bring to a close debate on Executive Calendar No. 72, the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia.

Bill Frist, Arlen Specter, Trent Lott, Lamar Alexander, Jon Kyl, Jim Talent, Wayne Allard, Richard G. Lugar, John Ensign, C.S. Bond, Norm Coleman, Saxby Chambliss, James Inhofe, Mel Martinez, Jim DeMint, George Allen, Kay Bailey Hutchison, John Cornyn.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of Senate that debate on Executive Calendar No. 72, the nomination of Janice R. Brown, of California, to be the U.S. circuit judge for the District of Columbia Circuit, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS), the Senator from Wisconsin (Mr. KOHL), and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 65, nays 32, as follows:

[Rollcall Vote No. 130 Ex.]

YEAS—65

Alexander	DeWine	McConnell
Allard	Dole	Murkowski
Allen	Domenici	Nelson (FL)
Bennett	Ensign	Nelson (NE)
Bond	Enzi	Pryor
Brownback	Frist	Roberts
Bunning	Graham	Salazar
Burns	Grassley	Santorum
Burr	Gregg	Sessions
Byrd	Hagel	Shelby
Carper	Hatch	Smith
Chafee	Hutchison	Snowe
Chambliss	Inhofe	Specter
Coburn	Inouye	Stevens
Cochran	Isakson	Sununu
Coleman	Kyl	Talent
Collins	Landrieu	Thomas
Conrad	Lieberman	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner
DeMint	McCain	

NAYS—32

Akaka	Dorgan	Mikulski
Baucus	Durbin	Murray
Bayh	Feingold	Obama
Biden	Feinstein	Reed
Bingaman	Harkin	Reid
Boxer	Johnson	Rockefeller
Cantwell	Kennedy	Sarbanes
Clinton	Kerry	Schumer
Corzine	Leahy	Stabenow
Dayton	Levin	Wyden
Dodd	Lincoln	

NOT VOTING—3

Jeffords	Kohl	Lautenberg

The PRESIDING OFFICER. On this vote, the yeas are 65, the nays are 32. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Republican whip.

ORDER OF PROCEDURE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate stand in recess until 2:15 today and that the time during the recess count under the provisions of rule XXII; provided further that the vote on the confirmation of the Brown nomination occur at 5 p.m. tomorrow, Wednesday, with all time until then equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. The Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. THUNE).

EXECUTIVE SESSION

NOMINATION OF JANICE ROGERS BROWN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA—Continued

The PRESIDING OFFICER. The Senator from North Carolina.

NATIONAL HUNGER AWARENESS DAY

Mrs. DOLE. Mr. President, for the past two years I have come to the Senate floor on National Hunger Awareness Day to talk about the battle against hunger, both here in America and around the world. In fact, I reserved my maiden speech for this topic—one of my top priorities as a U.S. Senator. I have stated over and over again that the battle against hunger is one that can't be won in a matter of months or even a few years but it is a victory that we can claim if we continue to make the issue a priority.

As Washington Post columnist David Broder said about hunger, ''America has some problems that seem to defy solution. This one does not. It just needs caring people and a caring government, working together.'' I could not agree more.

Last year on Hunger Awareness Day, Senators SMITH, DURBIN, LINCOLN, and I launched the Senate Hunger Caucus, with the express purpose of providing a bi-partisan forum for Senators and staff to engage each other on national and international hunger and food insecurity issues. By hosting briefings and disseminating information, the caucus has been striving to bring awareness to these issues, while at the same time finding ways to collaborate on legislation. I want to thank 34 of my colleagues for joining the Senate Hunger Caucus and their staffs for their diligent work. In addition, I am excited to see our friends in the House of Representatives start their own Hunger Caucus and I look forward to working with them as both houses of Congress continue to find solutions to eliminating hunger.

It is truly astounding how so many of our fellow citizens go hungry or are living on the edge of hunger each and every day. Thirteen million of these hungry Americans are deemed to be children.

As we know, when children are hungry they do not learn. This is a travesty that can and should be prevented. Currently over 90,000 schools and 28 million children participate each school day in the School Lunch Program. The children of families whose income levels are below 130 percent of poverty are eligible for free school meals and those families whose income levels are between 130 percent of poverty and 185 percent of poverty are eligible for reduced price meals.

Unfortunately, many State and local school boards have informed me that parents are finding it difficult to pay the reduced fee, and for some families the fee is an insurmountable barrier to participation. That is why I am a strong supporter of legislation to eliminate the reduced price fee and harmonize the free income guideline with the WIC income guideline. I am proud to say that a pilot program to eliminate the reduced price fee in up to five states was included in last year's reauthorization of Child Nutrition and WIC. I have encouraged the Appropriations Committee to include funding for this pilot program, and I look forward to working with them on this very important issue which touches so many families going through difficult times.

In my home State of North Carolina, more than 900,000 of our 8.2 million residents are dealing with hunger, according to the most recent numbers from the U.S. Department of Agriculture. Our State has faced significant economic hardship over the last few years as once thriving towns have been hit hard by the closing of textile mills and furniture factories. And this story is not unlike so many others across the country.

Many Americans who have lost their manufacturing jobs have been fortunate enough to find new employment in the changing climate of today's workforce. Simply being able to hold down job doesn't necessarily guarantee your family three square meals a day. But there are organizations who are addressing this need as a mission field.

Groups like the Society of St. Andrew, the only comprehensive program in North Carolina that gleans available produce from farms, and then sorts, packages, processes, transports and delivers excess food to feed the hungry. In 2004, the Society gleaned more than 4.2 million pounds of food—or 12.8 million servings. Incredibly—it only costs one penny a serving to glean and deliver this food to those in need. And all of this work is done by the hands of the 9,200 volunteers and a tiny staff.

Gleaning is a practice we should utilize much more extensively today. It's astounding that the most recent figures available indicate that approximately 96 billion pounds of good, nutritious food—including that at the farm and retail level—is left over or thrown

away. A tomato farmer in western North Carolina sends 20,000 pounds of tomatoes to landfills each day during harvest season.

This can't be good for the environment. In fact, food is the single largest component of our solid waste stream—more than yard trimmings or even newspaper. Some of it does decompose, but it often takes several years. Other food just sits in landfills, literally mummified. Putting this food to good use through gleaning will reduce the amount of waste going to our already overburdened landfills. And I am so appreciative of my friends at Environmental Defense for working closely with us on this issue.

Like any humanitarian endeavor, the gleaning system works because of cooperative efforts. Clearly private organizations and individuals are doing a great job, but they are doing so with limited resources. It is up to us to make some changes on the public side and help leverage scarce dollars to feed the hungry.

I continue to hear that transportation is the single biggest concern for gleaners. I am proud to say that with the help of organizations such as the American Trucking Association, the Society of Saint Andrew and America's Second Harvest, we are taking steps to ease that transportation concern. In February of this year, I reintroduced a bill that will change the tax code to give transportation companies tax incentives for volunteering trucks to transfer gleaned food. I am proud to have the support of my colleagues, Senators DODD, BURR, LUGAR, ALEXANDER, SANTORUM, DURBIN, LAUTENBERG, and LINCOLN, original cosponsors, and I look forward to working with them on passage of this important bill.

I am also privileged to work with Senators LINCOLN and LAUTENBERG on a soon-to-be-introduced bill to provide up to $200,000 per fiscal year to eligible entities willing to carry out food rescue and job training. Entities like the Community Culinary School of Charlotte, a private, non-profit organization in my home State that provides training and job placement in the food service industry for people who are employed or underemployed.

Here is how it works. The Community Culinary School recruits students from social service agencies, homeless shelters, halfway houses and work release programs. They then work in collaboration with food rescue agencies in the area to provide meals to homebound individuals and to local homeless shelters. The food they rescue is donated and picked up from restaurants, grocers and wholesalers. The students then prepare nutritious meals using the donated food while at the same time developing both culinary and life skills.

Take a young lady from this program named Sibyl. After years of drugs, prisons and unplanned pregnancies, Sibyl entered the Community Culinary School of Charlotte. Her willingness and determination made her the top student of her class and she is today working full time as a chef.

Or take Bobby, who also graduated from the program. Bobby went from unemployment and homelessness to becoming a top graduate, now working two jobs and living independently. Our bill is intended to complement these kinds of private efforts that support food rescue and job skills that can make the greatest impact on individual lives.

In Deuteronomy 15:7, the Bible tells us, ''If there is among you a poor man, one of your brethren, in any of your towns within your land which the Lord your God gives you, you shall not harden your heart or shut your hand against your poor brother.'' So, as our fellow citizens in the private sector continue to be a giving people, let us find ways as public servants to once again harness the great public-private effort, and fight as one to end hunger in America. I again thank my colleagues who have worked so hard to build these partnerships. And I implore our friends on both sides of the aisle—as well as the good people throughout this great country—to join in this heartfelt mission—this grassroots network of compassion that transcends political ideology and will provide hope and security not only for those in need today—but for future generations as well. I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, due to his graciousness, I ask unanimous consent that Senator KENNEDY be allowed to speak directly after I complete my remarks.

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

Mrs. LINCOLN. Mr. President, I want to pay a tremendous compliment with a huge sense of gratitude to my colleague from North Carolina for her tirelessness with regard to this issue. She has been such an incredible fighter against the issue of hunger among Americans and really among her fellow man globally. I compliment her and thank her so much for the opportunity to work with her on something in which she has been a true leader. I am looking forward to many more things that we can do together, but she has made a huge effort in eliminating hunger.

We are here today to refocus ourselves and rededicate ourselves to bringing about a tremendous awareness to hunger as it exists in our Nation and certainly as it exists among our fellow man across the globe. I thank the Senator from North Carolina for all of her hard work.

I do come to the floor to join my colleague from North Carolina on an issue that I take very seriously. Thirty-six million Americans, including 13 million children, live on the verge of hunger. It is absolutely phenomenal to me, growing up as a farmer's daughter in the Mississippi Delta where there was such plenty in the fields, as I drive past them, to think that there are Americans, particularly American children, who go hungry every day not because we don't have the means but because we don't organize ourselves and set the priority of making sure these future generations, the future leaders of this great Nation, can at least have their tummies full enough that they can pay attention in school, grow healthy to become the kind of leaders that we want and need for our great Nation.

Today is National Hunger Awareness Day. It is a time when Americans are called to remember the hungry children and adults living across our Nation. We have all just come from our weekly caucus lunches. We have had plenty at this time. We are thinking about the opportunities that lie ahead of us, particularly the fun things that children do in the summertime. Yet we forget that there are many who have not had a good lunch today, or perhaps we forget that as school is letting out, those children who normally get a nutritious meal at school will not be getting those nutritious meals during the summertime while school is out.

Most importantly, it is a day when we are called to put our words into action, to help end hunger in our communities and across this great land.

At this time last year, Senators SMITH, DURBIN, DOLE, and myself formed the Senate Hunger Caucus to forge a bipartisan effort to end hunger in our Nation and around the world. I am so proud to be working with these three other Senators in moving this caucus forward. Our staffs have worked tirelessly in bringing us together, along with the other Members of the Senate, in order to make a difference. We are working with local, State, and national antihunger organizations to raise awareness about hunger, build partnerships, and build solutions to end hunger.

We have many challenges that face our Nation, and so many challenges that face this body itself. Yet this is one problem we know has an answer. And we know how to end hunger.

Recently I introduced, with Senators DURBIN, SMITH, and LUGAR, the Hunger-Free Communities Act of 2005. This bill calls for a renewed national commitment to ending hunger in the United States by 2015, reaffirms our congressional commitment to protecting the funding and integrity of Federal food and nutrition programs, and it creates a national grant program to support community-based antihunger efforts. I urge all of our colleagues to support this worthy and commonsense legislation. It sets a goal for a monumental concern and problem that we have in this Nation. It presents the answer, and it sets the time in which we want to reach that goal.

Mr. President, I want to take this opportunity to talk about the 36 million Americans, including 13 million children, who live on the verge of hunger.

Some people may ask—what can I do to help end hunger in America? I want to talk about some of the ways Americans can help join the hunger-relief effort. Acting on this call to feed the hungry requires the effort of every American and every sector of the economy.

The backbone of this effort is the willingness of Congress and the American people to support the Federal food and nutrition programs. These programs provide an essential safety net to working Americans, preventing the most vulnerable among us from suffering, and even dying, from malnutrition. Our continued investment in these programs is vital to the health of this nation.

The most significant of these programs, the Food Stamp Program, provides nutritious food to over 23 million Americans a year. More Americans find themselves in need of this program every year. Despite this growing need, the Administration proposes to cut the Food Stamp Program by $500 million over the next 5 years by cutting more than 300,000 low-income people off the program in an average month.

I understand our current budget constraints. However, even in these tight fiscal times, I believe that we must maintain our commitment to feed the hungry.

Therefore, we must first protect programs like the Food Stamp Program, the National School Breakfast and Lunch Program, Summer Feeding Program, WIC, and the Child and Adult Care Food Program. I urge Americans to contact their congressional representatives to voice their support for these programs. I urge my colleagues to support these programs and protect them from cuts and structural changes that will undermine their ability to serve our Nation's most vulnerable citizens.

In addition to the Federal food programs, eliminating hunger in America requires the help of community organizations. Government programs provide a basis of support, but they cannot do the work alone. Community and faith-based organizations are essential to locating and rooting out hunger wherever it persists. We rely on the work of local food banks, food pantries, soup kitchens, and community action centers across America to go where government cannot. I will do all I can to provide the resources these community organizations need to continue with the difficult but necessary work they perform.

Private corporations and small businesses also have a role to play in eliminating hunger in America. Our corporations and small businesses generate most of our Nation's wealth and have throughout history supported many of our greatest endeavors. Many corporations and businesses already contribute to efforts to eliminate hunger, and I hope others will begin to participate as opportunities to do so present themselves in the future.

