special committee to consider the firearms resolutions, saying that she wanted to ensure compliance with the Supreme Court decision, *Keller v. State Bar*, that forbids a state bar from using mandatory lawyers' dues to support political or ideological causes.

The Board of Governors, under Margaret Morrow's leadership, rejected the resolutions passed by the delegates and passed explicitly neutral language instead. Let me repeat this very important point. As President of the State Bar Board of Governors, Margaret Mor-

row led the Board in deciding to reject resolutions on gun laws passed by the California Bar Conference of Delegates and instead adopted a neutral resolution, which suggested that the State Bar sponsor "neutral forums on violence and its impact on the administration of justice." Therefore, she did the exact opposite of what her critics accuse her of. She followed the law as articulated by the United States Supreme Court, precisely what she will do if she is confirmed as a district judge.

I yield the remaining 5 minutes to the distinguished chairman of the Judiciary Committee, Chairman HATCH.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, as we close this debate, I would like to take just a moment to reiterate my support for Margaret Morrow. As my friend from Missouri, Senator ASHCROFT, has conceded, Ms. Morrow certainly enjoys the professional qualifications to serve as a United States district court judge.

Unfortunately, those who have chosen to vote against Ms. Morrow have failed to identify a single instance in the nominee's legal practice in which she has engaged in what can be considered as activism. The best the opponents to Ms. Morrow can do is take quotes from several of her speeches and read into that an activist intent. I do not believe, however, that when closely analyzed, those claims stand up. Regarding the two brief statements being used to question Ms. Morrow's propensity to engage in judicial activism, when balanced against the 20-plus-year distinguished and dedicated career, the statements are simply insufficient to determine that Ms. Morrow would be a judicial activist.

The first statement attributed to Ms. Morrow that the "law is on the cutting edge of social thought," when placed within its proper context and read along with the entire speech is not troubling to me. I note that the opposition did not discuss the text of that speech or the theme of the speech, because the speech itself is not controversial in any manner. In fact, the theme of the speech advocates change in the legal profession itself. The speech does not advocate judicial activism. This is why no one has mentioned any other sentence or phrase from the speech. It simply does not advocate activism.

The second statement attributed to Ms. Morrow, that the law and legal institutions are engines of change, was taken from a quote by Mr. Justice Brennan. Whether you agree with Mr. Justice Brennan or not, he was one of the most substantial Justices in history. And she was quoting him. Again, the opposition has not mentioned the theme of the speech from which this quote was taken. The speech also advocated change in the legal profession, not activism in the courts.

I personally believe that the profession could stand some changes in certain areas. It is not fair to this nominee or any other that her entire career

and judicial philosophy be judged on the basis of a few statements, arguably very ambiguous statements. I cannot ignore the overall theme of the speeches from which these statements were taken. The speeches in no way advocated activism. They only advocated change in the legal profession.

Ms. Morrow's legal career speaks for itself. She will be an asset to the Federal bench, in my opinion. Thus, when Ms. Morrow's statements are read in context, they do not paint a picture of a potential activist. Moreover, when asked by the members of the committee to explain her judicial philosophy and her approach to judging, she gave an answer with which any strict constructionist would agree. And when asked to explain whether her speeches were intended to suggest that judges should be litigating from the bench, she adamantly denied such a claim.

Given her plausible explanation of these statements criticized by my good friends from the Judiciary Committee and her sworn testimony that she would uphold the Constitution and abide by the rule of law, I have to give her the benefit of the doubt and will vote to confirm her. I think and I hope my colleagues will do the same.

Ordinarily, I believe that a nominee's testimony should be credited unless there is overwhelming evidence to the contrary. Here, those who oppose this nominee lack such evidence. What they are left with are snippets from some of her speeches, speeches that we are trying to divine the intent of, while lacking the evidence to think otherwise.

I will credit the testimony of the nominee and her stated commitment to the rule of law. I sincerely hope that she will not disappoint me, and I believe that she is a person of integrity and one who will judge, as she has promised, in accordance with the highest standards of the judgeship profession and with the highest standards of the Constitution and the rule of law.

On this basis, I support the nominee. I believe we all should support this nominee. She has had a thorough hearing and we have had many, many discussions of this. But I just don't think we should take things out of context and stop a nominee on that basis.

With that, I hope our colleagues will support the nominee. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Margaret M. Morrow, of California, to be United States District Judge for the Central District of California?

