

the National Review—and advocacy groups, and target all of them. With those combined lists, campaigns decide which potential voters to target for which mailings. The campaigns will also often share lists with each other and with party committees. All of this goes on offline.

On the other hand, when I go to the shopping mall and I walk into a store and look at five different items, five sweaters, or five pairs of pants, whatever it may be, and I don't buy any of them, there is no record of them at all. But there is a record of that kind of traveling or perusal, if you will, with respect to the web.

There are clearly questions that we have to resolve with respect to what kind of anonymity can be protected with respect to the online transaction.

I just do not think this is the moment for us to legislate. I think we need to study the issue of access very significantly.

There is a general agreement that consumers should have access to information that they provided to a web site. We still don't know whether it is necessary or proper to have consumers have access to all of the information that is gathered about an individual.

Should consumers have access to click-stream data or so-called derived data by which a company uses compiled information to make a marketing decision about the consumer? And if we decide that consumers need some access for this type of information, is it technologically feasible? Will there be unforeseen or unintended consequences such as an increased risk of security breaches? Will there be less rather than more privacy due to the necessary coupling of names and data?

Again, I don't believe we have the answers, and I don't believe we are in a position to regulate until we have thoroughly examined and experienced the work on those issues.

I disagree with those who think that this is the time for heavy-handed legislation from the Congress. Nevertheless, I believe we can legislate the outlines of a structure in which we provide some consumer protections and in which we set certain goals with which we encourage the consumer to familiarize themselves while we encourage the companies to develop the technology and the capacity to do it.

Clearly, opting in is a principle that most people believe ought to be maximized. Anonymity is a principle that most people believe can help cure most of the ills of targeted sales. For instance, you don't need to know if it is John Smith living on Myrtle Street. You simply need to know how many times a particular kind of purchase may have been made in a particular demographic. And it may be possible to maintain the anonymity and provide the kind of protection without major legislation. It seems to me that most companies will opt for that.

In addition to that, we need to resolve the question of how much access

an individual will have to their own information, and what rights they will have with respect to that.

Finally, we need to deal with the question of enforcement, which will be particularly important. It is one that we need to examine further. I believe that there is much for us to examine. We should not, in a sense, intervene in a way that will have a negative impact on the extraordinary growth of the Internet, even as we protect privacy and establish some principles by which we should guide ourselves. I believe that the FTC proposal reaches too far in that regard.

I hope my colleagues in the Senate will join me in an effort to embrace goals without the kind of detailed intrusion that has been suggested.

I thank the Chair.

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#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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#### EXECUTIVE SESSION

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#### NOMINATION OF BRADLEY A. SMITH, OF OHIO, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION

The PRESIDING OFFICER. Under the previous order, the hour of 11:30 a.m. having arrived, the Senate will proceed to executive session.

The legislative clerk read the nomination of Bradley A. Smith, of Ohio, to be a member of the Federal Election Commission.

Mr. McCONNELL. Mr. President, based on the caricatures of Professor Bradley Smith, one would think he must have horns and a tail. I unveil a picture of Brad Smith and his family in the hopes of putting to rest some of these rumors.

Let me quote Professor Smith himself on this point, talking about the experience he has had over the last 10 months. He said: In the last 10 months since my name first surfaced as a candidate, certain outside groups and editorial writers opposed to this nomination have relied on invective and ridicule to try to discredit me. Among other things, some have likened nominating me to nominating Larry Flynt, a pornographer, to high office. Nominating me has been likened to nominating David Duke, one-time leader in the Ku Klux Klan, to high office. Nominating me has been likened to nominating Theodore Kaczynski, the Unabomber, a murderer, to high office.

Professor Smith went on and said: Just this week I saw a new one. I was compared to nominating Jerry Springer, which is probably not a good comparison since Springer is a Democrat. Other critics have attempted ridicule, labeling me a "flat Earth Society poobah," and more.

He says: I say all this not by way of complaint because I'm sure that Mem-

bers—he is referring to Members of the Senate—have probably been called similar or worse things in the course of their public lives.

I thought it might be appropriate to begin with a photograph of Professor Smith and his family, which bears little resemblance to Larry Flynt, David Duke, or Theodore Kaczynski.

It is my distinct honor today to rise in support of the nomination of Professor Bradley A. Smith to fill the open Republican seat on the bipartisan Federal Election Commission.

In considering the two FEC nominees, Professor Brad Smith and Commissioner Danny McDonald, the Senate must answer two fundamental questions: Is each nominee experienced, principled, and ethical? And: Will the FEC continue to be a balanced, bipartisan commission?

I might state this is a different kind of commission. It is a commission set up on purpose to have three members of one party and three members of another party so that neither party can take advantage of the other in these electoral matters that come before the Commission. The Federal Election Commission is charged with regulating the political speech of individuals, groups, and parties without violating the first amendment guarantee of freedom of speech and association—obviously, a delicate task.

Over the past quarter century, the FEC has had difficulty maintaining this all-important balance and has been chastised, even sanctioned, by the Federal courts for overzealous prosecution and enforcement that treated the Constitution with contempt and trampled the rights of ordinary citizens.

In light of the FEC's congressionally mandated balancing act and the fundamental constitutional freedoms at stake, Congress established the balanced, bipartisan, six-member Federal Election Commission. The law and practice behind the FEC nominations process has been to allow each party to select its FEC nominees. The Republicans pick the Republicans; the Democrats pick the Democrats. As President Clinton said recently, this is, "the plain intent of the law, which requires that it be bipartisan and by all tradition, that the majority make the nomination" to fill the Republican seat on the Commission.

Professor Bradley Smith was a Republican choice agreed to by the Republicans in the House and the Republicans in the Senate and put forward by the Republicans to the President of the United States, who has nominated him.

Typically, Republicans complain that the Democratic nominees prefer too much regulation and too little freedom, while Democrats complain that the Republican nominees prefer too little regulation and too much freedom.

Ultimately both sides bluster and delay a bit, create a little free media attention, and then move the nominees forward. In fact, the Senate has never