A great example of how businesses and non-profits can partner to feed hungry people occurred this past Friday in Little Rock. Arkansas-based Tyson Foods and Riceland Foods, along with Jonesboro's Kraft Foods Post Division and Nestle's Prepared Foods Facility, donated truck loads of food as a special donation in honor of National Hunger Awareness Day. This food will go to the Arkansas Rice Depot, Potluck, Inc. and the Arkansas Hunger Relief Alliance, which represents six food banks located across Arkansas. These organizations will in turn use the food to help feed hungry Arkansans. I am grateful to these companies and non-profit organizations for their leadership in this effort to feed the over 450,000 Arkansans who have limited access to food.

Ending hunger in America requires the commitment of individual Americans. Our greatest national strength is the power that comes from individual initiatives and the collective will of the American people. I believe we are called by a higher power to care for our fellow men and women, and as a part of my Christian faith I know we are called to serve the poor and the hungry. I know it is a common denominator among almost all of our faiths that it is those, the poor and the hungry, the orphaned and the widowed, whom we are here, as our fellow man, to take care of, to help to lift them up.

If we believe in this call, we must live it every day—in our schools and in our homes, in our workplaces, our places of worship, in our volunteering, and, yes, in our prayers. This personal responsibility is a great one, but it holds tremendous power. It is a common denominator that can bring us together, the one problem that we all agree on and to which we know there is a solution. For as we have seen throughout American history, when individuals in this Nation bind together to serve a common cause, they can achieve the greatest of accomplishments. By sharing the many blessings and resources our Nation provides, I am confident that we can alleviate hunger at home and abroad.

I thank the Chair. I yield the floor.

Mr. KENNEDY. Mr. President, today is National Hunger Awareness Day, and it is an opportunity for all of us in Congress to pledge a greater effort to deal effectively with this festering problem that shames our Nation and has grown even more serious in recent years. It is a chance to live out our moral commitment to care for our neighbors and fellow citizens who have fallen on hard times.

The number of Americans living in hunger, or on the brink of hunger, now totals 36 million, 3 million more since President Bush took office. That total includes 13 million children, 400,000 more since 2001.

Day in and day out, the needs of millions of Americans living in hunger are widely ignored, and too often their voices have been silenced. Their battle is a constant ongoing struggle. It undermines their productivity, their earning power, and their health. It keeps their children from concentrating and learning in school. We all need to do more to combat it—government, corporations, communities, and citizens must work together to develop better policies and faster responses.

In Massachusetts, organizations such as the Greater Boston Food Bank, Project Bread, the Worcester County Food Bank, and many others serve on the frontlines every day, and they deserve our full support, but they should not have to wage the battle alone.

In 1996, the Clinton administration pledged to begin an effort to cut hunger in half in the United States by 2010, and the strong economy enabled us to make significant progress toward that goal. Hunger decreased steadily through 2000. We now have 5 years left to fulfill that commitment.

The fastest, most direct way to reduce hunger in the Nation is to improve and expand current Federal nutrition programs. Sadly, the current Administration and the Republican Congress propose to reduce, not increase, funds for important programs such as Food Stamps, and the Community Nutrition Program.

The Food Stamp Program is designed to be available to all eligible individuals and households in the United States. It provides a basic and essential safety net to millions of people. In 2003, on average, over 21 million Americans received food stamp benefits. Over half of all food stamp recipients are children.

Now, the administration plans to reduce, or even cut off, food stamps for recipients who rely on Medicare to afford the prescription drugs they need.

That is why I have introduced legislation to ensure that individuals who receive Medicare prescription drug benefits do not lose their food stamps. This legislation ensures that seniors do not have to choose between food and medicine. I urge my colleagues to support this important legislation.

It is time to do more for the most vulnerable in our society. National Hunger Awareness Day is our chance to pledge to eradicate hunger in America and to mean it when we say it.

Mr. President, I would like to congratulate Senator DOLE and Senator LINCOLN for giving focus and attention to National Hunger Awareness Day and for all they do on this particular issue. I had the opportunity yesterday to visit The Greater Boston Food Bank in Massachusetts—a successful food bank. We have 517,000 people who are hungry in eastern Massachusetts alone, over 173,000 of those individuals are children, and over 50,000 are elderly.

One thing we know how to do in this country is grow food. We can do that better than any other place in the world. Secondly, we know how to deliver packages of food with Federal Express, other kinds of delivery services, virtually overnight. The fact that we

have hunger in this Nation, we have children who are hungry, frail elderly who are hungry, working families who are hungry, or other homeless people who are hungry, we as a nation are failing our humanity. We know what can be done. It needs the combination of a governmental framework, private framework, and a very important involvement from the nonprofit framework and other groups at the local level, religious groups that have done such important work.

So I commend my friends and colleagues for bringing focus and attention to this issue. It has enormous implications. We find out in terms of education provided to the children, the needy children at breakfast for them early in the morning, the results in terms of their willingness, ability, and interest in cooperating with their teacher and learning go up immensely. We have information that documents all of that. Try to teach a hungry child to learn, and any teacher will tell you the complexities and difficulties and the frustrations in doing that.

I thank my two friends and others who are part of this movement. I look forward to working with them on a matter of enormous importance and consequence.

Mr DURBIN. Mr. President, I rise today to note National Hunger Awareness Day.

I am meeting today with 35 people here from Illinois who came to Washington to remind us that hunger is not a Democratic or Republican issue.

Basic sustenance ought to be a guarantee in a civilized society, not a gamble.

If children—or adults—are hungry in America, that's a problem for all of us. And it is a problem we can do something about.

For instance, we know that Federal nutrition programs work. WIC, food stamps, school lnch and breakfast programs, and other Federal nutrition programs are reaching record numbers of Americans today, and making lives better.

The problem is we are not reaching enough people. There are still too many parents in this country who skip meals because there is not enough money in the family food budget for them and their children to eat every night.

There are still too many babies and toddlers in America who are not getting the nutrition their minds and bodies need to develop to their fullest potential. There are still too many seniors and children who go to bed hungry.

There are 36 million Americans who are hungry or at risk of hunger. In the richest Nation in the history of the world, that is unacceptable.

Last week, I joined with several of my Senate colleagues to introduce the Hunger-Free Communities Act.

The bill is designed to promote local collaboration in the fight against hunger. But it also reminds us that we as a country are committed to ending hunger. We know how. We need to muster the political will.

We started this week by challenging our own offices to participate in a Senate food drive. I commend Senators LINCOLN, SMITH, and DOLE for their help in collecting food that will be donated to the Capitol Area Community Food Bank.

I look forward to working with people in the anti-hunger community and with my colleagues to eliminate domestic hunger in our lifetime.

Mr. SALAZAR. Mr. President, I rise to commend the efforts of our Nation's civic, business and faith leaders to call attention to the increasing number of Americans who are unable to put food on their tables. Today, on National Hunger Awareness Day, I am proud to join with communities in every region of my State that are taking on the charge to end hunger in the United States.

Growing up in Colorado's San Luis Valley, one of the poorest regions in the country, my family did not have electricity or running water in our home. But our family farm ensured that my brothers and sisters and I never went to bed hungry or arrived at school on an empty stomach. My classmates were not always as fortunate. Sadly, not much has changed since my youth.

Currently, in Conejos County, where my family's farm is located, one in four residents are living in poverty. That is twice the national average, and three times our State poverty rate. And increasingly, the stories behind these numbers are of working poor households who struggle to pay their mortgages, escalating electricity bills and fuel costs. In Colorado Springs, the Care and Share Food Bank estimated that close to 50 percent of the households receiving their emergency food assistance last year had at least one working parent. More and more, these families need to turn to their local food bank or church pantry in the very same communities where food is harvested; serving as a sad reminder that there is much more work to be done.

When speaking with hunger relief organizations throughout Colorado, they express concern when forced to turn families away, and the number of people they cannot help continues to grow. For example, the Marian House, which is operated by Catholic Charities of Colorado Springs, serves approximately 600 meals. Over the past several years, they have seen the daily number of people coming into food banks nearly double.

Unfortunately, their stories of growing demands reflect the problems facing much of the rural West. In fact, according to the U.S. Department of Agriculture, 16 percent of households in this region did not know where their next meal would come from—that is the highest rate of so-called ''food insecurity'' in any region of the country.

In the face of these staggering statistics, Coloradans are doing their part to eliminate hunger. Whether it is organizing a food drive in their school or office, volunteering at a soup kitchen, or donating to their local food bank, they are answering the call to reduce the number of hungry Americans. In Denver, where poverty is also on the rise, groups like the Food Bank of the Rockies have stepped up their food distribution. In 2004, hard-working, committed workers and volunteers distributed over 16 million pounds of food and essential household items, more than ever before.

However, today is a special day, where national, regional and local organizations collectively are raising awareness of hunger in America. I am particularly proud that National Hunger Awareness Day events have been organized in communities throughout Colorado, including Colorado Springs, Denver, Fort Collins, Grand Junction, Greeley, and Hot Sulphur Springs. I applaud Coloradans involved in these activities, and all those participating in the day's related events. I look forward to working with the Senate Hunger Caucus and the Senate Agriculture Committee in the movement to end hunger.

Mr. SMITH. Mr. President, I rise today to speak about a problem impacting communities across the United States and throughout the world. As many of my colleagues know, today is National Hunger Awareness Day. It is a day meant to focus our attention on those for whom putting food on the table continues to be a daily struggle.

For the last several years, my home State of Oregon has been at or near the top of repeated nationwide studies of hunger and food insecurity in the United States. While we have made some progress in fighting hunger in Oregon, there is still a long way to go to ensuring that children and families in my State and around the country do not go to bed hungry. According the U.S. Department of Agriculture's Economic Research Service, in 2003, approximately 36.3 million Americans lived in households that at some point during the year did not have access to enough food to meet their basic needs. Of those 36.3 million, 3.9 million were considered hungry.

In 2003, Oregon State University published a study on food insecurity and hunger in Oregon. The study found that pressures related to the high-cost of housing, health care, and the high-level of unemployment all contribute to food insecurity and hunger in our State. One of the more striking findings in the report is that underemployment is also a major factor leading to hunger and food insecurity; working families throughout Oregon are having a difficult time accessing food.

On the horizon, Oregon's economy appears to be brightening. While there are no quick fixes, I believe that solving hunger is within our grasp. Federal nutrition programs certainly serve an important safety net role in combating hunger; however, they are only one

piece of the puzzle. Community organizations, churches, business groups, and private citizens all have a part to play. Ultimately, winning the fight against hunger in Oregon and around the country requires that families are able to provide for themselves—that means having access to living wage jobs.

Many of my colleagues will remember that last year I asked them to join me in forming a Senate caucus devoted to raising awareness of the root causes of hunger and food insecurity. I appreciate very much the work of my Senate Hunger Caucus cochairs Senator LINCOLN, Senator DOLE, and Senator DURBIN—in helping to get the caucus off the ground. I am proud to say that today, the Senate Hunger Caucus counts 34 members, with both Republicans and Democrats.

This is clearly not a battle that will be won overnight, but it is something about which our conscience calls us to act. If we are to end hunger, we must work to address its root causes. Being successful in this mission will require that we are innovative and find new ways of doing things. I look forward to continuing to work with my colleagues in Congress and groups in Oregon to win this fight.

UPWARD MOBILITY

Mr. KENNEDY. Mr. President, before speaking on what I want to address to the Senate, and that is the pending business on the nominee, I want to bring to the attention of my colleagues an excellent editorial in the New York Times today: ''Crushing Upward Mobility.'' It is basically an analysis of a regulation that was put forward by the Department of Education that will save the Department of Education some resources, but at the cost of those middle-class families, working families, who are eligible for student loan programs. That is not the direction in which we should be going.

At the current time, we have a number of these young students who are paying 9.5 percent on guaranteed student loans. Can you imagine having a deal like that? You put out money and the Federal Government guarantees that you have nothing to lose, and it still costs these students 9.5 percent. We ought to be doing something about that, like taking the profits and making a difference in terms of lowering the burden on working families and middle-income families who are trying to help their children go on to college, rather than put more burden on them.

This is an excellent article. I ask unanimous consent that the editorial be printed in the RECORD.

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

[From the New York Times]

CRUSHING UPWARD MOBILITY

The United States is rapidly abandoning a long-standing policy aimed at keeping college affordable for all Americans who qualify academically. Thanks to a steep decline in aid to poor and working-class students and lagging state support for the public college systems that grant more than two-thirds of the nation's degrees, record numbers of Americans are being priced out of higher education. This is an ominous trend, given that the diploma has become the minimum price of admission to the new economy.

Greg Winter of The Times reported yesterday that the federal government has rejiggered the formula that determines how much families have to pay out of pocket before they become eligible for the student aid package, which consists of grants and low-interest loans. The new formula, which will save the government about $300 million in federal aid under the Pell program, will cause some lower-income students to lose federal grants entirely. The families of others will have to put up more money before they can qualify for financial aid. Perversely, single-parent household will have to pay more than two-parent households before they become eligible.

The federal Pell Grant program, which is aimed at making college possible for poor and working-class students, has fallen to a small fraction of its former value. The states, meanwhile, have trimmed aid to public colleges, partly as a consequence of soaring Medicaid costs. The states have deepened the problem by shifting need-based tuition to middle-class and upper-class students under the guise of handing out so-called merit scholarships.

The political clamor around the new formula is likely to lead to changes, but they will be aimed at upper-income families who are most able to pay. Tinkering with formulas in Washington will not solve this problem. The nation as a whole has been disinvesting in higher education at a time when college has become crucial to work force participation and to the nation's ability to meet the challenges of global economic competition.

Until the country renews its commitment to making college affordable for everyone, the American dream of upward mobility through education will be in danger of dying out.

Mr. KENNEDY. Mr. President, I intend to introduce later on in the afternoon the technical language and legislation that will block that particular provision by the Department of Education from going into effect.

Mr. President, Janice Rogers Brown's nomination to the DC Circuit is opposed more strongly by civil rights organizations than almost any other nominee I can recall to the Federal courts of appeals.