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Virginia (Mr. WARNER) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. BREAUX. I announce that the Senator from Kentucky (Mr. FORD) and the Senator from Michigan (Mr. LEVIN) are necessarily absent.

I also announce that the Senator from Nevada (Mr. REID) is absent attending a funeral.

The PRESIDING OFFICER (Ms. COLLINS). Are there any other Senators in the Chamber who desire to vote?

The result was announced, yeas 67, nays 28, as follows:

[Rollcall Vote No. 11 Ex.]

YEAS—67

Abraham	Faircloth	Lott
Akaka	Feingold	Lugar
Baucus	Feinstein	Mack
Bennett	Frist	McCain
Biden	Glenn	Mikulski
Bingaman	Gorton	Moseley-Braun
Boxer	Graham	Moynihan
Breaux	Gregg	Murray
Bryan	Harkin	Reed
Bumpers	Hatch	Robb
Byrd	Hollings	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inouye	Santorum
Cleland	Jeffords	Sarbanes
Cochran	Johnson	Smith (OR)
Collins	Kennedy	Snowe
Conrad	Kerrey	Stevens
Daschle	Kerry	Thompson
DeWine	Kohl	Torricelli
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Lieberman	

NAYS—28

Allard	Gramm	Murkowski
Ashcroft	Grams	Nickles
Bond	Grassley	Roberts
Brownback	Hagel	Sessions
Burns	Helms	Shelby
Coats	Hutchinson	Smith (NH)
Coverdell	Inhofe	Thomas
Craig	Kempthorne	Thurmond
D'Amato	Kyl	
Enzi	McConnell	

NOT VOTING—5

Ford	Reid	Warner
Levin	Specter	

The nomination was confirmed.

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

Mrs. BOXER. I move to lay it on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MORNING BUSINESS

Mr. HATCH. Madam President, I ask unanimous consent there now be a period of morning business with Senators permitted to speak up to 5 minutes each.

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

THE 299TH ANNIVERSARY OF FRENCH COLONIZATION

Mr. LOTT. Madam President, I rise today to recognize an important day in the history of this nation—a day that may intrigue some of you who are not familiar with Southern history. To-

morrow is the 299th anniversary of the landing of D'Iberville on the shores of present-day Mississippi, and the beginning of the French colonization of the American South.

Madam President, my colleagues are familiar with the English landings in Jamestown and Plymouth, Maryland and Pennsylvania. Some may recall the Spanish settlements up the eastern seaboard or the missions in the far West. But I suspect few of you know of the French colonization of the deep South and the frontier of the future United States, and the deeds of men like Pierre Lemoyne Sieur D'Iberville, the French military officer who began that colonization.

However, down home, all along the Mississippi Gulf Coast, we know and we remember. We remember how D'Iberville's band of French soldiers, hunters, farmers and adventurers began the exploration and occupation of the lower Mississippi valley. We remember that this landing eventually gave birth to towns as far-flung as Biloxi, Natchez, Mobile, New Orleans, Baton Rouge, Memphis, St. Joseph, Detroit, and Galveston.

My native Mississippi Gulf Coast is a place of year-round beauty, romance, and charm. It is easy to understand why the French chose to found their first colony there.

We are throwing a party today, in Biloxi, Mississippi, where D'Iberville landed, 299 years ago tomorrow, and in Ocean Springs, where he built Fort Maurepas. As I am sure you have heard, we know how to throw a party. But next year, on this very day, will be the 300th anniversary of D'Iberville's landing. And I especially want to invite every one of my colleagues and you, Madam President, to attend that celebration.

All along the Mississippi Gulf Coast, from my native Pascagoula west to Pass Christian and Bay St. Louis, hundreds of volunteers are already planning and preparing a vast array of festivals, parties, national sporting events, educational activities, and cultural exchanges with French cities, working to make our 1699 Tricentennial a truly wonderful celebration.

In conjunction with next year's festivities will be the Mardi Gras Celebration in all the coast towns, from Texas to Florida. I believe all of my colleagues are familiar with Mardi Gras.

But the Tricentennial celebrations are more than just festivities. They are celebrations of how really diverse we are in the deep South, how wonderfully varied and multi-cultural our Southern heritage, our American heritage really is, and how much we've accomplished over the past 300 years!

Come to the Gulf Coast next year with us, and help us celebrate that diverse culture, and our hard-won economic prosperity. You might be surprised. You'll find that whether we are of French, Scottish, Irish, Spanish, Yugoslavian, Vietnamese, English, African-American or Native American