She is opposed by respected civil rights leaders, including Julian Bond, the chairman of the NAACP, and Reverend Joseph Lowery, president emeritus of the Southern Christian Leadership Conference, who worked with Dr. Martin Luther King, Jr., in the civil rights movement, and who has fought tirelessly for many years to make civil rights a reality for all Americans.

Her nomination is also opposed by the Congressional Black Caucus, the National Bar Association, the Coalition of Black Trade Unions, the California Association of Black Lawyers, and Delta Sigma Theta Sorority, the second oldest sorority founded by African-American women.

Justice Brown's nomination is opposed by Dorothy Height, president emeritus of the National Council of Negro Women, and a leader in the battle for equality for women and African Americans. Dr. Height has dedicated her life to fighting for equal opportunities for all Americans. She is universally respected by Republicans and Democrats, and last year she received the Congressional Gold Medal, and President Bush joined Members of Congress in honoring her service.

In opposing Justice Brown's nomination, Dr. Height says:

I have always championed and applauded the progress of women, and especially African American women; but I cannot stand by and be silent when a jurist with a record of performance of California Supreme Court Justice Janice Rogers Brown is nominated to a Federal court, even though she is an African American woman. In her speeches and decisions, Justice Janice Rogers Brown has articulated positions that weaken the civil rights legislation and progress that I and others have fought so long and hard to achieve.

Justice Brown's nomination is opposed equally strongly by over 100 other organizations, including 24 in California, representing seniors, working families, and citizens concerned about corporate abuses and the environment.

Some of Justice Brown's supporters suggest that she should be confirmed because she is an African-American woman with a compelling personal story. While all of us respect her ability to rise above difficult circumstances, we cannot confirm nominees to lifetime positions on the Federal courts because of their backgrounds. We have a constitutional duty to confirm only those who would uphold the law and would decide cases fairly and reject those who would issue decisions based on personal ideology.

It is clear why this nomination is so vigorously opposed by those who care about civil rights. Her record leaves no doubt that she would attempt to impose her own extreme views on people's everyday lives instead of following the law. The courts are too important to allow such persons to become lifetime appointees as Federal judges.

Janice Rogers Brown's record makes clear that she is a judicial activist and would roll back not only civil rights but laws that protect public safety, workers' rights, and the environment, as well as laws that limit corporate abuse, which are precisely the cases the DC Circuit hears most often.

Our decision on this nomination is profoundly important to America's everyday life. All Americans, wherever they live, should be concerned about such a nomination to the DC Circuit, which interprets Federal laws that protect our civil liberties, worker safety, our ability to breathe clean air and drink clean water in our communities.

The DC Circuit is the crown jewel of Federal appellate courts and has often been the stepping stone to the Supreme Court. It has a unique role among the Federal courts in interpreting Federal power. Although located here in the District of Columbia, its decisions have national reach because it has exclusive

jurisdiction over many laws that protect consumers' rights, employees' rights, civil rights, and the environment. Only the DC Circuit can review the national drinking water standards under the Safe Drinking Water Act to ensure clean water for our children. Only the DC Circuit can review national air quality standards under the Clean Air Act to combat pollution in our communities. This court also hears the lion's share of cases involving the rights of workers under the Occupational Safety and Health Act which helps ensure that working Americans are not exposed to hazardous conditions on the job. It has a large number of cases under the National Labor Relations Act. As a practical matter, because the Supreme Court can review only a small number of lower court decisions, the judges on the DC Circuit often have the last word on these important rights.

Because of the court's importance to issues that affect so many lives, the Senate should take special care in appointing judges for lifetime positions on the DC Circuit. We must be completely confident that appointees to this prestigious court have the highest qualifications and ethical standards and will fairly interpret the laws, particularly laws that protect our basic rights.

The important work we do in Congress to improve health care, reform public schools, protect working families, and enforce civil rights is undermined if we fail in our responsibility to provide the best possible advice and consent on judicial nominations. Needed environmental laws mean little to a community that cannot enforce them in Federal courts. Fair labor laws and civil rights laws mean little if we confirm judges who ignore them.

In the 1960s and 1970s, the DC Circuit expanded public access to administrative proceedings and protected the interests of the public against the egregious actions of many large businesses. It enabled more plaintiffs to challenge agency decisions. It held that a religious group, as a member of the listening public, could oppose the license renewal of a television station accused of racial and religious discrimination. It held that an organization of welfare recipients was entitled to intervene in proceedings before a Federal agency. These decisions empowered individuals and organizations to shine a brighter light on governmental agencies. No longer would these agencies be able to ignore the interests of those they were created to protect.

But in recent years, the DC Circuit has begun to deny access to the courts. It held that a labor union could not challenge the denial of benefits to its members, a decision later overturned by the Supreme Court. It held that environmental groups are not qualified to seek review of Federal standards under the Clean Air Act. These decisions are characteristic of the DC Circuit's flip-flop.

After decades of landmark decisions allowing effective implementation of important laws and principles, the court now is creating precedence on labor rights, civil rights, and the environment that will set back these basic principles for years to come. It is, therefore, especially important to ensure that judges appointed to this important court will not use their position to advance an extreme ideological agenda.

Janice Rogers Brown would be exactly that kind of ideological judge. How can we confirm someone to the DC Circuit who is hostile to civil rights, to workers' rights, to consumer protections, to governmental actions that protect the environment and the public in so many other areas—the very issues that predominate in the DC Circuit? How can we confirm someone who is so deeply opposed to the core protections that the DC Circuit is required to enforce? It is hard to imagine a worse choice for the DC Circuit.

Perhaps most disturbing is the contempt she has repeatedly expressed for the very idea of democratic self-government. She has stated that where government moves in, community retreats, and civil society disintegrates. She has said that government leads to families under siege, war in the streets. In her view, when government advances, freedom is imperiled, and civilization itself is jeopardized. These views could hardly be further from legal mainstream. They are not the views of someone who should be confirmed to the second most important court in the land and the court with the highest frequency of cases involving governmental action. Congress and the White House are the places you go to change the law, not the Federal courts.

She has criticized the New Deal which gave us Social Security, the minimum wage, and the fair labor laws. She questioned whether age discrimination laws benefit the public interest. She has even said that today's senior citizens blithely cannibalize their children because they have the right to get as much free stuff as the political system will permit them to extract. No one with these views should be confirmed to any Federal court, and certainly not to the Federal court most responsible for cases respecting governmental action. It is no wonder that an organization seeking to dismantle Social Security is running ads supporting her nomination to the second most powerful court in the country.

Of course, like every nominee who comes before the Senate, Justice Brown assures us that she will follow the law. But merely saying so is not enough when there is clear and extensive evidence to the contrary. The Senate is more than a rubberstamp in the judicial confirmation process. We must examine the record and vote our conscience.

Justice Brown and her supporters ask us to believe that her contempt for the role of government and government regulation and her opinions against workers' rights and consumer protections are not an indication of how she would act as a Federal judge. It is hard to believe that anyone would repeatedly use such extreme rhetoric and not mean it. It is even harder to believe that her carelessness and intemperance somehow qualify her to be a Federal judge.

Moreover, Justice Brown's decisions match her extreme rhetoric. She has written opinions that would undermine these basic protections. I was especially troubled by her opinion in a case in which ethnic slurs have been proven to create hostile working conditions for Latino workers. Justice Brown wrote that the first amendment prevents courts from stopping ethnic slurs in the workplace even when those slurs create a hostile work environment, in violation of job discrimination laws.

Her opinion even went beyond the State law involved in the case and suggested that title VII and other Federal antidiscrimination laws may not prohibit this kind of harassment in the workplace. Her opinion contradicts decades of precedent protecting workers from harassment based on race, gender, ethnicity, and religion. Fortunately, a majority of California's Supreme Court disagreed with her views.

We cannot risk giving Justice Brown a lifetime appointment to a court on which she will have a greater opportunity to apply her extreme views on our Federal civil rights laws. This Nation has made too much progress toward our shared goal of equal opportunity to risk appointing a judge who will roll back civil rights.

Other opinions by Justice Brown would have prevented victims of age and race discrimination from obtaining relief in State court. She dissented from a holding that victims of discrimination may obtain damages from administrative agencies for their emotional distress. Time and again, she has issued opinions that would cut back on laws that rein in corporate special interests. When there is a choice between protecting the interests of working Americans and siding with big business, Janice Rogers Brown sides with big business, and she does so in ways that go far beyond the mainstream conservative thinking.

She wrote an opinion striking down a State fee requiring paint companies to pay for screening and treating children exposed to lead paint. Most of us are familiar with the dangers of lead paint. It is a contributing cause to mental retardation with regards to children. Many of the older communities all over this country have paint that has a lead content, and children have a habit of picking off the pieces. Even if it is in playgrounds, they have a way of ingesting these pieces. We find that children develop severe illness and sickness and in too many instances mental retardation. We tried here for years to eliminate the issues of lead in paint.

We have made some important progress.

As I understand it, one of the proposals was a small State fee requiring paint companies to pay for screening and treating children exposed to lead paint, and she struck down that State fee. Fortunately, she was unanimously reversed by the California Supreme Court. But because the United States Supreme Court hears so few cases, there is no guarantee that her mistakes will be corrected if she receives a lifetime position on the DC court.

In another case, she wrote a dissent urging the California Supreme Court to strike down a San Francisco law providing housing assistance to low-income elderly and disabled people.

Justice Brown has also clearly demonstrated her willingness to ignore established precedent. She wrote a dissent, arguing that the California Supreme Court ''cannot simply cloak ourselves in the doctrine of stare decisis,'' which is the rule that judges should follow the settled law. That is the basic concept of upholding the law, interpreting law, stare decisis, following the law which currently exists.

She wrote a dissent urging the California Supreme Court, saying we cannot simply cloak ourselves in that doctrine.

She again showed her willingness to disregard legal precedent just this year. In People v. Robert Young, Justice Brown tried to overturn a precedent protecting the rights of racial minorities and women not to be eliminated from juries for discriminatory reasons. In a concurring opinion not joined by any of her colleagues, she criticized the precedent stating that for the purposes of deciding whether a prosecuting attorney had discriminated in selecting a jury, black women could not be considered a separate group. The California Supreme Court had held two decades ago that prosecutors may not exclude jurors solely because they are black women.

Justice Brown argued that this precedent should be overruled because she saw no evidentiary basis that black women might be the victims of a unique type of group discrimination justifying their designation as a cognizable group.

It is not just Senate Democrats who are troubled about the record of Janice Rogers Brown. Conservatives have also expressed concern about the judicial activism of Janice Rogers Brown. The conservative publication National Review had this to say:

> Janice Rogers Brown . . . has said that judicial activism is not troubling per se; what matters is the ''worldview'' of the judicial activist. If a liberal nominee to the courts said similar things, conservatives would make short work of her.

Even conservative columnist George Will has said that Janice Rogers Brown is out of the mainstream.

In the past, some members of the press, and even some in Congress, have accused us of bias when we raise questions about a nominee. That is nonsense. Justice Brown has received the same treatment as other nominees. We have asked about her record, looked at her statements, and reviewed her opinions. We have raised questions when her record cast doubt on her commitment to the rule of law.

During the recent debate on judicial nominees, almost all of us, Republicans and Democrats, have emphasized that we want an independent judiciary. If that is truly what we believe, we must vote no on the nomination of Janice Rogers Brown. She opposes many of our society's most basic values shared by both Republicans and Democrats.

Throughout its history, America has embraced the ideals of fairness, opportunity, and justice. We all believe our laws are there to help ensure everyone can share in the American dream and that everyone should be free from discrimination. Janice Rogers Brown has expressed hostility to some of the protections most important to the American people, including those that protect workers, civil rights, and the environment. We believe that judges should be impartial, not beholden to powerful corporate interests. If we believe in these basic protections, it makes no sense to confirm a judge who would undermine them and turn back the clock on many of our most basic rights.

The Senate's role in confirming judges to the Federal courts is one of our most important responsibilities under the Constitution. We count on Federal judges to be openminded, fair, and respect the rule of law. Despite what Justice Brown thinks, laws passed by Congress to give Government a role in protecting the environment, immigrants, workers, consumers, public health and safety, have helped to make America a stronger, better, and more fair country. A nominee so deeply hostile to so many basic laws does not deserve to be appointed to such an important Federal court.

Last month, we celebrated the 51st anniversary of the Supreme Court's landmark decision in Brown v. Board of Education. Nothing can be a more important reminder of the role of our courts in upholding individual rights. In confirming Federal judges, we must ensure that they will uphold the progress our country has made in so many areas, especially in civil rights.

Justice Brown's record and her many intemperate statements give me no confidence that she will do so, and I urge my colleagues to vote against her nomination.

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

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

BIRTH CONTROL

Mr. DURBIN. Mr. President, today is a very important day in American history. On June 7, 1965, 40 years ago today, the U.S. Supreme Court struck down a Connecticut law making it a crime to use or prescribe any form of birth control or even to give advice about birth control. Forty years ago it was a crime to prescribe any form of birth control in the State of Connecticut, or to use it, or to give advice about it: 40 years ago.

It is hard to imagine, isn't it? Even married couples in Connecticut could be convicted of a crime, fined, and sentenced to up to a year in prison for using forms of birth control. Doctors who prescribed contraceptives, pharmacists who filled the prescriptions, even people who simply provided advice about birth control, could be charged with aiding and abetting a crime, fined, and sent to prison for up to a year.

But 40 years ago today, just across the street, by a vote of 7 to 2, the Supreme Court struck down the Connecticut law. The case was called Griswold v. Connecticut, a famous case. The Court's ruling held for the first time in our Nation's history that the Constitution guarantees all Americans the right to privacy in family planning decisions. Such decisions were so intensely personal, their consequences so profound, the Court said the State, the Government, may not intrude, it may not impose its will upon others.

You can search our Constitution, every single word of it, as short a document as it is, and never find the word ''privacy'' in this document. Yet the Supreme Court said they believed the concept of our privacy was built into our rights, our individual rights and liberties.

I referred briefly to this landmark ruling earlier today in remarks opposing the nomination of Janice Rogers Brown to serve as a Federal circuit court judge in the District of Columbia. That nomination is before the Senate at this moment. It is for a lifetime appointment. Janice Rogers Brown is a justice in the California Supreme Court who has stated explicitly her own personal philosophy, her own judicial philosophy, and it runs counter to many of the concepts and values I will be discussing as part of this commemoration of the Griswold decision.

I am glad there is a bipartisan resolution sponsored by my colleague from Illinois, Senator BARACK OBAMA, and Senator OLYMPIA SNOWE of Maine, calling on the Senate to celebrate the 40th anniversary of the Griswold decision. In that resolution, my two colleagues, one Democrat, one Republican, ask the Senate to renew its commitment to make sure that all women, including poor women, have access to affordable, reliable, safe family planning.

Right at the heart of the Griswold decision, the right to make the most intimate personal decisions about our lives in private, without Government

interference, we find the foundation for future decisions that expanded reproductive rights. In 1972, in Eisenstadt v. Baird, the Supreme Court granted unmarried people in America access to family planning and contraception—1972—and, in 1973, the famous case, Roe v. Wade, a 7-to-2 decision by the Supreme Court said that women have a fundamental right to decide whether to continue a pregnancy, depending on the state of the pregnancy. Supreme Court Justice Harry Blackmun was nominated to serve on the Supreme Court by Richard Nixon—obviously a Republican President. Justice Blackmun had been on the Court less than a year and a half when he was assigned to write the majority opinion in Roe v. Wade.

There is a brilliant new biography called ''Becoming Justice Blackmun'' by Linda Greenhouse. I finished it and recommend it to my colleagues. Justice Blackmun served on the Court at several different levels and kept copious notes. From those notes, which were donated, they have derived this biography, which I recommend to anyone, regardless of your political background, to understand what happens behind those closed doors at the Supreme Court.

Justice Blackmun revealed in this book how he struggled with the assignment of writing the majority opinion on Roe v. Wade. You see, he had been the general counsel for the Mayo Clinic, one of the most outstanding hospitals in America, which happens to be in the State of our Presiding Officer, Minnesota, in Rochester. So Justice Blackmun left Washington and went back to the library of the Mayo Clinic as he wrote this decision. He worked for long periods of time, plowing through books and articles on the whole question of abortion. He listened to a lot of people, including his own daughter, who dropped out of college in her sophomore year after becoming pregnant.

In his notes for the Roe decision, Justice Blackmun made two predictions. Here is what he said. The Court will be excoriated at first for its decision. Then, he went on to say, there will be an unsettled period for a while as States brought their laws into compliance with the Roe v. Wade decision.

The first prediction proved accurate; the second, overly optimistic. Thirty-two years after the Roe decision, 40 years after the Griswold decision, America today remains unsettled, not only about reproductive rights, but about many other fundamental matters of conscience as well. We are struggling today with a question that is as old as our democracy itself: What is the appropriate, what is the proper relationship between personal religious belief and public policy? How many battles, how many debates do we struggle through that go to that single issue? When should one group in America be able to impose its own moral code on the rest of society?

It is worth remembering that the Griswold decision overturned Connecticut's version of a Federal law called the Comstock Act. In 20 years on Capitol Hill, I have never heard anyone refer to the Comstock Act. Listen to the history. This law was named after its author, Anthony Comstock, a morals crusader and a zealot anti-abortion advocate.

In 1868, Anthony Comstock was the driving force behind a State anti-obscenity law in New York. In 1873, he brought his crusade to Washington. He lobbied Congress to pass a Federal law making it a crime to advertise or mail not only ''every lewd, lascivious, or filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character'' but also any information ''for preventing conception or producing abortion.''

Congress passed the Comstock law unanimously, with little debate. It then commissioned—this is something I find almost hard to believe—it commissioned Anthony Comstock as a special agent of the U.S. Post Office, gave him the power under the law to define what should be banned in America, and also vested in Mr. Comstock the power of arrest and gave him a huge travel budget. Imagine that: Mr. Comstock spent the next 30 years crisscrossing America, enforcing his law as he saw fit.

Two years before he died in 1915, Anthony Comstock bragged that he had been personally responsible for the criminal conviction of enough people to fill a 61-car passenger train. He prosecuted Margaret Sanger, the family planning pioneer, on eight counts of obscenity because she published articles on birth control. Druggists were punished and criminalized for giving out information to Americans about family planning and contraception. Publishers revised their texts and books so as to avoid the wrath of Mr. Comstock and his law, deleting banned words such as ''pregnant,'' and Americans lived with his censorship of the mail.

The Irish playwright George Bernard Shaw dismissed the Comstock Act as ''a standing joke at the expense of the United States.'' There was nothing funny about the Comstock Act, nothing funny to those who were forced by the law to conform with Anthony Comstock's rigid personal moral code. The penalty for violating the Comstock Act was up to 5 years in prison at hard labor and a fine of up to $2,000. For every victim who was prosecuted, there were untold others whose lives, health, and family suffered as a result of being denied basic information about family planning.

Linn Duvall Harwell is one of those who suffered. Miss Harwell now lives in New Hampshire. She is 82 years old. In 1929, when she was 6 years old, her mother, who was then 34 and pregnant for the eighth time, lost her life. She tried to abort her own pregnancy using knitting needles and bled to death, leaving behind a husband and five small children. Linn Duvall Harwell has spent her life trying to spare other women her mother's fate by protecting women's right to safe and legal contraception and abortion.

In 1958, Linn Harwell moved to Connecticut. A woman at her church asked her to volunteer for Planned Parenthood. She and other young mothers were trained in medical understanding of birth control by Estelle Griswold, the director of Planned Parenthood in Connecticut, and Charles Lee Buxton, the league's medical director. These were the two people who brought the lawsuit that later became the Griswold case before the Supreme Court. Years before the Court struck down Connecticut's Comstock law, Linn Duvall Harwell defied the law to teach poor women in housing projects about birth control and family planning.

Yesterday, the Chicago Sun-Times carried an article written by Miss Harwell about her life's work and the renewed threats today to the rights identified in Griswold and Roe. In her op-ed, Miss Harwell recalled a woman she met in 1968 named Rosie. Rosie was 32 years old. She and her husband, a short-order cook, were the parents of 11 children.

Miss Harwell wrote:

> By the time I met Rosie and her family, I could not help her, for she had so many children already. She and her family were imprisoned in poverty because she was unable to access the preventive medicine that I easily obtained.

She added:

> The Comstock law denied health care to millions of Rosies because of religious bigotry, legalized injustice and ignorance.

Today, it is estimated that 95 percent of American women will use birth control during their childbearing years. Reliable birth control is now a critical part of preventive health care for women. And Roe, although it has been weakened, is still the law of the land.

The widespread use of birth control has helped reduce maternal and infant mortality by an astonishing two-thirds in the last 40 years. Since Griswold, we have reduced infant and maternal mortality in America by two-thirds. In 1999, the U.S. Centers for Disease Control and Prevention included family planning on the list of ''Ten Great Public Health Achievements in the 20th Century.''

But Comstockery seems to be making a return. You can see it in efforts to impose gag rules on doctors and other measures designed to make it harder for women to get information and services related to family planning and abortion. You can see it in the stories of women who are harassed by pharmacists when they attempt to fill prescriptions for contraceptives—in some cases, even after these women have been victims of sexual assault.

A chill wind blows for reproductive rights and possibly other issues of conscience as well. You can hear that wind in the rhetoric of extremists who rail

about the ''culture war'' in America and misrepresent legitimate political debate as attacks on people of faith.

We heard the chill wind of religious intolerance in some of the sad debate over the tragedy of Terri Schiavo. We heard it in the dangerous, vitriolic condemnations of judges, like George Greer, the judge in the Schiavo case, who dared to enforce the law as he believed the Constitution required.

We can hear that chill wind of religious and social intolerance today in the debate over stem cell research. Once again, as with the Comstock laws, a passionate group who sees itself as the moral guardians of America would use the power of our Government to deny life-saving medical care to those who need it. They believe that a cell blastocyst deserves the same legal standing and protections as a full-grown child or adult suffering from Parkinson's or diabetes or terrible injury to their spinal cords. I respect their opinion. I respect their religious beliefs. In most cases, I don't share them. Neither do most Americans. I don't believe this vocal minority, no matter how well intentioned they may be, no matter how moral they believe themselves to be, should have a veto power over medical research that offers apparently unlimited potential to heal broken bodies and minds and save lives.

Will our courts continue to recognize the constitutional right to privacy on family planning and other profoundly personal issues? Or will we fill the Federal bench with judicial activists who see themselves as soldiers in a cultural war, who want to put their own agendas ahead of the Constitution? That is one of the questions that is at the heart of the debate on the Federal judges.

The filibuster debate is not about old Senate rules. It is about whether self-described cultural warriors can use our Government to impose their personal moral agenda on America.

In April, a group of organizations held a televised rally to condemn the Senate filibuster rule as a weapon against people of faith. They called it ''Justice Sunday.'' That day, Janice Rogers Brown, the nominee now before the Senate, gave a speech in which she argued that ''people of faith are embroiled in a war against secular humanists.'' According to newspaper accounts, she went on to say:

> [T]here seems to have been no time since the Civil War that this country was so bitterly divided. It's not a shooting war, but it's a war.

Mr. President, Americans are not at war with one another. We are at war in Afghanistan and Iraq, wars, sadly, fueled by religious extremism in many respects. Expressing honest, fundamental differences of opinion on political and social questions here at home is not an act of war. It is an act of democracy. It is our democratic process and our Constitution at work.

I respect the right of every person to express his or her beliefs about religion or anything else. That is part of the beauty of being a citizen in this great Nation. But we cannot allow the beliefs of a majority, or even a vocal minority, to determine moral choices for every American. As the Supreme Court ruled so wisely 40 years ago, there are decisions that are so intensely private that the Government has no right to intrude.

Soon I hope we take up the issue which the House considered just several days ago on stem cell research. It strikes me as strange, maybe unfair, that some believe we should oppose in vitro fertilization in every circumstance. I have friends of my family, friends for years, who have spent small fortunes in the hopes that a mother and father who cannot conceive by natural means can use this process to have a child whom they will rear and love all of their lives. One of my friends has spent $80,000 in two separate, thank goodness successful, efforts, and she has two beautiful children to show for it.

I cannot imagine why that is an immoral act, when a husband and wife will go to those extremes to bring a life into this world that they will love and nurture. But we know, just as in normal conception, there will be, during the process, some of the fertilized eggs that will not lodge in a mother's womb and lead to human life. That is the natural thing that occurs.

The same thing happens during in vitro fertilization. If they are successful in creating this fertilized egg, and then implanting it in a woman's womb so she can have a baby, it is a miracle, but as part of that miracle there will be some of these fertilized eggs which cannot be used.

So the question before us in stem cell research is very clear: Should stem cells from blastocysts be used to save others' lives, to prevent disease, to give someone hope and a future? That is what it is about. There are some who say no, some who would say we should not allow in vitro fertilization, and others who say, if you allow it, you should never allow those discarded blastocysts to be used for medical research.

The position of the Bush administration is close to that. The President, in August of 2001, said he would approve certain stem cell lines being used for research but no others. Well, it turns out those stem cell lines were very limited in their number and quality, and scientists and medical researchers have told us that the President's approach is not going to give us the opportunity we need to develop these stem cells into cures for diseases. So many of us believe we should move forward.

We should have strict rules against cloning. I do not know of a single Member of Congress, of either political party, who supports human cloning. We are all opposed to that. It should be condemned, and we should have strict ethical guidelines on the use of these stem cells so that they are used legitimately for research, not for profit or commercialization, but legitimately used for research to try to find the cures to these vexing diseases.

Many of us believe that this is as pro-life as it gets. If you can take stem cells that would be otherwise discarded and never used for any purpose and use them for the purpose of giving a youngster who has to inject with insulin three times a day a chance to be rid of diabetes, if you can use it for a person afflicted in their forties or fifties with Parkinson's disease, which is a progressively degenerative disease in most instances, if you can use it to try to regenerate the spinal column and all the things that are necessary so someone can walk again after a spinal cord injury—how in the world can that be wrong?

That strikes me as promoting life. Yet some will come to the floor, even threatening a filibuster, saying that we cannot do this because it violates their personal moral and religious beliefs. Well, I understand that. And that is how they should vote. But to stop the rest of the Nation—because of their personal moral and religious beliefs—from this type of medical research seems to me to be counterproductive, if you are truly committed to life and the health of those who surround us.

Forty years ago, the decision was made across the street that there are certain elements of privacy, there are certain elements of personal decisions made by individuals and families which the State, the Government cannot overrule because of anyone's personal religious, moral belief. They said that privacy is critically important in America. Those private decisions should be protected.

Every nominee for the Supreme Court I have heard in recent times has faced a Judiciary Committee question from some member, Democrat or Republican: Do you still agree with the Griswold v. Connecticut decision? Do you still believe that, even though this Constitution does not include the word ''privacy,'' that is part of what we have as Americans as part of our individual rights and liberties? The only one who tried to, I guess, split the difference and find some way to argue around it was Robert Bork. His nomination was ill-fated after he made some of those statements.

I believe most Americans feel we should be personally responsible, that we should be allowed to have our own personal religious beliefs, but they also think we should stay away from the Government imposing religious beliefs on one group or the other. That is what happened with the Comstock laws. That is what led to the laws in Connecticut, which were stricken in Griswold. Sadly, that is part of the debate today when it comes to stem cell research.

I am urging Senator FRIST, a medical doctor, one I greatly respect, to bring this bill up and bring it up quickly. I know there is a feeling by the White

House, and maybe even by some in Congress, that we should avoid this stem cell research debate. But when you think of the millions of Americans and their families who are counting on us to move medical research forward, is there anything more important on our political agenda?

I sincerely hope President Bush, who made an exception for some stem cell lines for research, will understand that you cannot take an absolute position on this issue. It is a tough issue. It is one where we should draw good, ethical guidelines for the use of this research, but not prohibit it, not close the door to this research and the cures that could emanate from it. That, I think, would be a lesson well learned, a lesson consistent with the decision made by the Supreme Court 40 years ago today.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I would like to get us back on the topic at hand. It is a topic that has been denied for some period of time. It is the Honorable Janice Rogers Brown nomination to the U.S. Court of Appeals for the DC Circuit. ''Justice delayed is justice denied'' is an old saying under the law. This lady has been delayed a long time. It is time to get this nomination through.

I am glad to see the cloture vote move us forward. She is going to be now approved, I believe, by a majority vote and a majority opinion. And I think if the country had to vote on Janice Rogers Brown, it would be a 90-plus percent vote for this lady, given her background, given her judicial expertise, given her demeanor, given her nature.

I think the country would look at this lady, whom I have a picture of here, and say: That is the type of person I want on the bench. This is a good, honorable person, with a great heart, a well-trained mind, who is thoughtful, with great experience. This is the type of person we ought to have on the bench. Yet we have just heard litany after litany of excuses, the dissecting of cases that you try to then parse to say she should not be on the bench for whatever reason.

I want to go through some of what has been stated previously. I want to go through, again, her background to get us back on topic. And then I want to go through some of the specifics.

She is currently serving as an associate justice on the California Supreme Court. She has held that position since 1996. She is the first African-American woman to serve on the State's highest court. She was retained with 76 percent of the vote in the last election. Certainly, that does not seem to be the sort of extreme case anyone can come up with; that 76 percent of Californians think she should be retained on the court. If she is so extreme, if she is so off the mark, if she is so out of the mainstream, why, in California, wasn't she voted off the bench?

Why didn't at least 24 percent of Californians or more than 24 percent vote her off the bench? Why didn't she have a much closer election than that? Where is the beef, an old advertising phrase?

In 2002, Justice Brown's colleagues relied on her to write the majority opinion for the court more times than any other justice. Prior to appointment and confirmation to the California Supreme Court, Justice Brown served from 1994 to 1996 as an associate justice on the Third District Court of Appeals, an intermediate State appellate court.

Justice Brown enjoys bipartisan support from those in California who know her best. A bipartisan group of 15 California law professors has written to the Senate Judiciary Committee in support of Justice Brown. The letter notes that:

> We know Justice Brown to be a person of high integrity, intelligence, unquestioned integrity, and evenhandedness. Since we have differing political beliefs and perspectives, Democratic, Republican and Independent, we wish especially to emphasize what we believe is Justice Brown's strongest credential for appointment on the D.C. Circuit Court: her open-minded and thorough appraisal of legal argumentation—even when her personal views may conflict with those arguments.

This is a bipartisan group that says she is open-minded and thorough in her appraisal of legal arguments.

A bipartisan group of Justice Brown's current and former judicial colleagues has also written a letter in support of her nomination. Twelve current and former colleagues noted in a letter to the committee that:

> Much has been written about Justice Brown's humble beginnings, and the story of her rise to the California Supreme Court is truly compelling. But that alone would not be enough to gain our endorsement for a seat on the Federal bench. We believe that Justice Brown is qualified because she is a superb judge. We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias and with an even hand.

This doesn't sound like the same lady who is being discussed on this floor by some of my colleagues on the other side.

Ellis Horvitz, a Democrat and one of the deans of the appellate bar in California, has written in support of Justice Brown noting that:

> . . . in my opinion, Justice Brown [possesses] those qualities an appellate jurist should have. She is extremely intelligent, very conscientious and hard working, refreshingly articulate, and possessing great common sense and integrity. She is courteous and gracious to the litigants and counsel who appear before her.

Regis Lane, director of Minorities in Law Enforcement, a coalition of ethnic minority law enforcement officers in California, wrote:

> We recommend the confirmation of Justice Brown based on her broad range of experience, personal integrity, good standing in the community, and dedication to public service . . . In many conversations with Justice Brown, I have discovered that she is very passionate about the plight of racial minorities in America, based on her upbringing in the south. Justice Brown's views that all individuals who desire the American dream regardless of their race or creed can and should succeed in this country, are consistent with [that group's] mission to ensure brighter futures for disadvantaged youth of color.

These are some of the people who know her the best. These are the statements they make about her. This is why she should be on the DC appellate court.

Justice Brown is an outstanding and highly qualified candidate as evidenced by her background, credentials, and training. This has been covered and covered. But she is a sharecropper's daughter, born in Greenville, AL, in 1949. During her childhood she attended segregated schools, came of age in the midst of Jim Crow policies in the South. She grew up listening to her grandmother's stories about NAACP lawyer Fred Gray, who defended Dr. Martin Luther King, Jr., and Rosa Parks. Her experience as a child of the South motivated her desire to be a lawyer. Her family moved to Sacramento, CA, when Justice Brown was in her teens. She later received a B.A. in economics from California State in Sacramento in 1974, and her J.D. from UCLA School of Law in 1977. She also received honorary law degrees from Pepperdine University Law School, Catholic University, and Southwestern University School of Law.

She has dedicated all but 2 years of her 26-year legal career to public service. For only 2 years has she not been in public service, 24 years of public service. Where is the person who is out of the mainstream? Where is the person who is irrational? Where is the person who doesn't hold or have the judicial temperament or doesn't have the intellect or the open-mindedness to be a judge in all of this? She has dedicated most of her life, 24 years, to public service.

Prior to more than 8 years as a judge in State courts, Justice Brown served from 1991 to 1994 as legal affairs secretary to California Governor Pete Wilson where she provided legal advice on litigation, legislation, and policy matters. From 1987 to 1990, she served as deputy secretary and general counsel to the California Business, Transportation, and Housing Agency where she supervised the State banking, real estate, corporations, thrift, and insurance departments.

From 1972 to 1987, she was deputy attorney general of the Office of the California Attorney General where she prepared briefs and participated in oral arguments on behalf of the State in criminal appeals, prosecuted criminal cases, and litigated a variety of civil issues. She began her legal career in 1977, when she served 2 years as deputy legislative counsel in the California Legislative Counsel Bureau. She has a broad base of experience from which to

draw to be an excellent person to sit on the Federal appellate court bench.

She has participated in a variety of statewide and community organizations dedicated to improving the quality of life for all citizens of California. Justice Brown has served as a member of the California Commission on the Status of African-American Males—the commission was chaired by now-U.S. Representative BARBARA LEE—and made recommendations on how to address inequalities in the treatment of African-American males in employment, business development, the criminal justice, and health care systems.

She is a member of the Governor's Child Support Task Force, which reviewed and made recommendations on how to improve California's child support enforcement laws. She serves as a member of the Community Learning Advisory Board of the Rio Americano High School and developed the Academia Civitas Program to provide government service internships to high school students in Sacramento. She has also assisted in the development of a curriculum to teach civics and reinforce the values of public service.

She has volunteered time with the Center for Law-Related Education, a program that uses moot courts and mock trials to teach high school students how to solve everyday problems. She has taught Sunday school class at Cordova Church of Christ for more than 10 years. That is Justice Janice Rogers Brown. Those are the facts. That is who she actually is.

So why has it taken that long a period of time for us to be able to get her to the floor? Why is there such consternation about her becoming a DC appellate court judge? Why have we spent years to get her to the point where we will vote on—I would love to see it today, but at least this week—her approval to the DC appellate court bench? I think it goes to the fact that she is a lady, nominated by President Bush, who will strictly construe the Constitution, stay within the bounds of the document, not try to write new opinion as to a new constitutional right or a new issue that is not within the Constitution or not within the law. She is what lawyers would call a strict constructionist. She says if the law says this—and it was passed to say that—that is what we enforce, if that is what the Constitution says.

It is not the living, breathing document of let's try to create another right or privilege here and take three or four of the amendments to the Constitution, provisions of the Constitution, frame them together, and then let's find a new right in the Constitution because we think this is good for the country. If it is a change to the Constitution that needs to happen, then it should happen. And it should go through this body with a two-thirds vote. It should go through the House with a two-thirds vote. It should go to the State legislatures for a three-fourths vote. It should not be a majority opinion of a bench somewhere.

She says she will stay within the confines of the law. That is what the President is trying to nominate, judges who will stay strict constructionists within the confines of the law and be what judges should be, interpreters of the law, enforcers of the Constitution as it is written, not as they wish it were written. That is what this nomination is about.

Others want to see a court that will expand and look and read different things in, even if it doesn't pass through this body or doesn't pass through the legislature or isn't signed into law by the President. We really are at a point of what it is that the judiciary is to be about in America. You are seeing the face of somebody who is a strict constructionist, saying that this is what it is about.

The judiciary has a role. It has a constitutional role. It is an extraordinarily important role. But it is defined and it is set. She believes it should stay within. That is why we have had so much trouble with so many of these judicial nominations.

During the first 4 years of the Presidency of George W. Bush, the Senate accumulated the worst circuit court confirmation record in modern times, thanks to partisan obstruction. Only 35 of President Bush's 52 circuit court nominees were confirmed, a confirmation rate of 67 percent. To give you a comparison on that:

People have said that is not so low; we approved a number of these lower court judges. But let's take President Johnson's term in office. There was a Democrat Senate and a Democrat President. What was his circuit court nomination rate? It was 95 percent.

President Bush: Republican Senate, Republican Presidency, 67 percent.

What about President Carter? Democratic President, Democratic Senate, and 93 percent of his circuit court nominees were approved.

President Bush: 67 percent.

What has taken place is a filibuster of good people, such as Janice Rogers Brown, who has served honorably most of her professional career in public service but does believe there are confines within which they rule. It is in the Constitution or it is not; it is in the law or it is not; it is constitutional or it is not. It is not what I wish it were, it is what is actually there. It is what the precedents have said that matters.

The average American may not be familiar with Senate rules on cloture or on the unprecedented low confirmation rate of President Bush's circuit court nominees, but the average American can tell you one thing: that the Constitution and common sense require the Government to be accountable to the people for its actions. This is especially the case of what we do in the House and the Senate as we move forward in this country.

I want to address some of the items that have been coming up in some of these debates. Various Members have raised specific points, and I want to address a few of those points.

Certain liberal special interest groups have tried to distort Janice Rogers Brown's decision when she served on the State court of appeals in the case of Sinclair Paint Company v. Board of Equalization. They claimed she was insensitive to the legislature's desire to protect children from lead poisoning.

What was really at issue in the case was the respect for the will of the California voters who wanted to make it more difficult for the California Legislature to raise taxes.

California proposition 13—people remember that—enacted in June of 1978, requires a two-thirds vote of the legislature to increase State taxes. That is what proposition 13 did. In 1991, the California Legislature voted by a simple majority to assess fees on manufacturers engaged in commerce involving products containing lead in order to fund a program to provide education, screening, and medical services for children at risk for lead poisoning. Justice Brown simply held for a unanimous court of appeals—a unanimous court of appeals—in affirming the judgment of the trial court that the assessment constituted a tax within the meaning of proposition 13 and thus had to be passed by a two-thirds vote.

That seems to be pretty basic and pretty common sense and not about her insensitivity to cases involving lead poisoning but simply what her role is under the law and her role as a jurist.

Under applicable California case law where payment is exacted solely for revenue purposes and its payment gives the right to carry on the business without any further conditions, the payment constitutes a tax. The Childhood Lead Poisoning Protection Act did not require the plaintiff to comply with any other conditions. It was merely required to pay its share of the program cost. Justice Brown reasonably concluded the assessment was a tax.

There are several other cases that have been brought up that I want to address.

Several liberal interest groups have attacked Justice Brown's dissent in Aguilar v. Avis Rent-a-Car Systems in which she argued racial discrimination in the workplace, even when it rises to the level of illegal race discrimination, cannot be prohibited by an injunction under the first amendment. I want to talk about this.

Justice Brown, as I have cited, is the daughter of a sharecropper from rural Alabama. She grew up under the shadow of Jim Crow laws. I think she understands the lingering effects of racial classification. In light of her personal history, the allegation she is insensitive to discrimination is absurd.

Notwithstanding her personal experiences with racism, Judge Brown's role as a judge has been to apply the law which she has done faithfully and rigorously. As I discussed earlier, it is the

role of the judge to apply the law and apply the Constitution, not rewrite the law the way they wish it were, not to rewrite the Constitution the way they think it ought to be, but to apply it in a particular case. And this is a case she could have looked at from her background and said: I understand this situation. I have been in this situation. Yet what does the law itself say?

Judge Brown's opinions demonstrate her firm commitment to the bedrock principle of civil rights. Discrimination on the basis of race is illegal, it is immoral, unconstitutional, inherently wrong, and destructive of a democratic society. Those are her statements.

In the Aguilar case, Justice Brown described the defendants' comments as disgusting, offensive, and abhorrent, and she voted to permit a large damage award under California's fair employment law to stand. Her dissent only pertained to an injunction that placed an absolute prohibition on speech. This is commonly called a prior restraint which most free speech advocates strenuously oppose.

Justice Brown's opinions demonstrate her firm commitment to the first amendment. She cited a long line of Supreme Court cases for the proposition that speech cannot be banned simply because it is offensive.

Justice Brown's opinions also demonstrate her commitment to equality in the workplace. Justice Mosk and Justice Kennard, considered one of the most liberal members of the California Supreme Court, also dissented on first amendment grounds.

Here we see the core of the person, the commitment to the law and to the rule of law. Here was something she had experienced, she understood, and yet had to say: OK, what does the law actually say, and what are the first amendment rights? Then she applied them in the case. That is the type of justice who looks at what is their role and what is it that they are required to do under the Constitution.

Judge Brown's opinion was so powerful that it prompted one member of the U.S. Supreme Court to take the unusual step of publishing an opinion dissenting from the denial of certiorari.

I find it amazing that the very same liberal outside groups who never hesitate to level accusations of censorship, perhaps, against the administration or even Congress are attacking Justice Brown for standing up for what she interpreted and looked at clearly as a first amendment issue which she had to stand by even though she found the comments herself so offensive and wrong.

Justice Brown has been attacked as being insensitive on women's issues because she has voted to strike down a State antidiscrimination law that provided a contraceptive drug benefit to women. Some have claimed her to be hostile to these women's issues.

What one has to do is look at the actual case, the actual facts, the actual law in front of her because her role as a justice is to take the law and the facts applied in this particular case, not what she wished it was, not what she hoped it would be, not what she thinks it should be in a perfect world, but what is it.

The law involved in the case actually required health and disability insurance policies to cover contraceptives. Justice Brown did not vote to strike down the law, she simply argued that the law should not be applied to force a religious institution—here Catholic Charities of Sacramento—to do something that violated its religious beliefs. This case was about religious freedom under the first amendment, not about gender discrimination or revisiting the right to contraceptives. It is about discrimination based on religion, and Justice Brown stood against this discrimination. Telling us about this case without saying a word about religious freedom on the issue misinforms people totally about this particular case and this person.

Justice Brown has been attacked for rendering opinions that have been considered outside the mainstream. These allegations are spurious. As I have stated, she has been affirmed by the population, the public voting in California, with a 76-percent approval rating. If her opinions are so out of the mainstream and so wrong, why weren't more Californians than roughly 25 percent concerned about this?

The flip side of this is that I have never won an election by a 75-percent margin. I would love to win an election by that margin. This is a confirmation election. It is different than what we face in the Senate.

Still, as somebody who has run for elections, when you get up to that three-fourths mark, that is really good, standing in front of the public and asking them to endorse your status, endorse your position, particularly if this allegation were true. If it were true that she is way out of the mainstream of public opinion in California and she is way out, on a consistent basis, so that her opinions are in the paper all the time and they are way out there, contrary to California public opinion, would you not think more than 25 percent of Californians would say, I am going to vote against confirming this lady?

I think probably a lot of people would look down the ballot box on judges and say, Which ones can I vote against because I am used to voting for all of them, particularly if somebody was so out of the mainstream on such a consistent basis that she is in the papers all the time about being in this dissent or being overruled in this case, that there would be some recognition of her and more people would be concerned. Yet that is not the case. I submit it is because it is just not true. She is not outside the mainstream.

I believe the criticism is utterly baseless. Among the eight justices who served on the California Supreme Court between 1996 and 2003, Justice Brown tied with another judge as the author of the second most majority opinions for the court. Only the chief justice wrote more majority opinions. Now, those are her colleagues on the bench saying: We think you are the right person to write this opinion. You are expressing the opinion for most of us. You are a hard worker. You are intelligent. You are an excellent wordsmith. These are all traits we would want in a justice.

Justice Brown also ranked fourth among the eight justices for the number of times she dissented alone. This puts her squarely in the middle, certainly not on either fringe in that category. It is wrong for Justice Brown's opponents to throw out numbers without offering any basis for comparison on her court.

I wish to talk about a particular case, the case of People v. McKay. Justice Brown stood alone among her colleagues in arguing for the exclusion of evidence of drug possession that was discovered after the defendant, Conrad McKay, was arrested for riding his bicycle the wrong way on a residential street. Her dissent is remarkable for its pointed suggestion of the possibility that the defendant was a victim of racial profiling.

Justice Brown commented:

> Questions have been raised about the disparate impact of stop-and-search procedures of the California Highway Patrol. The practice is so prevalent, it has a name: ''Driving While Black.''

This is somebody who is insensitive? I do not think that is the case with Justice Brown.

I will go on and read from the conclusion of her dissent. She added the following stirring comments:

> In the spring of 1963, civil rights protests in Birmingham united this country in a new way.

This is a native of Alabama.

> Seeing peaceful protesters jabbed with cattle prods, held at bay by snarling police dogs, and flattened by powerful streams of water from fire hoses galvanized the nation. Without being constitutional scholars, we understood violence, coercion, and oppression.

These are the words of Justice Janice Rogers Brown. And I continue:

> We understood what constitutional limits are designed to restrain. We reclaimed our constitutional aspirations. What is happening now is more subtle, more diffuse, and less visible, but it is only a difference in degree. If harm is still being done to people because they are black, or brown, or poor, the oppression is not lessened by the absence of television cameras.
>
> I do not know Mr. McKay's ethnic background. One thing I would bet on: he was not riding his bike a few doors down from his home in Bel Air, or Brentwood, or Rancho Palos Verdes—places where no resident would be arrested for riding the ''wrong way'' on a bicycle whether he had his driver's license or not. Well . . . it would not get anyone arrested unless he looked like he did not belong in the neighborhood. That is the problem.

That was her dissenting opinion, a stirring opinion, quoting things that in her growing up and in her childhood

she had witnessed. She is very sensitive on racial issues.

Last month, Ginger Rutland, who is on the editorial board of the Sacramento Bee, wrote this in her newspaper about Justice Brown's judicial courage:

> I know Janice Rogers Brown, and she knows me, but we're not friends. The associate justice on the California Supreme Court has never been to my house, and I've never been to hers. Ours is a wary relationship, one that befits a journalist of generally liberal leanings and a public official with a hard-right reputation fiercely targeted by the left. . . . I find myself rooting for Brown. I hope she survives the storm and eventually becomes the first black woman on the nation's highest court.

In describing Justice Brown's position in the McKay case that I quoted Justice Brown earlier, Rutland, the editorialist from the Sacramento Bee, says the following:

> Brown was the lone dissenter. What she wrote should give pause to all my friends who dismiss her as an arch conservative bent on rolling back constitutional rights. In the circumstances surrounding McKay's arrest, the only black judge on the State's highest court saw an obvious and grave injustice that her fellow jurists did not. . . . In her dissent, Brown even lashed out at the U.S. Supreme Court and—pay close attention, my liberal friends—criticized an opinion written by its most conservative member, Justice Antonin Scalia, for allowing police to use traffic stops to obliterate the expectation of privacy the Fourth Amendment bestows.

This is an admitted liberal editorial writer talking about Brown's courage.

This is a lady who is going to do an outstanding job on the DC Circuit Court of Appeals. The only tragedy is that she has not been there years earlier. The tragedy is that she has been held up because she looks at doing her job for what it is, which is staying within the Constitution and enforcing it, looking at the law and enforcing it; or if it goes against what is in the Constitution, ruling it unconstitutional, but not looking at the Constitution as she hoped it would be or mixing together a series of ideas in the Constitution and finding a new right; or looking at the law and thinking it should be this way or that and expanding it that way. This is a person who looks at her job as being a judge, in an honorable role, but it is a role that has a set to it and a way, and she is upholding that.

I believe that is really what is at the cornerstone of this debate. Unfortunately, we get it mired so often in personalities and accusations and hyperbole, comments of a personal nature toward an individual that are simply not true, when really what we are talking about is the role of courts.

Courts, like every institution, are people. People are on the courts. We have judges who are appointed to the courts, and they have their views and they have a way of looking at the Constitution or they have a way of looking at various documents or laws. She looks at it as more of a strict constructionist. That is an honorable way to look at it. I believe it is the right way to look at it. Yet she gets painted with all the other sorts of accusations that are simply not based on fact but are a disguise for what the real debate is about, which is the role of the judiciary in America today.

We are having a rolling debate about that issue. We are having a lot of discussion about that. We are having discussions in various States and in the Nation about what is the appropriate role of the judiciary. I believe this is a lady who would stand by that role.

Those are a series of issues. I may visit some others later on, but this is a lady who is eminently qualified, will do a wonderful job. I support her nomination, and I hope we can get to a strong vote fairly soon on it.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from North Dakota.

Mr. DORGAN. Mr. President, this is a debate that is worth having. There has been a great deal of discussion about this nominee for the lifetime appointment to the Federal bench.

There is no entitlement, of course, to a lifetime appointment to the Federal bench. The Constitution provides how this is done. First, the President shall nominate a candidate for a lifetime service on the Federal courts, and, second, the Congress shall provide its advice and consent, and determine whether to confirm the nominee. So the President nominates, sends a name, and the Congress does what is called in the Constitution advise and consent, says yes or no.

In most cases, the Congress says yes. This President, President George W. Bush, has sent us 218 names of people he wanted to send to the Federal courts for a lifetime. This Congress has said ''yes'' to 209 of the 218. That is pretty remarkable, when you think about it—209 out of 218 we have said ''yes.'' There are a few we have delayed and held up and have been subject to cloture votes. Some have said they haven't gotten a vote. Yes, they have gotten a vote. The procedure on the floor, of course, is there is a cloture vote, and they didn't get the 60 votes, but 60 votes is what requires consensus in the Senate. It has been that way for decades and decades.

I have voted for the vast, vast majority of the 209 Federal judges that the President has nominated, including, incidentally, both of the Federal judgeships in North Dakota which were open. Both of which are now filled with Republicans. I was pleased to support them. I think they are first-rate Federal judges. I am a Democrat. The names that came down from the President to fill the two judgeships in North Dakota were names of Republicans. I am proud of their service. I testified in front of the Judiciary Committee for both of them and introduced both of them.

So the fact is this is not about partisanship. It is about nominating good people, nominating people in the mainstream of political thought here in this country.

I take no joy in opposing a nominee, but I do think that if Members of the Senate will think carefully about the views of this nominee, they will decide that she really ought not be put on the second most important court in this country for a lifetime of service. Let me go through a few things that this nominee, Janice Rogers Brown, has said.

Let me say to my colleague who was speaking when I came in, this is not innuendo, not argumentative; these are quotes from the nominee. Facts are stubborn things. We are all entitled to our own opinions, but we are not all entitled to our own set of facts. Let me read the facts, and let me read the quotes that come from this nominee.

This nominee, Janice Rogers Brown, says that the year 1937 was ''the triumph of our own socialist revolution.'' Why? In 1937, that is when the courts, including the Supreme Court, upheld the constitutionality of Social Security and the other major tenets of the New Deal. The triumph of socialism? I don't think so. What planet does that sort of thinking come from, a ''triumph of socialism''?

This nominee says that zoning laws are a ''theft'' of property, a taking, under the Constitution; therefore, a theft of property. Well, we have zoning laws in this country for a reason. Communities decide to establish zoning laws so you don't build an auto salvage yard next to a church, and then have somebody move in with a porn shop next to a school and a massage parlor next to a funeral home. But this nominee thinks zoning is a theft of property. It is just unbelievable, it is so far outside the mainstream thought.

Here is what she says about senior citizens in America.

> Today's senior citizens blithely cannibalize their grandchildren because they have a right to get as much free stuff as the political system will permit them to extract.

I guess she is talking about maybe Social Security and Medicare. I don't know for sure. All I know is that a good many decades ago, before there was Social Security and Medicare, fully one-half of all elderly in this country lived in poverty.

Think of that. What a wonderful country this is. This big old planet spins around the Sun, we have 6 billion neighbors inhabiting this planet called Earth, and we reside in the United States of America. What a gift and blessing it is to be here. But think, in 1935, one-half of America's elderly, if they were lucky enough to grow old, to age to the point where they were called elderly, one-half of them lived in poverty. One-half of them lived in poverty. So this country did something important, very important. We put together a Social Security Program and a Medicare Program. What did this nominee say about that? She said:

> Today's senior citizens blithely cannibalize their grandchildren because they have a

right to get as much free stuff as the political system will permit them to extract.

Really? I wish perhaps she could have been with me one evening at the end of a meeting in a small town of about 300 people. A woman came up to me after the meeting and she grabbed a hold of my elbow. She was probably 80 years old. She said: Mr. Senator, can you help me?

I said I would try.

Then her chin began to quiver and her eyes welled up with tears and she said: I live alone. And she said: My doctor says I have to take medicine for my heart disease and diabetes, and I can't afford it. I don't have the money. Then she began to get tears in her eyes.

I wish perhaps Janice Rogers Brown understood something about that. She thinks this old lady, this elderly woman, struggling to find a way to pay for medicine to keep her alive, is cannibalizing somebody? I don't think so. I think it is incredible that someone would say this.

Now the President wants to put this nominee on the second highest court in the land for a lifetime of service.

She says again:

We are handing out new rights like lollipops in the dentist's office.

I guess I never thought the basic rights that we have in this country ought to be antithetical to what we believe is most important in America. I have traveled over most of this world and been in countries where there aren't rights. I have been in a country where, if people have the wrong piece of paper in their pocket and they are picked up, they are sent to prison for 12 years. I have seen the tyranny of dictatorships and the tyranny of communism. I happen to think basic rights that exist in this country for the American people are critically important; that ''We the people,'' the first three words of that document that represents the constitutional framework for this country's governance, is not something that ought to be taken lightly.

Let me read a couple of other things that this nominee has said. She was the only member of the California Supreme Court to conclude that age discrimination victims should not have the right to sue under common law. Age discrimination victims should not have the right to sue?

She was the only member of the California Supreme Court who voted to strike down a San Francisco law that provided housing assistance to displaced and low-income and disabled people.

I don't understand the President sending us this nominee. Is it the case that this administration really wants to put on the Federal bench for a lifetime someone who is opposed to the basic tenets of the New Deal that have lifted so many people out of poverty in this country, that represents, in many cases, some of the best in this country—telling old folks that when you reach that retirement age you don't have to lay awake at night worrying about whether you are going to be able to go to the doctor when you get sick because there will be Medicare; or telling people that Social Security will be there when you need it—you work, you invest in it, when you retire, you can collect it. Do we really want to put someone on this circuit court who believes that is a triumph of socialism? I don't think so.

There is a kind of arrogance here these days that is regrettable. I was here in the 1990s, and I watched 60 Americans who were nominated for judgeships never even have the courtesy of a day of hearings, let alone get to the floor of the Senate for a cloture vote or a vote up or down—60 of them. We are not even given the courtesy of a day of hearings. The President sends the name down in the 1990s. The majority party said, tough luck, we don't intend to do anything about it; you will not have a hearing; you will not have a vote. This name will not advance.

We did not do that. This caucus has not done that; in fact, just the opposite. Of the 218 names that have been sent to this Congress from this President, the Senate has approved 209 of them. Those who did not get confirmed had a cloture vote in the Senate. They had a day of hearings. They had an opportunity to testify before the Judiciary Committee. Their name was brought to the floor. We had cloture votes.

Now we have Members coming to the Senate on the other side saying, look, our policy is, everyone needs an up-or-down vote; not a cloture vote, an up-or-down vote. These Members did not hold that view at all in the 1990s. In fact, they did exactly the opposite. There are terms for that which I shall not use here.

The fact is, we are proceeding on the Janice Rogers Brown nomination because of an agreement made 2 weeks ago. I hope, however, having read what I have read about her views on a wide range of issues, that we will have sufficient colleagues in the Senate to say to this President, this is so far outside the mainstream, we will not approve this nominee.

It is not unusual for a political party to tell its President that you cannot pack the court. The members of Thomas Jefferson's own political party told Thomas Jefferson that. Members of the political party of Franklin Delano Roosevelt did the same thing, in his attempt to pack the Court.

My hope with respect to this nominee is that we will have sufficient numbers on the majority side—moderates and others—who will take a look at this record and say this is not the kind of record that we believe should commend someone for a lifetime of service on the DC Circuit. This is not what we should be doing.

I conclude as I started. I take no joy in coming to the Senate and opposing someone. I would rather be here speaking for a proposition, speaking for someone. It was Mark Twain who once was asked if he would engage in debate. He said, sure, as long as I can take the negative time. He was told, we didn't tell you the subject. He said, the negative side will take no preparation.

I am mindful that it is very easy to oppose. Let me say this: On this issue, on this nominee, this is not a close call. This is not a close call. I wish I could be here to support this nomination. I will not support the nomination of someone who believes the elements of that which has made this country such a wonderful place in which to work and live represents a triumph of socialism. It is not the triumph of socialism. It is a reflection of the interests of this country, we the people of this country who said we will lift the senior citizens of this country out of poverty. And we have done that. We went from 50 percent in poverty to less than 10 percent in poverty. Why? Because we did something important in this country, Social Security and Medicare.

With respect to environmental issues, with respect to workers' rights, with respect to a whole series of issues, this nominee is profoundly wrong. She has a record, a long record, an aggressive record of activism in support of what are, in my judgment, outdated and discredited concepts.

My hope is that in the remaining hours in this debate—I think we will vote on this tomorrow—my hope is there will be sufficient moderates on the other side who will understand this record does not justify confirmation to the Federal bench for a lifetime. I hope the next time I come to the Senate to speak on a judicial nomination, I will be able to speak in favor of a nomination that is a strong candidate.

This President has nominated some good people. I mentioned two from my State. I will say it again: both Republicans, both terrific people, both people I was proud to introduce to the Judiciary Committee and proud to support. While we might disagree on some issues, these are extraordinary jurists. I am proud they are Federal judges in my State. I felt the same way about some of the other nominees.

But this President has sent us a handful of nominees who do not deserve the backing and support of this Congress. It is long past the time for this Congress to stand up and speak with an independent voice. This Congress is not some sort of subsidiary of the White House. It is not an adjunct to the Presidency. This Congress is a separate branch of Government under this Constitution. The President nominates but we advise and consent. It is up to the Senate to determine whether judicial nominees are confirmed or not. My hope is we will make the right decision with this nomination.

I yield the floor and 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. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. THOMAS. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as in morning business.

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

ROLE OF THE FEDERAL GOVERNMENT

Mr. THOMAS. Mr. President, I know it has been a busy day and we are very much involved, of course, in moving forward with the judge arrangement, as we should be.

I spent a week in my home State. I guess we always come back with different ideas. I spent the whole time talking with people and having town meetings and those kinds of things, and in certainly a little different atmosphere.

People see a great deal in the news media about what is happening here, but, of course, what they get is what the media is intending for them to get, and somehow it is a little bit different. So frankly, people are a little impatient that we are not moving forward as much as we might. Certainly, we are working hard here, but the fact is, we have not moved to many different issues. I believe many of us want to do so.

I think we have spent an awful lot of time on internal kinds of issues that do not mean a lot to people out in the country. I understand that. I realize the way things are done here is important to us, such as changing procedures and all those things. But folks are talking about energy, folks are interested in a highway bill, people are interested in health and the cost of health care, such as what you do in rural areas with health care. There are a lot of these things that are so very important to people on the ground, and here we are continuing to talk about how we are going to vote on judges. So they get a little impatient. I understand that. So I hope we are in the process of doing something about that.

There is also a great deal of concern, of course, in Government spending and the deficit. I certainly share that concern. I have been more and more concerned about it as time has gone by. We have Social Security before us, about which we need to continue to do something.

Interestingly enough, the issue that came up most often when I was home in Wyoming is the idea of illegal aliens and illegal immigration and the great concern about that. I share that concern. Most people here do. Of course, we are seeking to do something. But perhaps we need to focus on some of those issues a little more.

I particularly will talk a little bit about spending and about the deficit. I think that is one of our most important issues. In relation to that, it seems to me we need to get some sort of an idea of what we think the role of the Federal Government is. We have kind of gotten in the position that for anything that is wanted by anyone, why, let's get the Federal Government to do it. Then we have somebody here on the Hill who will introduce a bill to do that, and perhaps it has very little relationship to what we normally think is the role of the Federal Government.

I think most people would agree with the notion we want to limit the size of the Federal Government, that we, in fact, want Government to be as close to the people as can be, and that the things that can be done at the State level and the county level, the city level, should be done there, the things that can be done in the private sector should be done there. I would hope we could come up with some kind of general idea, an evaluation, of what we think the role of the Federal Government specifically should be.

The other thing I will comment on a little bit is having some kind of a system for evaluating programs. We have programs we put into place when there is a need. Hopefully, there is a need for them. I think it is also apparent that over a period of time that need may change. But yet, once a program is in place and people are involved, they build a constituency around it. It stays in place without a good look at it to see whether it still belongs there.

These are some of the issues of concern. I think the first step toward reducing the $400 billion deficit is eliminating waste. Of course, what is waste to one person may not be waste to another. But there has to be, again, some definition as to how important things are relative to our goals and to assess programs that stay in place because they are there or that are not managed as well as they might be. I think we have some responsibility to try to ensure that we take a look at that issue.

There are serious problems facing our Nation today, of course. The President's budget that he put out proposes eliminating 150 inefficient and ineffective Government programs. You can imagine what that is going to mean to people who are involved. ''Something in my town? Something in my State? We are not going to mess around with that.''

There needs to be some kind of a relatively nonpolitical idea as to how you do that and what the purposes are. Of course, I see some of that right now in the military changes that obviously need to be made. They are difficult to make. So I hope the administration will pursue this idea of setting up some kind of a program—and I am here to support it—that evaluates those programs that are in place to see if, indeed, they are still as important as they were in the beginning.

We have to even go further than that, of course, to curb runaway spending. I think we can consolidate a number of the duplicative programs that are out there and save money and make it more efficient in their services. There are organizations that could manage a number of programs, each of which now has its own bureaucracy, and to put them together to make it efficient. I know you will always have people who say: Well, you are taking away jobs. That is not the purpose of programs. The purpose of programs is to deliver a service, and to do it in a way that is as efficient as it can be.

Of course, there are programs that should be eliminated. They have accomplished what they were there for. We need to have a system. I hope and I am interested in helping to put together a program that would do that. There is probably some merit in having a termination to a program so that after 5 or 10 years, it has to be reevaluated to be extended. That is one way of doing it. I don't know if it is the only way. That is something we are going to do, and I would like to do some of that.

The role of the Federal Government, again, if you talk in generalities, if you talk to people in terms of philosophy, most would say, we want to keep the Federal Government small. How many times do you hear people saying: Keep the Federal Government out of my life? Yet at the same time we have created this kind of culture where whenever anything is needed or wanted, mostly money, then let's get the Federal Government to do it.

If we step back and take a look at it and say: Wait a minute, is this the kind of thing the Federal Government should be involved in or is this something that could be done more efficiently by a government closer to the people, I believe we ought to do that.

Some lawmakers here believe the Government is the solution to all of society's ills. I don't agree with that. I don't believe that. Our role in the Federal Government is a limited role. Our role is to provide opportunities, not to provide programs for everything.

Ronald Reagan said: Government is not the solution to our problem. Government often is the problem. That is true. That doesn't mean there isn't a role. There is a role, an important role. But we need to help define that somehow. That vision of limited government has, to a large extent, been lost. We need to debate. We need to have some discussion, some idea as to what that role is.

Unfortunately, sometimes the politics of government are are you going to do everything for everybody because it is good politics. Politics is not our only goal here. Our goal is to limit government, to provide services, to provide them efficiently, and to evaluate them as time goes by.

Unfortunately, when a program gets put into place, it becomes institutionalized. It is there often without sufficient change. It is a real challenge. Something we need to do is to develop a plan, a consistent and organized plan to evaluate programs, to determine whether they are outdated, to determine whether they are still necessary, to determine if they could be done in a

little different way to be more efficient and more effective.

Clearly the Federal Government does have a role. It has a role in many matters. So our challenge is to determine what the roles are and then to set it up so that we are as efficient as can be. I know I am talking in generalities, but I believe these are some things that are basic to some of the ideas we ought to be talking about and evaluating. I sense that doesn't happen very much. We sort of are challenged to see how many programs we can get going. We seem to be challenged to see how much money we can spend.

I appreciate what the administration is seeking to do to try and reduce some of the spending. That is very difficult. You can see what kind of reaction you get cutting back on programs or changing them. Our budget group is working on doing some of that. We need to be more involved in that.

As I mentioned, evaluating programs is something we should do. We have a constitutional obligation to appropriate hard-earned tax dollars in the most efficient manner we possibly can. New government programs get institutionalized. They go on forever. So I think there are some things we could do that would be important, and that we should.

There will be some proposals coming from OMB. I intend to seek to help put them into place if we can and have a system that deals with efficiency, a system that deals with identifying what the proper role of the various levels of government is. We will hear the States saying: We need more money. That is probably true. But nevertheless, we ought to have some other definitions besides where the money will go.

I hope we have one where we can review some things. I know these are general ideas. I have not gotten into the specifics. But from time to time, I think we have to look at ourselves and say: How do we deal with some of these issues? Clearly, everyone would agree we have to do something about spending. We have to do something about the deficit. We have to look at the future as to how we are going to make this thing work.

You can take a look at Social Security. In about 10 years, we will have to take trillions of dollars out of the general fund to put them back where they belong in the Social Security fund. That is going to be very difficult. It is a tremendous amount of money. But that is what we have done, of course, and it is reasonable because that money has to be drawing interest and it is drawing interest. But those things are going to be more and more difficult.

We are seeking to try and review and renew the Tax Code so it can be simpler and more efficient and hopefully provide better opportunities for the economy to grow and have incentives for growing by being able to put that money into developing jobs as opposed to coming into the Federal Government.

These are real challenges, but they are worthwhile: the challenge of evaluating government programs to see if they are still important, to see if they are still being done the way they were designed to meet the needs they were designed to meet when they were first there, to do something about the idea of controlling spending and the size of the Federal Government so that doesn't continue to expand into every area that is open. We ought to take a look at all the programs that are in place, that we are talking about putting in place, all the bills that are brought in here, and see what a wide breadth of subjects we talk about. Some you could make a pretty good case are not within the area of normal recognition of Federal Government activity.

I hope the role of the Federal Government is something we could talk about. We ought to talk about it with the State leadership and get a little clearer idea of how we define these things and get some kind of a measurement against these roles.

There are lots of challenges. I will be happy when we can move on through this judicial debate. It is very important, but we should not be spending all this much time on it in terms of how we do these things and get on with the things that have an impact on what we are doing out in the country.

I yield the floor and 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. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BROWNBACK. Mr. President, I want to take up the discussion of Justice Janice Rogers Brown and her qualifications for serving on the DC Circuit Court of Appeals and some of the accusations and charges that have been brought against her. There have been a number that have been put forth. I had a lengthy discussion earlier about what I think this is really about, that it is about her being a strict constructionist, wanting to stay within the confines of the Constitution and the law and her interpretation rather than an expansive reading of it. I think that is really what is at the root of this, but people bring forth all sorts of allegations and charges, and I want to address some of them.

One of them is on a particular case, the Lochner case. As it might be described, this is getting into the weeds and details of some items, but I think it is meritorious to raise. She has been charged by some of our colleagues that in the Santa Monica Beach v. Superior Court case that Justice Brown called the demise of the Lochner decision, which was overruled in 1937, the revolution of 1937, and ''she wants to undo'' this overruling. A couple of my colleagues on the other side of the aisle said that Justice Brown believes in Lochner and wants the New Deal undone. That is the charge against Janice Rogers Brown. I want to talk about that particular charge because the opposite is what is actually true. This is the opposite of what Justice Brown said, and I want to go through her words of what she said to refute that particular case.

They are accusing her of wanting to undo the New Deal and the legislation that has been in place surrounding and regarding the New Deal.

In the Santa Monica case, which is the case that is cited for her opinion that she wants to undo the New Deal legislation of Roosevelt—FDR—she clearly criticized Lochner as wrongly decided:

> [T]he Lochner court was justly criticized for using the due process clause as though it provided a blank check to alter the meaning of the Constitution as written.

It was in the very next sentence that Justice Brown mentioned ''revolution of 1937.'' In context, it is clear that Brown felt the end of Lochner was a good thing, that the end of Lochner was a good thing, and she says that. Moreover, the ranking member of the Senate Judiciary Committee flatly asked Justice Brown at the hearing—we are at her confirmation hearing—this issue has been put forward. This charge has been made that you want to undo the New Deal legislation, that you want to overturn FDR, and the legacy of FDR. That is what you want to do. The ranking member of the Senate Judiciary Committee flatly asked Justice Brown at her confirmation hearing:

> Do you agree with the holding in Lochner?

She answered just as directly, ''No.'' This evidence is out there for all to see.

Why pretend it is not there is what I would say. She says no, she does not want to undo the New Deal legislation. She said it in sworn testimony at the Senate Judiciary Committee. She says that in her opinion in the Santa Monica Beach case. She does not want to overrule the case.

Others have attacked Justice Brown's speech to the Federalist Society when she lamented the demise of the Lochner era, in which the Supreme Court violated property or other economic rights. That is the allegation.

Justice Brown's speeches illustrate her personal views. To suggest that her critique of the Holmes dissent in Lochner is evidence of how she would rule in a certain case belies the facts. Indeed, Justice Brown has taken issue with the Lochner decision, criticizing the Supreme Court's ''usurpation of power,'' stating the Lochner court was justly criticized for using the due process clause:

> . . . as though it were a blank check to alter the meaning of the Constitution as written.

That is what she actually said.

Discussing the history of the judiciary, which Hamilton stated was to be

the branch ''least dangerous to the political rights of the Constitution,'' Justice Brown has stated her personal views that judges too often have strayed from this framework and engaged in judicial activism.

That is something we have talked about a lot, about judicial activism. She believes that too often judges have strayed from this framework and engaged in judicial activism. It was in this context that Justice Brown stated the standards of scrutiny employed by the judiciary, which are not enumerated in the Constitution, often are used by judicial activists to reach the results they want.

Justice Brown's record shows she is committed to following precedent, even when she might personally disagree with it. Partisan attack groups, lacking evidence that Brown is unable to follow precedent, have indicated their opposition stems from Justice Brown's supposed incorporating her personal views into judicial decision-making. They assert she injected her personal views on property rights into judicial opinions, but nothing could be further from the truth.

The two cases cited by the attack groups in this context deal with the Takings clause. The groups fail to point out the Supreme Court itself expressed the view that Justice Brown herself is now accused of advocating, that property rights were intended to carry the same import as other rights in the Constitution.

In Dolan v. City of Tigard, the Supreme Court majority wrote:

> We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances.

That is a 1994 case.

The reason I point these out is I want people to know the factual setting here, that she does not support an opinion to overrule New Deal legislation.

She has been attacked on her judicial qualifications, which I covered in an earlier presentation, but I want to also state here clearly and for the record, the ABA recently found Justice Brown qualified and concluded—this is from the ABA, the American Bar Association—that Justice Brown:

> . . . meets the Committee's very high standards with respect to integrity, professional competence and judicial temperament and that the Committee believes that the nominee will be able to perform satisfactorily all of the duties and responsibilities required by the high office of a federal judge.

If we are going to consider outside evaluations of judges, I would think the ABA's assessment that she is fit to serve on the DC Circuit is far more relevant than any others that might come forward.

I mentioned these to address some of the attacks on her that I think are based on her more limited strict constructionist view than on what others are basing their attacks, by trying to piece things together. Justice Brown is enormously qualified by her set of personal experiences, public service, good legal mind, good legal temperament, sound training and abilities to serve on the DC Circuit Court of Appeals. She will make an outstanding judge on that court of appeals.

Mrs. CLINTON. Mr. President, while I commend my colleagues for the compromise that momentarily spared this body from the so-called nuclear option, their agreement did nothing to change the fact that several of President Bush's judicial nominees fall well outside the mainstream and the parameters of what is an acceptable jurist. This nominee in particular, Janice Rogers Brown, has shown a disdain for the rule of law and precedent and is undeserving of lifetime tenure on the Federal bench.

The administration's agenda has become evident throughout the course of the debate over judicial nominees. The President, the Republican leaders, and their supporters have turned our Federal judiciary into their own personal political battleground. To satisfy the demands of their most ardent right wing supporters, the Republicans have not chosen to appoint capable Federal jurists but rather the political activists willing to contort the law, precedent, and the Constitution in order to promote their own conservative political agenda.

Our Federal courts have drifted well to the right in the past two or three decades. Today's so-called moderates would have been called conservatives in the 1970s. And while I personally think that this drift is not in the best interest of our country, I understand and accept that the President is certainly entitled to nominate conservatives to the bench. In fact, I have voted for the vast majority of this President's judicial nominees despite the fact that they maintain a conservative philosophy and support positions on issues that I do not necessarily agree with. I have done so because these nominees have demonstrated a respect for justice and the rule of law.

But even accounting for this drift, some of his nominees, such as Janice Rogers Brown, are far outside of even today's conservative mainstream.

Justice Brown is an agenda driven judge who, usually as a lone dissenter, shows little respect for the considered policy judgments of legislatures, repeatedly misconstrues precedent and brazenly criticizes U.S. Supreme Court rulings. She has a record of routinely voting to strike down property regulations, invalidate worker and consumer protections and restrict civil rights laws.

What makes Justice Brown particularly ill suited for a lifetime appointment to District of Columbia Court of Appeals is her disdain for Government. Among other things, she has long advocated for the demise of the New Deal. She equates democratic Government with ''slavery,'' claims that the New Deal ''inoculated the federal Constitution with a kind of collectivist mentality,'' calls Supreme Court decisions upholding the New Deal ''the triumph of our own socialist revolution,'' accuses social security recipients of ''blithely cannibaliz[ing] their grandchildren because they have a right to get as much 'free' stuff as the political system permits them to extract,'' and advocates returning to the widely discredited, early 20th century Lochner era, where the Supreme Court regularly invalidated economic regulations, like workplace protections.

''Where government moves in,'' Justice Brown has stated, ''community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is: families under siege; war in the streets; unapologetic expropriation of property; the precipitous decline of the rule of law; the rapid rise of corruption; the loss of civility and the triumph of deceit. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.'' Justice Brown's contempt for government runs so deep that she urges ''conservative'' judges to invalidate legislation that expands the role of government, saying that it ''inevitably transform[s] . . . democracy . . . into a kleptocracy.''

Furthermore, Justice Brown takes issue with one of the basic tenets of our entire judicial system—precedent. When she does not like the result established case law dictates, Justice Brown tries single-handedly to change it. In one dissent, she proclaimed, ''(w)e cannot simply cloak ourselves in the doctrine of stare decisis.''

These and other comments have prompted her colleagues on the California Supreme Court to criticize her for ''imposing . . . [a] personal theory of political economy on the people of a democratic state.'' Her fellow justices have taken her to task for asserting ''an activist role for the courts.'' They have noted that she ''quarrel[s] . . . not with our holding in this case, but with this court's previous decision . . . and, even more fundamentally, with the Legislature itself.'' And finally, they contend that Justice Brown's brand of judicial activism, if allowed, would ''permit a court . . . to reweigh the policy choices that underlay a legislative or quasi-legislative classification or to reevaluate the efficacy of the legislative measure.''

Justice Brown's nomination makes clear that we have entered an era in which conservative politicians are seeking to nominate and confirm judges who read the Constitution and the law to coincide with the Republican Party's platform. The expectation is that these judicial appointees will toe the party line. This politicization of the judiciary carries disastrous consequences. Because when our judges are viewed as politicians, it diminishes the influence and the respect afforded our courts, which is the lifeblood of their efficacy. Our independent judiciary is the most respected

in the world, and our courts' ability to reach unpopular but just decisions is made possible only because of the deep wells of legitimacy they have dug.

I urge my colleagues to take the longer view for the good of the American people. Think carefully about what the result to our judiciary will be if we continue to pack our courts with extremists who ignore justice and the law. I implore my colleagues to take seriously their constitutional charge of advice and consent and to reject the nomination of Janice Rogers Brown.

Mr. JOHNSON. Mr. President, I rise today in opposition to President Bush's nomination of Janice Rogers Brown to be United States Circuit Court Judge to the Court of Appeals for the DC. Circuit.

This morning, the Washington Post editorialized against the nomination of Justice Brown, writing that she ''is that rare nominee for whom one can draw a direct line between intellectual advocacy of aggressive judicial behavior and actual conduct as a judge,'' I agree with this respected newspaper's assessment and ask unanimous consent that this editorial be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. JOHNSON. I have several concerns about Justice Brown's ability to serve on this important court. On the California Supreme Court, Justice Brown has proven to be an activist judge when it suits her political agenda. Consistently, and despite precedent to the contrary, Justice Brown has ruled on the side of corporations. For example, in a cigarette sales case, she ignored relevant law and protected corporations in lieu of protecting minors. In other cases she has placed corporate interests above law that intended to shield consumers and women.

Justice Brown has also attempted to remove protections for teachers, and has been hostile to such New Deal era programs as Social Security. She has called government assistance programs ''[t]he drug of choice for . . . Midwestern farmers, and militant senior citizens.'' These views are out of touch with most Americans and South Dakotans.

During today's debate, colleagues argued that because Justice Brown has been reelected by California voters by a 76 percent margin, she should not be considered ''out of the mainstream.'' This argument is misplaced. First, many other judges get reelected at a higher rate. It should also be noted that her retention reelection took place only 1½ years into her tenure on the California Supreme Court, at a time before her extreme views and activist agenda could have been known by voters.

Both the American Bar Association and the California Judicial Commission have questioned Justice Brown qualifications to serve on the bench. The California Judicial Commission specifically noted questions about her deviation from precedent and her ''tendency to interject her political and philosophical views into her opinions.'' We should note their concerns and seriously consider them.

Justice Brown's views and history of judicial activism is especially dangerous in the DC Circuit. She is a nominee who is far outside of the mainstream. For these reasons, I stand in opposition of the confirmation and lifelong appointment of Janice Rogers Brown.

REJECT JUSTICE BROWN

[From the Washington Post, June 7, 2005]

The Senate filibuster agreement guaranteeing up-or-down votes for most judicial nominees creates a test for conservatives who rail against judicial activism. For decades, conservative politicians have objected to the use of the courts to bring about liberal policy results, arguing that judges should take a restrained view of their role. Now, with Republicans in control of the presidency and the Senate, President Bush has nominated a judge to the U.S. Court of Appeals for the D.C. Circuit who has been more open about her enthusiasm for judicial adventurism than any nominee of either party in a long time. But Janice Rogers Brown's activism comes from the right, not the left; the rights she would write into the Constitution are economic, not social. Suddenly, all but a few conservatives seem to have lost their qualms about judicial activism. Justice Brown, who serves on the California Supreme Court, will get her vote as early as tomorrow. No senator who votes for her will have standing any longer to complain about legislating from the bench.

Justice Brown, in speeches, has openly embraced the ''Lochner'' era of Supreme Court jurisprudence. During this period a century ago, the court struck down worker protection laws that, the justices held, violated a right to free contract they found in the Constitution's due process protections. There exist few areas of greater agreement in the study of constitutional law than the disrepute of the ''Lochner'' era, whose very name—taken from the 1905 case of Lochner v. New York—has become a code word for judicial overreaching. Justice Brown, however, has dismissed the famed dissent in Lochner by Justice Oliver Wendell Holmes, saying it ''annoyed her'' and was ''simply wrong.'' And she has celebrated the possibility of a revival of ''what might be called Lochnerism-lite'' using a different provision of the Constitution—the prohibition against governmental ''takings'' of private property without just compensation.

In the context of her nomination, Justice Brown has trivialized such statements as merely attempts to be provocative. But she has not just given provocative speeches; ''Lochnerism-lite'' is a fairly good shorthand for her work on the bench, where she has sought to use the takings doctrine aggressively. She began one dissent, in a case challenging regulation of a hotel, by noting that ''private property, already an endangered species in California, is now entirely extinct in San Francisco.'' Her colleagues on the California Supreme Court certainly got what she was up to. In response, they quoted Justice Holmes's Lochner dissent and noted that ''nothing in the law of takings would justify an appointed judiciary in imposing [any] personal theory of political economy on the people of a democratic state.''

Justice Brown is that rare nominee for whom one can draw a direct line between intellectual advocacy of aggressive judicial behavior and actual conduct as a judge. Time was when conservatives were wary of judges who openly yearned for courts, as Justice Brown puts it, ''audacious enough to invoke higher law''—instead of, say, the laws the people's elected representatives see fit to pass. That Justice Brown will now get a vote means that each senator must take a stand on whether some forms of judicial activism are more acceptable than others.

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

The PRESIDING OFFICER (Mr. ALEXANDER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

PENSION SECURITY

Mr. REID. Mr. President, throughout this Congress, I have argued that the Senate ought to spend less time debating radical judges and more time focusing on issues that can improve the lives of working Americans. One such issue is the gradual erosion of retirement security. Instead of working to replace Social Security's guaranteed benefit with a risky privatization scheme, we should work to strengthen retirement by shoring up our pension system. In no industry is this looming pension crisis more acute than the airline industry. The Finance Committee held a hearing on pension problems facing the airline industry this morning, and I hope that the committee will move soon on legislation to fix those problems.

Last month we learned just how worrisome this issue is, as the Pension Benefit Guaranty Corporation and United Airlines agreed to terminate the four pension plans maintained by the airline as that company struggles to emerge from bankruptcy. At the same time, Northwest, Delta and American Airlines face similar pension liabilities and are requesting Congress' help so that they can avoid bankruptcy. To their credit they are fighting to preserve their workers' pensions but need some time to allow them to recover from the effects of the post-9/11 travel downturn.

While the pension funding problems facing the airline industry are substantial, the industry is not alone in inadequately funding their employee pension plans. Congress needs to carefully review the rules that apply to the broad spectrum of employers that offer pension plans to their employees. Congress needs to make sure that those rules are strengthened to require greater funding for the pension promises